THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Appellate Case No. 2020-000528

RECEIVED
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SC Court of Appeals

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; Eleanor N. Hawkins, …….. Plaintiffs,

v.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; and John Doe, a Nominal Defendant Representing all Persons or Entities Unknown Who May Claim an Interest in the Property that is the subject of this action, …….. Defendants,

And

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; ……. Third-Party Plaintiffs,

v.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under

Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust Dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; and Michael J. Wilk, ……Third-Party Defendants,

Of which Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; Eleanor N. Hawkins; Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P.

Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and PhillipH. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; and Michael J. Wilk, are the ……..Appellants,

And

Of which Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; and John Doe, a Nominal Defendant Representing all Persons or Entities Unknown Who May Claim an Interest in the Property that is the subject of this action are the……..Respondents.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiff,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiffs,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet

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P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

TO: KENNETH R. MOSS and ROBERT E. LEE, Attorneys for Plaintiffs and Third-Party Defendants; and JAMES CHRISTOPHER CLARK, Attorney for Defendant Vista Del Mar Condominiums, LLC:

YOU WILL PLEASE TAKE NOTICE that Defendants/Third-Party Plaintiffs Atlantic Development Company, LLC and Atlantic Coast Funding, LLC ("ADC" and "ACF") hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an order granting ADC and ACF summary judgment in their favor on Plaintiffs' Complaint related to the easement at issue, claims asserted by the Third-Party Defendants related to the easement at issue, and on ADC's counterclaim and third-party claim for an implied easement as there are no genuine issues of material fact in dispute and ADC and ACF are entitled to judgment in their favor as a matter of law.

This motion will be supported by the pleadings filed herein; deposition testimony; a memorandum of law in support that may be filed by ADC and ACF; such other matters as may be properly presented to the Court at the time of the hearing; and the following:

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1. This case is a title dispute between the current record owner and a condominium association and its unit owners concerning a 2.58 Acre Tract and an easement once subject to a horizontal property regime.[1]

2. In 2003, the original developer submitted 5.853 acres of land and improvements to a Horizontal Property Regime named Vista Del Mar by recording an initial Master Deed.

3. In June 2006, the original developer conditionally submitted 5.00 acres of additional land and improvements to the terms of the Master Deed by recording the First Amendment to the Master Deed.

4. In March 2009, by rights expressly granted to it in the Master Deed, the original developer removed the 2.58 Acre Tract from the Regime by recording the Fourth Amendment to the Master Deed and then a Corrective Fourth Amendment. The Corrective Fourth Amendment references a plat describing the 2.58 Acre Tract that was recorded in Plat Book 243 at Page 275.

5. Plat Book 243 at Page 275 shows an access easement and a street or road named Vista Del Mar Lane that border the 2.58 Acre Tract.

6. In December 2013, the original developer recorded a deed conveying the 2.58 Acre Tract to GDMB Ocean, LLC ("GDMB Ocean") (the "GDMB Deed") and additionally assigned its rights as "Developer" under the Master Deed to GDMB Operations, LLC ("GDMB Operations") (the "GDMB Assignment").

[1] Plaintiffs' Amended Complaint describes the 2.58 Acre Tract as "Tract 1," and the easement as "Tract 2." Defendants ADC and ACF have separately moved for partial summary judgment with respect to the 2.58 Acre Tract. This partial summary judgment motion concerns only the disputed easement.

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7. In December 2014, Plaintiff Vista Del Mar Condominium Association ("VDMCA") conveyed an easement to GDMB Ocean, LLC over that area entitled labeled "access easement" in Plat Book 243 at Page 275.

8. GDMB later sold and transferred title to the 2.58 Acre Tract and easement to ADC, along with other property. ADC then gave a mortgage on the property to ACF as security for a promissory note.

9. Plaintiffs assert the easement—that Plaintiff VDMCA conveyed to Defendant ADC's predecessor-in-title—is void because it violates S.C. Code § 27-31-70, which provides "[t]he common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void."

PROCEDURAL HISTORY

10. In 2017, Plaintiffs initiated this action and raised five claims in their complaint: 1) quiet title; 2) declaratory judgment; 3) equitable title; 4) equitable easement appurtenant; and 5) servitude appurtenant.

11. ADC and ACF filed an answer to Plaintiffs' complaint in which ADC asserted counterclaims for a declaratory judgment.

12. ADC and ACF now seek summary judgment in their favor on each of Plaintiffs' claims regarding the easement.

LEGAL STANDARD

13. Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

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genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

14. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998).

15. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

GROUNDS FOR SUMMARY JUDGMENT

16. An easement is not a division of property within the meaning of S.C. Code § 27-31-70. Therefore, the statute does not apply to the easement.

17. Plaintiffs and Third-Party Defendants are equitably estopped from disputing the easement because Plaintiff VDMCA[2] conveyed the easement to ADC's predecessor in title. *See, e.g., Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006) ("The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.").

[2] Third-Party Defendants are all members of Plaintiff VDMCA.

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18. Plaintiffs and Third-Party Defendants are estopped from contesting the easement because a party may not challenge the validity of its own deed. *See generally, Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000) ("Estoppel by deed precludes a party to a deed from asserting as against the other any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it."); 7 S.C. Jur. *Estoppel and Waiver* § 7.

19. Upon the recording of Plat Book 243 at Page 275, an implied easement was created as a matter of law and Plaintiffs and Third-Party Defendants are estopped from claiming otherwise. *see generally Town of Kingstree v. Chapman*, 405 S.C. 282, 305, 747 S.E.2d 494, 505–06 (Ct. App. 2013) ("As to the grantor, who conveyed the property with reference to the plat, and the grantee and his successors, the dedication of the easement is complete at the time the conveyance is made. The grantee receives a private easement at the time of conveyance in any streets referenced in the plat." When "lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.") (internal citations omitted).

20. Plaintiffs and Third-Party Defendants waived their rights to contest the easement. *See generally, Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 388 (1992).

CONCLUSION

21. There are no genuine issues of material fact. Accordingly, this Court should grant ADC's and ACF's motion for partial summary judgment on Plaintiffs' Complaint and the Third-

Party Defendants' claims related to the easement at issue and on ADC's counterclaim and third-party for an implied easement.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

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ATTORNEYS FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

July 15, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2017-CP-26-00424
Vista Del Mar Condominium Association, Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust, John J. Hawkins and Eleanor N. Hawkins,	)	
Plaintiffs,	)	MEMORANDUM IN OPPOSITION TO ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S MOTION FOR SUMMARY JUDGMENT
vs.	)	
GDMB Ocean, LLC, GDMB Operations LLC, Vista Del Mar Condominiums, LLC, Atlantic Development Company, LLC, Atlantic Coast Funding, LLC, and John Doe, a Nominal Defendant Representing all Persons or Entities Unknown Who May Claim an Interest in the Property that is the subject of this action,	)	
Defendants.	)	
Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,	)	
Third Party Plaintiff,	)	
vs.	)	
Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.	)	

WWPEM, PLLC
SC-6791-003

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Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,	)
Third-Party Defendants.	)

The Plaintiffs, Vista Del Mar Condominium Association ("Association"), Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust ("Merritt"), John J. Hawkins ("J. Hawkins"), Eleanor N. Hawkins ("E. Hawkins")(hereinafter collectively referred to as "Plaintiffs"), and Third-Party Defendants respectfully submit this Memorandum in Opposition to Defendants Atlantic Development Company, LLC ("Atlantic Development") and Atlantic Coast Funding, LLC's ("Atlantic Funding")(hereinafter collectively referred to as "Movants") Motion for Summary Judgment ("Motion"). For the reasons set forth below, the Vista Del Mar prays that the Court deny the Motion.

Movants' main arguments are that the 2.58 Acre Tract ("Tract") was not a statutory common element, that the developer was able to remove the Tract pursuant to the Master Deed, that Tract was removed before the transition period ended, and that S.C. Code §27-31-70 did not void this removal. Movants further argue in an additional brief that Plaintiffs and Third Party Defendants are estopped from disputing the validity of the easement at issue in this case and that an implied easement was created as a matter of law.

BACKGROUND

The Master Deed of the Vista Del Mar Horizontal Property Regime (hereinafter "Master Deed") was filed with the Horry County Registrar of Deeds on December 4, 2013. **Exhibit A**, Master Deed of the Vista Del Mar Horizontal Property Regime. The Developer at the time was Defendant Vista Del Mar Condominiums, LLC ("VDMC"). Id. at 3. On June 27, 2006, VDMC

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recorded the First Amendment to the Master Deed and added additional property to the Regime for Phase II. **Exhibit B**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1. This additional property contained 5.0 acres as shown on the plat recorded in Plat Book 214 at Page 102 in the Horry County Registrar of Deeds. VDMC proceeded to build on the property and sold its last remaining unit for the Regime on or about December 31, 2007. **Exhibit E**, Dennis Merritt Deed.

On or about March 25, 2009, VDMC filed a Fourth Amendment to the Master Deed in an attempt to remove a portion of the additional property added into the Regime. A corrective fourth amendment followed and was filed on April 6, 2009 (Fourth and Corrective Fourth Amendment hereinafter referred to as "Partition Amendment"). **Exhibit C**, Fourteenth Amendment and Corrective Fourth Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime. The Partition Amendment purported to remove 2.58 acres from the Regime as recorded in Deed Book 3705 at Page 3087 in the Horry County Registrar of Deeds ("Removed Tract"). However, Plaintiffs and Third Party Defendants asserted that the purported removal was ineffective as a matter of law. The Removed Tract was then sold and conveyed by VDMC to GDMB Ocean, LLC on or about December 19, 2013.

On December 19, 2013 with an effective date of December 20, 2013, Grande Dunes Development Company, LLC, Villa Marbella Development Company, LLC, Villa Venezia Development Company, LLC and Vista Del Mar Condominiums, LLC as Assignor and GDMB Operations, LLC entered into an Assignment of Declarant and Developer Rights in Connection with the Grande Dunes Development.[1] After this transaction, GDMB Ocean, LLC or GDMB Operations, LLC granted an access easement interest over portions of the common area of the

[1] By instrument recorded in Deed Book 3705 at Page 3116, records of Horry County, South Carolina.

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Regime purportedly on behalf of the Association (hereinafter "Access Easement"). The Removed Tract and Access Easement were sold and conveyed to Atlantic Development Company, LLC.[2] Plaintiffs and Third Party Defendants brought this quiet title action asserting that they did not consent to, join in, or in any way ratify the removal and sale of Removed Tract or the Access Easement and that these transactions were void as a matter of law pursuant to S.C. Code §27-31-70. Movants, however, contend that the Master Deed and its amendments were effective and that the statute relied upon by Plaintiffs and Third Party Defendants does not void the transactions.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). A trial court may not grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," show that there is a genuine issue as to any material fact. Bovain v. Canal Ins., 678 S.E.2d 422, 424 (2009); Rule 56(c), SCRCP. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Robinson v. Estate of Harris, 662 S.E.2d 420, 422 (S.C. App., 2008)(citing Moore v. Weinberg, 373 S.C. 209, 215-16 (Ct. App. 2007).

"Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 607 S.E.2d 362, 364 (S.C. Ct. App. 2004). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be

[2] Title to Real Estate Limited Warranty Deed was recorded in the records of Horry County on January 08, 2016 in Deed Book 3884 at Page 1242.

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viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth. of S.C., 581 S.E.2d 161, 165 (2003).

Plaintiffs and Third-Party Defendants are the non-moving parties before the Court on the present Motion and therefore all inferences must be viewed in the light most favorable to them.

ARGUMENT

I. The Removed Tract was a common element that, pursuant to statute, could not be divided, partitioned, or removed from the Regime.

Pursuant to the Horizontal Property Act, "The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void." S.C. Code §27-31-70. Plaintiffs are not aware of any reported cases that have interpreted the referenced code section. Further, a unit owner has 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… The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property." S.C. Code §27-31-60(a). "Once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer." Reyhani v. Stone Creek Cover Condo. II Horizontal Prop. Regime, 494 S.E.2d 465,468 (Ct. App. 1997).

Movants contend that because the Removed Tract was undeveloped that it did not fit the statutory definition of common element and therefore the statutory provisions prohibiting removal

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does not apply. Plaintiffs and Third Party Plaintiffs, however, do not agree and assert firmly that the Removed Property was in fact developed. Therein lies a highly disputed issue of fact.

The Horizontal Property Act includes as general common elements "the land whether leased or in fee simple…on which the apartment or building stands… and all 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 §27-31-20(f). Movant's argument ignores that a condominium building was constructed on a 5.0 acre parcel of land that was submitted to the Vista Del Mar Horizontal Property Regime in the First Amendment to Master Deed, **Exhibit B**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1. This additional property contained 5.0 acres as shown on the plat recorded in Plat Book 214 at Page 102 in the Horry County Registrar of Deeds. Giving credence to Movant's argument would require the Court to completely ignore the dimensions and property boundaries of the real property that was expressly phased into the horizontal property regime. It is clear that not only the land directly under a building can be included as a common element but also the entirety of the real property that lies within the boundaries of real property that was expressly phased into the horizontal property regime. Plaintiffs and Third Party Plaintiffs contend that once the additional land was submitted to the Regime, it became a common element and was then part of the "land… on which the building stands." Additionally, it was an element of the property that was "in existence . . [and]. . rationally of common use."

Additionally, and more importantly, in this case the Master Deed defined *Common Area* as "…all of the Regime property after excluding the Units." **Exhibit A**, p. 2. The Master Deed further defined *Regime* as "…the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith." Id. at 4. Therefore,

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the Master Deed itself categorized all property excluding the Units as a common area, meaning that the Removed Tract was expressly defined as a common area of the horizontal property regime. Further, the Partition Amendment clearly states that the "… Developer amended the Master Deed removing a subdivided portion of the **Common Area** from the Regime and from the application of the Master Deed…" **Exhibit C**, pg. 1 (*bold and underlined emphasis added*). Even the Partition Amendment expressly stated that a common area was being removed. Therefore, Plaintiffs and Third Party Defendants believe the record clearly confirms that the Removed Tract was a common area and any argument by Movants that it was not is therefore an issue of material fact.

Movants further argue that because the Master Deed and First Amendment did not have a map or plat specifically describing the Removed Tract as a common element as required under S.C. Code 27-31-110 that the Removed Tract cannot be considered a common element. The statutory requirement states that "Other common elements, both limited and general, must be shown graphically insofar as possible and must be described in detail in words and figures." S.C. Code 27-31-110. As the statute requires as much detail as possible, it certainly does not require every single detail. Plaintiffs and Third Party Defendants assert that any question as to whether a part of the Regime is a common element is answered and defined in the Master Deed. As stated previously, the Master Deed clearly defines *Common Area* as "…all of the Regime property after excluding the Units." **Exhibit A**, p. 2. The Removed Tract was of course and expressly Regime property after the filing of the First Amendment to the Master Deed, **Exhibit B**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1.

Plaintiffs and Third Party Defendants believe this case to be clear in that the Removed Tract was a common element pursuant to statute and the Master Deed. The Horizontal Property Act unmistakably mandates that the common elements cannot be divided or partitioned and that

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the co-owners own a percentage of the common element, which is permanent in character, and cannot be altered without their approval. S.C. Code §27-31-70; S.C. Code §27-31-60(a). In this case, VDMC removed a common element and did so without the co-owners' approval. **Exhibit C**, pg. 1. Plaintiffs and Third Party Defendants, therefore, contend that the removal of the Removed Tract from the Regime was void by operation of law. [3]

II. Even if removal of the Removed Tract from the Regime was not void by operation of law, the Developer lost its ability to amend the Master Deed to withdraw the Removed Tract because the transition period had lapsed.

As Movants argue, there are several instances in the Master Deed which states that the Developer has the ability to withdraw unimproved property from the Regime during the transition period. Assuming arguendo these provision of the Master Deed are not void pursuant to S.C. Code §27-31-70, the Master Deed also specifically stated that to withdraw unimproved common area, "…the Developer will execute an Amendment for itself and as attorney-in-fact for all Owners." **Exhibit A**, pg. 29. However, as stated previously, Plaintiffs and Third Party Defendants contend that these provisions fail and are unenforceable pursuant to the Horizontal Property Act.[4]

Even if these provisions do not fail as a matter of law, Plaintiffs and Third Party Defendants contend that issues of material fact remain with regards to when the transition period ended. The Master Deed defines the "Transition Period" as the "…time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. December 31, 2017; or

[3] See Windham v. Riddle, 672 S.E.2d 578, 582-83 (2009)("In construing a deed, the intention of the grantor must be ascertained and effectuated, **unless that intention contravenes some well settled rule of law of public policy**.")(bolded for emphasis).
[4] See footnote three (3) and argument under Section I above.

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2. Three (3) months after the conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or
3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to this Master Deed executed and filed of record by Developer." **Exhibit A**, pg. 5.

Movants assert that the transition period ended when GDMB Operations chose to end it in 2015, pursuant to option number three (3) above. However, Plaintiffs and Third Party Defendants argue that the transition period ended on or about March 31, 2008, three months after the last unit constructed was sold, pursuant to option two (2) above.[5] Plaintiffs and Third Party Defendants believe this schism exists due to the parties attributing different meanings to option number two (2).

"A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." DNR v. Town of McClellanville, 345 S.C. 617, 623 (S.C., 2001) (citing Hawkins v. Greenwood Development Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997); 17A Am.Jur.2d Contracts § 338). Whether the language is ambiguous is a question of law for the court; however, if it is determined to be ambiguous evidence may be used by the parties to establish the intent and then it becomes a question of fact. Id.

[5] See Plaintiffs'Amended Complaint,¶17 ("Upon information and belief VDMC sold its last remaining unit in Vista Del Mar Horizontal Property Regime on or about December 31, 2007. With the filing of this conveyance the "transition period", as defined in the Master Deed, would have begun and the transition period would have expired on or about March 31, 2008.")

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In this case, the Developer stated in the Master Deed that it had the right to "…expand the Regime in five additional phases to a total of two hundred fifty (250) Units…" **Exhibit A**, pg. 28. While the Regime could be expanded, phases three through five were never added to the Regime. See generally **Exhibit A**. Therefore, the Regime consisted solely of two phases, the last unit of which was sold on or about December 31, 2007. Plaintiffs and Third Party Defendants' believe that the reading of the second option establishes that the transition period was to end three months after the conveyance of ninety-nine percent (99%) of the maximum number of units contained in all phases of the Regime, and the Regime only ever contained two phases. Therefore, the transition period should have ended on or about March 31, 2008, which is prior to the removal and conveyance of the Removed Tract and the grant of the Access Easement.[6]

On the other hand, the Movants argue that the maximum number of units would be two hundred fifty (250) units, the total units that could have been contained if all phases were added to the Regime. Their position is that because ninety-nine percent (99%) of the potential two hundred fifty (250) units were not conveyed, option number two (2) was never triggered. Because there are two different meanings and interpretations for the same provision, the Court must hold that the provision is ambiguous and is consequently a question of fact for the fact finder. As a result, summary judgment is not appropriate. Robinson v. Estate of Harris, 662 S.E.2d 420, 422 (S.C. App., 2008)(citing Moore v. Weinberg, 373 S.C. 209, 215-16 (Ct. App. 2007)("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.")

[6] Although Movants assert that Dan Schuster, the Association's 30(b)(6) witness noted the transition period ended in 2015 and the Association's financial statement stated as such as well, Plaintiffs and Third Party Defendants take the position that it does not change the fact that the transition period **should have ended** in 2008.

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Lastly, even if the court agrees with the Movants' reading of the transition period language in the Master Deed, the developer never signed the Partition Amendments or the Access Easement as attorney-in-fact for all owners. **Exhibits C & D**. With regards to subdividing, the Master Deed clearly states that "…the Developer will execute an Amendment for itself **and** as attorney-in-fact for all Owners." **Exhibit A**, pg. 29 (bolded for emphasis). The record is clear that the developer did not expressly sign "as attorney-in-fact for all Owners" and therefore did not strictly comply with the requirements of the Master Dee. As a result, the Partition Amendment is not effective. See generally Snow v. Smith, 416 S.C. 72, 89-90, 784 S.E.2d 242, 251 (Ct. App. 2016)(stating a developer may "amend restrictive covenants running with the land or impose new restrictive covenants running with the land, provided . . . the developer . . . strictly compl[ies] with the amendment procedure as set forth in the declaration of covenants"). To the extent that Movant would assert that the Developer was not required to expressly sign an Amendment "as attorney-in-fact for all Owners", there is a disputed issue. In that instance, and because there are two different meanings and interpretations for the same provision, the Court must hold that the provision is ambiguous and is consequently a question of fact for the fact finder. As a result, summary judgment is not appropriate.

III. Plaintiffs and Third Party Defendants are not equitably estopped from disputing the validity of the Access Easement

"A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." Snow v. Smith, 784 S.E.2d 242, 248 (Ct. App. 2016). A deed cannot convey an interest the grantor does not have or does not have permission to grant. Belue v. Fetner, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968). Therefore, if the Master Deed did not

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provide authority for the developer or the Association to grant an easement, no easement is able to be granted. If the Master Deed did grant authority, and the authority was not in perpetuity, the authority could have logically expired.

In this case the Access Easement was granted as a result of the Removed Tract, which as Plaintiffs and Third Party Defendants assert was void as a matter of law. **Exhibit D**, Amended and Restated Easement Agreement.[7] Therefore, if the court determines that the Removed Tract was not proper and void, no implied easement would exist.

Secondly, even if the court holds that the Master Deed and Horizontal Property Act allows for the subdivision and removal of common elements, the Master Deed makes no reference regarding the granting of additional easements outside of the ones it specifically asserts under Section Eleven (11). The Master Deed allows for easements for encroachments as between common areas and units and as between units and units, and easements for air space, utilities, construction, inspection by the developer, emergency personnel, and for a sales office and related signs. **Exhibit A**, pgs. 25-27. Upon information and belief, no provision of the Master Deed specifically authorizes any other scope of easement to be granted. See generally, Exhibit A. Therefore, the developer at the time and the Association had no authority to grant the Access Easement and the Access Easement is invalid and void *ab initio*. See generally Anchorage Plantation Homeowners Ass'n v. Walpole, 2018-UP-337 (S.C. App., 2018)(holding the declaration did not give the developer the right to transfer that specific type of interest and, as a result, the transfer was void *ab initio*); Belue v. Fetner, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968)(A deed cannot convey an interest the grantor does not have).

[7] "WHEREAS, in **conjunction with the removal of the Benefitted Parcel** from the Master Deed and recordation of the Plat, an access easement was granted for the Benefitted Parcel…" (bolded for emphasis).

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Moreover, Plaintiffs and Third Party Defendants contend that they in no way consented to, joined in, or in any way ratified the Access Easement or conveyance of the Removed Tract. While there was a signature from the Association on the agreement for the easement, the Association was still under the control of the developer.[8] Plaintiffs and Third Party Defendants assert that "Once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer." Reyhani v. Stone Creek Cover Condo. II Horizontal Prop. Regime, 494 S.E.2d 465,468 (Ct. App. 1997). The purported granting of the Access Easement by the Developer would of course deprived the Owners of a property interest without their consent and is therefore not valid.

IV. Conclusion

In conclusion, Plaintiffs and Third Party Plaintiffs maintain that the applicable law voids the conveyance of the Access Easement and the removal of the Removed Tract and, even if it does not void the transactions, issues of material fact still remain that must be determined in trial and therefore their Motion should be denied. Lastly, the Movant's Motion for Summary Judgment on the Access Easement issue should also be denied as questions of material fact remain regarding whether there was even authority to convey the easement, let alone remove the Removed Tract.

[8] Plaintiffs and Third Party Defendants argue that control of the Association should have been turned over in 2008; however, it was not done until February 2015.

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Respectfully submitted,

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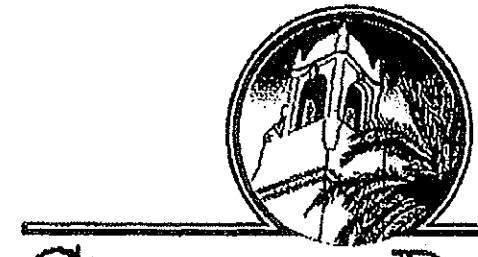
August 8, 2019

EXHIBIT
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REGISTRAR OF DEEDS

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF LAWS OF 1976, AS AMENDED



GRANDE DUNES

MASTER DEED OF

THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME

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STATE OF SOUTH CAROLINA	)	MASTER DEED
	)	OF THE VISTA DEL MAR
COUNTY OF HORRY	)	HORIZONTAL PROPERTY REGIME

TO ALL WHOM THESE PRESENT MAY COME:

WHEREAS, Vista Del Mar Condominiums, LLC (the "Developer") is a South Carolina limited liability company, whose business address is PO Box 2095, Myrtle Beach, South Carolina 29578-2095; and

WHEREAS, the Developer is the owner of that certain real property more fully described in Exhibit "A" attached hereto located within the City of Myrtle Beach, Horry County, South Carolina (the "Land"); and

WHEREAS, the Developer intends to construct certain improvements on the Land; and

WHEREAS, the Developer now deems it appropriate to organize a horizontal property regime by duly executing and recording this Master Deed in the Office of the Register of Deeds for Horry County, South Carolina ("ROD").

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon, together with all easements, rights and appurtenances thereunto belonging, to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976) and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME, subject to the following, **INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO WITHDRAW UNIMPROVED PORTIONS OF THE LAND PURSUANT TO SECTION 14.2(b):**

1. Definitions.

Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20, South Carolina Code of Laws (1976), when used in this Master Deed or any amendment hereto, will have the meaning therein provided. The following words, as well as other defined terms set forth herein, when used in this Master Deed or any amendment or supplement hereto, unless the context requires otherwise, will be deemed to include the singular and plural forms as the context requires and have the following meanings:

"Annual Assessment Period" means the fiscal year of the Association established by the Association's Board of Directors.

"ARC" will mean and refer to the board or committee established pursuant to the Master Covenants for Grande Dunes to approve improvements, additions, and changes within the Development, and its successor or the assign of the architectural review and approval authority of the Master Covenants.

"Assessment" means the amount assessed against an Owner and his Unit from time to time by the Association in the manner provided herein.

"Assigned Value" means the value assigned to each Unit in accordance with Exhibit "C" attached hereto and utilized for purposes of computing the Percentage Interest appurtenant to such Unit, which Assigned Value will not constitute the sales price of the Unit or be relied upon as a representation of the actual value of the Unit.

"Association" means Vista Del Mar Condominium Association, being an association of Owners of Units located in the Project, in the form of a nonprofit, non-stock membership association, which will be incorporated in accordance with the Article of Incorporation, attached hereto as Exhibit "D" and the Nonprofit Corporation Act.

"Board of Directors" or "Board" means the Board of Directors of the Association, and "director" or "directors" means a member or members of the Board.

"Building," means a structure containing Units.

"Bylaws" means the Bylaws of the Association attached hereto as Exhibit "E," as amended from time to time in accordance with the terms of the Bylaws and this Master Deed.

"Common Area" means all of the Regime property after excluding the Units, including the following:

1. Easements through Units for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to Units and the Common Areas; provided, however, such easements through a Unit will be only according to the Plans for the Building, or as the Building is constructed unless otherwise approved by the Unit Owner.

2. An easement of support in every portion of a Unit that contributes to the support of a Building.

3. Easements through the Units and Common Areas for maintenance, repair and replacement of the Units and Common Areas.

4. Installation for the furnishing of utility services to more than one Unit or to the Common Areas or to a Unit other than the one containing the installation, which installation will include ducts, plumbing, wiring, and other facilities for the rendering of such services.

5. The tangible personal property required for the maintenance and operation of the Unit, even though owned by the Association.

6. Pool and associated facilities, when constructed.

7. Gatehouse or other controlled entry facilities, elevators, walkways, ponds, waterfalls and fountains.

When used herein, "Common Area" will be deemed to include any service provided by the Association in furtherance of the uses and purposes to which any of the aforesaid facilities are put.

"Common Expense(s)" means (a) all expenses incident to the administration of the Association and maintenance, repair and replacement of the Common Areas and the Limited Common Areas, after excluding there from such expenses which are the responsibility of an Owner; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common

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Expenses by the Condominium Act or the Regime Documents; and (d) reasonable reserves established for the payment of any of the foregoing.

"Condominium Act" means the Horizontal Property Act of South Carolina, South Carolina Code of Laws (1976), Section 27-31-10 to Section 27-31-300, as may be amended from time to time.

"Developer" means Vista Del Mar Condominiums, LLC, a South Carolina limited liability company, its successors and assigns.

"Institutional Mortgage" will mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term will also mean and refer to the holder of any Mortgage securing a loan made by the Developer, its affiliates, successors, or assigns

"Land" means the Land which is described in Exhibit "A" attached hereto, as said exhibit may be amended from time to time in accordance with the provisions of this Master Deed to withdraw unimproved portions thereof from the Project.

"Limited Common Area" means that portion of the Common Area set aside and allocated for the exclusive use of the Owner of the Unit to which attached or assigned, and will include that portion of any Common Area that is pierced by the Unit's interior stairs, if any; a Unit's chimney structure and flue, if any; air conditioner units and condensers and hot water heaters located outside of the Unit, and the spaces occupied by same; assigned parking spaces on the two parking levels of the Building; and the terraces adjacent to the Unit.

"Master Association" will mean and refer to Grande Dunes Master Association, a South Carolina not-for-profit corporation.

"Master Covenants" means and refers to that certain Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association filed in the ROD April 26, 2000 in Book 2254, and to which the Regime is subject and pursuant to which the Association is a "Subordinate Association."

"Master Deed" means this document, as amended from time to time.

"Member" means each Owner who is a member of the Association.

"Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit.

"Mortgagee" will mean and refer to the holder of a Mortgage.

"Nonprofit Corporation Act" means and refers to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code of laws (1976), Sections 33-31-101, et. seq., as amended from time to time.

"OCRM" means the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control.

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"Owner" means the record owner, whether one or more persons, of fee simple title in and to any Unit; excluding, however, those persons having such interest merely as security for the performance of an obligation.

"Percentage Interest" means the undivided percentage interest owned by each Owner as a tenant-in-common in the Common Areas. "Total Percentage Interest" means the aggregate of all the Percentage Interests.

"Plans" mean and include the site plan and the floor plans of the Project which are filed as an attachment to this Master Deed showing the boundaries of the Land, the horizontal and vertical location of the improvements and Common Areas of the Project thereon and certified by a licensed engineer or architect in accordance with the provisions of the Condominium Act.

"Project" means, collectively, the Land, the Building and all other improvements and structures located thereon, and all easements, rights and appurtenances belonging thereto, submitted to the Condominium Act by this Master Deed, as amended from time to time in accordance with the provisions hereof. For purposes hereof, including , but not limited to, insuring the Building and other insurable improvements, "Project" shall mean the Project as originally constructed or to be constructed by the Developer pursuant to its plans and specifications for the improvements, prior to the construction and installation of an Owner's betterments, improvements, upgrades and upfits pursuant to the Owner's and Developer Purchase and Sale Agreement and any addendum thereto. If Developer constructs and installs betterments, improvements, upgrades and upfits pursuant to the Purchase and Sale Agreements between the Developer and one or more Owners, the developer shall set forth in Exhibit "B" hereto the amount for which the developer constructed the Building, in which such Owners have Units, pursuant to the original plans and specifications. An Owner shall be responsible to insure its betterments, improvements, upgrades and upfits in excess of the Owner's allocable share of the Association's insurance charged pursuant to Assessments in proportion to the Owner's Statutory Percentage shown on Exhibit "C" hereto.

"Regime" means the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith.

"Regime Documents" means and includes this Master Deed, all Exhibits hereto, the Articles of Incorporation of the Association, the Bylaws and the Rules and Regulations, all as amended from time to time in accordance with the provisions thereof or in accordance with the laws of the State of South Carolina.

"Rules and Regulations" means the rules and regulations from time to time promulgated by the Board of Directors governing the use of the Common Areas and Units.

"Transition Period" means the time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. December 31, 2017; or

2. Three (3) months after the conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or

3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the

Association by an express amendment to this Master Deed executed and filed of record by Developer.

"Trustee" means the Board of Directors acting as a fiduciary for the benefit of the Association and the Owners in holding certain funds and providing services as provided herein, or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use by an Owner, situate within the Unit boundaries described in this Master Deed, including Exhibit "B" attached hereto, as amended from time to time in accordance with the provisions of this Master Deed and constituting an "apartment" as defined in the Condominium Act. Each Unit will be identified in the architect's floor plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Area.

2. Administration

2.1 The Association.

The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Regime Documents, as the same may be amended from time to time, will govern the Association and the Owners.

2.2 Membership.

Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association that is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

2.3 Agreements.

The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

(a) The Association will not enter into any contractual arrangement with a term of longer than two (2) years without Member approval therefor by a majority of the votes cast by written ballot or in person or by proxy at a meeting at which a quorum is present; and

(b) Any professional management agreement entered into pursuant to Section 2.8 will provide that such contractual arrangement is subject to termination without cause and without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement.

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Anything contained herein to the contrary notwithstanding, the following contracts will be exceptions to the provisions of Sections 2.3(a) and 2.3(b) above:

(i) Any contract with a utility company if the rates charged for the materials or services are subject to regulation by the South Carolina Public Service Commission; provided, however, that the term of the contract will not exceed the shortest term for which the utility will contract at the regulated rate in effect at the contract date;

(ii) Any prepaid casualty and/or liability insurance policy with a term not to exceed three (3) years, provided that the policy permits short rate cancellation by the insured;

(iii) Any contract for cable television services and equipment or satellite dish television services and equipment for a term not to exceed five (5) years; and

(iv) Any contract for the sale or lease of burglar and/or fire alarm equipment, installation and/or services for a term not to exceed five (5) years.

Each Owner by acquiring or holding an interest in a Unit thereby ratifies and agrees to be bound by the terms and conditions of all such contractual arrangements entered into by the Board of Directors on behalf of the Association prior to the conveyance of the Unit to the Owner.

2.4 Books and Records.

The Association will keep full and accurate books of account and financial records showing all receipts and disbursements. In particular, the books will be maintained with a detailed account, in chronological order, of the receipts and expenditures affecting the Regime and its administration, and specifying the maintenance and repair expenses of the Common Area as well as other expenditures incurred. Vouchers accrediting the entries made thereupon will also be maintained in chronological order.

2.5 Financial Statements.

No later than 120 days after the close of any fiscal year of the Association, the Association will cause financial statements for such fiscal year to be prepared (but not necessarily certified) by a licensed public accountant. Copies of the financial statements will be available to any Owner or Mortgagee upon written request to the Association. The Association may charge a reasonable fee for copying such statements.

2.6 Access to Information.

The Association will make available to Owners of any Unit and to any Mortgagee current copies of the Regime Documents and the books, records, vouchers, contractual arrangements and financial statements of the Association. "Available" means available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association may charge reasonable copying costs for any requested copies or extracts. Any party entitled to the benefits of this Section 2.6 will be permitted to designate one or more agents who will be permitted to represent said party in connection with any and all reviews of the Regime Documents and books, records, contractual arrangements and financial statements of the Association.

2.7 Rules and Regulations.

The Board of Directors will be entitled to promulgate reasonable Rules and Regulations from time to time, which will be binding on the Association and all Owners and lessees of Owners, their families, invitees and guests, regarding the use and enjoyment of Units and Common Areas, including, but not limited to, the pool, when completed. Any fine which may be imposed against the Association by OCRM or by any other governmental agency for any violation of law or as a result of damage to any protected property of the Project by an Owner or by his renter, lessee or invitee shall be added to such Owner's Assessments and shall become a lien upon his Unit. Copies of the current Rules and Regulations will be furnished to Owners and lessees of Owners upon request.

2.8 Professional Property Manager.

The Board of Directors may retain a professional property management company to manage the day-to-day affairs of the Association.

2.9 Collection and Remission of Master Association Assessments.

The Board of Directors may collect assessments made against the Units by the Master Association and remit the same to the Master Association on behalf of the Unit Owners in accordance with the applicable provisions of the Master Covenants, as such restrictive covenants may be amended from time to time as set forth therein. Such assessments will not be deemed a Common Expense hereunder.

2.10 Collections and Remission of Optional Cable Television, Telephone and Other Charges; Master Utility Charges.

In the event the Association at any time secures any optional cable, telephone or other service, including broadband communications access, the Association will be entitled to collect fees charged to those Unit Owners who elect to receive such optional service made available to the Unit Owners through the Regime and remit the same to the provider thereof on behalf of such Unit Owners. Such elective costs and expenses will not be deemed a Common Expense hereunder, but will be charged to the Units Owners separately from their Assessment. Furthermore, the Board of Directors will pay any master utility meter charge, base cable to all Units, or other blanket utility fee for services to all Units not otherwise separately metered or charged to individual Units. Such master cost and expense will be a Common Expense hereunder; provided, however, in the event actual costs exceed the budgeted costs therefor, such unbudgeted excess may be prorated and charged to the Units Owners separately from their Assessment, and will not require payment thereof from any other budget line item surplus or a Special Assessment or other extraordinary measure of collection.

3. Property Rights

3.1 Units.

Each Unit will for all purposes constitute a separate parcel of real property which, subject to the provisions of this Master Deed, may be owned in fee simple and which may be conveyed, transferred, leased and encumbered in the same manner as any other real property. Each Owner, subject to the provisions of the Condominium Act and this Master Deed, will be entitled to the exclusive ownership and possession of his Unit.

3.2 Description of Units.

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The dimensions, area and location of the Units are as set forth on Exhibit "B" attached hereto and are generally intended to include the following:

(a) Horizontal (Upper and Lower).

(i) The upper horizontal boundary of each Unit is the plane formed by the uppermost, unexposed surface of the wallboard or other material comprising a part of the ceiling in the uppermost story of the Unit.

(ii) The lower horizontal boundary of each Unit is the plane formed by the finished surface of the concrete slab or uppermost surface of the subflooring on which the lowermost story of the Unit is constructed.

(b) Vertical (Perimetric or Lateral). The vertical boundaries of each Unit are the planes formed by the outermost, unexposed surface of the wallboard or other surface comprising the perimeter walls enclosing the Unit.

(c) Units Deemed to Include. Notwithstanding the description of the boundaries set forth above, the Units shall be deemed to include the following: all portions of the plumbing, heating, electrical, and air conditioning systems (including furnaces, compressors, components, pipes, wires, conduits, ducts, and the like) serving only that Unit even if partially outside the boundaries of the Unit; all windows, glass surfaces, and doors (including window and door frames and the hardware thereof) serving the Unit; all window screens and screens on any screened terrace; and any fireplace or stove hearth, facing brick, tile or firebox; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines within the Unit but serving more than one Unit. In interpreting deeds and plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the Building, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.

The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Areas attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Area contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

3.3 Modification of Units.

The Developer, on behalf of itself, its successors and assigns, hereby reserves the right to modify or reconstitute, at any time and from time to time, one or more Units owned by Developer or its affiliates without the consent of the Association or any Owner other than those who may be directly affected; provided, however, that the aggregate Percentage Interest assigned to the Units so affected will not change even though the same may be reallocated among such changed Units. If Developer makes any changes in Units pursuant to this Section 3.3, such changes will be reflected by an amendment of this Master Deed which will be duly recorded in the ROD. Such amendment will not require the consent of Owners other than the Developer.

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(a) Combining Adjacent Units. An Owner of adjacent Units may, with the consent of the Developer during the Transition Period and thereafter with the consent to the Board of Directors, join the adjacent Units to form one residential space; provided, however, no change shall be made to the Assigned Values and Statutory Percentages of the adjacent Units so combined, and the Owner shall be entitled to such number of votes in the Association and shall be subject to such number of Assessments as shall be represented by the total of adjacent Units so combined.

3.4 Common Area and Limited Common Area.

(a) Percentage Interest. The Owners will own the Common Area as tenants-in-common, with each Unit having, appurtenant thereto, the Percentage Interest in the Common Areas set forth in Exhibit "C" attached hereto; provided, however, that the use of the Limited Common Area will be restricted as set forth in Section 3.4(e). The Percentage Interest appurtenant to each Unit has been determined by dividing the Assigned Value of the respective Unit as shown on Exhibit "C" by the aggregate Assigned Value of all Units as shown on Exhibit "C." The value assigned to any Unit in Exhibit "C" does not represent the sales price or market value of the Unit and will only be utilized for purposes of computing the Percentage Interest appurtenant to the respective Unit.

(b) Inseparability of Percentage Interests. The Percentage Interest in the Common Area cannot be separated from the Unit to which it appertains and will be automatically conveyed or encumbered with the Unit even though such Percentage Interest is not expressly mentioned or described in the deed or other instruments.

(c) No Partition. The Common Area will remain undivided and no right to partition the same or any part thereof will exist except as provided in the Condominium Act, the Bylaws and this Master Deed.

(d) Use of Common Area. The Common Area will be used in accordance with the intended purposes without hindering the exercise of or encroaching upon the rights of other Owners. The Board of Directors will, if any question arises, determine the purpose for which a part of the Common Area is intended to be used. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Common Area.

(e) Use of Limited Common Area. Anything to the contrary contained herein notwithstanding, ownership of each Unit will entitle the Owner or Owners thereof to the exclusive use of the Limited Common Area adjacent and appurtenant to such Unit, which exclusive use may be delegated by such Owner to persons who reside in his Unit. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Limited Common Area. An Owner will be responsible for maintenance and repair of the Limited Common Area appurtenant to his Unit as set forth in Section 8.3 below.

(i) Assigned Parking Spaces. The numbered parking spaces located on parking levels within or outside of a Building preceded by "P-", as shown on the Plans for the Building, are Limited Common Areas of the Units with equivalent Residential Unit numbers.

(f) Reservation of Easements and Use, Expansion and Contraction Rights. The Common Areas will be subject to all easements and use, expansion and contraction rights, if any, reserved by the Developer hereunder, and the right of the Developer to expand the Regime by construction of additional Units pursuant to Section 14.2

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3.5 Status of Title of Project.

The Developer represents to the Association and all the Owners that, as of the effective date hereof, the Developer has marketable, fee simple title to the Project. The rights and interests of all Owners in and to the Regime will be subject only to (a) liens for real estate taxes for the current year and subsequent years; (b) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Master Deed; (c) easements and use rights, if any, reserved by the Developer hereunder; and (d) applicable governmental regulations, including zoning laws, which may be imposed upon the Regime from time to time.

3.6 Limited Warranty From Developer.

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON AREA (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE REGULATION. Each Owner, in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section 3.6 establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Area and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Area.

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4. Assessments

4.1 Creation of Lien and Personal Obligation for Assessments.

Each Unit is and will be subject to a lien and permanent charge in favor of the Association for the Assessments set forth herein. Each Assessment, together with interest thereon and cost of collection thereof as hereinafter provided, will be a permanent charge and continuing lien upon the Unit against which it relates, and will also be the joint and several personal obligation of each Owner of such Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner by acquiring or holding an interest in any Unit thereby covenants to pay such amounts to the Association when the same will become due; provided, however, that no Owner acquiring title to any Unit at a foreclosure sale of any Institutional Mortgage, his successors and assigns, will have any personal obligation with respect to the portion of any Assessments (together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the Institutional Mortgage being foreclosed as provided in Section 4.8.

4.2 Annual Assessments.

At least thirty (30) days prior to the Association's next succeeding Annual Assessment Period the Board will adopt a budget for the next succeeding Annual Assessment Period by estimating the Common Expenses to be incurred during such Annual Assessment Period, including a reasonable allowance for contingencies and operating and replacement reserves, such budget to take into account the projected anticipated income which is to be applied in reduction of the amount to be collected as an assessment. Upon adoption of the budget, a copy thereof will be delivered to each Owner. The Annual Assessment fixed against each Unit will be based upon said budget and in proportion to the respective Percentage Interests of each Unit subject to assessment, and the Board will give written notice to each Owner of the Annual Assessment fixed against his Unit for such next succeeding Annual Assessment Period; provided, however, the delivery of a copy of said budget will not be a condition precedent to an Owner's liability for payment of such Annual Assessment. In fixing the annual budget, the Board of Directors shall reflect in the budget the recommendations of a maintenance audit conducted by a professional inspector at such frequency as the Board shall determine, but not less frequently than every three (3) years. The Board shall provide the Developer with a copy of each such inspection report or maintenance audit findings within fifteen (15) days following receipt thereof by the Board. The Board shall not be relieved of its duty to contract for an annual maintenance audit by virtue of the Developer's inspections pursuant to Section 11.5 below.

The Annual Assessment will not be used to pay for the following:

(a) Casualty insurance of individual Owners on their possessions within the Units and liability insurance of such Owners insuring themselves and their families individually, which will be the sole responsibility of such Owners;

(b) Casualty insurance of individual Owners on the betterments, improvements, upgrades and upfits made to Units by an Owner or by the Developer pursuant to the Owner's and Developer's Purchase and Sale Agreement and any addendum thereto. If Developer constructs and installs betterments, improvements, upgrades and upfits pursuant to the Purchase and Sale Agreements between the Developer and one or more Owners, the developer shall set forth in Exhibit "B" hereto the amount for which the developer constructed the Building, in which such Owners have Units, pursuant to the original plans and specifications. An Owner shall be responsible to insure its betterments, improvements, upgrades and upfits in excess of the Owner's allocable share

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of the Association's insurance charged pursuant to Assessments in proportion to the Owner's Statutory Percentage shown on Exhibit "C" hereto.

(c) Ad valorem taxes assessed against Units;

(d) Other charges or expenses related solely to individual use or occupancy of any Unit; or

(e) Assessments charged directly to Owners by the Master Association pursuant to the Master Declaration, to which the Regime is subject.

It is anticipated that ad valorem taxes and other governmental assessments, if any, upon the Project will be assessed by the taxing authority upon the Unit, and that each assessment will include the assessed value of the Unit and of the undivided interest of the Owner in the Common Area; provided, however, that for the current calendar year, the ad valorem taxes will be based upon the condition of the Land as of January 1, and the Developer will be liable for that portion of the taxes applicable to the period prior to the recordation of this Master Deed. When current ad valorem taxes are due and payable, the remainder of the ad valorem taxes for the current calendar year will be prorated between the Developer and each Owner based upon the Owner's Percentage Interest and based upon the number of days each owned the Unit as evidenced by the date of the Unit Deed. Any such taxes and governmental assessments upon the Project, which are not so assessed, will be included in the Association's budget as a recurring expense and will be paid by the Association as a Common Expense. Except as otherwise provided herein, each Owner is responsible for making his own return of taxes and such return will include such Owner's undivided interest in the Common Area as such undivided interest is determined by law for purposes of returning taxes.

EACH OWNER, IN ACCEPTING A DEED TO A UNIT FROM THE DEVELOPER OR ANY OTHER PERSON, HEREBY ACKNOWLEDGES THAT THE REGIME BUDGET AND ANNUAL ASSESSMENT THEREUNDER INITIALLY ESTABLISHED BY THE DEVELOPER, AND AS MAY BE MODIFIED OR AMENDED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION, MAY BE INADEQUATE TO FUND, AS MAY BE NEEDED, THE COSTS AND EXPENSES OF PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS. IN THE EVENT THE REGIME IS REQUIRED TO INCUR COSTS AND EXPENSES PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM IN EXCESS OF THE UNEXPENDED AMOUNT BUDGETED FOR A PARTICULAR YEAR, THE REGIME MAY BE REQUIRED TO VOTE A SPECIAL ASSESSMENT UNDER SECTION 4.4 BELOW AGAINST THE OWNERS TO RAISE THE REQUIRED FUNDS TO PAY SUCH EXCESS COSTS AND EXPENSES. FURTHERMORE, IN THE EVENT THE REGIME DOES NOT, FOR ANY REASON, APPROVE ANY SUCH SPECIAL ASSESSMENT, THE VALUE OF A UNIT MAY BE SUBSTANTIALLY AND MATERIALLY AFFECTED.

4.3 Rounding.

Annual Assessments charged by the Association will be rounded off to the nearest dollar.

4.4 Special Assessments.

In addition to the Annual Assessments, the Board of Directors may levy in any calendar year "Special Assessments" for the purpose (i) of supplementing the Annual Assessments if the same are inadequate to pay the Common Expenses and (ii) of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of the Common Area; provided, however, that any such Special Assessment which in the aggregate

exceeds twenty percent (20%) of the total Annual Assessments for such year will have the approval of Members therefor by a majority of the votes cast by written ballot or in person or by proxy at a meeting at which a quorum is present, duly called for the express purpose of approving such Special Assessment.

4.5 Date of Commencement of Annual Assessments; Due Dates.

Although the Annual Assessment is calculated on a yearly basis for the Annual Assessment Period, each Owner of a Unit will be obligated to pay to the Association or its designated agent such Assessment in advance in monthly, quarterly, semi-annual or annual installments as established by the Board. An installment shall be due and payable on the due date established by the Board, but in the absence of any such specific due date, the installment shall be due and payable in full on or before the last day of the month in which the Assessment is billed.

The obligations of Owners regarding the payment of monthly portions of the Annual Assessment provided for in this Section 4.5 will, as to each Unit, commence upon the recording of this Master Deed. The first monthly payment of the Annual Assessment for each such Unit will be an amount equal to the monthly payment for the Annual Assessment Period in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Association will, upon demand at any time, furnish any Owner liable for any such Assessment a certificate in writing signed by an Officer of the Association or the property manager of the Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificate. Such certificate will be conclusive evidence of payment of any Assessment stated to have been paid as to any person or entity that has relied on the certificate to his or its detriment.

4.6 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If an Assessment is not paid on the date when due, as hereinabove provided in Section 4.5, then such Assessment together with such late charges and interest thereon and any costs of collection thereof as hereafter provided, will be a charge and continuing lien on the Unit to which it relates, and will bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, will remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner will nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities will be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments

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for the Annual Assessment Period then in effect remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Unit to which it relates or pursue both such courses at the same time or successively. In any event, the Association will be entitled also to recover reasonable attorney's fees actually incurred and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Unit, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law exempting any Unit or portion thereof from sale. If the Association commences to foreclose its lien, the Owner may be required to pay a reasonable rental for the Unit after the commencement of the action and at its option the Association will be entitled to the appointment of a receiver to collect such rents. The Association will have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may be relieved from liability from the Assessment provided for herein by abandonment of his Unit or otherwise.

(d) During any period in which an Owner will be in default in the payment of any Annual or Special Assessment levied by the Association, the voting rights of the Owner and the rights of the Owner and lessees of the Owner, their families, invitees and guests, to use and enjoy the recreational areas of the Common Area may be suspended by the Board of Directors until such time as the Assessment has been paid.

4.7 Developer's Unsold Units.

Anything contained in this Section 4 to the contrary notwithstanding, so long as the Developer owns any Unit for sale, the Developer may annually elect either to pay the regular Assessment for each such Unit or to pay the difference between the amount of Assessments collected on all other Units not owned by the Developer and the sum of (a) the amount of actual operating expenditures by the Association during the fiscal year, and (b) the amount of reserves budgeted to be funded during the year but not in a sum greater than its regular Assessment. Unless the Developer otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Developer will be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Developer owns any Unit for sale, the Developer may, but will not be obligated to, reduce the regular Assessment for any year to be paid by Owners of Units, which may be a contribution to the Association, an advance against future regular Assessments due from said Owners, or a loan to the Association, in the Developer's sole discretion. The amount and character (contribution, advance or loan) of such subsidy will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Developer.

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4.8 Subordination of the Charges and Liens to Institutional Mortgages.

(a) The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Unit is hereby made subordinate to the lien of any holder of an Institutional Mortgage or his assigns placed on such Unit, and all Assessments with respect to such Unit having a due date on or prior to the date such Institutional Mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to Assessments authorized hereunder having a due date subsequent to the date such Institutional Mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such Institutional Mortgage.

(b) Such subordination is merely a subordination and will not relieve the Owner of the mortgaged Unit of his personal obligation to pay all Assessments coming due at a time when he is the Owner; will not relieve such Unit from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other person pursuant to a foreclosure sale will relieve any previous Owner from liability for any Assessment coming due before such sale or transfer.

(c) To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

4.9 Reserves.

The Board of Directors will establish and maintain an adequate reserve fund for the periodic repair and replacement of the Common Area. The Board of Directors will include amounts needed to maintain an adequate reserve fund in its estimation of the Common Expenses for each fiscal year and will cause deposits to the reserve fund to be made in connection with the collection of the Annual Assessment.

4.10 Working Capital Collected at Initial Closing.

Notwithstanding anything to the contrary in this Master Deed, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Unit from the Developer a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable at the time of transfer of each Unit by the Developer to any other Owner. Each such Owner's share of working capital, as aforesaid, will be transferred to the Association at the time of closing the conveyance from the Developer to the Owner. Such sum is and will remain separate and distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Master Deed and the Bylaws.

5. Insurance and Casualty Losses

5.1 Hazard Insurance.

(a) The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a "master" or "blanket" type policy or policies of property insurance covering the entire Project, except (i)

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land, foundation, excavation, or other items normally excluded from coverage; (ii) all improvements and betterment made to Units by Owners at their expense; and (iii) personal property of Owners and lessees of Owners, their families, invitees and guests. Such coverage will also insure supplies, equipment and other personal property of the Association. All policies of property insurance will be single entity condominium insurance coverage. The master insurance policy will afford, at a minimum, protection against loss or damage by fire and other perils normally covered by standard extended coverage endorsements; and all other perils which are customarily covered with respect to condominium projects similar in construction, location and use, including all perils normally covered by a standard "special coverage" endorsement, where such is available. The policy will be in an amount equal to one hundred (100%) percent of the then current replacement cost of the Project, exclusive of land, foundations, excavation, and other items normally excluded from coverage. A "deductible amount" may be included at the discretion of the Board of Directors, and in such amounts as the Board of Directors shall determine to be available at a material savings, as determined by the Board in its sole discretion, in premium cost resulting therefrom, but the deductible amount will be considered a Common Expense and borne by the Association regardless of the number of Owners directly affected by the loss and reserves will be established therefor.

(b) For purposes hereof, including, but not limited to, insuring the Building and other insurable improvements, "Project" shall mean the Project as originally constructed or to be constructed by the Developer pursuant to its plans and specifications for the improvement prior to the construction and installation of an Owner's betterments, improvements, upgrades and upfits pursuant to the Owner's and Developer Purchase and Sale Agreement and any addendum thereto. If Developer constructs and installs betterments, improvements, upgrades and upfits pursuant to the Purchase and Sale Agreements between the Developer and one or more Owners, the developer shall set forth in Exhibit "B" hereto the amount for which the developer constructed the Building, in which such Owners have Units, pursuant to the original plans and specifications. An Owner shall be responsible to insure its betterments, improvements, upgrades and upfits in excess of the owner's allocable share of the Association's insurance charged pursuant to Assessments in proportion to the Owner's Statutory Percentage shown on Exhibit "C" hereto.

(c) The name of the insured under the master policy will be substantially as follows: "Vista Del Mar Condominium Association for the use and benefit of the Individual Owners of Units in Vista Del Mar Horizontal Property Regime." Loss payable provisions will be in favor of the Association and the Trustee, as a trustee for each Owner, and each such Owner's Mortgagee as the interests of such parties may appear. Each Owner and his respective Mortgagee, if any, will be beneficiaries of the policy in a percentage equal to the Percentage Interest attributable to the Unit owned by such Owner. All policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by Institutional Mortgage investors in the area in which the Project is located, and which appropriately names all Mortgagees or their servicer in such form as requested by such Mortgagees or their servicer.

(d) All policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, Owners, Mortgagees or the designees of Mortgagees; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or (iii) the policy includes any limiting clause (other than insurance provisions) which could prevent Mortgagees or Owners from collecting insurance proceeds. Policies may not be cancelable or substantially modified by any party without at least ten (10) days prior written notice to the Association and each Mortgagee, which is listed as a scheduled holder of a first Mortgage in the insurance policy. Policies should also contain a "special condominium endorsement" or its equivalent which

provides for the following: recognition of any insurance trust agreement; a waiver of the rights of subrogation against Owners individually; the insurance is not prejudiced by any act or negligence of individual Owners which is not under the control of the Association or such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(e) The Association will provide to Owners and/or Mortgagees requesting the same in writing a certificate of insurance, or a copy of the certificate of insurance, for the Project, for which the Association may charge reasonable copying costs.

(f) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner will be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Association may have in force on the Project at any particular time. Any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of any Owner's policy will be chargeable to the Owner who acquired such other insurance. Any Owner who obtains an individual insurance policy covering any portion of the Project, other than the personal property belonging to such Owner, will file a copy of such policy with the Association within thirty (30) days after purchasing such insurance. Each Owner, at his own expense, may obtain on his Unit or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, risk of loss with respect to any improvements made by an Owner within his Unit shall be that of the Owner. Betterments coverage or "improvements insurance" shall be secured solely by an Owner wishing such coverage of his risk of loss, and the Association shall have no liability therefor.

5.2 Liability Insurance.

The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a policy of comprehensive general liability insurance coverage covering at a minimum all of the Common Area. Coverage limits will be in amounts generally required by private Institutional Mortgage holders for projects similar in construction, location and use to the Project; provided, however, that such coverage will be for at least $1,000,000 for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Area and legal liability arising out of law suits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the insurance policy.

5.3 Fidelity Bonds and Other Insurance.

The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Regime. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors and will not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or a professional management company, as the case may be, at any given time during the term of each bond; provided, however,

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that in no event will the aggregate amount of such bonds be less than a sum equal to 2/12ths of the total Annual Assessments plus reserve funds. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

The Association will obtain, maintain and pay the premiums, as a Common Expense, on a policy of directors and officers liability insurance in such amounts as determined by the Board of Directors.

The Board of Directors will be authorized on behalf of the Association to obtain and maintain such other and further insurance as the Board of Directors may determine from time to time.

5.4 Authority to Adjust Loss.

The exclusive authority to negotiate, settle and otherwise deal in all respects with insurers and adjust all losses under policies provided for herein will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Unit, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Section 5.4, including executing all documents required in connection therewith on behalf of the Owner.

5.5 Trustee.

(a) The Board of Directors may, from time to time, designate a third party Trustee hereunder. The Trustee, whether the Board of Directors acting in said capacity, or a third-party designated by the Board, will serve the Association and the Owners and their Mortgagees (as their interests may appear) as provided herein. Any third-party Trustee, but not the Board of Directors acting in such capacity, will be entitled to receive reasonable compensation for services rendered which will be a Common Expense of the Association.

(b) All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Project to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(c) Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.

(d) Proceeds of insurance policies received by the Trustee will be disbursed as follows:

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(i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;

(ii) If it is determined, as provided in Section 5.6, that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided;

(iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements;

(iv) If the damage or destruction is to the Common Area and is to be repaired or reconstructed, two days prior written notice of each disbursement will be given to the Mortgagee known by the Trustee from the records of the Association to have the largest interest in or lien upon such Common Area; and if the damage or destruction is to one or more Units and is to be repaired or reconstructed, said notice will also be given to the Mortgagee or Mortgagees known to the Trustee from the records of the Association to have an interest in or lien upon such Unit or Units.

(c) The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith pursuant to and in accordance with the foregoing requirements.

5.6 Damage and Destruction.

(a) Immediately after all or any part of the Project covered by insurance is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section 5.6, means repairing or restoring the damaged property to substantially the same conditions in which it existed prior to the fire or other casualty, with each Unit and the Common Area having the same vertical and horizontal boundaries as before; provided, however, such repair and reconstruction shall be limited to repair or replacement as originally constructed Developer pursuant to its plans and specifications for the improvement prior to the construction and installation of an Owner's betterments, improvements, upgrades and upfits, repair and replacement of which shall be the sole responsibility of the Owner.

(b) Any such damage or destruction to the Project or which renders any Unit untenantable or uninhabitable, or any such damage or destruction to the Common Area, will be repaired and reconstructed as promptly as practicable. No Mortgagee will have any right to restrict the use of insurance proceeds otherwise available for repair, reconstruction or rebuilding.

(c) In the event that it is determined by law or otherwise that the damage or destruction will not be repaired, reconstructed or rebuilt, then and in that event:

(i) The Project will be owned by the Owners as tenants-in-common;

(ii) The undivided interest in the Project of each Owner will be a percentage equal to the Percentage Interest appurtenant to the Unit theretofore owned by the Owner;

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(iii) All liens affecting any of the Units will be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners of the respective Units;

(iv) The Project will be subject to an action for partition at the instance of any Owner, in which event the net proceeds of the sale will be deposited with the Trustee;

(v) The Association will proceed to satisfy all of its liabilities and convert all of its assets to cash, which will be deposited with the Trustee;

(vi) The proceeds from the sale of the Project, the liquidation of the assets of the Association and the insurance proceeds related to the damage or destruction to the Project will be considered one fund which, after paying the reasonable expenses of the Trustee, will be distributed to all the Owners and their respective Mortgagees as their interests may appear in percentages equal to the Percentage Interests of said Owners. Distributions to such Owners and their Mortgagees will be made pursuant to certificates provided for in Section 5.5.

5.7 Insufficient Proceeds to Repair.

(a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, or if no insurance proceeds exist with respect to such damage or destruction, the Board of Directors will levy an Assessment against the Owners of damaged or affected Units in sufficient amounts to provide funds to pay costs in excess of insurance proceeds for repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction. That portion of such Assessments levied against each Owner will be equal to that percentage computed by dividing the Percentage Interest appurtenant to such Owner's Unit by the aggregate Percentage Interests appurtenant to all Units damaged or affected.

(b) Any and all sums paid to the Association under and by virtue of those Assessments provided for in subsection (a) of this Section 5.7 will be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee will be disbursed as provided in Section 5.5.

6. Condemnation

6.1 General.

Whenever all or any part of the Project will be taken by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof; provided, however, that the exclusive right to negotiate, settle and otherwise deal in all respects with the condemning authority as to the taking of the Common Area will be vested in the Board of Directors or its duly authorized agent on behalf of the Association. Each Owner, in accepting a deed to a Unit, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person in all matters related to the authority granted in this Section 6.1, including executing all documents required in connection therewith on behalf of the Owner. The award made for such taking will be payable to the Trustee. Unless otherwise required by law at the time of such taking, any award made therefor will be disbursed by the Trustee, as hereinafter provided in this Section 6.

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6.2 Non-Essential Areas.

If the taking does not include any portion of any Unit or any portion of the Common Area essential to the continued occupancy of any Unit, then the Board of Directors will be permitted to replace any nonessential improvements to the extent deemed appropriate and the Trustee will disburse the proceeds of such awards in the same manner as hereinabove provided for and in connection with the repair, reconstruction or rebuilding of improvements after damage or destruction, with all excess proceeds to be distributed to the Association.

6.3 Essential Areas.

If the taking includes any portion of a Unit or the Common Area essential to the use of any Unit, then the award will be disbursed, and all related matters, including, without limitation, alteration of the Percentage Interests appurtenant to each Unit, will be handled, by (a) the Developer during the Transition Period, and (b) thereafter, the Board of Directors in a just and equitable manner to all Owners; provided, however, that all action of the Board of Directors will be pursuant to and in accordance with a plan approved by Members representing at least sixty-seven (67%) percent of the total votes of the Association voting in person or by proxy, at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving such in a duly recorded amendment to this Master Deed. In the event that such an amendment will not be recorded within ninety (90) days after the taking, then such taking will be deemed to be and will be treated as damage or destruction which will not be repaired or reconstructed as provided for in Section 5.6, whereupon the Regime will be terminated in the manner therein prescribed.

7. Architectural Control

7.1 Approval Required for Unit Changes and Viewable Interior Features.

To preserve the original architectural appearance of the Project, the structural integrity thereof and the Unit designs, including architectural and engineering aspects therein, no construction, reconstruction or Unit modification of any nature whatsoever, except as specified in the Regime Documents or permitted as part of the construction and installation of an Owner's betterments, improvements, upgrades and upfits pursuant to the Owner's and Developer Purchase and Sale Agreement and any addendum thereto, will be commenced or maintained upon or within, the Building, including without limitation within a Unit and a Limited Common Area, nor will there be any change, modification or alteration of any nature whatsoever of the design and appearance of any surfaces or facades, nor will any Owner paint any gate, fence or roof, nor will any Owner change the design or color of the exterior lights, nor will any Owner install, erect or attach to any part of the exterior any addition or change until after the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same will have been submitted to and approved in writing as to harmony of design, color and location in relation to the surrounding features by the ARC and pursuant to original plans and specifications or Design Guidelines adopted therefor. Furthermore, such required approval by the ARC shall extend to any interior features or aesthetic elements that are proposed to be changed. The failure of an Owner to secure the required approval of the ARC as aforesaid, or to take such action, remedial or otherwise, as the ARC shall at any time determine to be required hereunder shall be subject to the authority and enforcement powers of the ARC as set forth in the Master Covenants.

(a) Assigned ARC Functions. In the event the Developer assigns to the Association the ARC functions set forth in the Master Covenants, as permitted pursuant to Section 5.2(a) thereof, the said

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functions shall be administered by a committee of the Board of Directors in accordance with the document of assignment therefor prepared and filed in the ROD by the Developer.

8. Maintenance

8.1 Responsibility of Association.

Except as specifically provided to the contrary herein, the Association will maintain the Common Area in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Area. In addition, the Association will repair or replace all parts of the Common Area as necessary. Except as otherwise provided herein, the cost of such will be charged to the Owners as a Common Expense.

8.2 Access to Units.

The Association will have the irrevocable right, to be exercised by the Board of Directors or its agent, which term includes the Association manager, to have reasonable access to each Unit from time to time as may be necessary for the periodic inspection and application of termite and other bug control treatment for which the Association may contract, from time to time; to undertake such action as it may determine to prepare and secure the Building and the Unit in anticipation of storm or hurricane, provided the Association shall be under no obligation to an Owner to do so; and for the inspection, maintenance, repair or replacement of any of the Common Area accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area or to other Units.

8.3 Responsibility of Owner.

In the event that the Board of Directors should determine that the need for maintenance or repairs by the Association as provided for in this Section 8.3 is caused through the willful or negligent act of an Owner or the lessee of an Owner, their families, invitees or guests, or the Owner's pets, the cost of which is not covered or paid for by insurance, then the cost, both direct and indirect, of such maintenance or repairs will be added to and become a part of the Assessment to which such Owner and his Unit are subject. Each Owner will maintain, repair or replace at his own expense all portions of his Unit which may become in need thereof, including the heating and air-conditioning system components within such Unit, all bathroom and kitchen fixtures and appliances, light fixtures, interior non-load-bearing walls, carpeting, drapes, doors, windows, screens window and door hardware, and other items within the Unit. Further, each Owner will, at his own expense, maintain, repair and replace, when necessary, that portion of the heating and air-conditioning system exclusively servicing his Unit, which is located outside his Unit. Each Owner will, at his own expense, keep the Limited Common Area to which his Unit has exclusive access and to which he has exclusive use clean and neat, and will conduct maintenance and repair thereto as necessary. If the Owner does not make those repairs required to be made by him within thirty (30) days from the date of receipt of written demand from the Association, the same may be repaired by the Association and the cost thereof will be assessed against the Owner and Unit owned by such Owner.

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9. Access, Ingress and Egress.

All Owners, by accepting title to a Unit, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roadways, sidewalks and walkways located within the Project from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times. There is reserved unto Developer, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Project, provided that access may be granted to any person who gives reasonable evidence satisfactory to entry guards, if there are any, that entry is with the specific permission of the Owner, or his duly authorized agent. Neither the Developer nor the Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Project in accordance with the foregoing.

NEITHER THE DEVELOPER NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF ANY GATE OR CONTROLLED ACCESS TO THE PROJECT OR SAFETY MEASURES UNDERTAKEN WITH RESPECT THERETO BY EITHER OR BOTH OF THEM AND WHETHER OR NOT SUCH ACTIVITIES OR UNDERTAKINGS ARE REFERRED TO AS "SECURITY" MEASURES, NOR SHALL EITHER OR BOTH BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY FAILURE TO PROVIDE CONTROLLED ACCESS OR SAFETY MEASURES, OR FROM LEAVING ANY GATE OPEN, AS PERMITTED UNDER SECTION 9.1 BELOW, OR FROM A FAILURE OR INEFFECTIVENESS OF ANY SUCH CONTROLLED ACCESS OR SAFETY MEASURES UNDERTAKEN BY EITHER OR BOTH OF THEM. NO REPRESENTATION, WARRANTY OR COVENANT IS GIVEN TO ANY OWNER OR OCCUPANT BY EITHER OR BOTH OF THE DEVELOPER AND THE ASSOCIATION THAT ANY CONTROLLED ACCESS OR SAFETY MEASURES INSTALLED OR UNDERTAKEN CANNOT BE BYPASSED OR COMPROMISED, OR THAT THEY WOULD, IN FACT, AVERT DAMAGE OR LOSS RESULTING FROM THAT WHICH THEY ARE DESIGNED TO PREVENT, AND EACH OWNER BY ACCEPTANCE OF A DEED TO A UNIT AND EACH OCCUPANT THEREOF SHALL INDEMNIFY AND HOLD THE DEVELOPER AND ASSOCIATION HARMLESS FROM ANY DAMAGE AND COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY EITHER OR BOTH OF THEM AS A RESULT OF ANY SUCH ASSERTION OR DETERMINATION.

9.1 Developer's Right to Maintain Open Gate.

Notwithstanding anything herein contained to the contrary, the Developer hereby reserves unto itself, its successors and assigns, the right and option to control any gate to the Project and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours of 6 a.m. to 6 p.m. and will terminate upon expiration of the Transition Period.

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10. Unit Restrictions

10.1 Units.

All Units will be, and the same are hereby restricted exclusively, for residential use, provided, however, a Unit may be used as a combined residence and executive or professional office by the Owner thereof so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visitation by clients, or unreasonable levels of mail, shipping, storage or trash requirements. The within restriction shall not apply to the activities of the Developer under Section 11.6 below. No immoral, improper, offensive or unlawful use will be made of any Unit and no use or condition will be permitted which is a source of unreasonable noise or interference with the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners or lessees of Owners, their families, invitees and guests. All Units will be kept in a clean and sanitary condition and no rubbish, refuse or garbage will be allowed to accumulate. No fire hazard will be allowed to exist and no use or condition will be permitted which will increase any rate of insurance related to the Project. In addition, all Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations in effect from time to time governing the use of Units.

10.2 Animals and Pets.

No animals, livestock or poultry of any kind will be raised, bred or kept on any part of the Project, except that dogs, cats, birds and fish may be kept by the respective Owners inside their respective Units provided that (i) the Board of Directors may, in its sole discretion, establish by rule that dogs of a certain breed are potential hazards to the Project and its occupants, such as those known as Pit Bulls, Rotweillers, Dobermans, Chows and German Shepards, and are deemed not to be normal household pets; (ii) the Board of Directors may, in its sole discretion, establish by rule that cats of a certain breed or exotic species are potential hazards to the Project and its occupants and are deemed not to be normal household pets; (iii) the Board of Directors may establish reasonable rules and regulations to insure that all permitted pets are properly licensed and inoculated for rabies and such other disease for which inoculation is customary for that breed of pet; (iv) an Owner execute a written indemnification and hold harmless agreement in favor of the Regime and the Regime's management company, in form and content satisfactory to counsel for the Board, prior to bringing the Owner's pet upon the Property; (v) permitted pets are not kept, bred or maintained for any commercial purpose and do not create any health hazard or, in the sole discretion of the Board of Directors, unreasonably disturb the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners and lessees of Owners, their families, invitees and guests; and (vi) the Board may establish reasonable rules to limit the number of such allowed pets. Pets shall be kept on a leash at all times when outside of a Unit, and the Owner shall clean up after his or her pet.

10.3 Antennas.

No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Project by an Owner, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Developer and the Association, and their successors and assigns, will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Project.

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10.4 Leasing of Units.

Any Owner will have the right to lease or rent his Unit; provided, however, that all leases and rental contracts will be for a duration of one (1) year or more unless, for good cause shown, the Board permits, in writing, a shorter term, which, nevertheless, shall not be shorter than six (6) months. Any such permitted lease or rental will be in writing and will require the lessee to abide by all conditions and restrictions placed on the use and occupancy of the Unit and the Common Area by the Regime Documents. The Board of Directors will have the right to approve the form of all such leases and rental contracts at any time if it elects to do so. Occupancy by a tenant or renter under any such approved form of lease or rental contract is subject to continuing approval of the Board thereunder, which may be removed at any time by the Board for any violation by any such tenant or renter of the Rules and Regulations of the Association.

10.5 Motor Homes, Trailers, Boats, Etc.

All vehicles will be parked in spaces within the Common Area designated therefor. There will be no storage or parking upon any portion of the Project of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorized bicycle, motorized go-cart, or any other related forms of transportation devices. Nothing herein shall be construed to limited or prevent the ownership, operation and parking of a licensed motorcycle within the Project.

10.6 Signs.

Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window, or within a Unit and viewable through any window, or on the exterior of any improvements or on any unimproved portion of property located within the Project, without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 10.6 shall not apply to the Developer or to any person having the prior written approval of the Developer. In addition, the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas in accordance with architectural design standards adopted therefor by the ARC and approved by governmental authority with jurisdiction thereof.

10.7 Grills.

The use of individual grills (charcoal, gas or electric) is a fire hazard and is strictly prohibited.

11. Easements

11.1 Encroachments.

If any portion of the Common Area encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Area as a result of settling or shifting of the Building or variances from the Plans, an easement will exist for the encroachment and for the maintenance of the same so long as the Building stands. If the Building, any Unit, and/or any adjoining part of the Common Area will be partially or totally

destroyed as a result of fire or other casualty or a result of eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Area upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Area due to such rebuilding, will be permitted, and valid easements for such encroachments and the maintenance thereof will exist so long as the Building will stand.

11.2 Easement for Air Space.

The Owner of each Unit will have an exclusive easement for the use of the air space occupied by said Unit as it exists at any particular time and as said Unit may be altered or reconstructed from time to time pursuant to this Master Deed.

11.3 Utilities, etc.

There is hereby granted a blanket easement upon, across, over and under all the Project for ingress, egress, installation, replacing, repairing and maintaining a master television antenna or CATV system and all utilities, including, but not limited to water, gas, sewers, telephones and electricity, and other forms of telecommunication and technology cabling, now existing or developed in the future. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Project and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Units. In addition, the Board of Directors will be entitled to grant additional permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

11.4 Easement for Construction.

Notwithstanding anything herein to the contrary, Developer and persons designated by the Developer will have an easement to enter upon and cross over the Common Areas for purposes of ingress and egress to all portions of the Project; to use portions of the Common Areas and any Units owned by the Developer for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project; and to maintain and correct drainage of surface, roof or storm water.

11.5 Easement for Inspection by Developer.

Notwithstanding anything herein to the contrary, Developer and persons designated by the Developer will have an easement to enter upon and cross over the Common Areas for purposes of ingress and egress to all portions of the Project; as well as an easement for reasonable access to each Unit as the Developer may find desirable, for the inspection of the whole or any portion of the Project, its Units and Common Areas, the components and structural parts thereof, as well as the their maintenance requirements and the maintenance performed thereon to the date of any such inspection. Nothing herein shall require the Developer to perform any such inspection, but if the Developer does undertake any such inspection, Developer shall provide to the Board of Directors a copy of its findings or the inspection report produced therefrom. Nothing herein shall relieve the Board from engaging a professional inspector to perform an annual maintenance audit as part of the Board's annual budgeting process under Section 4.2 above.

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11.6 Easement for Sales Purposes.

Developer and persons designated by the Developer will have an easement to maintain one or more sales offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Areas while the Developer is selling Units in the Project or any contemplated expansion thereof. Developer reserves the right to place models, management offices and sales offices in any Units owned by Developer and on any portion of the Common Area in such number, of such size and in such locations as Developer deems appropriate. So long as Developer will be selling Units in the Project or any contemplated expansion thereof, Developer will have the right to restrict the use of a reasonable number of parking spaces, for purposes including, but not limited to, the providing of spaces for use by prospective Unit purchasers, Developer's employees and others engaged in sales, maintenance, construction or management activities. The duration of Developer's use of the premises herein provided shall be limited to the period the Developer is selling Units in the Project or any contemplated expansion thereof or has the right to so expand the Regime pursuant to Section 14.2, but the scope of such use shall not be limited to uses in support solely of development and sale of the Project, but may extend to any such business use in support of other Grande Dunes development, sale and operating activities by it or any affiliate.

11.7 No View Easements.

No view easements, express or implied, will be granted to any Owner in connection with the conveyance of a Unit to such Owner.

11.8 Other.

There is hereby granted to the Association, its directors, officers, agents and employees and to any manager employed by the Association and to all policemen, firemen, ambulance personnel, and all similar emergency personnel, an easement to enter upon the Project or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section 11.8 will be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

12. Owner's Acknowledgment of Beachfront Noises and Nuisances.

Every Owner by acceptance of a deed to a Unit hereby acknowledges that the Project's proximity to the beach fronting the Atlantic Ocean will result in noise emanating therefrom and the same may be a nuisance. Neither the Developer nor the Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, affiliates, assignees, successors, nominees or agents, be liable to any Owner for any inconvenience or damage sustained by such Owner as a result of any such noise emanating from or in proximity to beachfront.

13. Assigned Value and Voting Rights

13.1 Units, Assigned Values, and Percentage Interests.

The Schedule of Percentage Interests contained in Exhibit "C" attached hereto shows the Assigned Value of each Unit as of the date of this Master Deed and the Percentage Interest appurtenant to such Unit for all purposes, and the aggregate Assigned Values of Units in Buildings of all phases which may be added to the Regime pursuant to Section 14. The aggregate Assigned Values of Units in a Building to be added to the

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Regime in a future phase may be changed by the Developer at the time Developer submits said Building and its Units to this Master Deed, provided that following such submission the total Assigned Values of all Units in the Project, if all phases are constructed and submitted, will not be greater or less than said totals contained in Exhibit "C".

13.2 Voting Rights.

Members and the Developer will be entitled to a vote in the Association and for all other purposes herein in accordance with the provisions of the Association's Articles of Incorporation attached hereto as Exhibit "D" and the By-Laws of the Association attached as Exhibit "E," and as the same may be hereafter amended.

(a) Voting by Multiple Owners. When any Unit is owned in the name of two or more persons, other than husband and wife, or entities, whether fiduciaries, or in any manner of joint or common ownership, the vote for such Unit will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners recorded in the ROD, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

14. The Development Plan For The Project

14.1 Phase I.

The Regime as initially constituted (sometimes referred to herein as "Phase I") is composed of Building Number 1 which contains twenty-five (25) Units, as well as the Common Areas thereof, all as described and depicted on Exhibit "B" attached hereto.

14.2 Reservation of Right to Expand and Contract.

Anything to the contrary contained in this Master Deed notwithstanding, at any time during the Transition Period, the Developer will be entitled to expand the Regime in five additional phases to a total of two hundred fifty (250) Units as provided in this Section 14 and as further described in Exhibit "C" hereto.

(a) Expansion; Conversion of Common Area.

The Developer is entitled, but not obligated, to expand the Regime during the Transition Period by constructing additional Units on all or any portion of the Common Area and to submit said real property (or any portion thereof) and all improvements constructed thereon, to the Regime, from time to time, by filing one or more Amendments to this Master Deed (including amendments to the Exhibits, including Exhibit "C" to reflect any required change in the Percentage Interests pursuant thereto and Section 13.1). Improvements as shall be so constructed by Developer shall be consistent with the quality and structure type of those constructed at the time this Master Deed is filed of record in the ROD, although additional Units may be laid out in different configurations, and different classes of accessory Units may be provided. Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD.

(b) Contraction; Withdraw of Unimproved Common Area.

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During the Transition Period, the Developer is entitled to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the application of this Master Deed by filing one or more Amendments to this Master Deed (including amendments to the Exhibits). Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD Office for Horry County.

14.3 Amenities; Required Expansion.]

Amenities may be, but will not be required to be, constructed as part of the expansion of the Regime pursuant to this Section 14.3, all such amenities being optional with the Developer. No Owner will have the right to require construction or addition to the Regime under any circumstances.

14.4 Assignability of Rights.

The Developer will be entitled to assign the rights reserved in this Section 14 to any person or entity by an instrument recorded in the ROD.

14.5 Application of Master Deed.

Upon the filing of the Amendment prescribed by Section 14.2 hereof, all definitions contained in this Master Deed will be deemed amended to the extent necessary to cause the additional real property and the improvements described in such Amendment to be treated as fully an integral part of the Project as if said real property and improvements constituted a portion of the Project as of the effective date hereof.

14.6 Annual Assessments for Additional Units and Working Capital Reserve.

The Annual Assessment with respect to the Units added to the Regime pursuant to this Section 14 will be equal to the then current Annual Assessment applicable to existing Units with equivalent Percentage Interests, pro rated on a per diem basis; provided, however, that as to any type of Unit being added to the Regime for which there is currently no Annual Assessment, the Annual Assessment will be proportionately increased or decreased based upon the Percentage Interest of such Units. Assessments regarding all of the additional Units will commence upon the recording of the Amendment prescribed by Section 14.2 hereof.

All obligations with respect to working capital provided for in Section 4.10 will be applicable upon the transfer of the additional Units by the Developer.

14.7 No Consent Required.

Subject to the time limit set forth in Section 14.2 hereinabove, the Developer, its successors and assigns, will have the absolute right to effect an expansion or contraction of the Regime in accordance with this Section 14 and to file Amendments to this Master Deed without any action or consent on the part of any Owner or Mortgage holder; provided, however, that to the extent any action on the part of any Owner is required by any third party to assure the expansion of the Regime as provided in this Section 14, each Owner, in accepting a deed to a Unit, agrees to undertake such actions and/or provide such consents as are reasonably requested, and expressly appoints the Developer his due and lawful attorney-in-fact, with full power of substitution, to execute all documents reasonably required to evidence the requisite action or consent.

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14.8 Multiple Ownership.

No Unit in the Regime will be used for or subject to any type of Vacation Time Sharing Plan or Vacation Multiple Ownership Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et. seq., or any subsequent laws of this State dealing with that or similar type of ownership by a Unit Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Unit and which is not otherwise registered as a Vacation Time Sharing Plan or Vacation Multiple Ownership Plan or which utilizes the Unit as accommodations for time share sale prospects of any Person, without the prior written consent of the Developer during the Developer's Transition period and thereafter by the Board of Directors of the Association.

15. Transition Provisions

15.1 Appointment of Directors and Officers.

At all times during the Transition Period, the Developer will have the sole and exclusive right to appoint the Board of Directors and officers of the Association, fill any vacancy of the Board or officers caused by the withdrawal of any director or officer appointed by the Developer and veto the removal of any director or officer appointed by the Developer. Upon the expiration of the Transition Period, the Developer will retain the right to elect at least one (1) director. This right will continue for as long as the Developer holds for sale in the ordinary course of business one or more of Units included in the Regime.

15.2 Special Meeting to Elect Board.

Within sixty (60) days after the date on which Owners other than the Developer become entitled pursuant to Section 15.1 above to elect members of the Board of Directors of the Association, the Association will call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, a special meeting of the Members to elect the Board of Directors.

15.3 Cooperation.

The Association will cooperate with the Developer to the extent reasonably requested by the Developer during and after the Transition Period to promote the orderly development and marketing of the additional Units planned for the Regime, and it is acknowledged by the Association that it is in the best interest of all Owners to expand the Regime to include all Units authorized by Section 14 hereof.

15.4 Controlling Provisions.

In the event of any inconsistency between this Section 15 and the other provisions of the Regime Documents, this Section 15 will be controlling and binding on all parties having an interest in the Regime.

16. Alternative Dispute Resolution

16.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.

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The Developer, Association, Owners, and any person not otherwise subject to the Regime Documents who agrees to submit to this Section 16 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving the Regime Documents or the Project, and to avoid the emotional and financial costs of litigation. For purposes hereof, the architect and contractor for a Building and the Units constructed therein shall constitute Bound Parties hereunder. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Regime Documents or the Project (but not matters applicable solely to the Grande Dunes Master Association and/or the Master Covenants) including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 16.2, are subject to the procedures set forth in Section 16.3.

16.2 Exempt Claims.

The following Claims ("Exempt Claims") are exempt from the provisions of Section 16.3:

(a) any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 16.3 below; or

(c) any suit between Owners which does not include the Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Regime and the Project; or

(d) any suit in which an indispensable party is not a Bound Party; or

(e) any suit which otherwise would be barred by any applicable statute of limitation; or

(f) any suit involving a matter which is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 16.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 16.3, but there is no obligation to do so.

16.3 Mandatory Procedures for Non-Exempt Claims.

Any Bound Party having a Claim ("Claimant") against a Bound Party involving the Regime Documents or the Development, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section 16.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit C to the Master Covenants, and then only to enforce the results hereof:

(a) Litigation.

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No judicial or administrative proceeding with an amount in controversy exceeding $25,000.00, will be commenced or prosecuted by the Association unless approved by seventy-five percent 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the collection of assessments, including the foreclosure of liens, as well as the enforcement of other provisions of the Regime Documents, except where it is asserted that the Developer is in violation of any provision of the Regime Documents other than a violation of its requirement to pay Assessments or to fund operating shortfalls in accordance with Section 4.7; (b) proceedings involving challenges to ad valorem taxation; (c) counterclaims brought by the Association in proceedings instituted against it; or (d) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by both the Developer and the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Section 16 and the procedures therefor set forth in Exhibit C to the Master Covenants, if applicable.

16.4 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions.

Any conflict or discrepancy between the terms and conditions set forth in this Section 16 and the procedures set forth in Exhibit C to the Master Covenants and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit C to the Master Covenants will control.

(b) TIME IS OF ESSENCE.

All periods of time set forth herein or calculated pursuant to provisions of this Section 16 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

17. General Provisions

17.1 Adherence to Provisions of Master Deed, Bylaws and Rules and Regulations.

Every Owner who rents his Unit must post inside his Unit a list of the Rules and Regulations of the Association applicable thereto. Any rental agency handling an Owner's rental must further agree to abide by the Rules and Regulations and will be responsible for informing persons renting through its agency of any breaches of the Rules and Regulations by said persons and for taking any and all necessary corrective action. Should a particular agency or person continue not to take corrective action against the renters it has contracted with, or refuse to cooperate with the Association in the enforcement of its Rules and Regulations or other provisions of the Regime Documents, the Association may require the Owner to cease using the services of that particular rental agency. Refusal to do so may result in fines against the Owner in an amount to be determined by the Board of Directors. Any fines will be added to and become a part of the Assessment against the Unit and Owner.

17.2 Amendment.

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Amendments to this Master Deed, except as herein expressly provided to the contrary, including, but not limited to amendments pursuant to Section 14 which may be made without the consent or approval of either the Board or the Members, will be proposed by the Board of Directors in accordance with the following procedure:

(a) Notice.

Notice of the subject matter of the proposed amendment or amendments will be included in the notice of the meeting of the Association at which such proposed amendment or amendments are to be considered.

(b) Adoption.

The Master Deed may be amended at any time and from time to time at a meeting of the Association called in accordance with the Bylaws and this Master Deed upon the vote of Members holding sixty-seven (67%) or more of the total vote in the Association; provided, however, that if the Association will vote to amend the Bylaws in any respect, such amendment will be set forth in an amendment to this Master Deed and will be valid only when approved by Members holding more than fifty percent (50%) of the total vote in the Association.

(c) Nondiscrimination.

Irrespective of the foregoing, no amendment will (i) alter the Percentage Interest applicable to each Unit (except as permitted in accordance with Sections 3.3, 6.3 and 13.1 hereof); or (ii) discriminate against any Owner or against any Unit or class or group of Units, unless in each instance all Owners adversely affected thereby expressly consent thereto in writing. Notwithstanding any Rule or Regulation or other restriction, the Board of Directors of the Association will make reasonable accommodations in its Rules and Regulations or other restrictions as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Unit and the Common Area, and in furtherance thereof is authorized and empowered to assign Common Area parking spaces for handicap parking generally or to assign same for exclusive use of a Person as handicap parking.

(d) Necessary Amendments.

Notwithstanding any other provisions of this Master Deed to the contrary, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provisions of the Regime Documents that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary Mortgage market lenders, guarantors or insurers with respect to condominium projects, then at any time and from time to time the Board may effect an appropriate corrective amendment so long as written objection to such amendment is not received from Members representing more than fifty percent (50%) of the total votes of the Association within twenty (20) days after written notice of the proposed amendment is given to all Members.

(e) Recording.

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A copy of each amendment provided for in this Section 17.2 will be certified by the Association as having been duly adopted and will be effective when recorded.

(f) Approval of the Developer.

In recognition of the fact that certain provisions of this Master Deed are for the benefit of the Developer, no amendment in derogation of any right reserved or granted to the Developer by provisions of this Master deed may be made without the written approval of the Developer.

17.3 Termination.

The Regime may be terminated and the Project removed from the provisions of the Act in the following manner:

(a) Agreement.

All of the Owners may remove the Project from the provisions of the Act by an instrument to that effect, duly recorded, subject to Sections 17.2(e) and 17.2(f) of this Master Deed.

(b) Destruction.

In the event it is determined in the manner provided in Section 5.6 that the Project will not be repaired or reconstructed after casualty, the Regime will be terminated and the Regime Documents revoked. The determination not to repair or reconstruct after casualty will be evidenced by a certificate of the Association certifying as to the facts effecting the termination.

(c) Condemnation.

In the event that any part of a Unit, or the Common Area essential to the use of any Unit will be taken by an authority having the power of eminent domain and the consent of Members representing at least sixty-seven (67%) percent of the total votes of the Association as provided in Section 6.3 to a plan for continuation of the Regime will not be expressed in an amendment to this Master Deed duly recorded within ninety (90) days after such taking, the Regime will be terminated and the Regime Documents revoked. A certificate of the Association certifying as to the facts effecting the termination will evidence such taking.

17.4 Covenants Running With the Land.

All provisions of this Master Deed will be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of this Master Deed will bind and inure to the benefit of the Developer and all Owners and claimants of the Regime or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns.

17.5 Enforcement.

Each Owner will comply strictly with the Bylaws and with the Rules and Regulations of the Association, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed and in the deed to his Unit. Failure to comply with any of the same

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will be grounds for an action to recover sums due, for damages or injunctive relief, or for all three, maintainable by the Board of Directors on behalf of the Association or by any aggrieved Owner. In addition, the rights of any Owner or lessee of an Owner, their families, invitees or guests to use and to enjoy the Common Area may be suspended by the Board of Directors for continued violation of the Rules and Regulations. Failure by the Association or any Owner to enforce any of the foregoing will in no event be deemed a waiver of the right to do so thereafter.

(a) Authority and Enforcement.

Subject to the provisions of Section 17.5(b) hereof, upon the violation of this Master Deed, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's or Unit occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner or Unit occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Unit occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

(b) Procedure.

Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Project for violations of the Master Deed, By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(i) Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

(A) The alleged violation;

(B) The action required to abate the violation; and

(C) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Master Deed, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(ii) Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice will contain:

(A) The nature of the alleged violation;

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(B) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;

(C) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(D) The proposed sanction to be imposed.

(iii) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if the officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and manner of delivery. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

17.6 Severability.

All provisions of this Master Deed and all of the Regime Documents will be construed in a manner that complies with the Act and South Carolina law to the fullest extent possible. If all or any portion of any provision of this Master Deed or any other Regime Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

17.7 Gender or Grammar.

The singular whenever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed. In addition, the use of the terms "herein" or "hereof" will mean this Master Deed and not merely the Section or paragraph in which such term is utilized.

17.8 Headings.

All Section headings are utilized merely for convenience and will not restrict or limit the application of the respective Sections.

17.9 Powers of Attorney.

By acceptance of a deed or other conveyance of an interest in a Unit, all Members do hereby grant, and if further required, do agree to vote in a manner to provide to, and to ratify and confirm retention by, Developer of Developer's rights under this Master Deed, including, without limitation, the right to amend this Master Deed in accordance with the provisions hereof. In connection with this voting agreement, each member appoints Developer as proxy for such member with full power of substitution to vote for the member on all such matters on which the member may be entitled to vote, and with respect to which there is a reservation or designation of voting rights in Developer under this Master Deed, and with all powers which the member would possess if personally present at any meeting of members. Such appointment will be, upon acceptance of a deed

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or other conveyance by the member and without the necessity of further action by the Developer or the member, a power coupled with an interest and will be irrevocable. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Member is recorded in the ROD. This irrevocable proxy will automatically terminate thirty (30) days after the conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer in the ordinary course of Developer's business. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Developer herein provided, which will run with the land.

17.10 Unit Deeds.

In accepting a deed to any Unit, the grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Master Deed and the Exhibits, as amended, and further agrees to execute any and all documents reasonably requested by the Developer or the Association from time to time to expressly evidence the foregoing.

18. Exhibits Attached

The following Exhibits are attached hereto and incorporated verbatim in this Master Deed by reference as fully as if set forth herein.

Description	Identification
Legal Description of the Land	A
Site Plan and Floor Plans	B
Schedule of Assigned Values and Percentage Interests	C
Articles of Incorporation of Association	D
Bylaws of the Association	E

[Remainder of Page Purposely Left Blank]

IN WITNESS WHEREOF, Developer has caused this Master Deed to be executed to be effective as of this 26th day of November, 2003

WITNESS:

Vista Del Mar Condominiums, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Name: Dowdell Brown
Title: Executive Vice President

Attest: _____
Name: Franklin J. Long
Title: Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this 26th day of November, 2003, by VISTA DEL MAR CONDOMINIUMS, LLC, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Dowdell Brown, its Executive Vice President, as attested by Franklin J. Long, its Secretary.

_____ (SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

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Exhibit "A"

Legal Description of The Land

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres ± and designated as Tract A on a map entitled, "Boundary Survey of a Portion of the Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Survey") prepared by Survey technology, Inc., dated February 25, 2002 and recorded in the ROD Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Survey, which Survey is incorporated herein by reference.

The within conveyance is subject to all easements of record and/or upon the ground.

Being the same premises conveyed to Vista del Mar Condominiums, LLC by deed of Grande Dunes Development Company, LLC dated April 30, 2002 and recorded in the ROD aforesaid in Deed Book 2476, Page 500.

Pursuant to S.C. Code Ann. Section 48-39-330 (1976), as amended, the Developer discloses that the property or a portion thereof is or may be subject to statutory regulation imposed by The South Carolina Coastal Zone Act of 1977, S.C. Code Ann. Sections 48-39-10 et seq. (1976), as amended by the South Carolina Beach Management Act, S.C. Code Ann. Sections 48-39-270 et seq. (1976), hereinafter collectively called "the Acts". The Acts involve, and may subject the property to, the creation and existence of interim and final baselines, setback lines, the velocity zone and an erosion rate, all as is more fully defined in the Acts. Part or all of the property is or may be located seaward of the setback line, the minimum setback line or interim baseline, and has an erosion rate, all as determined by the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control, formerly the South Carolina Coastal Council (hereinafter, "OCRM"). All or part of the property is or may be within the velocity zone as determined by the Federal Emergency Management Agency. The Acts may also restrict the Regime's rights to build, repair or rebuild structures on the property. No structure may be constructed seaward of the setback lines without a permit issued by OCRM. Pursuant to the Acts, the locations of the baselines and interim and final setback lines are subject to change. The methodology utilized in determining the exact location of the setback lines and baselines on the property and the current applicable erosion rate may be obtained from OCRM. The methodology described above must be utilized in a case-by-case, property-by-property manner in order for an exact, surveyed determination to be made of the location of the baselines and setback lines. The Developer makes no representation concerning the location of such baselines, setback lines, or the velocity zone, the effect of such regulation on the property, or the accuracy of the foregoing disclosure.

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Exhibit "B"

Site Plan and Floor Plans

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

NOTE

Exhibit "B" is composed of a survey showing the location of Building 1 and other improvements, as well as the vertical location of each floor and the Units located thereon. Exhibit "B" also includes a set of floor plans for Building 1, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location affording access to each Unit. The survey for Building 1 has been recorded in Plat Book 193 at Page 192. The floor plans for Building 1 have been recorded in Condominium Cabinet D at Page 221. Said Exhibit further includes the matters set forth below, and includes the attached Building 1 certification letter by The Nichols partnership, Inc., architect of the above referenced plans, dated October 22, 2003 and recorded herewith.

Building 1 consists of twenty-five (25) Units located in an 8-story Building over two parking decks, identified on the floor plans as levels P1 and P2. Each Unit in the Building is individually numbered and described as Units 1101, 1102, 1103, 1104, 1201, 1202, 1203, 1204, 1301, 1302, 1303, 1304, 1401, 1402, 1403, 1404, 1502, 1503, 1504, 1602, 1603, 1604, 1702, 1703 and 1802. There are four Units on each of the first, second, third and fourth floors, three Units on each of the fifth and sixth floors, two Units on the seventh floor and one Unit on the eighth floor. Assigned parking spaces for the Units are on the two parking decks identified as levels P1 and P2.

Each of the Units in the Building has a separate entrance from a Common Area elevator and from a door off of an interior Common Area stairwell, and is a one-story flat. Units 1104, 1204, 1304, 1404 and 1504 (sometimes referred to as "A" Unit or a "Genova" Unit) each have 3 bedrooms, a media room, great room, morning room, 3 terraces and 3½ baths. Units 1103, 1203, 1303, 1403, 1503 and 1703 (sometimes referred to as a "B" Unit or a "Torino" Unit) each have 3 bedrooms, great room, morning room, 3 terraces and 3½ baths. Units 1102, 1202, 1302, 1402, 1502, 1602, 1702 and 1802 (sometimes referred to as a "C" Unit or an "Arenfano" Unit) each have 2 bedrooms, a media room, great room, morning room, 3 terraces and 2½ baths. Units 1101, 1201, 1301 and 1401 (sometimes referred to a "D" Unit or a "San Remo" Unit) each have 3 bedrooms, great room, morning room, 3 terraces and 3½ baths. Units 1603 and 1604, an "A" Unit and a "B" Unit have been combined and are shown on the floor plans as Unit 1603-1604, a 3 bedroom, 3½ bath Unit, with media room, two home offices, a family room, living room, dining room and 3 terraces

The locations of each Unit and the floor plan thereof for Building 1 is graphically shown on the plans of The Nichols Partnership, Inc. dated October 31, 2003, and the location of the building and the vertical locations of each floor and the Units and Common Areas located thereon are shown on the as-built survey of Hobbs Upchurch & Associates, P.A. dated October 21, 2003 shows the ground location of Building

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adjacent to each Unit, including the railing thereof, is a Limited Common Area and is subject to restrictions as set forth elsewhere in this Master Deed.

Reference to areas as Common Areas, Limited Common Areas or common elements in this paragraph will be in addition to and read in conjunction with the further designations of Common Areas, Limited Common Areas and common elements set out in other portions of this Master Deed and the survey and floor plans making up the balance of this Exhibit "B". The asphalt roadways and parking areas around the Building and shown on the as-built survey are Common Areas. The parking spaces shown on the first two parking decks below the residential floors of Building 1, identified on the floor plans as levels P1 and P2, having numbers corresponding to the numbers of the Units and preceded by "P-" are Limited Common Areas of the said corresponding Units.

Exhibit "B" is deemed to include the attached certification letter of The Nichols Partnership, Inc., architects of the above referenced plans recorded simultaneously herewith. This Exhibit "B" will be amended if Phases II through VI , or any of them, become part of the Regime in accordance with the terms of this Master Deed.

For purposes of insuring the Project, of which the Building is a part, as set forth in Sections 1 (Definition of "Project"), 4.2(b) and 5.1(b), the initial "replacement cost" of Building 1 is $16,500,000.00.

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THE NICHOLS PARTNERSHIP
ARCHITECTURE/PLANNING

October 22, 2003

Mr. Brian F. Kernaghan, Esq.
NEXSEN PRUET JACOBS POLLARD & ROBINSON, LLC
2411 North Oak Street, Suite 105
Myrtle Beach, SC 29577

Re: Vista del Mar Horizontal Property Regime
Myrtle Beach, South Carolina

Dear Mr. Kernaghan:

This letter is to serve as the Architect's Certification (CBA) for the above-referenced project as requested by you for attachment to the Master Deed.

The undersigned Architect, registered to practice architecture in the State of South Carolina, certifies that these documents reflect, to the best of the architects knowledge, information and belief, the observational and accessible configurations of the structures. They show floor plans and elevations of the building, and graphically show the dimensions, area and locations of each apartment therein, with the dimensions, areas and location of the common elements affording access to each apartment.

Please note that the architectural information contained in this Certification Submittal does not represent the as-built condition of the individual units of the building.

Sincerely,
THE NICHOLS PARTNERSHIP, P.A.

By: John R. Nichols
President

JRN/lss

cc: Dan Zebowski

111 Atrium Avenue
Coral Gables, Florida 33134
Tel (305) 443 3308
Fax (305) 443 3948
Email info@nichols.com
www.nichols.com
AA0 0000

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Exhibit "C"

Schedule of Assigned Values and Percentage Interests

This is a schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in Vista Del Mar Horizontal Property Regime. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

Building and Units	Assigned Value	Statutory Percentage	Assigned Parking
Building 1			
1101	$2,500	4.06504%	P-1101
1102	$2,000	3.25203%	P-1102
1103	$2,500	4.06504%	P-1103
1104	$3,000	4.87805%	P-1104
1201	$2,500	4.06504%	P-1201
1202	$2,000	3.25203%	P-1202
1203	$2,500	4.06504%	P-1203
1204	$3,000	4.87805%	P-1204
1301	$2,500	4.06504%	P-1301
1302	$2,000	3.25203%	P-1302
1303	$2,500	4.06504%	P-1303
1304	$3,000	4.87805%	P-1304
1401	$2,500	4.06504%	P-1401
1402	$2,000	3.25203%	P-1402
1403	$2,500	4.06504%	P-1403
1404	$3,000	4.87805%	P-1404
1502	$2,000	3.25203%	P-1502
1503	$2,500	4.06504%	P-1503
1504	$3,000	4.87805%	P-1504
1602	$2,000	3.25203%	P-1602
1603	$2,500	4.06504%	P-1603
1604	$3,000	4.87805%	P-1604
1702	$2,000	3.25203%	P-1702
1703	$2,500	4.06504%	P-1703
1802	$2,000	3.25203%	P-1802
	$61,500	99.99998%	

Five additional Buildings, or any lesser number of them, may be submitted in any order as Phases II through VI of the Regime. A Building may be composed of as little as twenty-five (25) Units with an Assigned Value of only $2,000 each, or as many as forty-five Units with a statutory value of $3,000 each, or any combination of Units with statutory values ranging between $2,000 and $3,000. As each phase is added, the

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total Assigned Value of all phases submitted and constituting the Regime at that time and the Percentage Interest of each Unit may be determined. In determining the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building, which may be constructed and submitted to the Regime as phases II through VI, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Buildings I	$ 61,500.00
Maximum Possible Assigned Values[1] in Building 2	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 3	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 4	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 5	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 6	$ 105,000.00
Total Maximum Assigned Values[1] of the Project, If All Phases Are Constructed and Submitted	$ 586,500.00

As an example, if Building 2 is composed of thirty-five (35) Units, each with an Assigned Value of $3,000, and is added as Phase II, the total Assigned Values in Phase I ($61,500) would be added to the additional Assigned Values in Phase II ($105,000), so that, following submission the total Assigned Values in Phases I and II would be $166,500. To determine the Percentage Interest of Unit a Unit with an Assigned Value of $2,000 if Phase II is added to Phase I and those two (2) phases constitute the entire Regime, the following formula would be used:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} \quad \frac{\$\ 2{,}000}{\$\ 166{,}500} = 1.20120\%$$

[1] The total Assigned Values of a building with only twenty-five (25) Units, with Assigned Value of $2,000 each is $50,000.00. The Developer may, but will not be required to, build a building with as many as thirty-five (35) Unit, each with an Assigned Value of $3,000, in which event the total assigned values in that building will be $105,000.00.

If the Phase II Building 2 is, instead, composed of only twenty-five (25) Units, each with an Assigned Value of $2,000, then the Percentage Interest of Unit a Unit with an Assigned Value of $2,000 would be calculated as follows:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} \quad \frac{\$\,2{,}000}{\$111{,}500} \quad = \quad 1.79372\%$$

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Exhibit "D"

Articles of Incorporation

Attached Hereto

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

NOV 2 4 2003

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

FILED

NOV 2 4 2003

Mark Hammond
SECRETARY OF STATE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
JIM MILES
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

1. The name of the nonprofit corporation is **Vista Del Mar Condominium Association**

2. The initial registered office of the nonprofit corporation is 2411 North Oak Street, Suite 402 (Street & Number)
Myrtle Beach (City), Horry (County), S.C. (State), 29577 (Zip Code)

The name of the registered agent of the nonprofit corporation at that office is:

Franklin J. Long

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature, FRANKLIN J. LONG

3. Check (a), (b), or (c) whichever is applicable. Check only one box.

a. [ ] The nonprofit corporation is a public benefit corporation.

b. [ ] The nonprofit corporation is a religious corporation.

c. [X] The nonprofit corporation is a mutual benefit corporation.

4. Check (a) or (b), whichever is applicable:

a. [X] This corporation will have members.

b. [ ] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is 2411 N. Oak St., Suite 402 (Street & Address)
Myrtle Beach (City), Horry (County), S.C. (State), 29577 (Zip Code)

6. If this nonprofit corporation is either a public benefit or religious corporation (box a. or b. of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

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a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the court of common pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b. [ ] Upon dissolution of the corporation, consistent with law, the remaining assets of the corporation shall be distributed to: _____

_____

_____

7. If the corporation is a mutual benefit corporation (box "c" of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the [remaining] assets of the corporation will be distributed upon dissolution of the corporation.

a. [X] Upon dissolution of the mutual benefit corporation the remaining assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. [ ] Upon dissolution of the mutual benefit corporation the [remaining] assets, consistent with law, shall be distributed to _____

_____

_____

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See § 33-31-202(c) of the 1976 South Carolina Code, the applicable comments thereto, and the instructions to this form):

a. **Capitalized Words. The use of capitalized words herein shall have the meanings attributed to them in the Master Deed of Vista Del Mar Horizontal Property Regime, hereinafter the "Master Deed," recorded or to be recorded in the Office of Register of Deeds for Horry County, South Carolina.**

b. **Purpose. This Association does not contemplate pecuniary gain or profit, and the specific, primary purposes for which it is formed are to provide for management, administration, maintenance and preservation of Vista Del Mar Horizontal Property regime and the Common Areas thereof, all according to the Master Deed. No part of the net earnings of the Association shall inure to the benefit of any person, other than for acquiring, constructing, or providing management, maintenance, and care of Association property, and other than by a rebate of excess Association fees and assessments, if any.**

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c. Right to Appoint Directors and Officers. The Developer under the Master Deed shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates: (i) December 31, 2017; (ii) three (3) months after the conveyance by the Developer, in the ordinary course of business to persons other than a successor Developer, of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number; (iii) or three (3) months following the date the Developer surrenders its authority to appoint directors of the Association by an express amendment to the Master Deed executed and filed in the Office of Register of Deeds for Horry County, South Carolina by the Developer.

d. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Unit that is subject to the Master Deed (including the Developer) shall be a member of the Association. Until the expiration of the Developer's right to appoint directors and officers of the Association pursuant to subparagraph c of this ¶ 8, the Developer, and its successors and assigns, other than as an owner of a Unit, shall be a member of the Association. The membership of each owner of a Unit shall be appurtenant to and may not be separated from ownership of the Unit and ownership of a Unit shall be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association that is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. Any person or entity who holds an interest in a Unit merely as security for the performance of an obligation shall not be a member of this Association.

e. Voting Rights. The Association shall have two (2) classes of voting membership. Members are divided into classes for the sole purpose of computing voting rights and shall not vote as a class.

Class A. Class A members of the Association shall be all owners of Units (including the Developer). A Type A Member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine as provided in the Master Deed, but in no event shall more than one (1) vote be cast with respect to any Unit.

Class B The Type B member shall be the Developer or its designated assign, in its capacity other than as an Owner of a Unit. The Type B member shall be entitled to three (3) votes for each vote held by Type A members, plus one (1) vote, until the expiration of the Developer's right to appoint directors and officers of the Association pursuant to subparagraph c of this ¶ 8. Thereafter, the Type B member shall exercise votes only as to its Type A memberships.

9. The name and address (with zip code) of each incorporator is as follows (only one is required):

Name	Address (with zip code)
Franklin J. Long	Post Office Box 2095, Myrtle Beach, S.C. 29578-2095

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

_____ Signature of director
(only if named in articles)

_____ Signature of director
(only if named in articles)

_____ Signature of director
(only if named in articles)

11. Each incorporator must sign the articles.

Franklin J. Long
Signature of incorporator
FRANKLIN J. LONG

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The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

VISTA DEL MAR CONDOMINIUM ASSOCIATION,
a nonprofit corporation duly organized under the laws of the state of South Carolina on **November 24th, 2003**, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 24th day of November, 2003.

Mark Hammond

Mark Hammond, Secretary of State

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Exhibit "E"

By-Laws of the Association

Attached Hereto

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BYLAWS OF

THE VISTA DEL MAR CONDOMINIUM ASSOCIATION

ARTICLE I
NAME AND LOCATION

1.1 Name and Location. The name of the corporation is THE VISTA DEL MAR CONDOMINIUM ASSOCIATION, hereinafter referred to as the "Association." The principal office of the Association shall be located at the Project, or at such other place as may be designated by the Board.

ARTICLE II
DEFINITIONS

2.1 Incorporation. The definitions contained in the Master Deed are incorporated by reference herein.

(a) The Master Deed. "Master Deed" shall mean and refer to the Master Deed Of Vista Del Mar Horizontal Property Regime recorded in the Office of Register of Deeds for Horry County, South Carolina, and subsequent amendments thereto.

ARTICLE III
MEETING OF MEMBERS AND VOTING

3.1 Annual Meeting. The first meeting of the Members, whether an annual or a special meeting, shall be held on such day and at such time as the Board, upon majority vote, shall determine and which shall occur not more than twelve (12) months following the date of the close of the sale of the first Unit in the Regime. Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board.

3.2 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing five percent (5%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the five percent (5%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with the Nonprofit Corporation Act.

3.3 Notice and Place of Meetings. Unless otherwise provided in the Master Deed, the Articles of Incorporation, in these By-Laws, or in the Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) but not more than sixty (60) days before such meeting

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to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing five percent (5%) of the total voting power of the (5%) Association, written notice of such meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the Members; or (c) amending the Articles of Incorporation. Meetings shall be held within the Project or at a meeting place within the same county, as close to the Project as possible.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

3.4 Quorum. Unless otherwise provided herein, in the Master Deed, the Articles of Incorporation, or the Nonprofit Corporation Act, the presence of Members representing one-third (⅓) of the votes of all Members, in person or by proxy, shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum of one-third (⅓) of the votes of all Members is present may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Members to leave less than such required quorum, provided that Members representing twenty percent (20%) of the total votes of the Association remain present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the Members required to constitute such quorum. If the required quorum is not present, another meeting may be called, not less than ten (10) nor more than sixty (60) days following the first meeting, and the required quorum at the subsequent meeting shall be the Members present, in person or by proxy, and entitled to vote. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

3.5 Ballots and Representative Voting.

(a) Written Ballots. Any vote of Members on a matter that would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered to every Member by the Association. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceeds the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (1) indicate the record date for Members eligible to vote; (2) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (3) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of directors,

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which shall be by plurality); and (4) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be counted in the vote to be taken. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies. All of the provisions of this Section 3.5(b) are subject to Section 17.9 of the Master Deed. To the extent that a provision set forth in this Section is inconsistent with Section 17.9 of the Master Deed, the provisions of Section 17.9 of the Master Deed shall control. At all meetings of Members, each Member may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Unit, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the Nonprofit Corporation Act, or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

3.6 Membership and Voting. The Association shall have two (2) classes of voting membership:

Class A: The Class A Members shall be all Owners, including the Developer (as defined in the Master Deed) and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine as provided in the Master Deed, but in no event shall more than one (1) vote be cast with respect to any Unit.

Class B: The Class B Member shall be the Developer whose voting rights shall be three (3) votes for each vote held by Class A Members, plus one (1) vote. The Class B membership shall cease upon the first of the following dates:

(a) December 31, 2017;

(b) three (3) months following the date on which the Developer has conveyed to Owners in the ordinary course of its business property representing of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or

(c) three (3) months following the date the Developer surrenders the authority to appoint and remove Directors and officers of the Association by an express amendment to the Master Deed executed and filed in the Office of Register of Deeds for Horry County, South Carolina by the Developer.

Except as otherwise provided in the Master Deed, the Articles of Incorporation, these By-Laws, or the Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority. Members are divided into Class A and Class B Members for the sole purpose of computing voting rights and shall not vote as a class. Owners of Units in all phases shall have the same voting rights.

3.7 Eligibility to Vote: Voting rights attributable to Units shall not vest until the Association has levied Assessments against those Units. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in god standing, a Member must be current in the payment of all assessments levied against the Member's Unit and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Master Deed. A Member's good standing shall be determined as of the record date established in accordance with Section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing.

3.8 Record Dates:

A. Record Dates Established by the Board: For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, or in the Nonprofit Corporation Act. The record dates established by the Board pursuant to this Section shall be as follows:

(1) Record Date for Notice of Meetings: In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(2) Record Date for Voting: In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(3) Record Date for Action by Written Ballot Without Meeting: In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(4) Record Date for Other Lawful Action: In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

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(5) "Record Date" Means as of the Close of Business: For purposes of this subparagraph (a), a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

B. Failure of Board to Fix a Record Date: If the Board, for any reason, fails to establish a record date, rules set forth in the Nonprofit Corporation Act shall apply:

3.9 Action Without Meeting: Any action that may be taken at any annual or special meeting of Members (except the election of Directors) may be taken without a meeting in accordance with the provisions of the Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

3.10 Conduct of Meetings: Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the Nonprofit Corporation Act. Any Member of the Association may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters that relate to the formulation of contracts with third parties, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board. In any matter relating to the discipline of an Association Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

ARTICLE IV
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number. The Board of Directors, all directors of which must be Members of the Association, or an officer, director, employee or agent of a Member, including Developer, shall manage the affairs of the Association. The initial Board of Directors shall consist of three (3) Directors who shall be appointed by the Developer. The Developer shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to the Master Deed until the expiration of the Transition Period.. Within sixty (60) days after the expiration of the Transition Period, the Members shall elect five (5) Directors. The Association shall either call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, such special meeting of the Members to elect the Board of Directors, or the date on which the Association shall count the written ballots distributed to the Members with such notice or the election of the Board of Directors. Each year thereafter, the Members shall elect such number of Directors as shall exist whose terms are expiring.

4.2 Term of Office. The election of Directors shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However, at the meeting of the Association following expiration of the Transition Period held to elect five (5) Directors or the date following expiration of the Transition Period when written ballots are to be counted for the election of such Directors pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next three (3) nominees receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective

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Director, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected.

4.3 Removal; Vacancies. A Director appointed by the Developer may only be removed by the Developer, otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by sixty-seven percent (67%) of the votes of the Members voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Director may be elected at the same meeting at which the vacancy is created by the removal of the Director. A Director whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than 10 days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of a Director, the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Director. A successor Director shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

4.4 Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

4.5 Indemnification of Corporate Agents. The Association shall indemnify any present or former Director, officer, employee or other agent of the Association to the fullest extent authorized under the Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination. The Board shall make nomination for election to the Board of Directors from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Board shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election. The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Master Deed. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Directors at a meeting shall be by secret written ballot. Voting for Directors may also be conducted by written ballot pursuant to Section 3.5(a).

ARTICLE VI
MEETINGS OF DIRECTORS

6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually at such place within the Project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists with the Project, the Board shall select a room as close as possible to

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the Project. Should a regularly scheduled meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

6.3 Quorum. A majority of the Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.4 Executive Session. The Board may, with approval of a majority of the Directors present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.5 Telephone Meetings. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

6.6 Waiver of Notice. The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minute. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.7 Notice of Adjourned Meeting. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.8 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

6.9 Notices Generally. Notice of any meeting of the Board of Directors, whether regular or special, shall be given to each Director by one (1) of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; (d)

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by telegram, charges prepaid; or (e) by facsimile transmission to the fax number of the Directors or to e-mail address of the Directors, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Director's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however,. notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company, faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Duties. It shall be the duty of the Board of Directors to:

A. Maintenance: Perform the maintenance described in the Master Deed;

B. Insurance: Maintain insurance as required by the Master Deed;

C. Discharge of Liens: Discharge by payment, if necessary, any lien against the Common Area and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);

D. Assessments: Fix, levy, collect and enforce Assessments as set forth in the Master Deed;

E. Expenses and Obligations: Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

F. Records: Cause to be kept a complete record of all its acts and affairs and to present a statement thereof to the Members at the annual meeting of the Members, at any special meeting when such statement is requested in writing by one-fourth (¼) of the Class "A" Members; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership;

G. Supervision: Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

H. Enforcement: Enforce these Bylaws and the Master Deed;

I. Review of Financial Records: Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve

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accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components that the Association is obligated to maintain.

J. Reserve Account Withdrawal Restrictions: Require that at least two (2) signatures are needed for the withdrawal of monies for the Association's reserve accounts, at least one (1) of which shall be that of a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

K. Reserve Account Fund Management: The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

L. Reserve Studies. At least every five (5) years the Board shall cause an independent analysis of the reserve component of the operating budget to be conducted to confirm that component replacement costs and useful lives are accurately reflected in the reserve allocation.

7.2 Powers. The Board of Directors shall have power to:

A. Manager: Employ a manager as provided in the Master Deed;

B. Adoption of Rules; Set Aside Common Area Parking for Handicap: Adopt rules in accordance with the Master Deed, including rules setting aside Common Area parking spaces as handicap parking only, and adopt rules limiting the number of cars that will be permitted to be parked in the Common Area parking spaces;

C. Assessments, Liens and Fines: Levy and collect Assessments and impose fines as provided in the Master Deed.

D. Enforcement (Notice and Hearing): Enforce these Bylaws and/or the Master Deed, provided that at least fifteen (15) days' prior notice of any charges (other than Assessment) or potential discipline or fine and the reasons therefor are given to the Member affected, and that an opportunity is provided for the Member to be heard, orally or in writing not less than five (5) days before the effective date of the discipline or fine, said hearing to be before the Board. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first class or registered mail sent to the last address of the Member as shown on the Association's records.

E. Contracts: Contract for goods and/or services in accordance with the Master Deed.

F. Delegation: Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Master Deed or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by the Board at any

time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

G. Appointment of Trustee: Appoint a trustee as provided in the Master Deed.

H. Borrowings. Borrow money (i) for the purpose of improving the Regime, or any portion thereof, (ii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Regime, (iii) for providing services authorized herein, and, (iv) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

I. Other Powers: In addition to any other power contained herein or in the Master Deed, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act.

7.3 Prohibited Acts. The Board shall not take any of actions prohibited of it under the Master Deed except with the vote or written consent of a majority of the Members other than Developer.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Directors, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

8.2 Election of Officers. The Developer shall have the sole right to appoint and remove officers during the Transition Period. Thereafter, all officers shall hold office at the pleasure of the Board.

8.3 Term. The Board shall elect the officers of this Association annually and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

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8.7 Duties of the Officers.

A. President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a South Carolina nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

B. Vice President. The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to an Association manager.

ARTICLE IX
COMMITTEES

9.1 Appointment. An Architectural Review Committee may be appointed as provided in the Master Deed. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Act also requires Members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more Directors have a material financial interest.

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ARTICLE X
BOOKS AND RECORDS

10.1 Inspection by Members. The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board shall prescribe. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

10.2 Rules for Inspection. The Board shall establish reasonable rules with respect to:

A. Notice to be given to the custodian of the records by the Member desiring to make the inspection;

B. Hours and days of the week when such an inspection may be made;

C. Payment of the cost of reproducing copies of documents requested by a Member.

10.3 Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Regime, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Unit. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

ARTICLE XI
MISCELLANEOUS

11.1 Amendments. Prior to close of the sale of the first Unit, Developer may amend these Bylaws. After sale of the first Unit these Bylaws may be amended, only as provided in the Master Deed or in the Nonprofit Corporation Act.

11.2 Conflicts. In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Master Deed and these Bylaws, the Master Deed shall control.

11.3 Fiscal Year. Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

HORRY COUNTY ASSESSOR
165.00-01-092 Sep 73.02pa

816851

STATE OF SOUTH CAROLINA)
) DECLARATION OF LIMITATIONS ON USE
COUNTY OF HORRY) FOR GRANDE DUNES BEACHFRONT PROPERTY

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This Declaration of Limitations on Use for Grande Dunes Beachfront Property (the "Declaration") is made to be effective as of the 28th day of June, 2002 by Myrtle Beach Farms Company, Inc., a corporation formed under the laws of the State of South Carolina, its successors and assigns ("Declarant") and Columbia Properties Myrtle Beach, LLC, a Delaware limited liability company, its successors and assigns ("CPMB").

WITNESSETH:

WHEREAS, Declarant is the developer of the development generally known as "Grande Dunes" located in and near the City of Myrtle Beach, County of Horry, State of South Carolina, and is the owner of certain undeveloped portions of Grande Dunes; and

WHEREAS, CPMB has purchased from Declarant as of the date hereof certain real property located in Grande Dunes; and

WHEREAS, as an inducement to CPMB to purchase such land, Declarant agrees to declare, publish and abide by certain restrictive covenants affecting certain land owned by Declarant; and

WHEREAS, Declarant has conveyed a certain portion of the land to be subject to such restrictive covenants to Vista del Mar Condominiums, LLC, an affiliated company of Declarant ("Vista del Mar"), such land conveyed to Vista del Mar being described in Exhibit C, attached hereto and incorporated herein by reference; and

WHEREAS, as owner of the property described in Exhibit C, Vista del Mar wishes to join in the declaration set forth herein.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant, for and in consideration of the above recitals and for other good and valuable consideration to it in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, declare that the Covenants and Restrictions (as hereinafter defined) shall be covenants running with the land affecting the Burdened Property (as hereinafter defined), and that the Burdened Property is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and possessed subject to the Covenants and Restrictions.

1. Definitions. For purposes of this Declaration:

(a) "Benefitted Property" shall mean that certain real property located in Grande Dunes and more fully described in Exhibit A attached hereto and incorporated herein by reference.

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(b) "Burdened Property" shall mean that certain real property owned by Declarant as of the date hereof and located in Grande Dunes and more fully described on Exhibits B and C attached hereto and incorporated herein by reference.

(c) "Covenants and Restrictions" shall have the meaning described to it in Section 2 hereof.

(d) "Termination Date" shall mean 10 (ten) years after the date of Closing unless earlier terminated in accordance with the provisions of Section 2 hereof.

2. Covenants and Restrictions. The Declarant, its successors and assigns, hereby declares, places and imposes the following covenants and restrictions upon the Burdened Property:

Until the Termination Date, Declarant, its successors and assigns, shall not permit the Burdened Property to be used for the operation of a full service hotel. For purposes of this Declaration, a "full service hotel" shall be a hotel containing food operations (restaurant or room service operation). Notwithstanding the aforesaid, the foregoing restrictions on the Burdened Property shall terminate on the earlier of (i) the Termination Date; (ii) the date 366 days following CPMB's closing on the purchase of the Benefitted Property if CPMB, its successors and assigns, has not commenced construction of a first class quality full service resort hotel on the Benefitted Property (for purposes of this instrument, CPMB, its successors and assigns, shall be considered to have commenced construction on the Benefitted Property at such time as it has installed footings for the hotel on the Benefitted Property), or; (iii) CPMB ceases to operate the full service resort hotel on the Benefitted Property for a period of eighteen (18) consecutive months unless CPMB ceases operation due to a natural disaster or other casualty loss to the hotel on the Benefitted Property and CPMB is diligently pursuing renovation and reconstruction.

3. Legal Effect. The Covenants and Restrictions constitute covenants running with the title to the Burdened Property and shall bind Declarant, its successors or assigns and every other person now or hereafter acquiring an interest in or a lien upon the Burdened Property. For purposes of the Covenants and Restrictions, the Benefitted Property shall constitute the dominant estate and the Burdened Property shall constitute the servient estate. The Covenants and Restrictions shall not inure to the benefit of any individual owner, other than CPMB, (its successors, successors in title to the Benefitted Property, assigns and mortgagees) of a commercial or residential lot, parcel, condominium home or dwelling unit in Grande Dunes, but such covenants shall inure to the benefit of CPMB and such persons, firms or entities as on the Benefitted Property or any portion thereof, and their successors, successors in title, assigns and mortgagees.

4. No Third Party Rights. Nothing contained in this instrument will be deemed to constitute a benefit, gift, grant or dedication of any portion of the Burdened Property to the general public or for any public purpose whatsoever, nor shall the covenants and restrictions be for the benefit of any person other than the owner of the Benefitted Property, its successors, assigns, and mortgagees as set forth in Section 3. This instrument is not intended to constitute

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any other person or owner of any other property at Grande Dunes, a beneficiary, a third party beneficiary hereunder, or to give any such person any rights hereunder, including, without limitation, any rights of enforcement.

5. Termination. The Covenants and Restrictions shall terminate on the Termination Date unless earlier terminated in accordance with the provisions of Section 2. Declarant may evidence the termination of the Covenants and Restrictions and this instrument by filing a notice of termination, which notice is signed by Declarant and CPMB, and such notice of termination shall be conclusive evidence of the termination of the covenants and restrictions and this instrument as to any third parties relying upon the same. Declarant agrees that if a notice of termination is to be filed prior to the termination date, it will provide CPMB written notice at least seven (7) days prior to such filing.

6. Severability. If any covenant, restriction or provisions contained in this instrument is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions and provisions contained in this instrument (or the application of such covenants, restrictions and provisions to persons or circumstances other than those in respect of which the termination of invalidity or unenforceability is made) will not be affected thereby and such covenant, restriction or provision contained in this instrument will be valid and enforceable to the fullest extent permitted by law.

7. Acceptance of Conditions. By delivery of this instrument to Declarant, CPMB, its successors and assigns, agree to abide by the conditions and obligations, if any, imposed upon CPMB, its successors and assigns and contained herein.

8. Remedies for Breach. The terms and conditions of this Declaration shall be enforceable by Declarant, its successors and assigns, and by CPMB, its successors and actions, by actions for specific performance or injunction in addition to any other remedies available at law.

9. Notices. All notices, demands and requests (collectively the "Notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the party intended, (ii) delivered to the then designated address of the party intended, (iii) rejected at the then designated address of the party intended, provided such notice was sent prepaid by certified mail, return receipt requested or by overnight courier providing for delivery against receipt, or (iv) sent via facsimile so long as the original copy is also sent via (i) or (ii) above on the same day. The initial addresses of the parties shall be:

Declarant: Myrtle Beach Farms Company, Inc.
P. O. Drawer 2095
Myrtle Beach, South Carolina 29577
Phone: (843) 448-5123
Fax: (843) 448-9838

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With a copy to: James B. Moore, Jr., Esquire
McNair Law Firm, P. A.
P. O. Drawer 418
Georgetown, South Carolina 29442
Phone: (843) 546-6102
Fax: (843) 546-0096

CPMB: COLUMBIA PROPERTIES MYRTLE BEACH, LLC
Attn: Edward Rofes
207 Grandview Drive
Ft. Mitchell, Kentucky 41017-2799
Phone: (859) 578-1108
Fax: (859) 578-1190

With a copy to: Tedd H. Friedman, Esq.
Katz, Teller, Brant & Hild
2400 Chemed Center
255 E. Fifth Street
Cincinnati, Ohio 45202
Phone: (513) 721-4532
Fax: (513) 721-7120

Upon at least ten (10) days prior written notice, each party shall have the right to change its address to any other address within the United States of America.

10. Counterparts. This document may be executed in multiple counterparts, the signature pages of which may be compiled to constitute an original document.

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, this Declaration is executed to be effective as of the day and year first written above.

Signed, Sealed and Delivered
In the Presence of:

MYRTLE BEACH FARMS COMPANY, INC.

By: Barry R Spivey (Corp.
Its: Vice President Seal)

ATTEST:

By: Franklin J Long
Its: Secretary

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY APPEARED BEFORE ME, the undersigned witness, who, being duly sworn, deposes and states that (s)he saw the within named ~~Burroughs & Chapin Company~~ Myrtle Beach Farms Company, Inc., by Barry R Spivey, its Vice President, and Franklin J Long, its Secretary, sign, seal and deliver the foregoing Declaration, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

SWORN to before me this 28th day of June, 2002.

Notary Public for South Carolina
My Commission Expires: 4/18/2011
(Notary Seal)

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IN WITNESS WHEREOF, this Declaration is executed to be effective as of the day and year first written above.

Signed, Sealed and Delivered
In the Presence of:

Nancy R. Jeffcoat

James B. Moore Jr.

VISTA DEL MAR CONDOMINIUMS, LLC

By: Barry R. Spivey (Corp.
Its: Vice President Seal)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness, who, being duly sworn, deposes and states that (s)he saw the within named Vista del Mar Condominiums, LLC, by Barry R. Spivey, its Vice President, sign, seal and deliver the foregoing Declaration and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Nancy R. Jeffcoat
Witness

SWORN to before me this 28th day of June, 2002.

James B. Moore Jr.
Notary Public for South Carolina
My Commission Expires: 4/18/2011
(Notary Seal)

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IN WITNESS WHEREOF, this Declaration is executed to be effective as of the day and year first written above.

Signed, Sealed and Delivered
in the Presence of:

Michelle Stallmeyer

COLUMBIA PROPERTIES MYRTLE BEACH, LLC

By: _____
Its: EDWARD ROFES
Vice President-Finance

STATE OF Kentucky)
) PROBATE
COUNTY OF Kenton)

PERSONALLY APPEARED BEFORE ME, the undersigned witness, who, being duly sworn, deposes and states that (s)he saw the within named COLUMBIA PROPERTIES MYRTLE BEACH, LLC, by Edward Rofes, its VP-Finance, sign, seal and deliver the foregoing Declaration, and that (a)he with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

SWORN to before me this 10th day of July, 2002.

Michelle Stallmeyer
Notary Public for Kentucky State at Large
My Commission Expires: My Commission Expires Oct. 24, 2002
(Notary Seal)

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EXHIBIT A

Benefitted Property

DESCRIPTION OF A 10.89 ACRE PARCEL OF LAND LOCATED IN THE CITY OF MYRTLE BEACH, COUNTY OF HORRY, STATE OF SOUTH CAROLINA, IN ACCORDANCE WITH A PLAT ENTITLED, "PLAT OF 10.89 ACRE AND 14.11 ACRE PORTION~OCEAN TRACT GRANDE DUNES RESORT", DATED JUNE 12, 2002 AND LAST REVISED JUNE 25, 2002 PREPARED FOR MYRTLE BEACH FARMS COMPANY, INC., MARRIOTT OWNERSHIP RESORTS, INC., AND COLUMBIA PROPERTIES MYRTLE BEACH, LTD. BY ASSOCIATED LAND SURVEYORS, SUCH MAP BEING RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR HORRY COUNTY IN PLAT BOOK 184 AT PAGE 94.

SAID 10.89 ACRE PARCEL BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, BEING A ½" IRON PIPE AT THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF 82nd AVENUE NORTH AND THE EASTERN RIGHT-OF-WAY OF OCEAN BOULEVARD;

THENCE, TURNING WITH THE SAID RIGHT-OF-WAY OF OCEAN BOULEVARD FOR THE NEXT THREE (3) CALLS, (1) ALONG A CURVE TO THE LEFT WITH A RADIUS OF 132.76 FEET, A TANGENT LENGTH OF 63.01 FEET, A CENTRAL ANGLE OF 50°46'37", THE RADIUS OF WHICH BEARS 132.76, THE CHORD OF WHICH BEARS NORTH 17°16'18" EAST FOR A DISTANCE OF 113.84 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 117.66 FEET TO A ½" IRON PIPE;

THENCE, (2) NORTH 08°07'00" WEST, 41.80 FEET TO A ½" IRON PIPE;

THENCE, (3) ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 555.04 FEET, A TANGENT LENGTH OF 112.27 FEET, A CENTRAL ANGLE OF 22°52'14", THE RADIUS OF WHICH BEARS NORTH 12°42'00" WEST, THE CHORD OF WHICH BEARS NORTH 65°51'53" EAST FOR A DISTANCE OF 220.09 FEET; THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 221.55 FEET TO A ½" IRON PIPE;

THENCE, TURNING WITH THE PROPERTY OF N/F MARRIOTT OWNERSHIP RESORTS, INC. FOR THE NEXT TWELVE (12) CALLS, (1) SOUTH 43°36'09" WEST, 26.67 FEET TO A ½" IRON PIPE;

THENCE, (2) SOUTH 46°10'12" EAST, 236.96 FEET TO A ½" IRON PIPE;

THENCE, (3) SOUTH 53°54'23" EAST, 82.01 FEET TO A ½" IRON PIPE;

THENCE, (4) SOUTH 80°42'43" EAST, 97.00 FEET TO A ½" IRON PIPE;

THENCE, (5) SOUTH 68°58'08" EAST, 80.00 FEET TO A ½" IRON PIPE;

THENCE, (6) NORTH 89°00'18" EAST, 38.30 FEET TO A ½" IRON PIPE;

THENCE, (7) SOUTH 44°51'30" EAST, 179.62 FEET TO A ½" IRON PIPE;

THENCE, (8) NORTH 88°41'30" EAST, 56.28 FEET TO A ½" IRON PIPE;
THENCE, (9) SOUTH 46°18'30" EAST, 113.31 FEET TO A ½" IRON PIPE;

THENCE, (10) SOUTH 01°01'54" EAST, 81.27 FEET TO A ½" IRON PIPE;

THENCE, (11) SOUTH 43°49'48" WEST, 22.14 FEET TO A ½" IRON PIPE;

THENCE, (12) SOUTH 46°10'11" EAST, 386.12 FEET TO A ½" IRON PIPE;

THENCE, TURNING AND RUNNING WITH THE 2000 MEAN HIGH WATER MARK OF THE ATLANTIC OCEAN FOR THE NEXT TWO (2) CALLS, (1) SOUTH 49°07'10" WEST, 146.86 FEET TO A ½" IRON PIPE;

THENCE, (2) SOUTH 48°56'44" WEST, 257.36 FEET TO A ½" IRON PIPE;

THENCE TURNING WITH THE NORTHERN RIGHT-OF-WAY OF 82nd AVENUE NORTH, NORTH 46°10'12" WEST, 1186.47 FEET TO A ½" IRON PIPE;

THE POINT OF BEGINNING;

CONTAINING: 474,433 SQUARE FEET OR 10.89 ACRES OF LAND, MORE OR LESS.

BEING A PORTION OF THE PROPERTY CONVEYED TO MYRTLE BEACH FARMS COMPANY BY J.O. NORTON, MASTER FOR HORRY COUNTY, BY HIS DEED DATED MAY 4, 1933 AND RECORDED MAY 4, 1933 IN DEED BOOK U-5 AT PAGE 532, RMC FOR HORRY COUNTY. MYRTLE BEACH FARMS COMPANY, INC. IS SUCCESSOR, BY REASON OF MERGER, TO MYRTLE BEACH FARMS COMPANY PURSUANT TO THE ARTICLES OF MERGER OR SHARE EXCHANGE RECORDED IN THE RMC FOR HORRY COUNTY ON SEPTEMBER 10, 1990 IN DEED BOOK 1419 AT PAGE 720.

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EXHIBIT B

Burdened Property

All that certain piece, parcel, tract of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, consisting of 65.85 acres, more or less commencing at the northeastern intersection of Ocean Boulevard and 82nd Avenue North being the Point of Beginning, thence turning and running N43°34'25"E for a distance of 1613.62' to a point; thence turning and running along a curve having a radius of 1129.02', a tangent of 8.81', a chord of N43°07'36"E for a distance of 17.61' to a point; thence continuing along a curve having a radius of 772.77', a tangent of 420.70' and a chord of N76° 24'28"E for a distance of 738.98' to a point; thence continuing along a curve having a radius of 832.77', a tangent of 330.92' a chord of S83°17'59"E for a distance of 615.07' to a point; thence turning and running S75°01'43"E for a distance of 98.47' to a point; thence continuing along a curve having a radius of 1105.00', a tangent of 101.58', a chord of S80°16'51"E for a distance of 202.31' to a point; thence turning and running S85°32'00"E for a distance of 129.46' to a point; thence turning and running S39°59'12"E for a distance of 622.63' to a point; thence turning and running S50°19'50"W for a distance of 864.82' to a point; thence turning and running S48°32'38"W for a distance of 784.59' to a point; thence turning and running S49°58'47"W for a distance of 791.06' to a point; thence turning and running N46°17'05"W for a distance of 1116.18' to the Point of Beginning, all measurements being a little more or less.

LESS AND EXCEPT THEREFROM the following described property:

ALL THAT CERTAIN 10.89 ACRE PARCEL OF LAND LOCATED IN THE CITY OF MYRTLE BEACH, COUNTY OF HORRY, STATE OF SOUTH CAROLINA, IN ACCORDANCE WITH A PLAT ENTITLED, "ALTA/ACSM PLAT OF 10.89 ACRE PORTION OF OCEAN TRACT, GRANDE DUNES RESORT" DATED JUNE 20, 2002, SUCH PARCEL BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT A ABOVE;

AND:

ALL THAT CERTAIN PIECE, PARCEL, OR LOT OF LAND SITUATED, LYING AND BEING LOCATED BETWEEN THE SOUTHEASTERN RIGHT-OF-WAY OF OCEAN BOULEVARD AND THE ATLANTIC OCEAN AND GRAND DUNES BOULEVARD, IN THE CITY OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA, AND BEING MORE PARTICULARLY SHOWN ON A "PLAT OF 14.11 ACRE PORTION-OCEAN TRACT GRAND DUNES RESORT" (THE "MAP"), DATED NOVEMBER 28, 2001, PREPARED FOR MYRTLE BEACH FARMS COMPANY, INC. BY ASSOCIATED LAND SURVEYORS AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 1/2" IRON PIPE, BEING NORTH 43°36'09" EAST 305.00' FEET FROM THE EASTERN RIGHT-OF-WAY OF 82nd AVENUE NORTH AND RUNNING

PRIMARILY WITH THE SOUTHEASTERN RIGHT-OF-WAY OF OCEAN BOULEVARD, NORTH 43°36'09" EAST 595.06' FEET TO A 1/2" IRON PIPE, THENCE TURNING WITH THE SOUTHERN RIGHT-OF-WAY OF GRAND DUNES BOULEVARD FOR THE NEXT FOUR (4) CALLS, (1) THENCE NORTH 88°41'03" EAST 70.63' FEET TO A 1/2" IRON PIPE, (2) SOUTH 46°15'07" EAST 231.61' FEET TO A 1/2" IRON PIPE, (3) THENCE SOUTH 66°20'52" EAST 200.69' FEET TO A 1/2" IRON PIPE, (4) THENCE SOUTH 46°07'29" EAST 98.85' FEET TO A 1/2" IRON PIPE, THENCE TURNING WITH 6.09 ACRES, ALSO KNOWN AS BEACH CLUB TRACT, FOR THE NEXT THREE (3) CALLS, (1) SOUTH 43°35'48" WEST 1.23' FEET TO A 1/2" IRON PIPE, (2) THENCE SOUTH 36°40'31" WEST 225.39' FEET TO A ½" IRON PIPE, (3) THENCE SOUTH 46°24'46" EAST 663.56' FEET TO A POINT, THENCE TURNING AND RUNNING WITH THE 2001 MEAN HIGH WATER MARK OF THE ATLANTIC OCEAN FOR THE NEXT FOUR (4) CALLS, (1) SOUTH 42°25'10" WEST 16.77' FEET TO A POINT, (2) THENCE SOUTH 43°42'24" WEST 101.97' FEET TO A POINT, (3) THENCE SOUTH 51°29'08" WEST 212.25' FEET TO A POINT, (4) THENCE SOUTH 49°07'10" WEST 66.15' FEET TO A POINT, THENCE TURNING WITH A 10.66 ACRE TRACT, N/F MYRTLE BEACH FARMS COMPANY, INC., FOR THE NEXT ELEVEN (11) CALLS, (1) NORTH 46°10'12" WEST 386.12' FEET TO A 1/2" IRON PIPE, (2) THENCE NORTH 43°49'48" EAST 22.14' FEET TO A 1/2" IRON PIPE, (3) THENCE NORTH 01°01'54" WEST 51.27' FEET TO A 1/2" IRON PIPE, (4) THENCE NORTH 46°18'30" WEST 113.31' FEET TO A 1/2" IRON PIPE, (5) THENCE SOUTH 88°41'30" WEST 56.28' FEET TO A 1/2" IRON PIPE, (6) THENCE NORTH 44°51'30" WEST 179.62' FEET TO A 1/2" IRON PIPE, (7) THENCE SOUTH 89°00'18" WEST 38.30' FEET TO A 1/2" IRON PIPE, (8) THENCE NORTH 68°58'08" WEST 80.00' FEET TO A 1/2" IRON PIPE, (9) THENCE NORTH 80°42'43" WEST 97.00' FEET TO A 1/2" IRON PIPE, (10) THENCE NORTH 53°54'23" WEST 52.01' FEET TO A 1/2" IRON PIPE, (11) THENCE NORTH 46°10'12" WEST 236.96' FEET TO A ½ " IRON PIPE , BEING THE POINT OF BEGINNING, CONTAINING 14.11 ACRES. ALL OF WHICH WILL MORE FULLY AND IN DETAIL APPEAR BY REFERENCE TO THE MAP WHICH IS INCORPORATED HEREIN BY REFERENCE. THIS MAP IS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR HORRY COUNTY IN PLAT BOOK 180 AT PAGE 241;

AND:

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres± and designated as Tract A on a map entitled "Boundary Survey of a Portion of The Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Map") prepared by Survey Technology, Inc., said map being dated February 25, 2002 and recorded in the R.O.D. Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

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Exhibit C

Burdened Property (Vista del Mar Property)

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres± and designated as Tract A on a map entitled "Boundary Survey of a Portion of The Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Map") prepared by Survey Technology, Inc., said map being dated February 25, 2002 and recorded in the R.O.D. Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

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8S8325

II

McNair Law Firm, P. A. (JBM)
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577
C/M#: 010366.00467

Grantee's Address: P. O. Box 2095, Myrtle Beach, SC 29578

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that MYRTLE BEACH FARMS COMPANY, INC., a South Carolina corporation ("Grantor") for and in consideration of the sum of Five ($5.00) Dollars and other valuable consideration, to it in hand paid at and before the sealing of these presents by **GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company** ("Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released subject to the reserved easements described herein and all encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit B attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described property (the "Property"), to wit:

See Exhibit A attached hereto and incorporated Herein by reference for a description of the Property conveyed.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its successors and assigns forever, subject to the reserved easements described herein and the Permitted Exceptions.

And the said Grantor, subject to the reserved easements described herein and the Permitted Exceptions set forth on Exhibit B attached hereto and expressly incorporated herein by reference, does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors, but against no other.

DEED
2761 0820

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the Grantor, Myrtle Beach Farms Company, Inc., has executed this Limited Warranty Deed this 14th day of July, 2004.

Signed, Sealed and Delivered
in the Presence of:

Gail Cooper

Dana C. Joyner

MYRTLE BEACH FARMS COMPANY, INC.

By: Douglas P. Wendel

Its: Pres. + CEO

ATTEST:

By: Franklin J. King

Its: Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

I, Dana C. Joyner, Notary Public, do hereby certify that Myrtle Beach Farms Company, Inc., by Douglas P. Wendel, its President + CEO, and attested to by Franklin J. King its Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 14th day of July, 2004.

Dana C. Joyner (L.S.)
Notary Public for S.C.
My Commission Expires: 9-12-11

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EXHIBIT A

(Legal Description)

EXHIBIT A

HORRY COUNTY ASSESSOR
116-00-08-129 7-16-04.lr
Map Blk Parcel

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing **5.27 acres±** and designated as **Vista Del Mar Phase 2** on a map entitled "**Survey Plat of An 5.27 Acre Tract for Myrtle Beach Farms Company, Inc.**" (the "Map") prepared by Hobbs, Upchurch & Associates, P.A., said map being dated February 2004 and recorded in the R.O.D. Office for Horry County in Plat Book 198 at Page 49; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being a portion of the property conveyed to Myrtle Beach Farms Company by J.O. Norton, Master for Horry County, by his Deed dated May 4, 1933 and recorded May 4, 1933 in Deed Book U-5 at Page 532, RMC for Horry County. Myrtle Beach Farms Company, Inc. is successor, by reason of merger, to Myrtle Beach Farms Company pursuant to the Articles of Merger or Share Exchange recorded in the RMC for Horry County on September 10, 1990 in Deed Book 1419 at Page 720.

RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING EASEMENT:

An exclusive, perpetual, irrevocable, appurtenant easement (the "Beachfront Services Easement") on, over and across such portions of the above-described property (the "Beachfront Services Easement Property") being more particularly described in accordance with the above-referenced survey as follows: All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Caroling being all of the above-described property lying between the line shown on the above-referenced map designated as the City of Myrtle Beach Protection Overlay Zone Line and the mean high water mark of the Atlantic Ocean. Said property butting and bounding as follows: On the East by the mean high water mark of the Atlantic Ocean; on the West by the City of Myrtle Beach Protection Overlay Zone Line as shown on the above-referenced map; on the South by other lands of Myrtle Beach Farms Company, Inc.; and on the North by other lands of Myrtle Beach Farms Company, Inc.

The purpose of the Beachfront Services Easement shall be to permit the Grantor, its successors and assigns, the right but not the obligation to provide lifeguard services; rent beach chairs, rafts, towels, umbrellas, sailboats, kayaks, and similar beachfront equipment and all other services as from time to time are determined by Grantor.

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EXHIBIT B
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

6. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

7. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described on Exhibit A hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

8. The Beachfront Services Easement described in Exhibit A.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information

2. The property being transferred is located at Dogwood Neck Township bearing Horry County Tax Map Number Portion of 166-00-08-090.

3. Check one of the following:

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) X exempt from the deed recording fee because exemption 12-24-40(g). (If exempt, please skip items 4-7, and go to item 8 of this affidavit). Transfer to LLC in exchange for membership interest therein.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

(a) ___ Place the amount listed in item 4 above here:

(b) ___ Place the amount listed in item 5 above here: (If no amount is listed, place zero here).

(c) ___ Subtract line 6(b) from 6(a) and place here.

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is $ N/A .

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor .

9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 14th day of July, 2004.

Sara C. Jaynes
Notary Public for S.C.
My Commission Expires: 9-12-11

MYRTLE BEACH FARMS COMPANY, INC.

By: Doug Pinnell
(Print or Type Name Here)
Its: Pres. & CEO

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EXHIBIT A

McNair Law Firm, P. A. (JBM)
2411 Oak Street, Ste. 206
Myrtle Beach, SC 29577
C/M#: 010366.00467

Grantee's Address: P. O. Box 2095, Myrtle Beach, SC 29578

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, that GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company, ("Grantor") for and in consideration of the sum of Five ($5.00) Dollars and other valuable consideration, to it in hand paid at and before the sealing of these presents by **VISTA DEL MAR CONDOMINIUMS, LLC, a South Carolina limited liability company** ("Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released subject to the encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit B attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described property (the "Property"), to wit:

See Exhibit A attached hereto and incorporated Herein by reference for a description of the Property conveyed.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its successors and assigns forever, subject to the Permitted Exceptions.

And the said Grantor, subject to the Permitted Exceptions set forth on Exhibit B attached hereto and expressly incorporated herein by reference, does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors, but against no other.

[SIGNATURE PAGE ATTACHED]

DEED
2761 0829

IN WITNESS WHEREOF, the Grantor, Grande Dunes Development Company, LLC, has executed this Limited Warranty Deed this 14th day of July, 2004.

Signed, Sealed and Delivered
in the Presence of:

Gail Cooper

Sara C. Joyner

GRANDE DUNES DEVELOPMENT COMPANY, LLC
By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: Douglas P. Wendel
Its: Pres. & CEO

ATTEST:

By: Franklin J. Long
Its: Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

I, Sara C. Joyner, Notary Public, do hereby certify that Grande Dunes Development Company, LLC, by Burroughs & Chapin Company, Inc., its Managing Member, by Douglas P. Wendel, its Pres. & CEO, and attested to by Franklin J. Long, its Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 14th day of July, 2004.

Sara C. Joyner (L.S.)
Notary Public for S.C.
My Commission Expires: 9.12.11

MYRTLEBEACH 60175v2

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EXHIBIT A

(Legal Description)

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing **5.27 acres±** and designated as **Vista Del Mar Phase 2** on a map entitled "**Survey Plat of An 5.27 Acre Tract for Myrtle Beach Farms Company, Inc.**" (the "Map") prepared by Hobbs, Upchurch & Associates, P.A., said map being dated February 2004 and recorded in the R.O.D. Office for Horry County in Plat Book 198 at Page 49; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being the same premises conveyed to Grantor herein by deed of Myrtle Beach Farms Company, Inc. recorded 7/15/04 in the R.O.D. Office for Horry County in Deed Book 2761 at Page 820.

HORRY COUNTY ASSESSOR
116-00-08-129
Map Blk Parcel
7-16-04 EL

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EXHIBIT B
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Terms, Conditions and Restrictions of that certain Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association dated April 24, 2000, and recorded April 26, 2000 in Deed Book 2254 at page 1219; Seventh Supplemental Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association (Vista del Mar Tract) dated April 30, 2002, and recorded in Deed Book 2476 at page 496; and Twelfth Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association (Vista del Mar Phase II Tract) dated July 14, 2004, and recorded 7/15/04, 2004 in Deed Book 2761 at page 825.

6. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

7. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

8. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described on Exhibit A hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

9. The Beachfront Services Easement reserved by Myrtle Beach Farms Company, Inc. in the deed from Myrtle Beach Farms Company, Inc. to Grande Dunes Development Company, LLC dated July 14th, 2004 and recorded July 15, 2004 in the R.O.D. Office for Horry County in Deed Book 2761 at Page 820.

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STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information

2. The property being transferred is located at Dogwood Neck Township bearing Horry County Tax Map Number Portion of 166-00-08-090.

3. Check one of the following:

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _X_ exempt from the deed recording fee because 12-24-40(g). (If exempt, please skip items 4-7, and go to item 8 of this affidavit). Transfer to LLC in exchange for membership interest therein.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes __ or No _X_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

(a) $_____ Place the amount listed in item 4 above here:

(b) _____ Place the amount listed in item 5 above here: (If no amount is listed, place zero here).

(c) $_____ Subtract line 6(b) from 6(a) and place here.

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is $ N/A.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 14th day of July, 2004.

Notary Public for S.C.
My Commission Expires: 9-12-11

GRANDE DUNES DEVELOPMENT COMPANY, LLC
By: Burroughs & Chapin Company, Inc.
Its: Managing Member
By: _____
Its: Vice Pres. & CEO

MYRTLEBEACH 60175v2

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3883449 I
MBFC
8290

McNair Law Firm, P. A. (JBM)
P. O. Box 418
Georgetown, SC 29442

2:45

R.M.C.

EXEMPT

HORRY COUNTY ASSESSOR
NEW PARCEL 166-00-08-092
SPLIT FROM 166-00-08-090
Map Blk Parcel
5.1.02
pg

Grantee's Address: P. O. Box 2095, Myrtle Beach, SC 29578

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, that MYRTLE BEACH FARMS COMPANY, INC., a South Carolina corporation ("Grantor") for and in consideration of the sum of Five ($5.00) Dollars and other valuable consideration, to it in hand paid at and before the sealing of these presents by **GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company** ("Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released subject to the reserved easements described herein and all encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit B attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described property (the "Property"), to wit:

See Exhibit A attached hereto and incorporated Herein by reference for a description of the Property conveyed.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its, successors and assigns forever, subject to the reserved easements described herein and the Permitted Exceptions.

And the said Grantor, subject to the reserved easements described herein and the Permitted Exceptions set forth on Exhibit B attached hereto and expressly incorporated herein by reference, does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors, but against no other.

DEED
2476 0491

[SIGNATURE PAGE ATTACHED]

8
491

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IN WITNESS WHEREOF, the Grantor, Myrtle Beach Farms Company, Inc., has executed this Limited Warranty Deed this 30th day of April, 2002.

Signed, Sealed and Delivered
in the Presence of:

MYRTLE BEACH FARMS COMPANY, INC.

By: Douglas P. Wendel
Its: President and CEO

ATTEST:

By: Franklin J. Lay
Its: Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

I, SARA C. Joyner, Notary Public, do hereby certify that Myrtle Beach Farms Company, Inc., by Douglas P. Wendel its President And CEO, and attested to by Franklin J. Lay its Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 30th day of April, 2002.

(L.S.)
Notary Public for S.C.
My Commission Expires: 9-12-11

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EXHIBIT A

(Legal Description)

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres± and designated as Tract A on a map entitled "Boundary Survey of a Portion of The Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Map") prepared by Survey Technology, Inc., said map being dated February 25, 2002 and recorded in the R.O.D. Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being a portion of the property conveyed to Myrtle Beach Farms Company by J.O. Norton, Master for Horry County, by his Deed dated May 4, 1933 and recorded May 4, 1933 in Deed Book U-5 at Page 532, RMC for Horry County. Myrtle Beach Farms Company, Inc. is successor, by reason of merger, to Myrtle Beach Farms Company pursuant to the Articles of Merger or Share Exchange recorded in the RMC for Horry County on September 10, 1990 in Deed Book 1419 at Page 720.

RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING EASEMENT:

An exclusive, perpetual, irrevocable, appurtenant easement (the "Beachfront Services Easement") on, over and across such portions of the above-described property (the "Beachfront Services Easement Property") being more particularly described in accordance with the above-referenced survey as follows: All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Caroling being all of the above-described property lying between the line shown on the above-referenced map designated as the City of Myrtle Beach Protection Overlay Zone Line and the mean high water mark of the Atlantic Ocean. Said property butting and bounding as follows: On the East by the mean high water mark of the Atlantic Ocean; on the West by the City of Myrtle Beach Protection Overlay Zone Line as shown on the above-referenced map; on the South by other lands of Myrtle Beach Farms Company, Inc.; and on the North by other lands of Myrtle Beach Farms Company, Inc.

The purpose of the Beachfront Services Easement shall be to permit the Grantor, its successors and assigns, the right but not the obligation to provide lifeguard services; rent beach chairs, rafts, towels, umbrellas, sailboats, kayaks, and similar beachfront equipment and all other services as from time to time are determined by Grantor.

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EXHIBIT B
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

6. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

7. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described on Exhibit A hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

8. The Beachfront Services Easement described in Exhibit A.

STATE OF SOUTH CAROLINA)

) **AFFIDAVIT**

COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information

2. The property being transferred is located at Dogwood Neck Township bearing Horry County Tax Map Number 166-00-08-059 (portion)

3. Check one of the following:

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) X exempt from the deed recording fee because exemption 12-24-40(g). (If exempt, please skip items 4-7, and go to item 8 of this affidavit). Transfer to LLC in exchange for membership interest therein.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ___ or No ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

(a) ___ Place the amount listed in item 4 above here: _____

(b) ___ Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here).

(c) ___ Subtract line 6(b) from 6(a) and place here. _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 30th day of April, 2002.

Notary Public for S.C.
My Commission Expires: 8-21-06

MYRTLE BEACH FARMS COMPANY, INC.

By: Douglas B. Wendel

(Print or Type Name Here) Douglas B. Wendel

Its: President / CEO

Georgetown: 84713

495

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EXEMPT 1

388345 I

GDD 109

FILED
HORRY COUNTY
2008 APR 30 PM 2:16
R.M.C.

HORRY COUNTY ASSESSOR
166-00-08-092
Map Blk Parcel
5.402

McNair Law Firm, P. A. (JBM)

Grantee's Address: P. O. Box 2095, Myrtle Beach, SC 29578

STATE OF SOUTH CAROLINA)
) LIMITED WARRANTY DEED
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, that GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company, ("Grantor") for and in consideration of the sum of Five ($5.00) Dollars and other valuable consideration, to it in hand paid at and before the sealing of these presents by **VISTA DEL MAR CONDOMINIUMS, LLC, a South Carolina limited liability company** ("Grantee"), in the State aforesaid (the receipt whereof is hereby acknowledged) has granted, bargained, sold and released subject to the encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit B attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described property (the "Property"), to wit:

See Exhibit A attached hereto and incorporated Herein by reference for a description of the Property conveyed.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its successors and assigns forever, subject to the Permitted Exceptions.

And the said Grantor, subject to the Permitted Exceptions set forth on Exhibit B attached hereto and expressly incorporated herein by reference, does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors, but against no other.

[SIGNATURE PAGE ATTACHED]

DEED
2476 0500

A
500

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IN WITNESS WHEREOF, the Grantor, Grande Dunes Development Company, LLC, has executed this Limited Warranty Deed this 30th day of April, 2002.

Signed, Sealed and Delivered
in the Presence of:

Joanne L. Fitzsimmons

Dana C. Joyner

GRANDE DUNES DEVELOPMENT COMPANY, LLC
By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: Douglas P. Wendel
Its: President & CEO

ATTEST:

By: Franklin J. Long
Its: Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

I, Joanne L. Fitzsimmons, Notary Public, do hereby certify that Grande Dunes Development Company, LLC, by Burroughs & Chapin Company, Inc., its Managing Member, by Douglas P. Wendel, its President & CEO, and attested to by Franklin J. Long, its Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 30th day of April, 2002.

Joanne L. Fitzsimmons (L.S.)
Notary Public for S.C.
My Commission Expires: 8-21-06

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EXHIBIT A

(Legal Description)

EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres± and designated as Tract A on a map entitled "Boundary Survey of a Portion of The Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Map") prepared by Survey Technology, Inc., said map being dated February 25, 2002 and recorded in the R.O.D. Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being premises conveyed to Grantor herein by deed of Myrtle Beach Farms Company, Inc. recorded April 30, 2002 in the R.O.D. Office for Horry County in Deed Book 2476 at Page 491.

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EXHIBIT B
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Terms, Conditions and Restrictions of that certain Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association dated April 24, 2000, and recorded April 26, 2000 in Deed Book 2254 at page 1219; Seventh Supplemental Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association (Vista del Mar Tract) dated April 3rd, 2002, and recorded April 30th, 2002 in Deed Book 2476 at page 496.

6. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

7. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

8. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described on Exhibit A hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

9. The Beachfront Services Easement reserved by Myrtle Beach Farms Company, Inc. in the deed from Myrtle Beach Farms Company, Inc. to Grande Dunes

Development Company, LLC dated April 30, 2002 and recorded April 30, 2002 in the R.O.D. Office for Horry County in Deed Book 2476 at Page 491.

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STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information

2. The property being transferred is located at Dogwood Neck Township bearing Horry County Tax Map Number 166-00-08-090 (portion)

3. Check one of the following:

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) X exempt from the deed recording fee because 12-24-40(g). (If exempt, please skip items 4-7, and go to item 8 of this affidavit). Transfer to LLC in exchange for membership interest therein.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ___ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

(a) $_____ Place the amount listed in item 4 above here: _____

(b) _____ Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here).

(c) $_____ Subtract line 6(b) from 6(a) and place here. _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is $_____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 30th
day of April, 2002.

Notary Public for S.C.
My Commission Expires: 8-21-06

GRANDE DUNES DEVELOPMENT COMPANY, LLC
By: Burroughs & Chapin Company, Inc.
Its: Managing Member
By: Doug S. Wendt
Its: President & CEO

505

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COP

Please return to:
McNair Law Firm
Attn: James B. Moore, Jr.
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577
File No.:010366.00467

FILED
HORRY COUNTY, S.C.
2006 JUN 21 PM 2:05
BALLERY V. SKIPPER
REGISTRAR OF DEEDS

****

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CORRECTIVE DEED
(VISTA DEL MAR PHASE II)

****

WHEREAS, Myrtle Beach Farms Company, Inc., a South Carolina corporation, conveyed the below described property to Grande Dunes Development Company, LLC, a South Carolina limited liability company, by Deed dated July 14, 2004 and recorded July 15, 2004 in Deed Book 2761 at Page 0820, Office of the Register of Deeds for Horry County; and

WHEREAS, the plat recorded and referenced in the legal description in the aforesaid Deed contained a scrivener's error in that the plat incorrectly referenced the acreage in which the acreage was shown as being 5.27 acres instead of 5 acres; and

WHEREAS, a new plat was prepared as recorded in Plat Book 214 at Page 102, records of Horry County, to correct the scrivener's error; and

WHEREAS, it is the desire of Myrtle Beach Farms Company, Inc., a South Carolina corporation, to correct this mistake by the execution of this Corrective Deed.

NOW, THEREFORE, THIS DEED is made this 20th day of June, 2006, by and between **Myrtle Beach Farms Company, Inc., a South Carolina corporation,** hereinafter called Grantor, and **Grande Dunes Development Company, LLC, a South Carolina limited liability company, whose address is P.O. Box 2095, Myrtle Beach, SC 29578,** hereinafter called Grantee, which expression shall include his, her or their heirs and assigns, and/or its successors and assigns, forever, wherever the context so requires or admits; and, in this Deed, the singular shall include the plural and the plural the singular and one gender shall include all genders.

KNOW ALL MEN BY THESE PRESENTS that Grantor, for and in consideration of the sum of **Five and 00/100 ($5.00) Dollars** paid to Grantor by Grantee, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released subject to the reserved easements described herein and all encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit A attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these present does grant, bargain, sell and release unto Grantee, its successors and assigns forever, in fee simple, the following described property to wit:

3116-1135

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All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.00 acres and designated as **Parcel 2B 217,808 sq. ft. 5.00 Acres on a map entitled "Combination Plat of Parcels 2A and 2B City of Myrtle Beach, Horry County, South Carolina, Prepared For: VISTA DEL MAR CONDOMINIUMS, LLC"** (the "Map") prepared by Robert L. Bellamy & Associates, Inc., said map being dated November 12, 2004 and combination plat created May 24, 2006 and recorded in the R.O.D. Office for Horry County in Plat Book 214 at Page 102; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being a portion of the property conveyed to Myrtle Beach Farms Company by J.O. Norton, Master for Horry County, by his Deed dated May 4, 1933 and recorded May 4, 1933 in Deed Book U-5 at Page 532, RMC for Horry County. Myrtle Beach Farms Company, Inc. is successor, by reason of merger, to Myrtle Beach Farms Company pursuant to the Articles of Merger or Share Exchange recorded in the RMC for Horry County on September 10, 1990 in Deed Book 1419 at Page 720.

RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING EASEMENT:

An exclusive, perpetual, irrevocable, appurtenant easement (the "Beachfront Services Easement") on, over and across such portions of the above-described property (the "Beachfront Services Easement Property") being more particularly described in accordance with the above-referenced survey as follows: All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, being all of the above-described property lying between the line shown on the above-referenced map designated as the City of Myrtle Beach Protection Overlay Zone Line and the mean high water mark of the Atlantic Ocean. Said property butting and bounding as follows: On the East by the mean high water mark of the Atlantic Ocean; on the West by the City of Myrtle Beach Protection Overlay Zone Line as shown on the above-referenced map; on the South by other lands of Myrtle Beach Farms Company, Inc.; and on the North by other lands of Myrtle Beach Farms Company, Inc.

The purpose of the Beachfront Services Easement shall be to permit the Grantor, its successors and assigns, the right but not the obligation to provide lifeguard services; rent beach chairs, rafts, towels, umbrellas, sailboats, kayaks, and similar beachfront equipment and all other services as from time to time are determined by Grantor.

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TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto said Grantee, its successors and assigns forever, subject to the reserved easements described herein and the Permitted Exceptions.

AND said Grantor, subject to the reserved easements described herein and the Permitted Exceptions set forth on Exhibit A attached hereto and expressly incorporated herein by reference, does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against itself and its successors, but against no other.

IN WITNESS WHEREOF, Grantor has caused these premises to be signed and sealed as of the day and year first above written.

Signed, Sealed and Delivered
In the Presence of:

Witness #1

Witness #2

Myrtle Beach Farms Company, Inc.,
a South Carolina corporation

By: _____ (SEAL)
Name: William F. Pritchard
Its: Senior Executive Vice President

ATTEST:

By: _____
Franklin J. Long, Secretary

MYRTLEBEACH 86726v2

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****

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

CORPORATE PROBATE

****

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named Myrtle Beach Farms Company, Inc., a South Carolina corporation, by William F. Britt Jr., its Senior Executive Vice President, and attested by Franklin J. Long, its Secretary, sign, seal and as its act and deed deliver the within instrument; and, that (s)he with the other witness whose signature appears above witnessed the execution thereof.

1ST WITNESS SIGNS HERE AGAIN

Sworn to before me this
20th day of June, 2006.

Notary Public for South Carolina
My commission expires: 8/31/14

MYRTLEBEACH 86726v2

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. Property located in Horry County, South Carolina and described as Parcel 2B, 5 acres (Vista Del Mar) Myrtle Beach, SC 29588 being designated as a portion of Parcel TMS# 166-00-08-090 was transferred from Myrtle Beach Farms Company, Inc., a South Carolina corporation, to Grande Dunes Development Company, LLC, a South Carolina limited liability company, on June 20, 2006.

3. Check one of the following: The deed is

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) __x__ exempt from the deed recording fee because (See Information section of affidavit):
Transfer to LLC in exchange for membership interest therein/Corrective Deed
(If exempt, please skip items 4-7, and go to item 8 of this affidavit).

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check One: Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes __ or No x to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6 The deed recording fee is computed as follows:

(a) ___ Place the amount listed in item 4 above here: $_____

(b) ___ Place the amount listed in item 5 above here:
(If no amount is listed, place zero here).

(c) ___ Subtract line 6(b) from 6(a) and place here. $_____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is $_____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

MYRTLEBEACH 86726v2

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ELECTRONICALLY FILED - 2019 Aug 09 12:35 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 9th day of August, 2006.

Notary Public for S.C.
My Commission Expires: 8/31/14

Myrtle Beach Farms Company, Inc. (SEAL)

By: _____ (SEAL)
Name: William F. Hitchcock
Its: Senior Executive Vice President

ATTEST:
By: _____
Franklin J. Long, Secretary

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
(7) that constitute a contract for the sale of timber to be cut;
(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
(12) that constitute a Corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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EXHIBIT A
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

6. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

7. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described above in the legal description hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

8. The Beachfront Services Easement described herein.

COPY

Please return to:
McNair Law Firm
Attn: James B. Moore, Jr.
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577
File No.:010366.00467

FILED
HORRY COUNTY, S.C.
2006 JUN 21 PM 2:10
BALLERY V. SKIPPER
REGISTRAR OF DEEDS

****

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

CORRECTIVE DEED
(VISTA DEL MAR PHASE II)

****

WHEREAS, Grande Dunes Development Company, LLC, a South Carolina limited liability company, conveyed the below described property to Vista del Mar Condominiums, LLC, a South Carolina limited liability company, by Deed dated July 14, 2004 and recorded July 15, 2004 in Deed Book 2761 at Page 0829, Office of the Register of Deeds for Horry County; and

WHEREAS, the plat recorded and referenced in the legal description in the aforesaid Deed contained a scrivener's error in that the plat incorrectly referenced the acreage in which the acreage was shown as being 5.27 acres instead of 5 acres; and

WHEREAS, a new plat was prepared as recorded in Plat Book 214 at Page 102, records of Horry County, to correct the scrivener's error; and

WHEREAS, it is the desire of Grande Dunes Development Company, LLC, a South Carolina limited liability company, to correct this mistake by the execution of this Corrective Deed.

NOW, THEREFORE, THIS DEED is made this 10th day of June, 2006, by and between **Grande Dunes Development Company, LLC, a South Carolina limited liability company,** hereinafter called Grantor, and **Vista del Mar Condominiums, LLC, a South Carolina limited liability company, whose address is P.O. Box 2095, Myrtle Beach, SC 29578,** hereinafter called Grantee, which expression shall include his, her or their heirs and assigns, and/or its successors and assigns, forever, wherever the context so requires or admits; and, in this Deed, the singular shall include the plural and the plural the singular and one gender shall include all genders.

KNOW ALL MEN BY THESE PRESENTS that Grantor, for and in consideration of the sum of **Five and 00/100 ($5.00) Dollars** paid to Grantor by Grantee, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released subject to the reserved easements described herein and all encumbrances, easements, rights-of-way, restrictions, covenants, reservations and agreements set forth on Exhibit A attached hereto and expressly incorporated herein by reference (the "Permitted Exceptions"), and by these present does grant, bargain, sell and release unto Grantee, its successors and assigns forever, in fee simple, the following described property to wit:

3116-1140

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All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing **5.00 acres** and designated as **Parcel 2B 217,808 sq. ft. 5.00 Acres** on a map entitled "**Combination Plat of Parcels 2A and 2B City of Myrtle Beach, Horry County, South Carolina, Prepared For: VISTA DEL MAR CONDOMINIUMS, LLC**" (the "Map") prepared by Robert L. Bellamy & Associates, Inc., said map being dated November 12, 2004 and combination plat created May 24, 2006 and recorded in the R.O.D. Office for Horry County in Plat Book 214 at Page 102; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

Being the same premises conveyed to Grantor herein by Deed of Myrtle Beach Farms Company, Inc. recorded 6-21-06 in the Office of the Register of Deeds for Horry County in Deed Book 3116 at Page 1135.

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular, the said premises before mentioned unto said Grantee, its successors and assigns forever, subject to the Permitted Exceptions.

AND said Grantor, subject to the Permitted Exceptions set forth on Exhibit A attached hereto and expressly incorporated herein by reference, does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against itself and its successors, but against no other.

[Signatures Appear on Next Page]

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IN WITNESS WHEREOF, Grantor has caused these premises to be signed and sealed as of the day and year first above written.

Signed, Sealed and Delivered In the Presence of:

Witness #1

Witness #2

Grande Dunes Development Company, LLC
a South Carolina limited liability company

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____ (SEAL)
Name: William F. Rikard
Its: Senior Executive Vice President

ATTEST:

By: _____
Franklin J. Long, Secretary

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

CORPORATE PROBATE

****

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named Grande Dunes Development Company, LLC, by Burroughs & Chapin Company, Inc., its Managing Member by William F. Rikard, its Sr. Exec. Vice Pres., and attested by Franklin J. Long, its Secretary, sign, seal and as its act and deed deliver the within instrument; and, that (s)he with the other witness whose signature appears above witnessed the execution thereof.

1ST WITNESS SIGNS HERE AGAIN

Sworn to before me this
20th day of June, 2006.

Notary Public for South Carolina
My commission expires: 8/31/14

MYRTLEBEACH 86741v2

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. Property located in Horry County, South Carolina and described as Parcel 2B, 5 acres (Vista Del Mar) Myrtle Beach, SC 29588 being designated as a portion of Parent TMS# 166-00-08-090 was transferred from Grande Dunes Development Company, LLC, a South Carolina limited liability company, to Vista del Mar Condominiums, LLC, a South Carolina limited liability company, on June 20, 2006.

3. Check one of the following: The deed is

(a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _x_ exempt from the deed recording fee because (See Information section of affidavit):
Transfer to LLC in exchange for membership interest therein/Corrective Deed
(If exempt, please skip items 4-7, and go to item 8 of this affidavit).

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check One: Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____

(b) ___ The fee is computed on the fair market value of the realty which is _____.

(c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes __ or No _x_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is _____.

6 The deed recording fee is computed as follows:

(a) ___ Place the amount listed in item 4 above here: $_____

(b) ___ Place the amount listed in item 5 above here:
(If no amount is listed, place zero here).

(c) __ Subtract line 6(b) from 6(a) and place here. $_____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is $_____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

MYRTLEBEACH 86741v2

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9. I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 20th day of June, 2006.

Notary Public for S.C.

My Commission Expires: 8/31/14

Grande Dunes Development Company, Inc.
By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____ (SEAL)
Name: William E. Rutherford
Its: Senior Executive Vice President

ATTEST:
By: _____
Franklin J. Long, Secretary

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty.' Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
(7) that constitute a contract for the sale of timber to be cut;
(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
(12) that constitute a Corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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EXHIBIT A
(Permitted Exceptions)

1. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or regulations or by the South Carolina Coastal Zone Management Act of 1977, Sections 48-39-10, et. seq., Code of Laws of South Carolina, 1976, as amended by the South Carolina Beach Management Act, South Carolina Code Sections 48-39-270, et. seq.

2. Easements and covenants of record.

3. Title to that portion of the property below the mean high water mark of the Atlantic Ocean.

4. Covenants and Restrictions set forth in Declaration of Limitations On Use For Grande Dunes Beachfront Property dated December 12, 2001, recorded December 13, 2001 in Deed Book 2434 at page 807.

5. Terms, Conditions and Restrictions of that certain Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association dated April 24, 2000, and recorded April 26, 2000 in Deed Book 2254 at page 1219; Seventh Supplemental Declaration of Covenants, Conditions and Restrictions For Grande Dunes Master Association (Vista del Mar Tract) dated April 30, 2002, and recorded in Deed Book 2476 at page 496; and Twelfth Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association (Vista del Mar Phase II Tract) dated July 14, 2004, and recorded July 15, 2004 in Deed Book 2761 at page 825.

6. Zoning laws and ordinances of the City of Myrtle Beach and all other local, state and federal ordinances, laws or regulations as applicable.

7. Terms and provisions of Development Agreement between Myrtle Beach Farms Company, Inc., et al. and the City of Myrtle Beach dated December 5, 2000, recorded in Deed Book 2323 at Page 933 in the R.O.D. Office for Horry County.

8. The right, title and interest, if any, of the public to use as a beach or recreational area any part of the land described above hereto lying between the mean high water mark and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line; or (d) any other line which has been or which hereinafter may be legally established as relating to the public use.

9. The Beachfront Services Easement reserved by Myrtle Beach Farms Company, Inc. in the deed from Myrtle Beach Farms Company, Inc. to Grande Dunes Development Company, LLC dated June _____, 2006 and recorded _____, 2006 in the R.O.D. Office for Horry County in Deed Book _____ at Page _____.

FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA)
APR 30 PM 2:47
COUNTY OF HORRY)
R.H.C.

SEVENTH SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GRANDE DUNES MASTER ASSOCIATION [Vista del Mar Tract]

THIS Seventh Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association ("Seventh Supplemental Declaration") is entered into effective the 30th day of April, 2002, by Grande Dunes Development Company, LLC, a South Carolina limited liability company (hereinafter called "Declarant").

WITNESSETH:

WHEREAS, the Declarant, by "Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association" dated April 24, 2000, and recorded April 25, 2000, recorded in the Office of Register of Deeds for Horry County in Book 2254, at Page 1219, made certain properties in Horry County, South Carolina subject to the aforesaid Declaration (the "Declaration"); and

WHEREAS, Section 2.3(a) of the Declaration provides, in relevant part, that Declarant may bring within the plan and operation of the Declaration additional property, said addition to be made by filing a Supplemental Declaration with respect to the said additional property; and

WHEREAS, Declarant desires to add to the plan and operation of the Declaration the property known as the Vista del Mar tract and described in Exhibit "A" (the "Property") and to impose additional special restrictions on the property submitted hereby.

KNOW ALL MEN BY THESE PRESENTS THAT the Declarant does hereby declare as follows:

I. Definitions. The words used in this Seventh Supplemental Declaration, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Declaration.

II. Submission of Property to Declaration. The real property described in Exhibit "A" attached hereto, pursuant to Section 2.3(a) of the Declaration, is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Declaration, and to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, as further amended by this Seventh Supplemental Declaration.

(a) Additional Conditions.

(1) Designated Community Type. The Property described in Exhibit "A" hereto is assigned to the Residential (Non-timeshare) Community and under the Declaration constitutes a part of a Neighborhood to be formed.

III. Completeness. Except as herein provided, the Declaration, as previously amended, shall remain in full force and effect, without modification, the said Declaration, as previously amended and as amended hereby, being the complete text of said instrument as of the date hereof.

NPMB1:3805.4-RD-(BFK) 015481-00016

2476 @ 496

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed the day and year first above written.

WITNESSES:

GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: Douglas S. Wendel
Name: Douglas S. Wendel
Title: President & CEO

By: Franklin A Long
Name: Franklin A Long
Title: Secretary

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within Grande Dunes Development Company, LLC, a South Carolina limited liability company, by Burroughs & Chapin Company, Inc., its Managing Member, by Douglas P. Wendel, its President & CEO, attested by Franklin J. Lunz, its Secretary, sign, seal and as its act and deed, deliver the within written instrument and that (s)he with the other witness witnessed the execution thereof.

SWORN TO before me
this 30th day of April, 2002.

Dana C. Jayne
Notary Public for the State of South Carolina
My commission expires: 9-12-11

NPMB1:3605.4-RD-(BFK) 015481-00016

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EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 10.985 acres (478,510 square feet) as shown on a map entitled "Plat of 10.985 Acre, Tax Parcel 186-08-01-016, Southeast Corner of S-28 and Ocean Boulevard, City of Myrtle Beach, Horry County, South Carolina" prepared for Myrtle Beach Farms Company, Inc., by Associated Land Surveyors, said map being dated April 25, 2002 and recorded in the R.O.D. Office for Horry County in Plat Book 183 at Page 73, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map which map is incorporated herein by reference.

Georgetown: 84983

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BK: 2657 10-27-03 Recorded
P: 1309 2657-1309 10/27/03
Orig: 2254-1219 Master

STATE OF SOUTH CAROLINA	)	AMENDED AND RESTATED SEVENTH SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GRANDE DUNES MASTER ASSOCIATION [Vista del Mar Tract]
	)	
	)	
COUNTY OF HORRY	)	

THIS Amended and Restated Seventh Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association ("Amended and Restated Seventh Supplemental Declaration") is entered into effective the 7th day of October, 2003, by Grande Dunes Development Company, LLC, a South Carolina limited liability company (hereinafter called "Declarant") and Vista del Mar Condominiums, LLC, a South Carolina limited liability company (hereinafter called "Vista del Mar").

WITNESSETH:

WHEREAS, the Declarant, by "Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association" dated April 24, 2000, and recorded April 26, 2000, recorded in the Office of Register of Deeds for Horry County in Book 2254, at Page 1219, made certain properties in Horry County, South Carolina subject to the aforesaid Declaration (the "Declaration"); and

WHEREAS, pursuant to Section 2.3(a) of the Declaration, the Declarant brought within the plan and operation of the Declaration additional property, said addition having been made by filing a Seventh Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association recorded in the Office of Register of Deeds for Horry County ("ROD") April 30, 2002 in Book 2476, Page 496 (the "Original Vista del Mar Supplemental Declaration"); and

WHERAS, the Original Vista del Mar Supplemental Declaration referred to the wrong survey for the additional property intended to be made subject to the Declaration; and

WHEREAS, subsequent to the filing of the Original Vista del Mar Supplemental Declaration, the Declarant conveyed the property which it had previously intended to make subject to the Declaration to Vista del Mar; and

WHEREAS, Declarant desires to correct the Original Vista del Mar Declaration by amending and restating said instrument to correctly describe the property known as the Vista del Mar tract, being correctly described in this Amended and Restated Seventh Supplemental Declaration on Exhibit "A" hereto (the "Property"); and

WHEREAS, Vista del Mar joins in the execution of this Amended and Restated Seventh Supplemental Declaration to evidence its consent to subjecting the Property owned by it to the Declaration.

KNOW ALL MEN BY THESE PRESENTS THAT the Declarant does hereby declare, and Vista del Mar does hereby consent and agree, that the Original Vista del Mar Supplemental Declaration is, by this Amended and Restated Seventh Supplemental Declaration, amended and restated in its entirety, to read as follows:

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I. Definitions. The words used in this Amended and Restated Seventh Supplemental Declaration, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Declaration.

II. Submission of Property to Declaration. The real property described in Exhibit "A" attached hereto, pursuant to Section 2.3(a) of the Declaration, is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Declaration, and to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, as further amended by this Amended and Restated Seventh Supplemental Declaration.

(a) Additional Conditions.

(1) Designated Community Type. The Property described in Exhibit "A" hereto is assigned to the Residential (Non-timeshare) Community and under the Declaration constitutes a part of a Neighborhood to be formed.

III. Completeness. Except as herein provided, the Declaration, as previously amended, shall remain in full force and effect, without modification, the said Declaration, as previously amended and as amended hereby, being the complete text of said instrument as of the date hereof.

IV. Joinder of Bank of America, N.A. Bank of America, N.A. executes this Amended and Restated Seventh Supplemental Declaration to signify its consent and agreement that the Mortgage, Assignment of Rents and Leases and Security Agreement dated April 30, 2002 and recorded April 30, 2002 in the ROD, in Mortgage Book 2965, Page 1356 is and shall remain subordinate to the Declaration as amended by this Amended and Restated Seventh Supplemental Declaration.

[Signature Pages Follow]

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IN WITNESS WHEREOF, this instrument to be executed effective the day and year first above written.

WITNESSES:

Miller M. Harper

Ella W. Willis

GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Name: Tony K. Cox
Title: Chief Real Estate Sales, Leasing & Land Maintenance Officer

By: _____
Name: Franklin J. Long
Title: Corporate Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within Grande Dunes Development Company, LLC, a South Carolina limited liability company, by Burroughs & Chapin Company, Inc., its Managing Member, by Tony K. Cox, its Chief Real Estate *attested by Franklin J. Long its Corporate Secretary sign, seal and as its act and deed, deliver the within written instrument and that (s)he with the other witness witnessed the execution thereof.

*Sales, Leasing & Land Maintenance Officer

SWORN TO before me
this 7th day of October, 2003.

Ella W. Willis
Notary Public for the State of South Carolina
My commission expires: 7-1-12

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VISTA DEL MAR CONDOMINIUMS, LLC,
a South Carolina limited liability company

BY: Grande Dunes Development Company, LLC
Its: Sole Member

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

Millie M. Harper

Ella W. Willis

By: _____

Name: Tony K. Cox

Title: Chief Real Estate Sales, Leasing & Land Maintenance Officer

Attest: _____

Name: Franklin J. Long

Title: Corporate Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within Vista del Mar Condominiums, LLC, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member, by Burroughs & Chapin Company, Inc., its Managing Member, by Tony K. Cox, its Chief Real Estate *, attested by Franklin Long, its Secretary, sign, seal and as its act and deed, deliver the within written instrument and that (s)he with the other witness witnessed the execution thereof. *Sales, Leasing & Land Maintenance Officer

SWORN TO before me
this 7th day of October, 2003.

Ella W. Willis
Notary Public for the State of South Carolina
My commission expires: 7-1-12

NPMB1:7956.3-RD-(BFK) 016481-00071

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JOINDER AND CONSENT OF BANK OF AMERICA

The undersigned, Bank of America, N.A., has hereby caused this instrument to be executed this ____ day of _____, 2003 to signify its consent, joinder and the subordination of the Mortgage, Assignment of Rents and Leases and Security Agreement dated April 30, 2002 and recorded April 30, 2002 in the ROD, in Mortgage Book 2965, Page 1356 pursuant to Paragraph IV of this Amended and Restated Seventh Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association.

Bank of America, N.A.

_____ By:_____

Its:_____

_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

Personally appeared before me _____ and made an oath that (s)he saw Bank of America, N.A. by its duly authorized officer(s), sign, seal, and as its act and deed deliver the within written Amended and Restated Seventh Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association, and that (s)he, with the other subscribing witness, witnessed the execution thereof.

_____(SEAL)

Sworn to before me this

____ day of _____, 2002.

_____
Notary Public for South Carolina

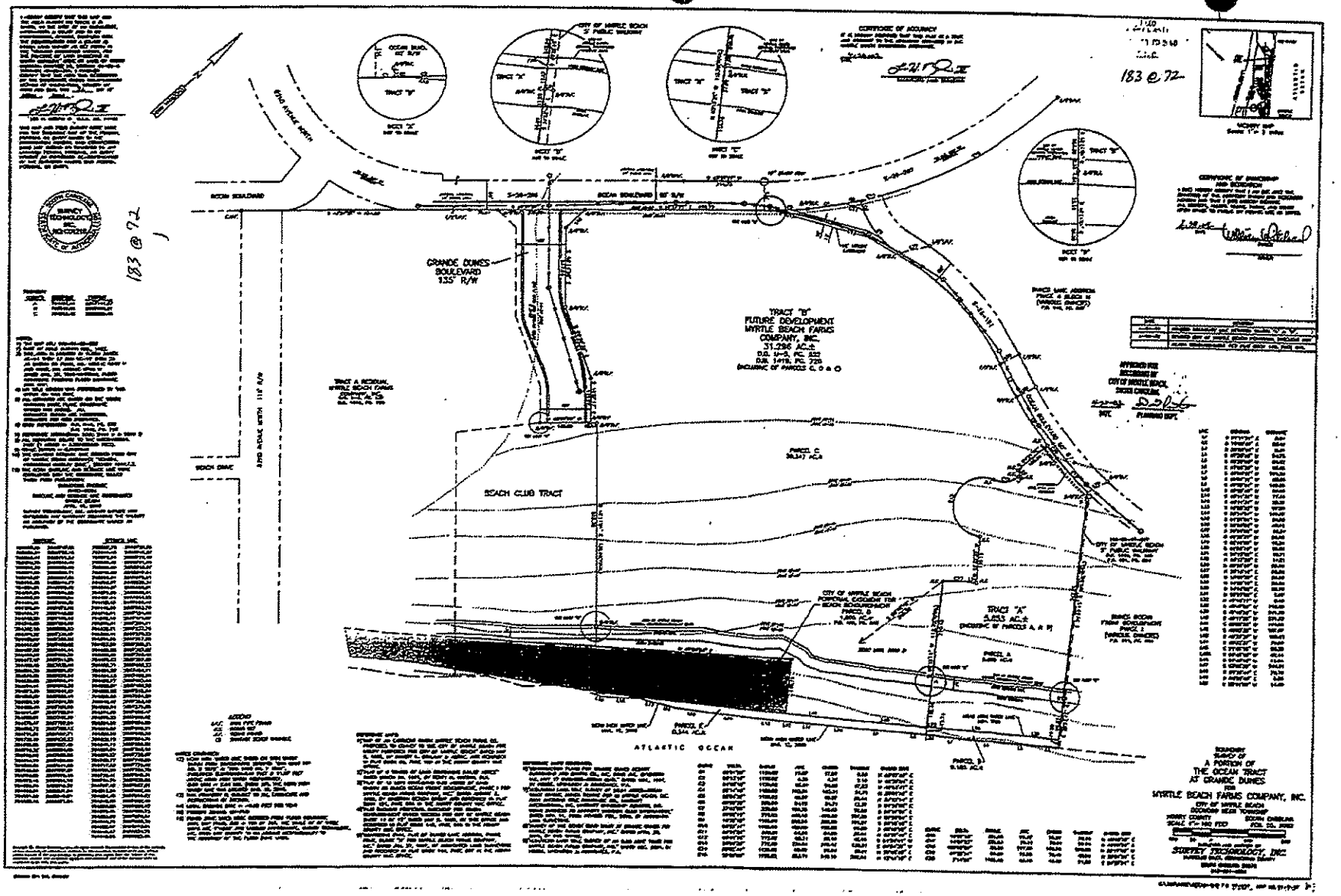
My Commission expires: _____

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EXHIBIT A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina containing 5.853 acres ± and designated as Tract A on a map entitled, "Boundary Survey of a Portion of the Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc." (the "Survey") prepared by Survey technology, Inc., dated February 25, 2002 and recorded in the ROD Office for Horry County in Plat Book 183 at Page 72; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Survey, which Survey is incorporated herein by reference.

Being the same premises conveyed to Vista del Mar Condominiums, LLC by deed of Grande Dunes Development Company, LLC dated April 30, 2002 and recorded in the ROD aforesaid in Deed Book 2476, Page 500.

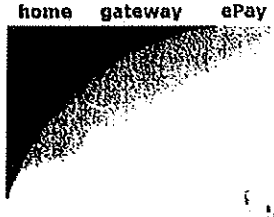


0643

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gateway



Register of Deeds Record



Prefix/Book/Page: 2/657/1309
Last Name: VISTA DEL MAR CONDOM
First Name: INIUMS LLC A SOUTH C
Description: AMENDED & RESTATED SEVENTH SUPP BK:2254-1219
Amount:
Filing Date: 10/27/03
Filing Time:

Other Parties	
Type	Name/ Business Name
GRANTE	GRANDE DUNES MASTER ASSOCIATION
GRANTOR	GRANDE DUNES DEVELOPMENT CO LLC SC LLC
GRANTOR	BURROUGHS & CHAPIN COMPANY INC
GRANTOR	GRANDE DUNES DEVELOPMENT COMPANY LLC
GRANTEE	GRANDE DUNES MASTER ASSOCIATION

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HORRY COUNTY ASSESSOR
166-00-08-129
Map Blk Parcel 7.16.04 PA

558325

FILED
HORRY COUNTY, S.C.
2004 JUL 15 PM 1:39
REGISTER OF DEEDS

RETURN TO: McNair Law Firm, P.A.
Myrtle Beach, SC
ATTN: JBM/gtc # 10346.467

STATE OF SOUTH CAROLINA)
) TWELFTH SUPPLEMENTAL
) DECLARATION OF
COUNTY OF HORRY) COVENANTS, CONDITIONS AND RESTRICTIONS
FOR GRANDE DUNES MASTER ASSOCIATION
[Vista del Mar Phase II Tract]

THIS Twelfth Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association ("Twelfth Supplemental Declaration") is entered into effective the 14th day of July, 2004, by Grande Dunes Development Company, LLC, a South Carolina limited liability company (hereinafter called "Declarant").

WITNESSETH:

WHEREAS, the Declarant, by "Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association" dated April 24, 2000, and recorded April 26, 2000, recorded in the Office of Register of Deeds for Horry County in Book 2254, at Page 1219, made certain properties in Horry County, South Carolina subject to the aforesaid Declaration (the "Declaration"); and

WHEREAS, Section 2.3(a) of the Declaration provides, in relevant part, that Declarant may bring within the plan and operation of the Declaration additional property, said addition to be made by filing a Supplemental Declaration with respect to the said additional property; and

WHEREAS, the Declarant is the owner of that certain property known as the Vista del Mar Phase II Tract and described in Exhibit "A" (the "Property"), and the Declarant wishes that the Property, to be developed as Phase II (Building 2) of the Vista del Mar Horizontal Property Regime, be added to the plan and operation of the Declaration and to impose additional special restrictions on the property submitted hereby.

KNOW ALL MEN BY THESE PRESENTS THAT the Declarant does hereby declare as follows:

I. Definitions. The words used in this Twelfth Supplemental Declaration, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Declaration.

II. Submission of Property to Declaration. The real property described in Exhibit "A" attached hereto, pursuant to Section 2.3(a) of the Declaration, is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Declaration, and to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, as further amended by this Twelfth Supplemental Declaration.

(a) Additional Conditions.

(1) Designated Community Type. The Property described in Exhibit "A" hereto is assigned to the Residential (Non-timeshare) Community and under the Declaration constitutes a part of a Neighborhood to be formed.

NPMB1:11877.1-RD-(BFK) 015481-00072

DEED
2761 0825

825

III. Completeness. Except as herein provided, the Declaration, as previously amended, shall remain in full force and effect, without modification, the said Declaration, as previously amended and as amended hereby, being the complete text of said instrument as of the date hereof.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed the day and year first above written.

WITNESSES:

Gail Cooper

Dana C. Joyner

GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: Douglas P. Wendel
Name: Douglas P. Wendel
Title: Pres. & CEO

Attest: Franklin J. Long
Name: Franklin J. Long
Title: Secretary

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within Grande Dunes Development Company, LLC, a South Carolina limited liability company, by Burroughs & Chapin Company, Inc., its Managing Member, by Douglas P. Wendel, its President + CEO, attested by Franklin J. Lay, its Secretary, sign, seal and as its act and deed, deliver the within written instrument and that (s)he with the other witness witnessed the execution thereof.

SWORN TO before me
this 14th day of July, 2004.

Dana C. Jayne
Notary Public for the State of South Carolina
My commission expires: 9-12-11

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EXHIBIT A
(Legal Description)

All that certain piece, parcel, tract of land, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, County of Horry, State of South Carolina, containing 5.27 acres and designated as Vista del Mar Phase 2 on a map entitled "SURVEY PLAT OF AN 5.27 ACRE TRACT FOR MYRTLE BEACH FARMS COMPANY, INC. CITY OF MYRTLE BEACH DOGWOOD NECK TOWNSHIP HORRY COUNTY" prepared by Hobbs, Upchurch & Associates, P.A., Consulting Engineers and Surveyors, said map being dated February, 2004 and last revised June 7, 2004, recorded in the R.O.D. Office for Horry County in Plat Book 198 at Page 49; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map, which Map is incorporated herein by reference.

FILED
HORRY COUNTY, S.C.
2006 JUN 27 PM 2:24
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AMENDED AND RESTATED TWELFTH SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GRANDE DUNES MASTER ASSOCIATION
(Vista del Mar Phase II Tract)

THIS AMENDED AND RESTATED TWELFTH SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GRANDE DUNES MASTER ASSOCIATION (this "***Amended and Restated Twelfth Supplemental Declaration***") is entered into as of the 27th day of June, 2006 (the "***Effective Date***"), by Grande Dunes Development Company, LLC, a South Carolina limited liability company ("***Declarant***").

WITNESSETH:

WHEREAS, the Declarant, by "Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association" dated April 24, 2000, and recorded April 26, 2000 in the Office of Register of Deeds for Horry County in Book 2254, at Page 1219, made certain properties in Horry County, South Carolina subject to the aforesaid Declaration (as further amended and supplemented, the "***Declaration***"); and

WHEREAS, pursuant to Section 2.3(a) of the Declaration, the Declarant brought within the plan and operation of the Declaration additional property, said addition having been made by filing a Twelfth Supplemental Declaration of Covenants, Conditions and Restrictions for Grande Dunes Master Association dated July 14, 2004 and recorded in the Office of Register of Deeds for Horry County ("ROD") in Deed Book 2761 at page 825 (the ***Twelfth Supplemental Declaration***"); and

WHEREAS, the plat recorded and referenced in the legal description in the aforesaid Twelfth Supplemental Declaration contained a scrivener's error in that the plat incorrectly referenced the acreage in which the acreage was shown as being 5.27 acres instead of 5 acres; and

WHEREAS, a new plat was prepared as recorded in Plat Book 214 at page 102, records of Horry County, to correct the scrivener's error; and

WHEREAS, Declarant desires to correct the Twelfth Supplemental Declaration by amending and restating said instrument to correctly described the property known as Vista del Mar Phase II Tract, being correctly described in this Amended and Restated Twelfth Supplement Declaration on Exhibit "A" hereto (the "***Property***").

KNOW ALL MEN BY THESE PRESENTS THAT the Declarant does hereby declare as follows:

Drawn by:

Parker Poe Adams & Bernstein L.L.P.
200 Meeting Street, Suite 301
Charleston, South Carolina 29401

CLT 967416v1

3119-465

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1. Definitions. The words used in this Amended and Restated Twelfth Supplemental Declaration, unless the context shall clearly indicate otherwise, shall have the same meaninge as set forth in the Declaration.

2. Submission of Property to Declaration. The real property described in Exhibit "A" attached hereto, pursuant to Section 2.3(a) of the Declaration, is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Declaration, and to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, as further amended by this Amended and Restated Twelfth Supplemental Declaration.

(a) Additional Conditions.

(1) Designated Community Type. The Property described in Exhibit "A" hereto is *assigned to the Residential (non-timeshare) Community* and under the Declaration constitutes a part of a Neighborhood to be formed.

3. Completeness. Except as herein provided, the Declaration, as previously amended, shall remain in full force and effect, without modification, the said Declaration, as previously amended and as amended herby, being the complete text of said instrument as of the date hereof.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the Effective Date.

WITNESSES:

GRANDE DUNES DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By:
Name: William F. Pritchard
Title: Sr. Exec. Vice President

Attest:
Name: Franklin J. Long
Title: Corporate Secretary

CLT 967416v1

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument acknowledged before me this 27th day of June, 2006, by Grande Dunes Development Company, LLC, by Burroughs & Chapin Company, Inc., its Managing Member by Wm. F. Pritchard, its Sr. Exec. VP; as attested by Franklin J. Long, its Corporate Secretary.

SWORN TO before me this 27th day of June, 2006.

Ella W. Willis
Notary Public for the State of South Carolina
My commission expires 7-1-12

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Exhibit A

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, County of Horry, State of South Carolina, containing 5.00 acres and designated as Parcel 2B, 217,808 sq. ft. 5.00 Acres on a map entitled "Combination Plat of Parcels 2A and 2B City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista del Mar Condominiums, LLC" (the "MAP") prepared by Robert L. Bellamy & Associates, Inc., said map being dated November 12, 2004 and combination plat created May 24, 2006 and recorded in the ROD Office for Horry County in Plat Book 214 at page 102; said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid Map which Map is incorporated herein by reference.

FILED
HORRY COUNTY, S.C.
2006 JUN 27 PM 2:25
KELLERY V. SKIPPER
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

FIRST AMENDMENT TO
MASTER DEED OF THE VISTA DEL MAR
HORIZONTAL PROPERTY REGIME
(PHASE II)

THIS FIRST AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME (the "First Amendment") is made this 27th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded in the Horry County Register of Deeds Office (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14 of the Master Deed, the Developer retained the right to expand the Regime by submitting additional phases to the Regime; and

WHEREAS, pursuant to this First Amendment, Developer desires to amend the Master Deed to submit to the Regime Phase II and to include language clarifying the payment details of the Association's hazard insurance premium at the initial closings of the Units.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its right under the Master Deed to expand the Regime by adding Phase II to the Regime, more particularly described in the attached Exhibit "A-1" hereto, including without limitation one (1) Building, known as the "Barcelona Building" or "Building 2," such Building containing **forty-one (41) Units**, along with the Common Areas, which shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Master Deed, as amended by this First Amendment, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, and as further amended herby, and does further declare as follows:

I. Definitions. The words in this First Amendment, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Master Deed.

II. Addition of Section 4.11 for Phase II and all Future Phases.

Section 4.11 Hazard Insurance Premium Collected at Initial Closing. Notwithstanding anything to the contrary in this Master Deed, as amended, each Owner in Phase II (or future phases, if developed) who acquires title to their Unit from the Developer shall pay at the closing their Unit's share of the Association's annual hazard insurance premium in full for the entire year. Such payment shall

3119-469

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be collected at the closing of the Unit and paid directly to the Developer for reimbursement of sums already paid to the insurance company.

III. Addition of Exhibit "A-1" for Phase II. Exhibit "A" to the Master Deed is hereby amended by the addition thereto of Exhibit "A-1" attached hereto and made a part hereof by this reference.

IV. Addition of Exhibit "B-1" for Building 2. Exhibit "B" to the Master Deed is hereby amended by the addition thereto of Exhibit "B-1" attached hereto and made a part hereof by this reference, and the Plans of the Regime shall include the site plan and floor and Unit plans for Building 2 filed as an attachment to this First Amendment and referred to in Exhibit "B-1."

V. Amendment of Exhibit "C". Exhibit "C" to the Master Deed, the schedule of Assigned Values and Percentage Interests for the Regime, is deleted in its entirety; and a new Exhibit "C" which is attached hereto and made a part hereof by this reference, shall be substituted therefor.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. THE SIGNATURE PAGE IMMEDIATELY FOLLOWS.]

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IN WITNESS WHEREOF, the Developer has caused this FIRST AMENDMENT TO MASTER DEED OF VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: William F. Pritchard
Name: William F. Pritchard
Title: Sr. Exec. Vice President

Attest: Franklin J. Long
Name: Franklin J. Long
Title: Corporate Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 21th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Wm. Pritchard, its Sr Exec. VP, as attested by Franklin J. Long, its Corporate Secretary.

(SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

CLT 967092v1

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EXHIBIT "A-1"

LEGAL DESCRIPTION
FOR
PHASE 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising 5.00 Acres, more or less, on a plat entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina. Said parcel having such size, shape, location, dimensions, buttings and boundings as will by reference to said plat more fully appear.

The location of the building and improvements located on said tract of land is more particularly shown on that certain plat entitled "Closing Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated May 31, 2006, and recorded in Plat Book 214 at Page 158, in the ROD Office for Horry County, South Carolina.

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EXHIBIT "B-1"

SITE PLAN AND FLOOR PLANS
BUILDING 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Note

Exhibit "B-1" is composed of an as-built survey showing the location of Building 2 and other improvements, as well as the vertical location of each floor and the Units located thereon. Exhibit "B-1" also includes a site plan and set of floor and Unit plans for Building 2, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location of the Common Areas affording access to each Unit. The as-built survey for Building 2 has been recorded in the Horry County ROD in **Plat Book 214 at Page 158.** Exhibit "B-1" is deemed to include the attached Architect's Certificate for Building 2 dated June 22nd 2006, by HKS, Inc., architects of the above referenced plans, and recorded herewith.

The Phase II Building, Building 2, consists of forty-one (41) Units located in a 12-story Building over two parking decks, identified on the floor plans as levels P1 and P2. Each Unit in Building 2 is individually numbered and described as Units 2101, 2102, 2103, 2104, 2201, 2202, 2203, 2204, 2301, 2302, 2303, 2304, 2401, 2402, 2403, 2404, 2501, 2502, 2503, 2504, 2601, 2602, 2603, 2604, 2701, 2702, 2703, 2704, 2801, 2802, 2803, 2804, 2902, 2903, 2904, 21002, 21003, 21004, 21103, 21104, 21204. There are four Units on each of the first, second, third, fourth, fifth, sixth, seventh, and eighth floors, three Units on each of the ninth and tenth floors, two Units on the eleventh floor, and one Unit on the twelfth floor. Assigned parking spaces for the Units are on the two parking decks identified as levels P1 and P2.

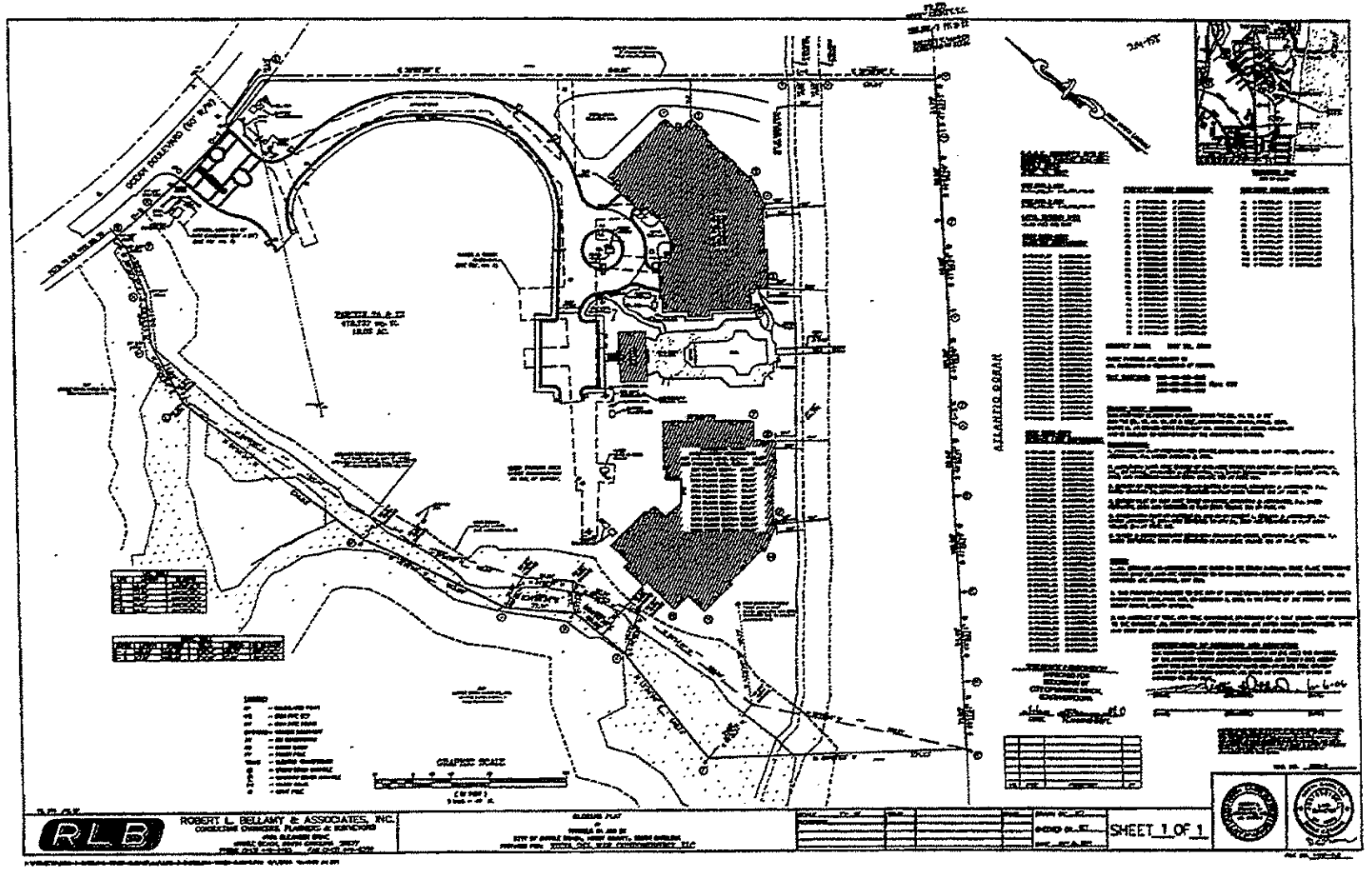
Each of the Units in Building 2 has a separate entrance from a Common Area elevator and from a door off of an interior Common Area stairwell, and is a one-story flat. **Units 2104, 2204, 2304, 2404, 2504, 2604, 2704, 2804, 2904, 21004, 21104, and 21204** (sometimes referred to as "A" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2103, 2203, 2303, 2403, 2503, 2603, 2703, 2803, 2903, 21003, and 21103** (sometimes referred to as "B" Units or "Cordoba" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2102, 2202, 2302, 2402, 2502, 2602, 2702, 2802, 2902, and 21002** (sometimes referred to as "C" Units or "Avilla" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2101, 2201, 2301, 2401, 2501,**

2601, 2701, and 2801 (sometimes referred to as "D" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans.

The locations of each Unit, Building 2, and the Common Areas making up Phase II are graphically shown on the aforementioned as-built survey and on the site plan and floor and Unit plans prepared by HKS, Inc., Architects attached hereto.

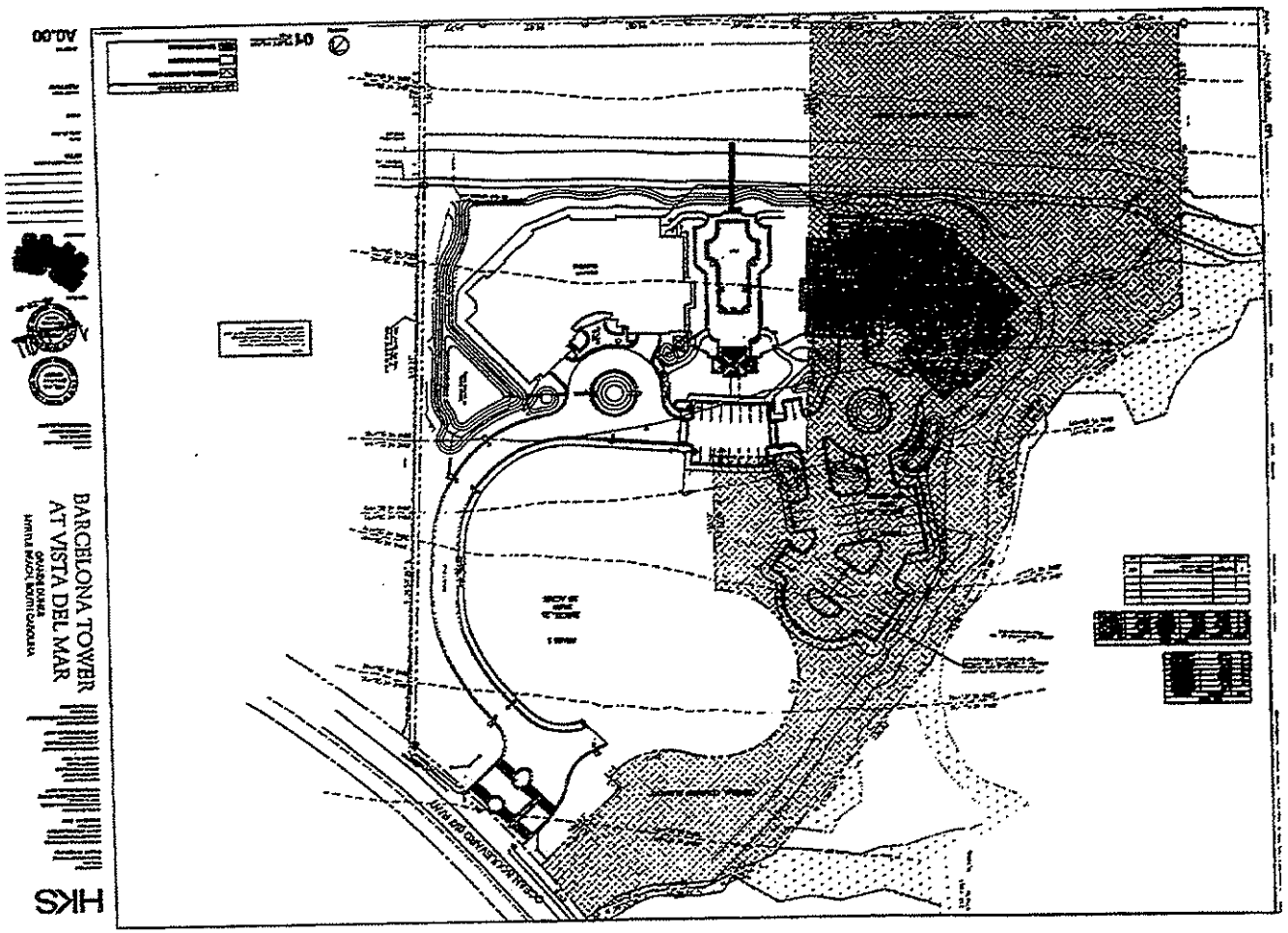
Reference to areas as Common Areas and Limited Common Areas in this Exhibit are in addition to and shall be read in conjunction with the further designations of Common Areas set out in other portions of this Master Deed and the as-built survey, site plan and floor plans making up the balance of this Exhibit "B-1".

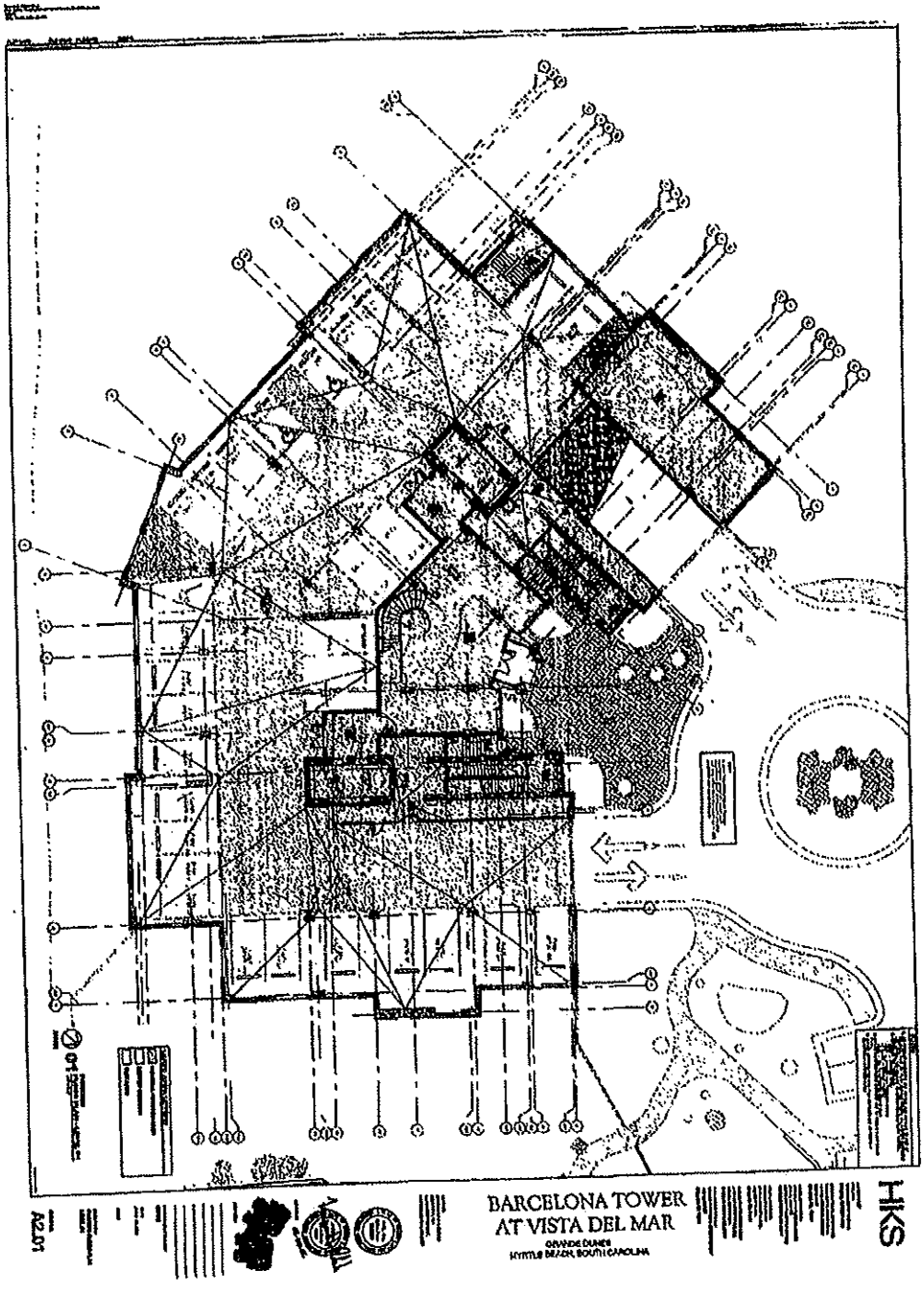
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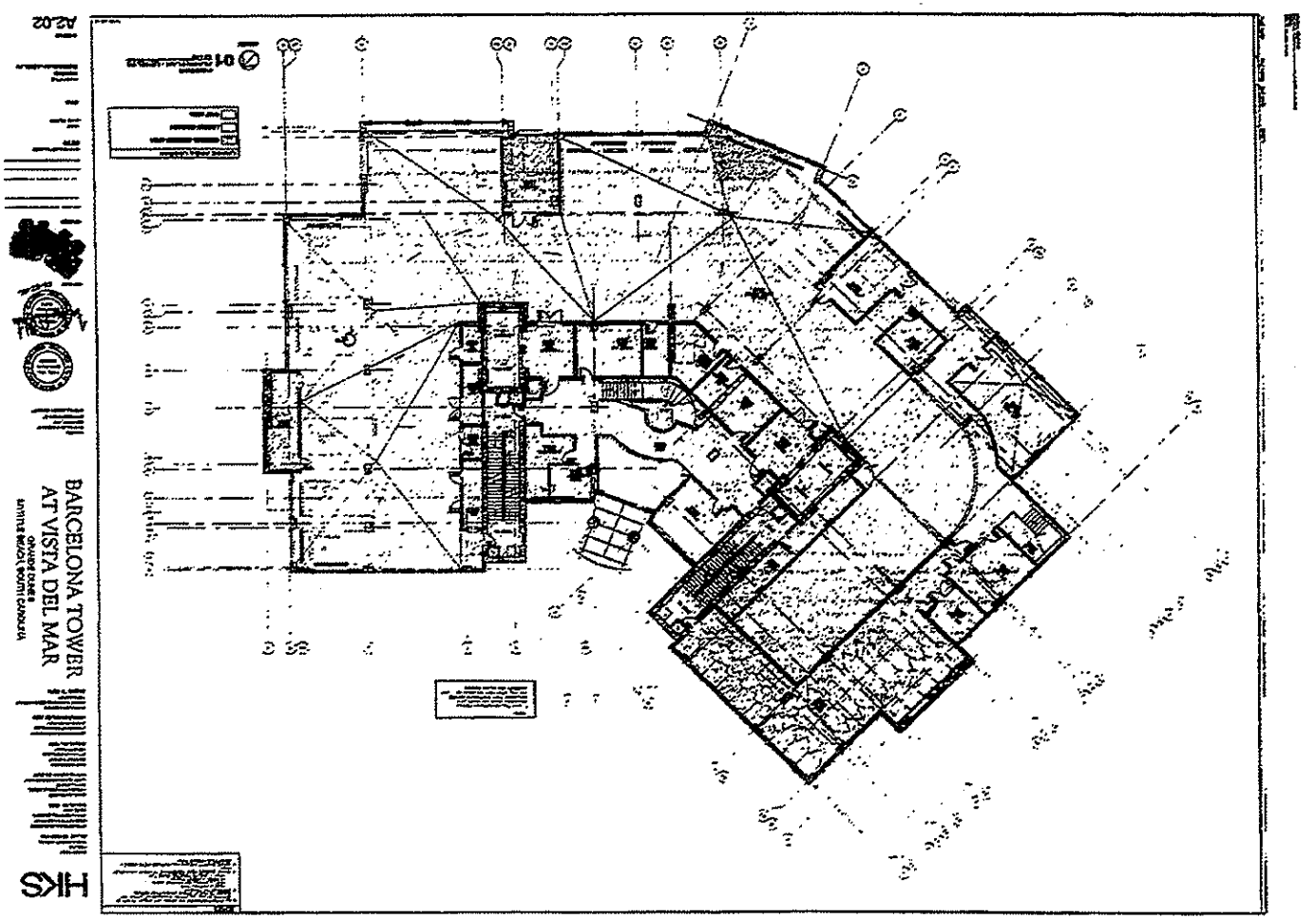
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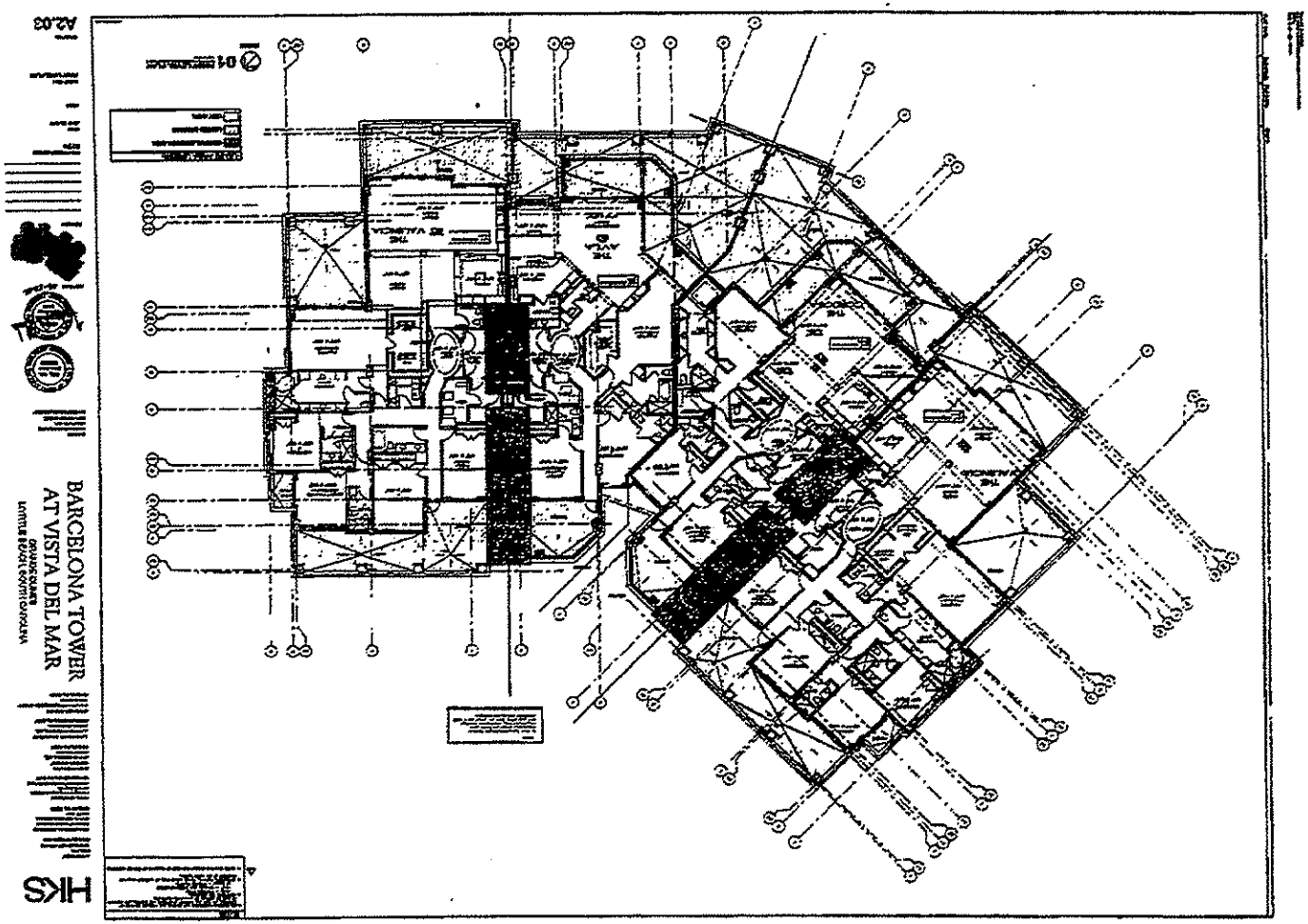


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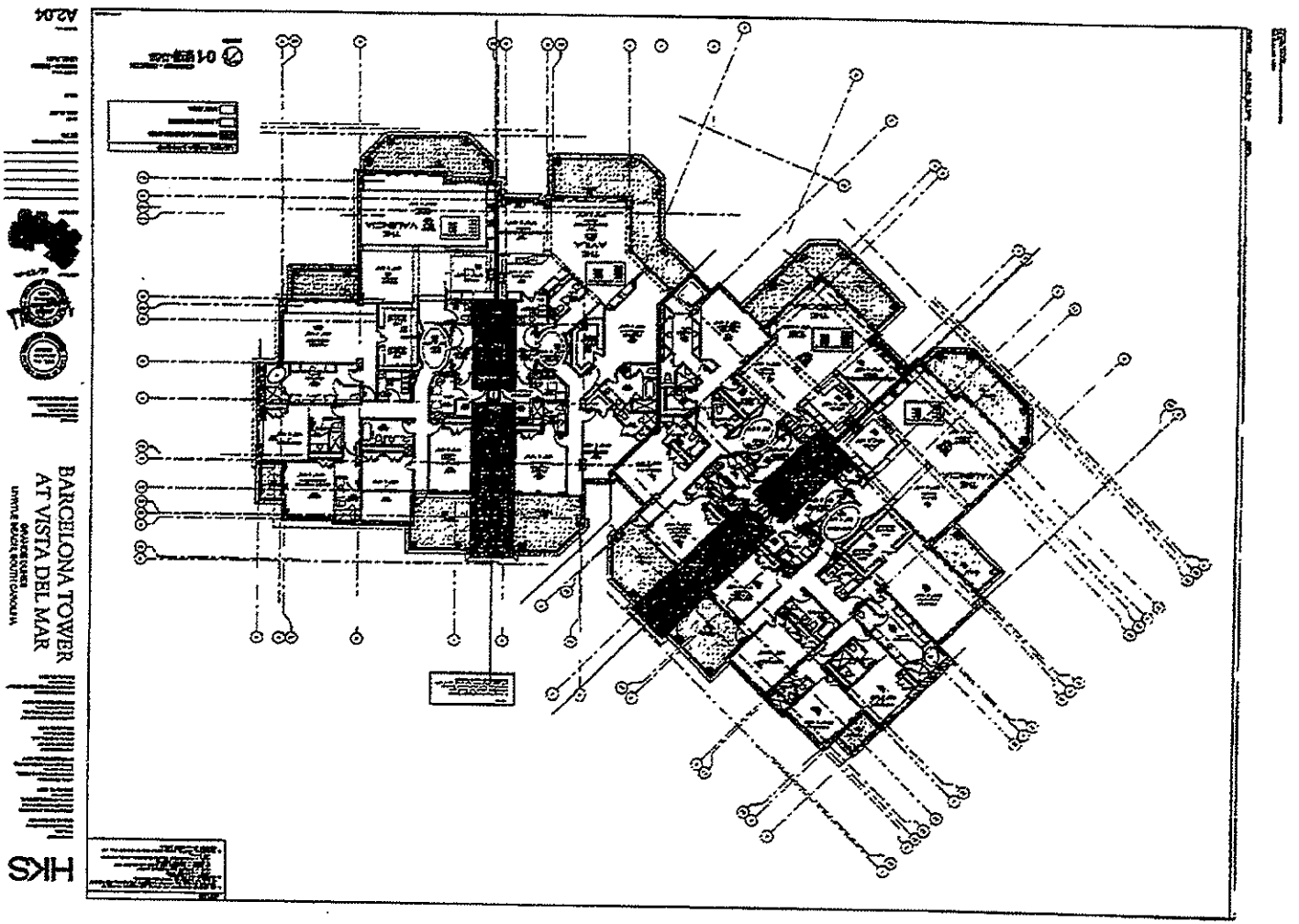
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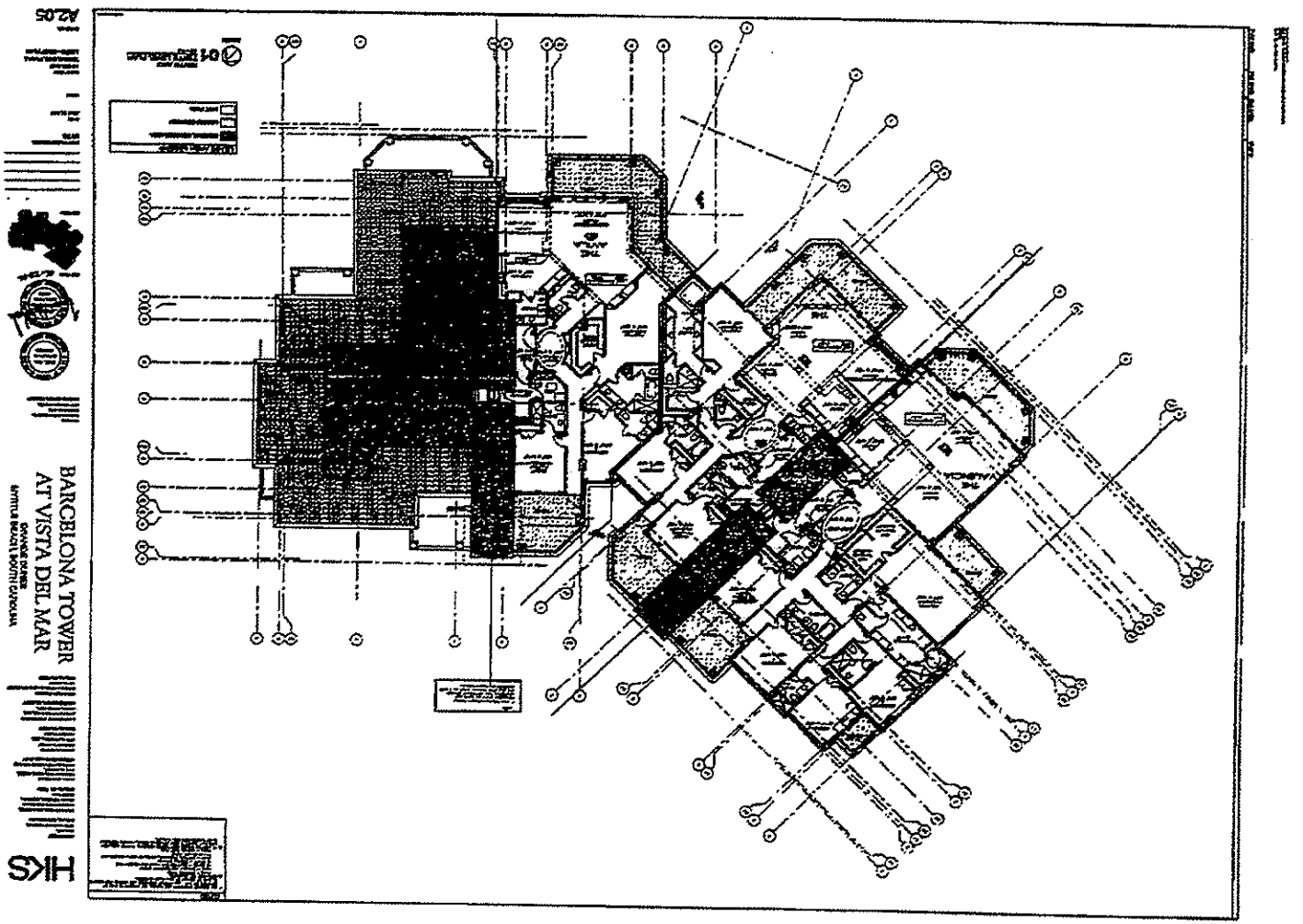
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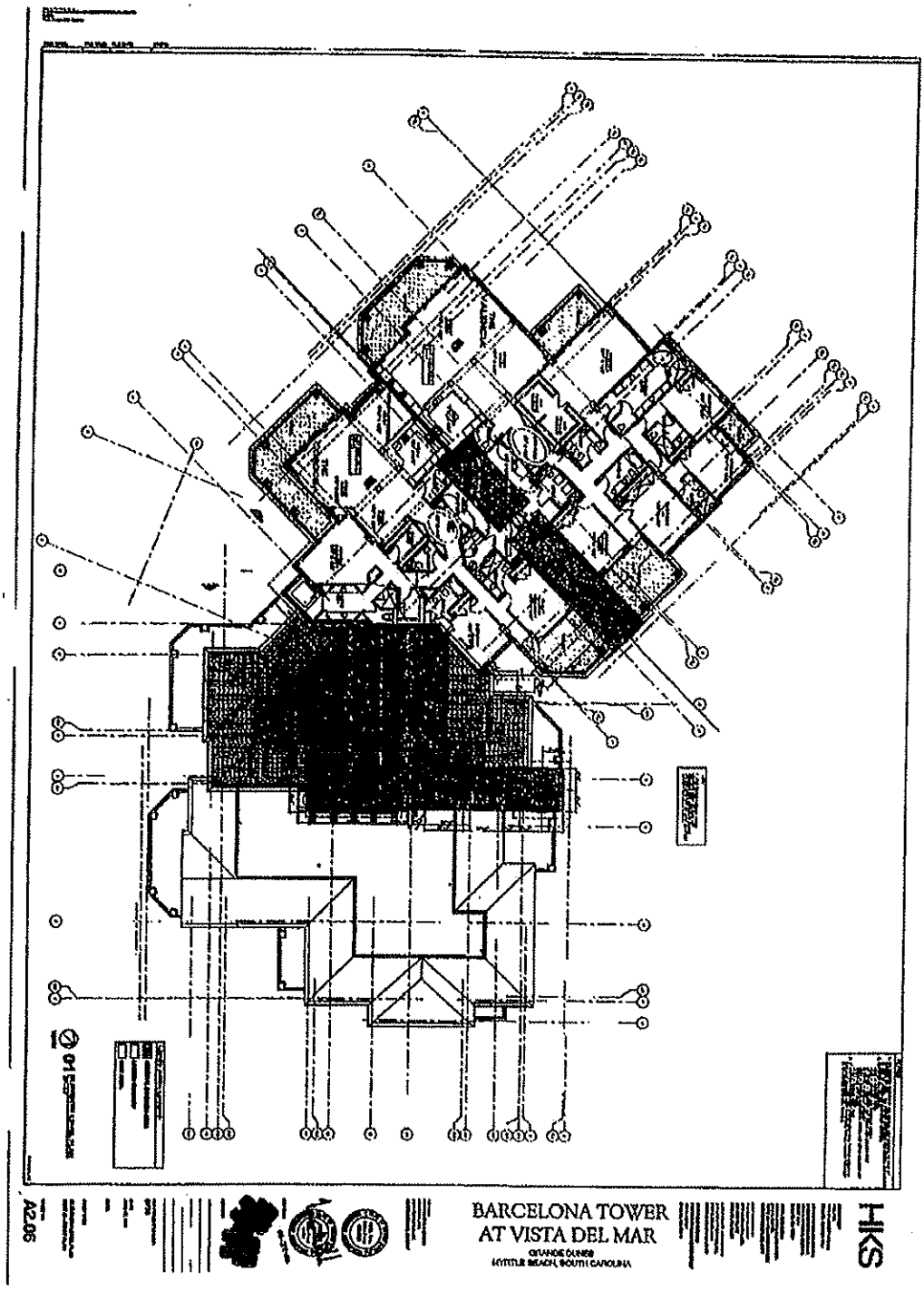


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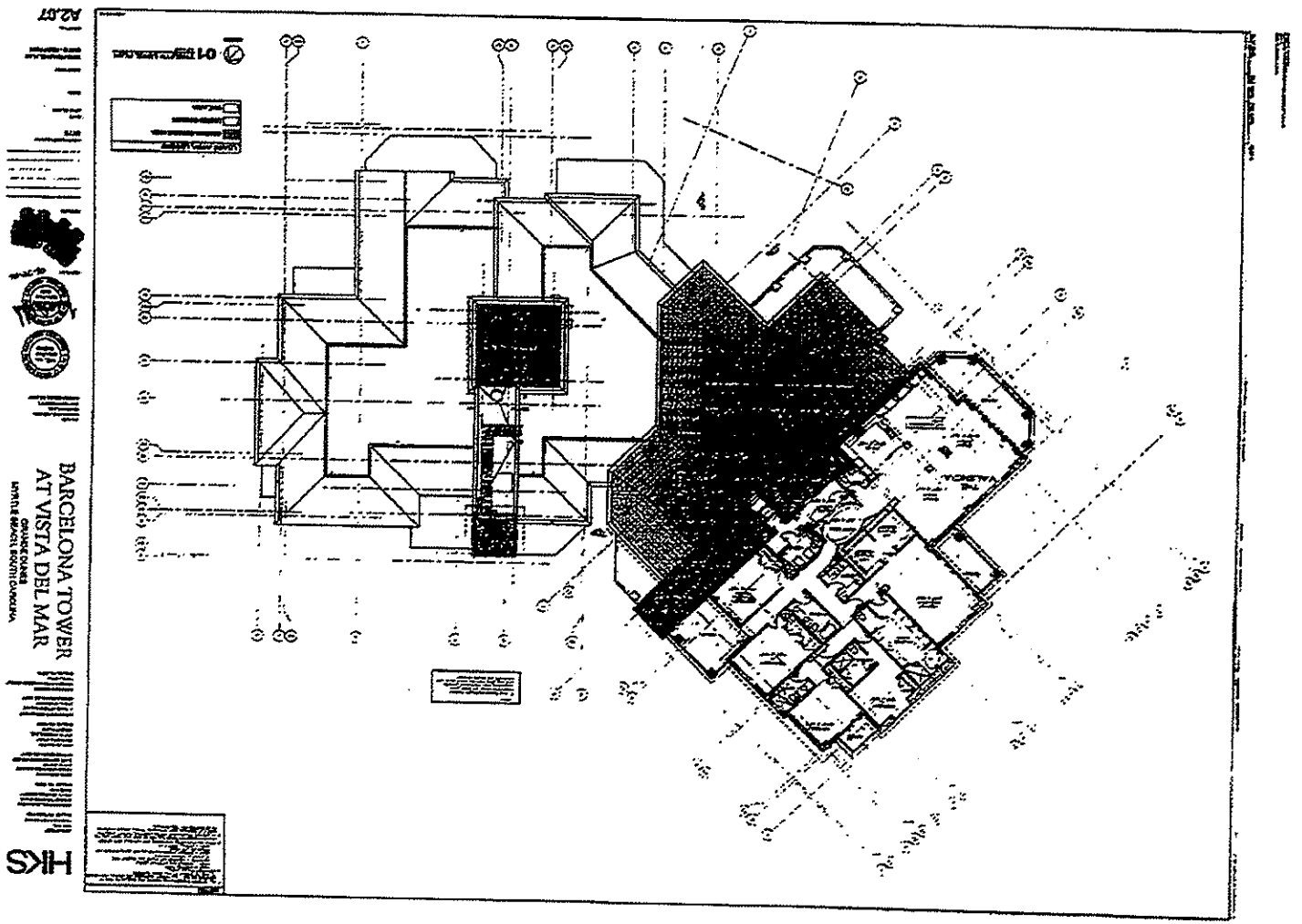
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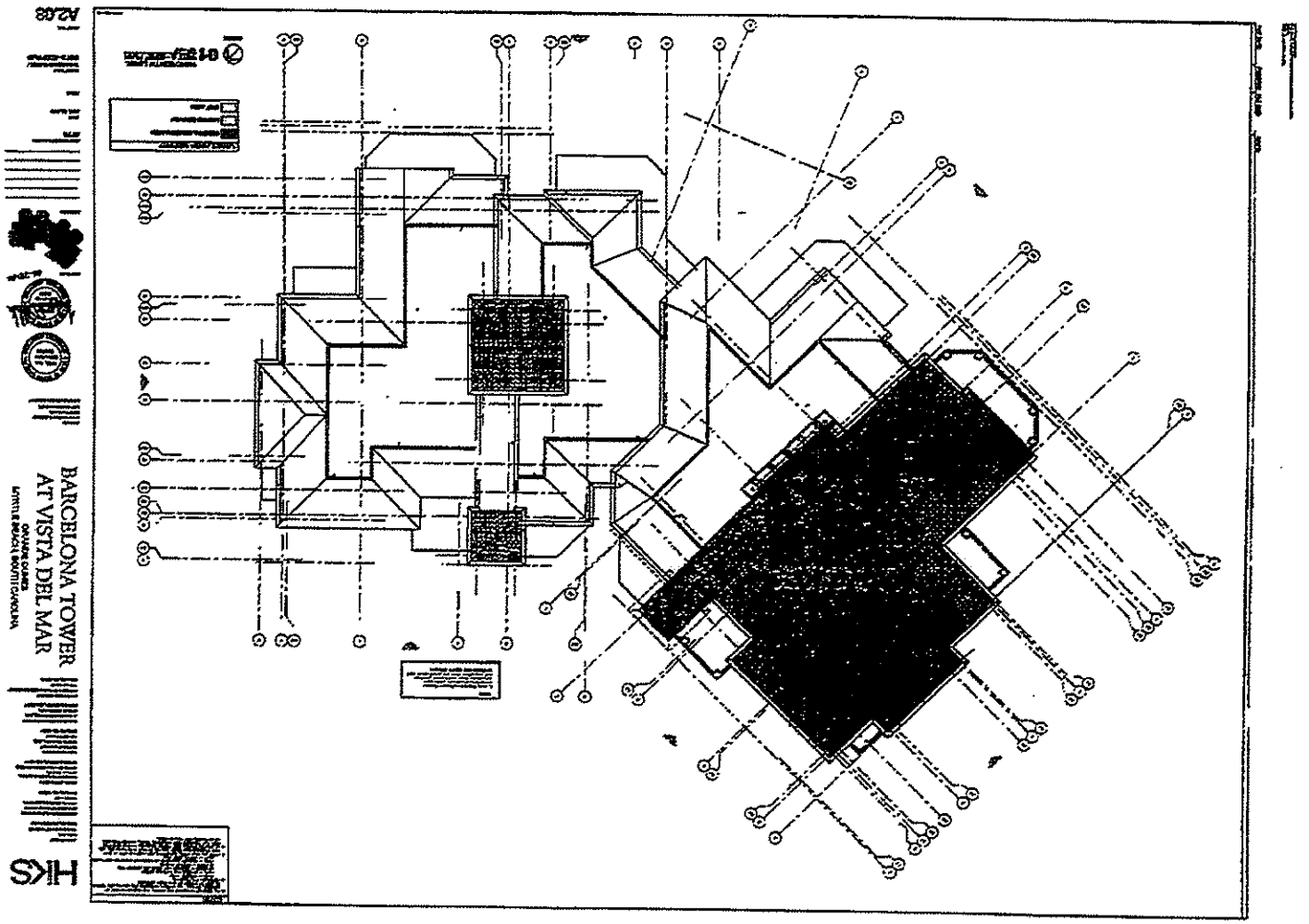


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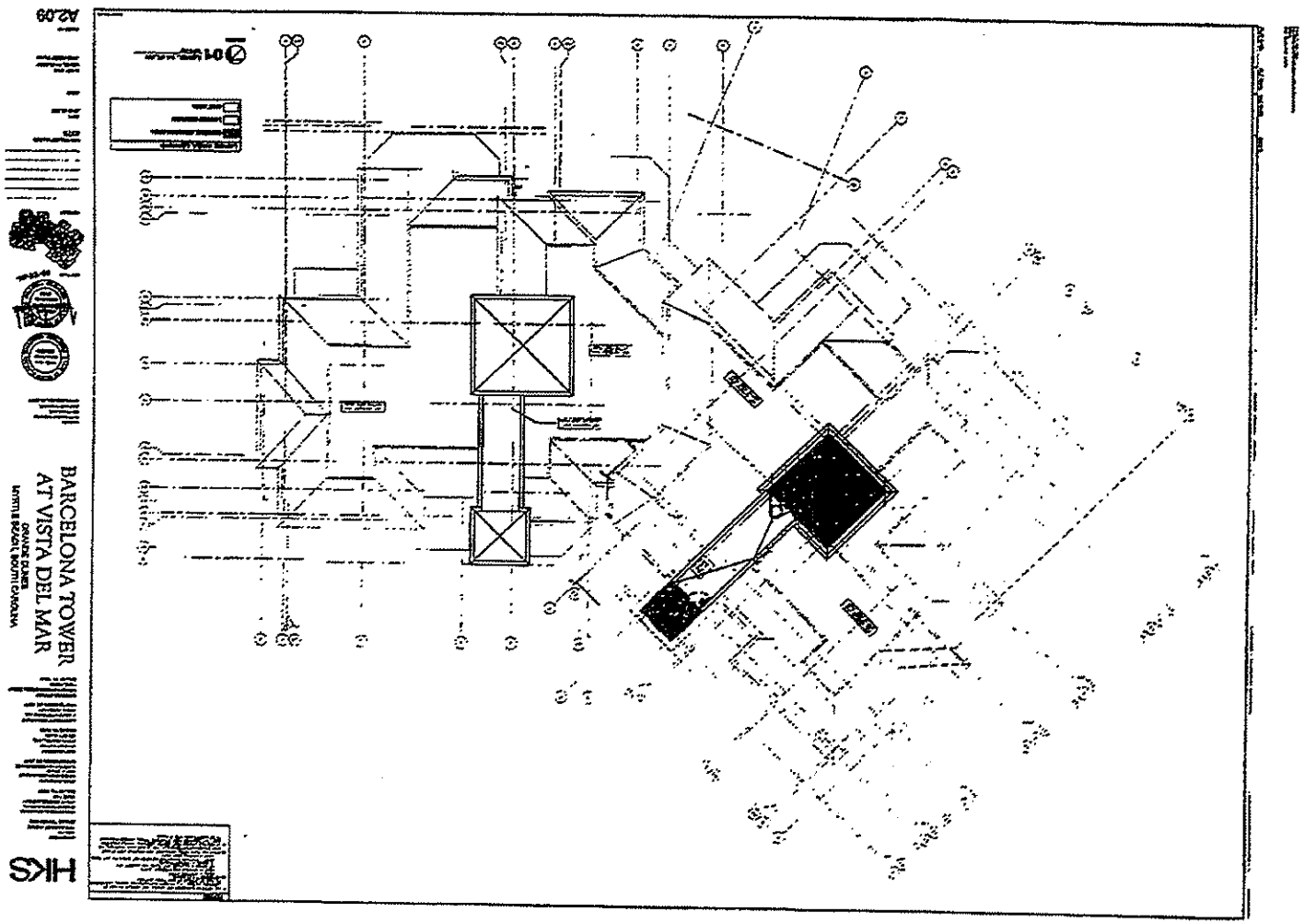
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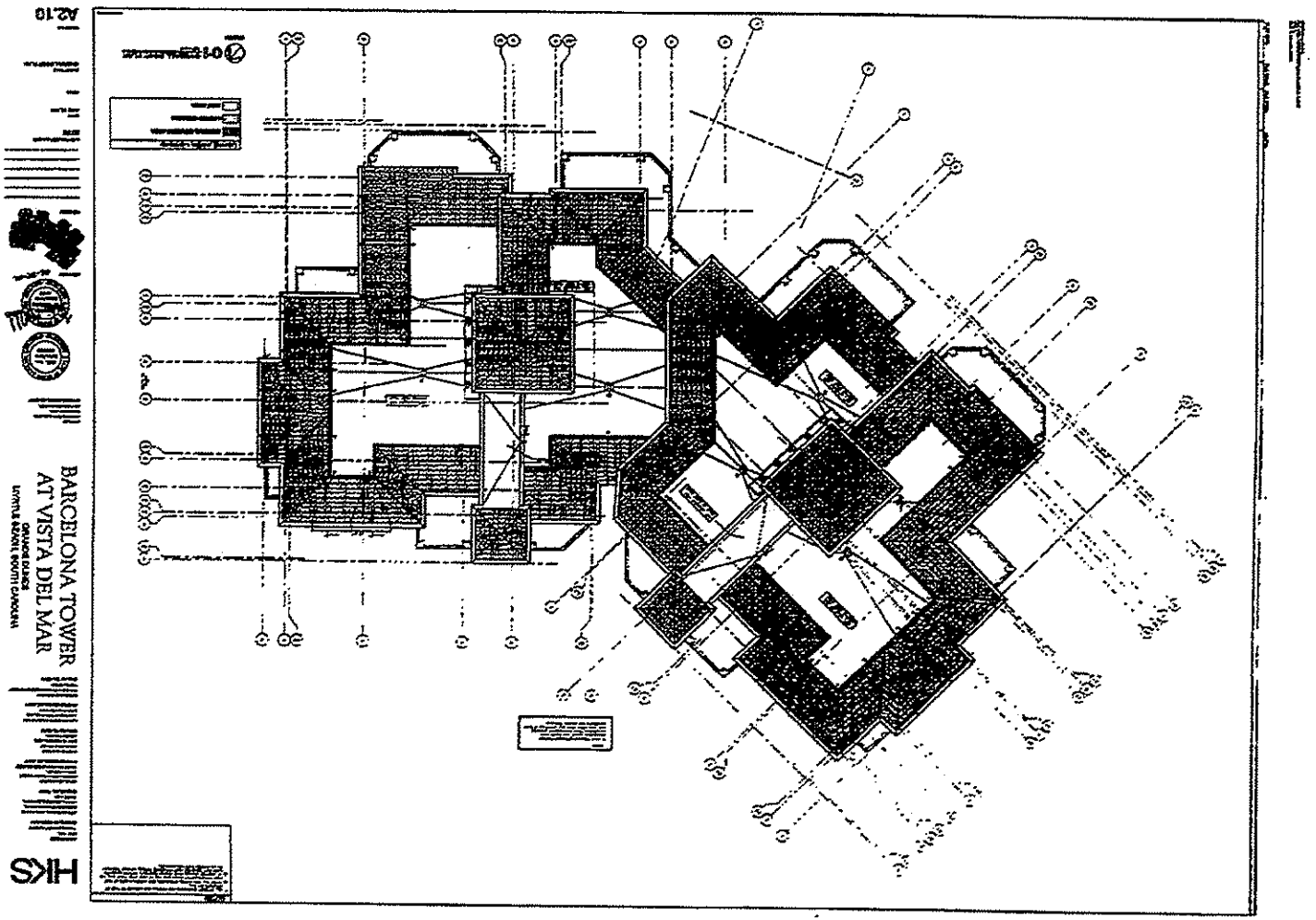
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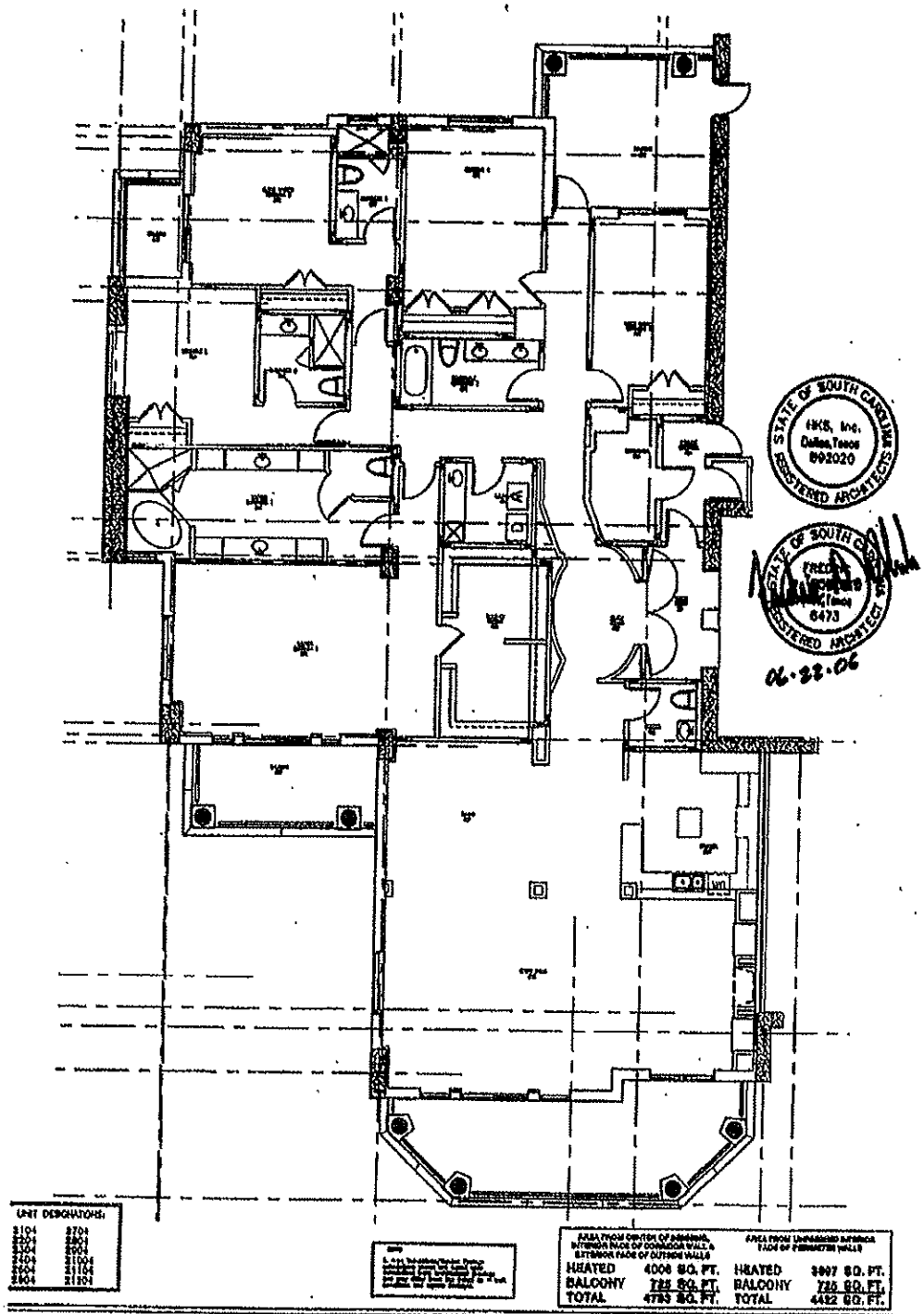


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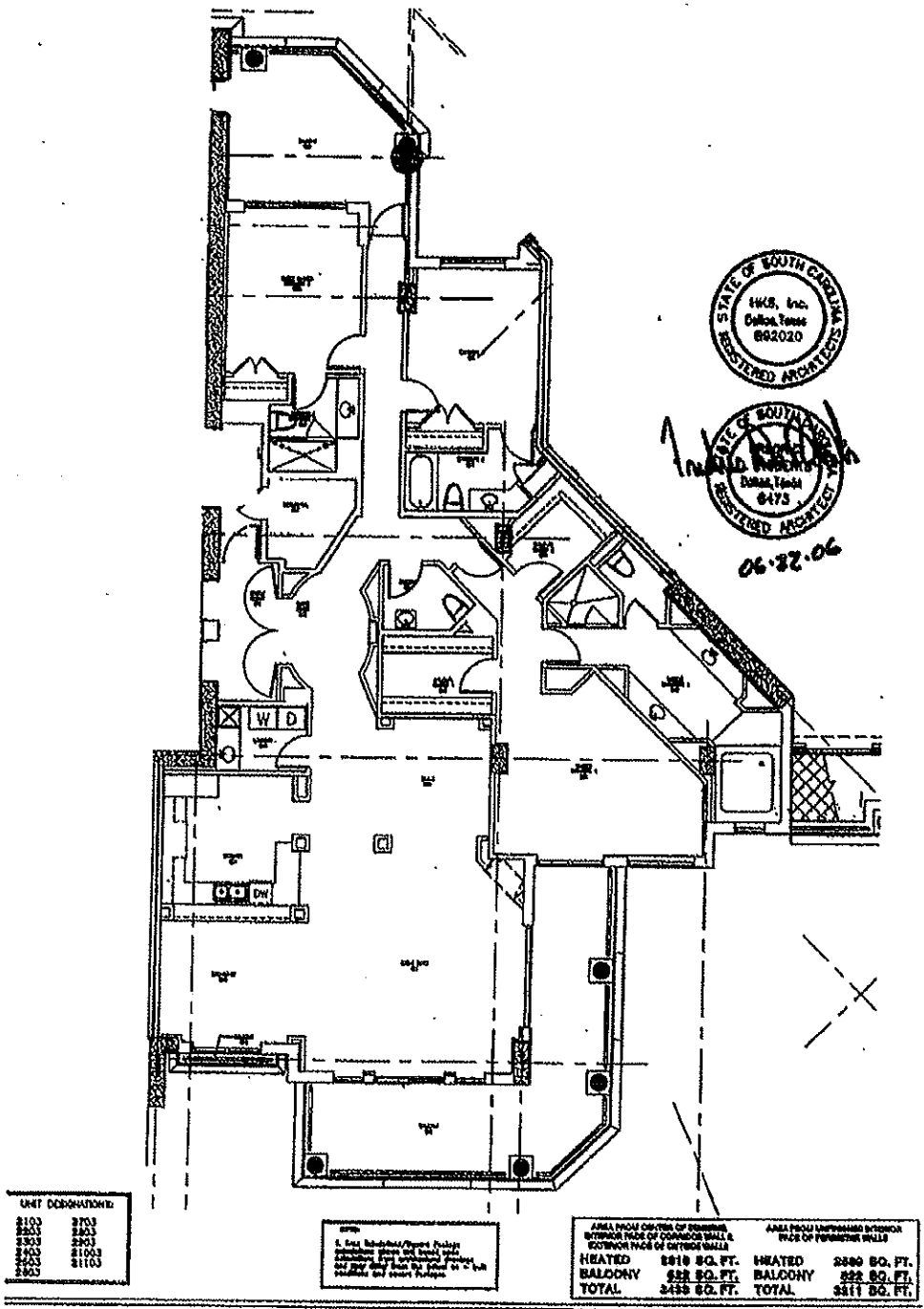


Barcelona Tower At Vista Del Mar
Grande Dunes
Myrtle Beach, South Carolina
JUNE 05, 2006

UNIT A

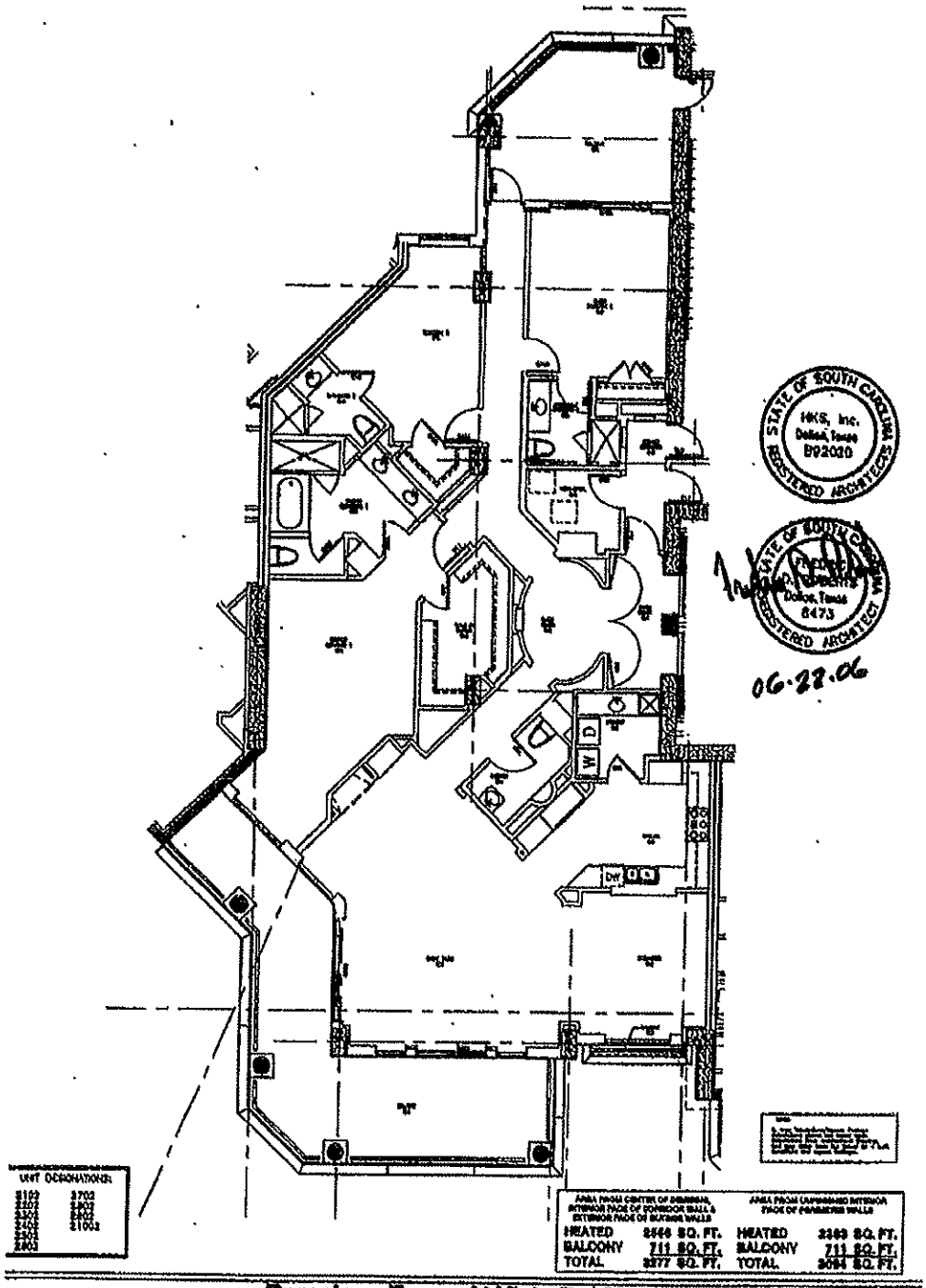
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Barcelona Tower At Vista Del Mar
Grande Dunes

UNIT B



STATE OF SOUTH CAROLINA
HKS, Inc.
Dallas, Texas
892030
REGISTERED ARCHITECTS

STATE OF SOUTH CAROLINA
Dallas, Texas
8473
REGISTERED ARCHITECT

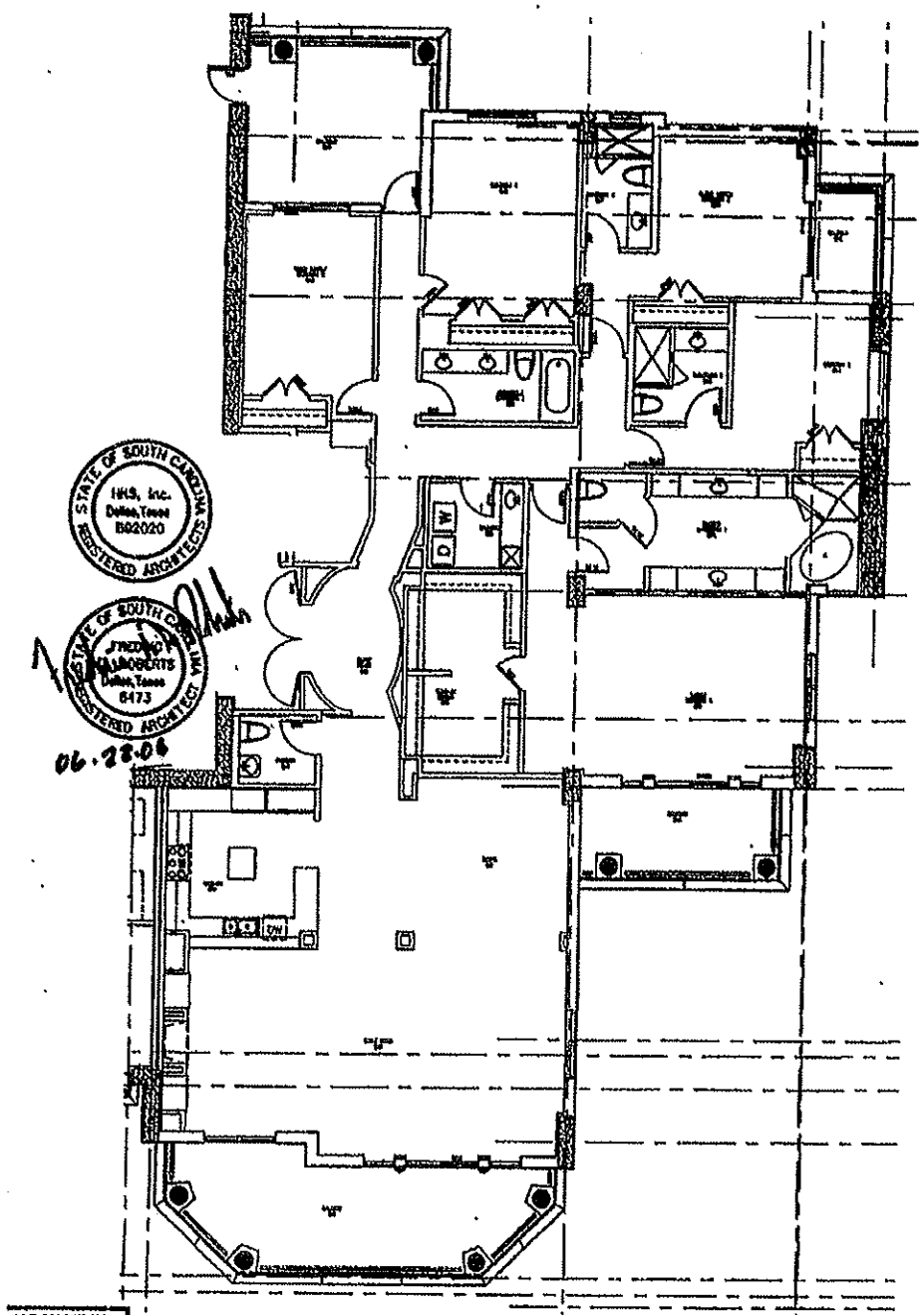
06.22.06

Barcelona Tower At Vista Del Mar
Grande Dunes
Myrtle Beach, South Carolina
JUNE 08, 2006

UNIT C

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Barcelona Tower At Vista Del Mar **UNIT D**

Grande Dunes

Myrtle Beach, South Carolina

JUNE 06, 2006

ARCHITECT'S CERTIFICATE
FOR
PHASE II OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Pursuant to S. C. CODE ANN. § 27-31-110 (1976), I certify that to the best of my knowledge the floor and unit plans attached to this First Amendment of Master Deed of The Vista Del Mar Horizontal Property Regime depict the dimensions, location and area of the Units and the General and Limited Common Elements of Phase II of the Vista Del Mar the Horizontal Property Regime.

HKS, INC.
1919 MCKINNEY AVENUE
DALLAS, TEXAS 75201

(signature)

By: Fred Roberts

Its: PRINCIPAL

South Carolina Architect's License No.: 6473

Date: 06/22/06

CLT 966568v1

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EXHIBIT "C"

Schedule of Assigned Values and Percentage Interests

This is a Schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in The Vista Del Mar Horizontal Regime. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

	Vista Del Mar			
	Units in Buildings/ Phases 1 & 2	**Assigned Value**	**% Interest**	**Parking Limited Common Area**
Phase I	1104	$3,000	1.72413 %	P-1104
	1204	$3,000	1.72413 %	P-1204
	1304	$3,000	1.72413 %	P-1304
	1404	$3,000	1.72413 %	P-1404
	1504	$3,000	1.72413 %	P-1504
	1604	$3,000	1.72413 %	P-1604
	1103	$2,500	1.43678 %	P-1103
	1203	$2,500	1.43678 %	P-1203
	1303	$2,500	1.43678 %	P-1303
	1403	$2,500	1.43678 %	P-1403
	1503	$2,500	1.43678 %	P-1503
	1603	$2,500	1.43678 %	P-1603
	1703	$2,500	1.43678 %	P-1703
	1102	$2,000	1.14942 %	P-1102
	1202	$2,000	1.14942 %	P-1202
	1302	$2,000	1.14942 %	P-1302
	1402	$2,000	1.14942 %	P-1402
	1502	$2,000	1.14942 %	P-1502
	1602	$2,000	1.14942 %	P-1602
	1702	$2,000	1.14942 %	P-1702
	1802	$2,000	1.14942 %	P-1802
	1101	$2,500	1.43678 %	P-1101
	1201	$2,500	1.43678 %	P-1201
	1301	$2,500	1.43678 %	P-1301
	1401	$2,500	1.43678 %	P-1401
Phase II	2104	$3,000	1.72413 %	P-104
	2204	$3,000	1.72413 %	P-204
	2304	$3,000	1.72413 %	P-304
	2404	$3,000	1.72413 %	P-404

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	Units in Buildings/ Phases 1 & 2	Assigned Value	% Interest	Parking Limited Common Area
	2504	$3,000	1.72413 %	P-504
	2604	$3,000	1.72413 %	P-604
	2704	$3,000	1.72413 %	P-704
	2804	$3,000	1.72413 %	P-804
	2904	$3,000	1.72413 %	P-904
	21004	$3,000	1.72413 %	P-1004
	21104	$3,000	1.72413 %	P-1104
	21204	$3,000	1.72413 %	P-1204
	2103	$2,500	1.43678 %	P-103
	2203	$2,500	1.43678 %	P-203
	2303	$2,500	1.43678 %	P-303
	2403	$2,500	1.43678 %	P-403
	2503	$2,500	1.43678 %	P-503
	2603	$2,500	1.43678 %	P-603
	2703	$2,500	1.43678 %	P-703
	2803	$2,500	1.43678 %	P-803
	2903	$2,500	1.43678 %	P-903
	21003	$2,500	1.43678 %	P-1003
	21103	$2,500	1.43678 %	P-1103
	2102	$2,500	1.43678 %	P-102
	2202	$2,500	1.43678 %	P-202
	2302	$2,500	1.43678 %	P-302
	2402	$2,500	1.43678 %	P-402
	2502	$2,500	1.43678 %	P-502
	2602	$2,500	1.43678 %	P-602
	2702	$2,500	1.43678 %	P-702
	2802	$2,500	1.43678 %	P-802
	2902	$2,500	1.43678 %	P-902
	21002	$2,500	1.43678 %	P-1002
	2101	$3,000	1.72413 %	P-101
	2201	$3,000	1.72413 %	P-201
	2301	$3,000	1.72413 %	P-301
	2401	$3,000	1.72413 %	P-401
	2501	$3,000	1.72413 %	P-501
	2601	$3,000	1.72413 %	P-601
	2701	$3,000	1.72413 %	P-701
	2801	$3,000	1.72413 %	P-801
Total	**66 Units**	**$174,000**	**100 %**	

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Four additional Buildings, or any lesser number of them, may be submitted in any order as Phases III through VI of the Regime. A Building may be composed of as little as twenty-five (25) Units with an Assigned Value of only $2,000 each, or as many as forty-five (45) Units with Assigned Values ranging between $2,000 and $3,000. As each phase is added, the total Assigned Value of all phases submitted and constituting the Regime at that time and the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building that may be constructed and submitted to the Regime as Phases III through VI, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Phase I Previously Submitted	$	61,500.00
Total Assigned Values in Phase II Submitted Herewith[1]	$	112,500.00
Maximum Possible Assigned Values in Phase III	$	105,000.00
Maximum Possible Assigned Values in Phase IV	$	105,000.00
Maximum Possible Assigned Values in Phase V	$	105,000.00
Maximum Possible Assigned Values in Phase VI	$	97,500.00
Total Maximum Assigned Values of the Project, If All Phases Are Constructed and Submitted	$	586,500.00

As an example, if Building 3 is composed of thirty-five (35) Units, each with an Assigned Value of $3,000, and is added as Phase III, the total Assigned Values in Phases I and II ($174,000) would be added to the additional Assigned Values in Phase III ($105,000), so that, following submission the total Assigned Values in Phase I through III would be $279,000. To determine the Percentage Interest of a Unit with an Assigned Value of $2,000 if Phase III is added to Phases I and II and those three (3) phases constitute the entire Regime, the following formula would be used:

ASSIGNED VALUE	$2,000	=	.716846%
TOTAL ASSIGNED VALUES	$279,000		

[1] Pursuant to Section 13.1 of the Master Deed, the Developer is hereby changing the total Assigned Value for Phase II from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $112,500 total Assigned Value set forth herein. In order to comply with Section 13.1 of the Master Deed, which requires that any such change cannot affect the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted, the Developer is hereby changing the total Assigned Value for Phase VI from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $97,500 total Assigned Value set forth herein. In accordance with Section 13.1 of the Master Deed, the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted ($586,500) has not been changed by virtue of this Amendment.

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HORRY COUNTY, S.C.
2006 AUG 10 PM 12:44
BALLEY V. SKIPPER
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

SECOND AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME

THIS SECOND AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME (the "Amendment") is made this 31st day of July, 2006, by the **VISTA DEL MAR CONDOMINIUM ASSOCIATION** (the "Association").

WITNESSETH:

WHEREAS, the Master Deed of The Vista Del Mar Horizontal Property Regime, dated November 26, 2003, was recorded in the Horry County Register of Deeds Office in Deed Book 2672 at Page 467 (as further amended, the "Master Deed"), creating the Vista Del Mar Horizontal Property Regime (the "Regime") upon certain property situated in Horry County, South Carolina more particularly described in said Master Deed (the "Property"); and

WHEREAS, the Board of Directors of the Association (the "Board"), in accordance with Section 17.2(d) of the Master Deed, have determined that the herein contained amendment to Section 8.3 of the Master Deed is necessary in order to clarify the maintenance responsibilities associated with the interior and exterior portions of windows located in the Units; and

WHEREAS, the Board, in accordance with Section 17.2(d) of the Master Deed, sent out an Objection to Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Outside Window Maintenance Responsibility) By Written Ballot Pursuant to Section 17.2(d) of the Master Deed (the "Notice of Amendment and Objection") to all Members of the Association formally proposing the herein contained amendment to Section 8.3 of the Master Deed and giving the Membership twenty (20) days to object in writing to said amendment; and

WHEREAS, the Board, in accordance with Section 17.2(d) of the Master Deed, did not receive written objections back from Members representing more than fifty percent (50%) of the total votes of the Association within twenty (20) days after their receipt of the Notice of Amendment and Objection, the herein contained amendment has been ratified and accepted by the Association.

NOW, THEREFORE, the Master Deed is hereby amended by the Association as follows:

1. Section 8.3 is hereby amended to add the following subsection (a):

(a) Outside Window Cleaning & Window Screen Repair. An Owner shall be solely responsible for the periodic window cleaning and repair of window screens accessible by the Unit's Owner from the Unit's porch or balcony. Except as herein provided, periodic cleaning of outside windows and repair of outside window screens shall be the responsibility of the Association pursuant to Section 8.2 above, and for purposes of said Section, such outside windows and window

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screens shall be deemed to be Common Areas notwithstanding any contrary provision of this Master Deed.

2. All capitalized terms not defined herein shall have the same meaning as set forth in the Master Deed.

3. If any term or condition of this Amendment conflicts with any term or condition of the Master Deed, the terms and conditions of this Amendment shall control. Otherwise, the terms and conditions of the Master Deed shall remain in full force and effect.

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IN WITNESS WHEREOF, the Association has caused this SECOND AMENDMENT TO MASTER DEED OF VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESSES:

Susan Rose

Eva Hayes

VISTA DEL MAR CONDOMINIUM ASSOCIATION

By: A Mart Belcamy
Name: A. Martin Belcamy
Title: President

Attest: Franklin J Long
Name: FRANKLIN J. LONG
Title: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 31st day of July, 2006, by the **VISTA DEL MAR CONDOMINIUM ASSOCIATION**, by A. Martin Belcamy, its President, as attested by Franklin J. Long, its Secretary.

Barbara E. Mungo (SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: Sept. 11, 2013
(AFFIX SEAL)

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EXHIBIT
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2006 JUN 27 PM 2:25
GALLERY V. SKIPPER
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

FIRST AMENDMENT TO
MASTER DEED OF THE VISTA DEL MAR
HORIZONTAL PROPERTY REGIME
(PHASE II)

THIS FIRST AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME (the "First Amendment") is made this 27th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded in the Horry County Register of Deeds Office (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14 of the Master Deed, the Developer retained the right to expand the Regime by submitting additional phases to the Regime; and

WHEREAS, pursuant to this First Amendment, Developer desires to amend the Master Deed to submit to the Regime Phase II and to include language clarifying the payment details of the Association's hazard insurance premium at the initial closings of the Units.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its right under the Master Deed to expand the Regime by adding Phase II to the Regime, more particularly described in the attached Exhibit "A-1" hereto, including without limitation one (1) Building, known as the "Barcelona Building" or "Building 2," such Building containing **forty-one (41) Units**, along with the Common Areas, which shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Master Deed, as amended by this First Amendment, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, and as further amended herby, and does further declare as follows:

I. Definitions. The words in this First Amendment, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Master Deed.

II. Addition of Section 4.11 for Phase II and all Future Phases.

Section 4.11 Hazard Insurance Premium Collected at Initial Closing. Notwithstanding anything to the contrary in this Master Deed, as amended, each Owner in Phase II (or future phases, if developed) who acquires title to their Unit from the Developer shall pay at the closing their Unit's share of the Association's annual hazard insurance premium in full for the entire year. Such payment shall

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be collected at the closing of the Unit and paid directly to the Developer for reimbursement of sums already paid to the insurance company.

III. Addition of Exhibit "A-1" for Phase II. Exhibit "A" to the Master Deed is hereby amended by the addition thereto of Exhibit "A-1" attached hereto and made a part hereof by this reference.

IV. Addition of Exhibit "B-1" for Building 2. Exhibit "B" to the Master Deed is hereby amended by the addition thereto of Exhibit "B-1" attached hereto and made a part hereof by this reference, and the Plans of the Regime shall include the site plan and floor and Unit plans for Building 2 filed as an attachment to this First Amendment and referred to in Exhibit "B-1."

V. Amendment of Exhibit "C". Exhibit "C" to the Master Deed, the schedule of Assigned Values and Percentage Interests for the Regime, is deleted in its entirety; and a new Exhibit "C" which is attached hereto and made a part hereof by this reference, shall be substituted therefor.

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IN WITNESS WHEREOF, the Developer has caused this FIRST AMENDMENT TO MASTER DEED OF VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: William F. Pritchard
Name: William F. Pritchard
Title: Sr. Exec. Vice President

Attest: Franklin J. Long
Name: Franklin J. Long
Title: Corporate Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this 27th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Wm. Pritchard, its Sr. Exec. VP, as attested by Franklin J. Long, its Corporate Secretary.

(SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

CLT 967092v1

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EXHIBIT "A-1"

LEGAL DESCRIPTION
FOR
PHASE 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising 5.00 Acres, more or less, on a plat entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina. Said parcel having such size, shape, location, dimensions, buttings and boundings as will by reference to said plat more fully appear.

The location of the building and improvements located on said tract of land is more particularly shown on that certain plat entitled "Closing Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated May 31, 2006, and recorded in Plat Book 214 at Page 158, in the ROD Office for Horry County, South Carolina.

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EXHIBIT "B-1"

SITE PLAN AND FLOOR PLANS
BUILDING 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Note

Exhibit "B-1" is composed of an as-built survey showing the location of Building 2 and other improvements, as well as the vertical location of each floor and the Units located thereon. Exhibit "B-1" also includes a site plan and set of floor and Unit plans for Building 2, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location of the Common Areas affording access to each Unit. The as-built survey for Building 2 has been recorded in the Horry County ROD in **Plat Book 214 at Page 158.** Exhibit "B-1" is deemed to include the attached Architect's Certificate for Building 2 dated June 22nd 2006, by HKS, Inc., architects of the above referenced plans, and recorded herewith.

The Phase II Building, Building 2, consists of forty-one (41) Units located in a 12-story Building over two parking decks, identified on the floor plans as levels P1 and P2. Each Unit in Building 2 is individually numbered and described as Units 2101, 2102, 2103, 2104, 2201, 2202, 2203, 2204, 2301, 2302, 2303, 2304, 2401, 2402, 2403, 2404, 2501, 2502, 2503, 2504, 2601, 2602, 2603, 2604, 2701, 2702, 2703, 2704, 2801, 2802, 2803, 2804, 2902, 2903, 2904, 21002, 21003, 21004, 21103, 21104, 21204. There are four Units on each of the first, second, third, fourth, fifth, sixth, seventh, and eighth floors, three Units on each of the ninth and tenth floors, two Units on the eleventh floor, and one Unit on the twelfth floor. Assigned parking spaces for the Units are on the two parking decks identified as levels P1 and P2.

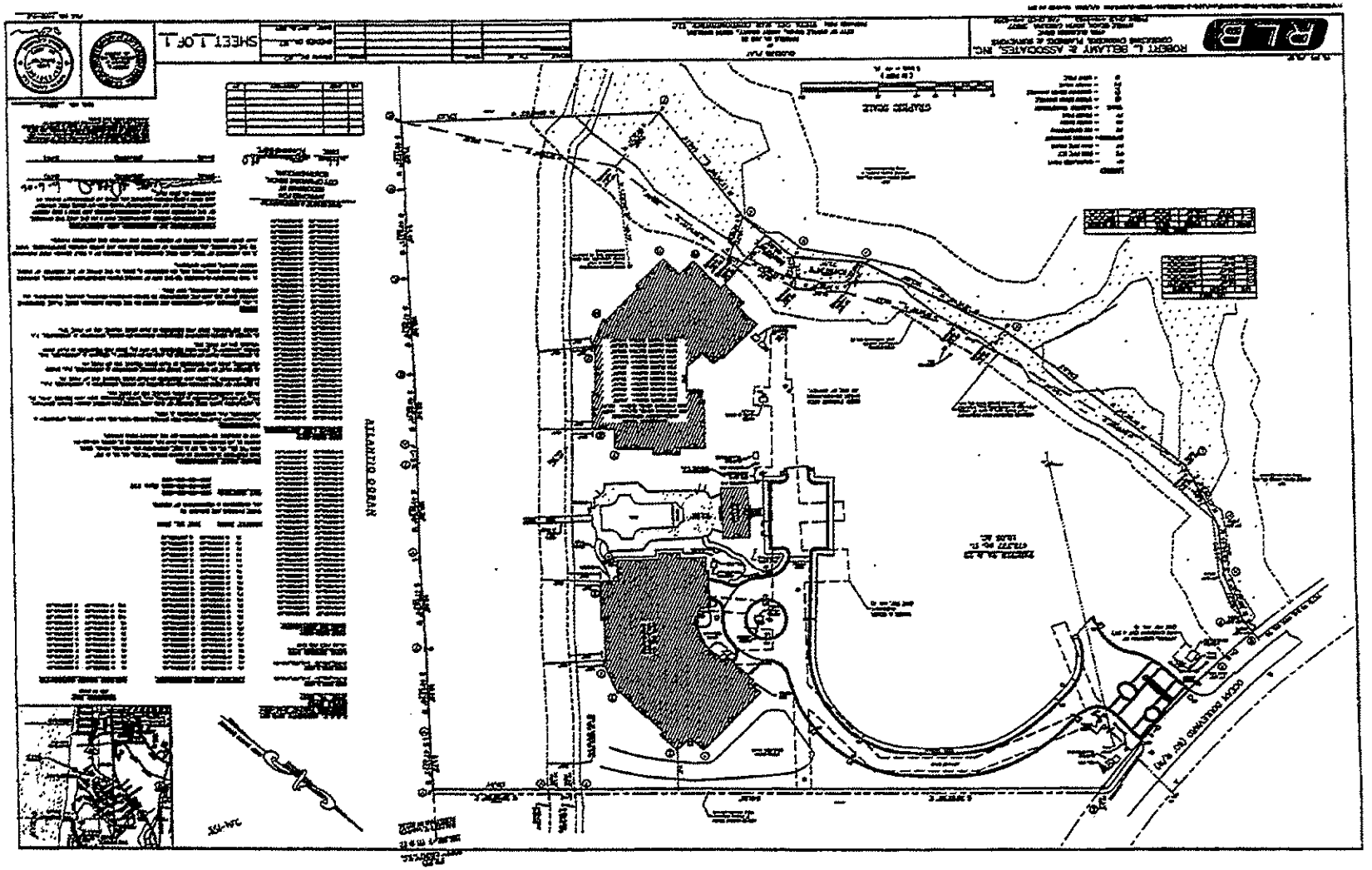
Each of the Units in Building 2 has a separate entrance from a Common Area elevator and from a door off of an interior Common Area stairwell, and is a one-story flat. **Units 2104, 2204, 2304, 2404, 2504, 2604, 2704, 2804, 2904, 21004, 21104, and 21204** (sometimes referred to as "A" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2103, 2203, 2303, 2403, 2503, 2603, 2703, 2803, 2903, 21003, and 21103** (sometimes referred to as "B" Units or "Cordoba" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2102, 2202, 2302, 2402, 2502, 2602, 2702, 2802, 2902, and 21002** (sometimes referred to as "C" Units or "Avilla" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2101, 2201, 2301, 2401, 2501,**

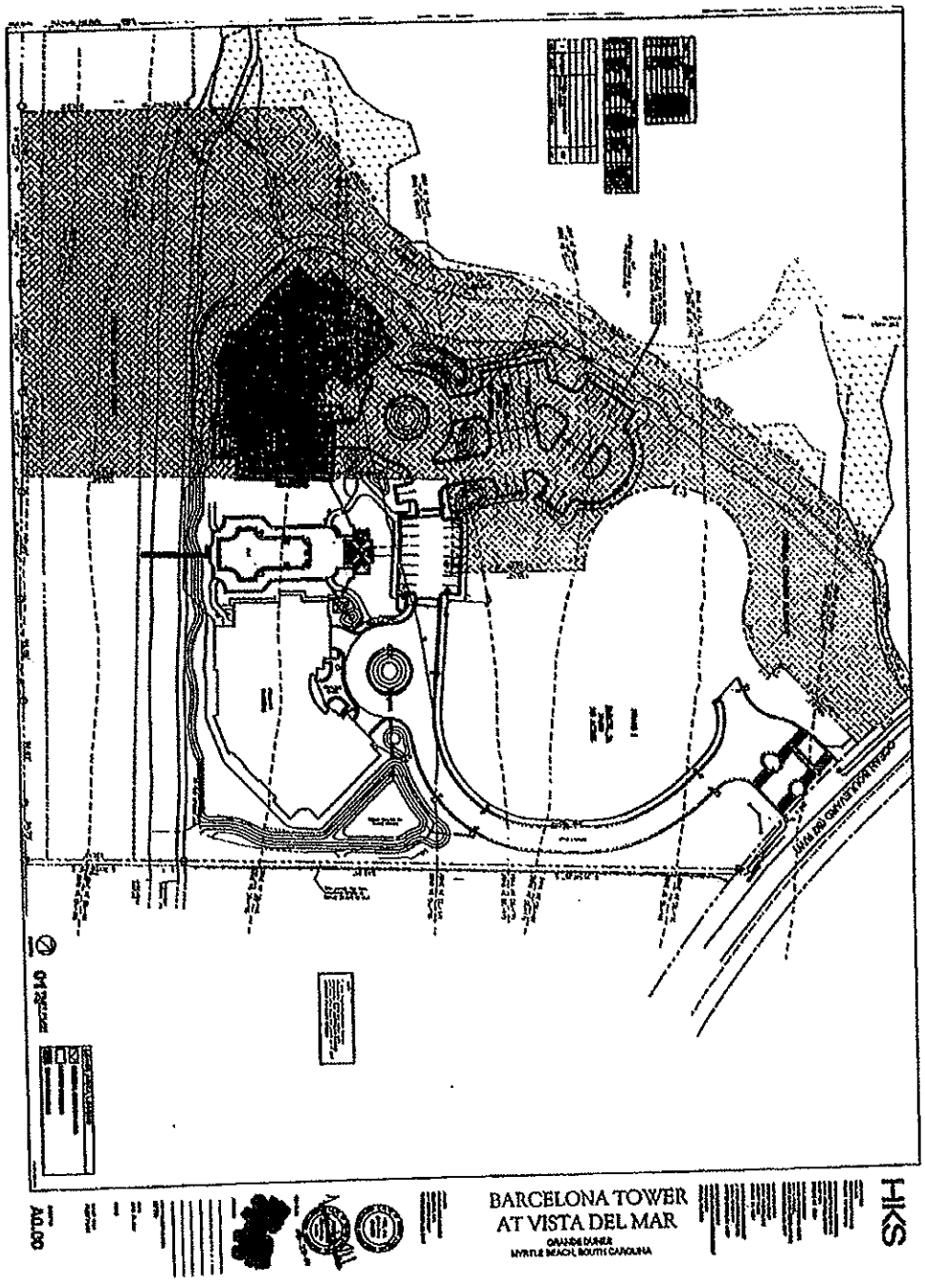
2601, 2701, and 2801 (sometimes referred to as "D" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans.

The locations of each Unit, Building 2, and the Common Areas making up Phase II are graphically shown on the aforementioned as-built survey and on the site plan and floor and Unit plans prepared by HKS, Inc., Architects attached hereto.

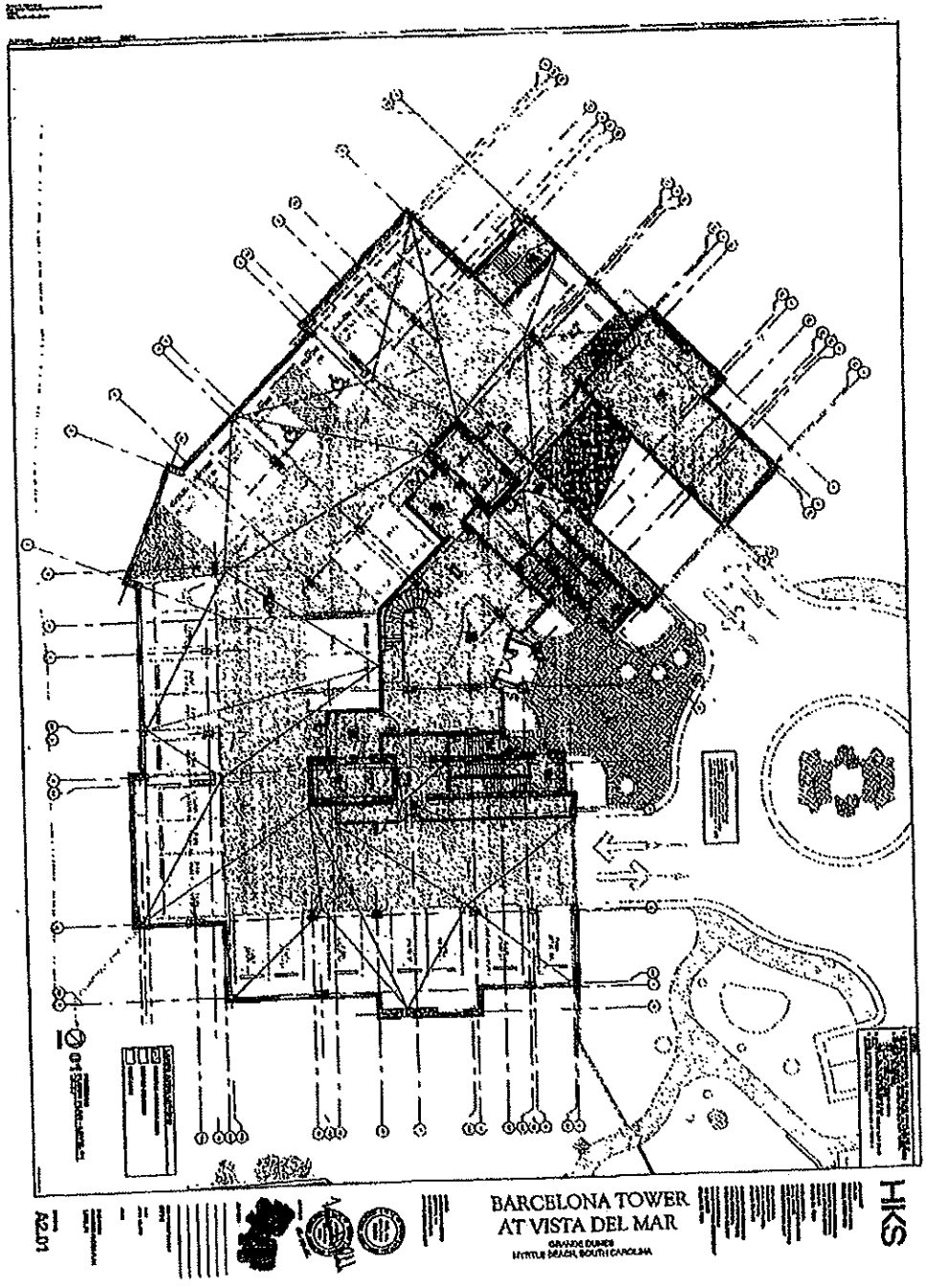
Reference to areas as Common Areas and Limited Common Areas in this Exhibit are in addition to and shall be read in conjunction with the further designations of Common Areas set out in other portions of this Master Deed and the as-built survey, site plan and floor plans making up the balance of this Exhibit "B-1".

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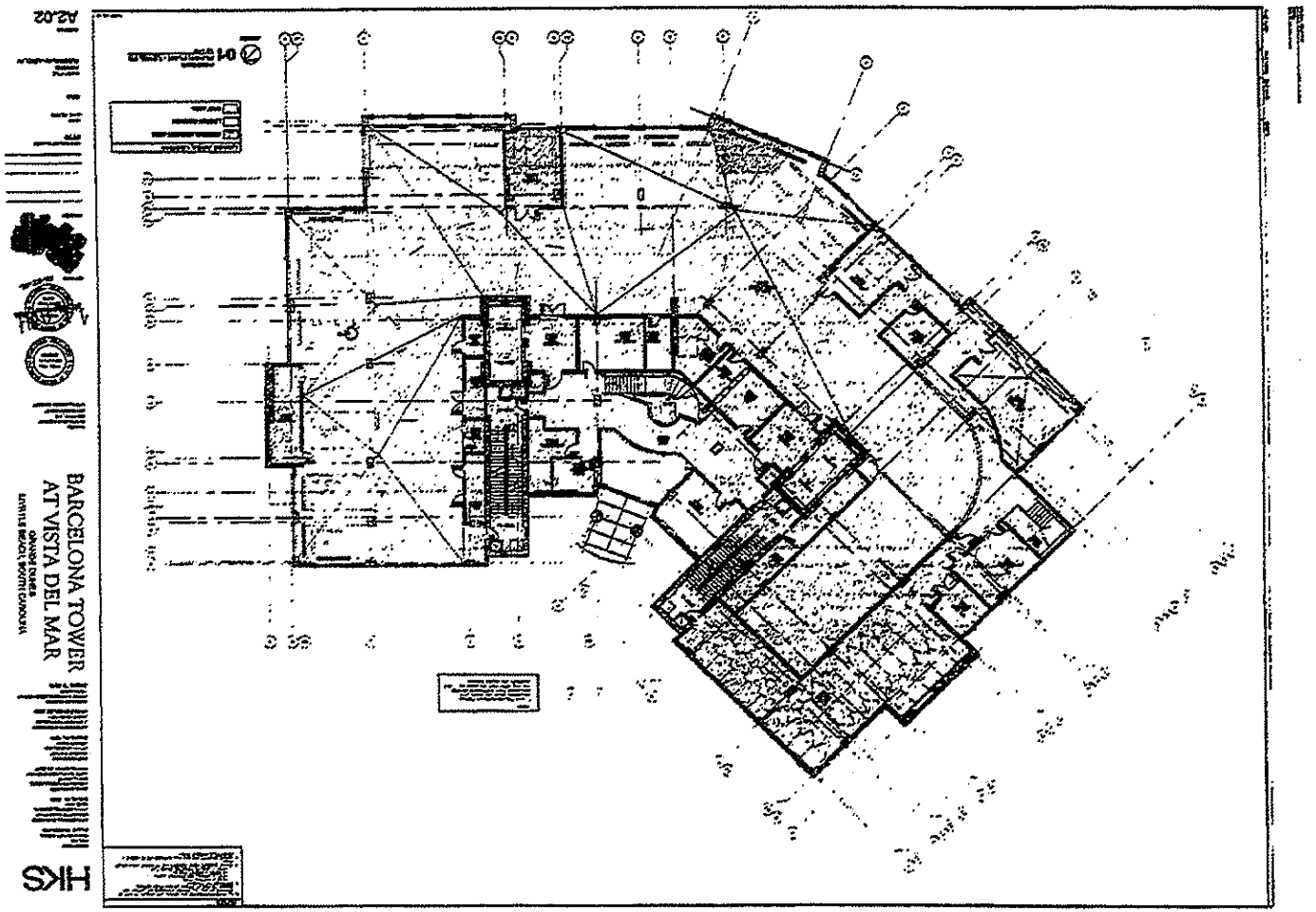


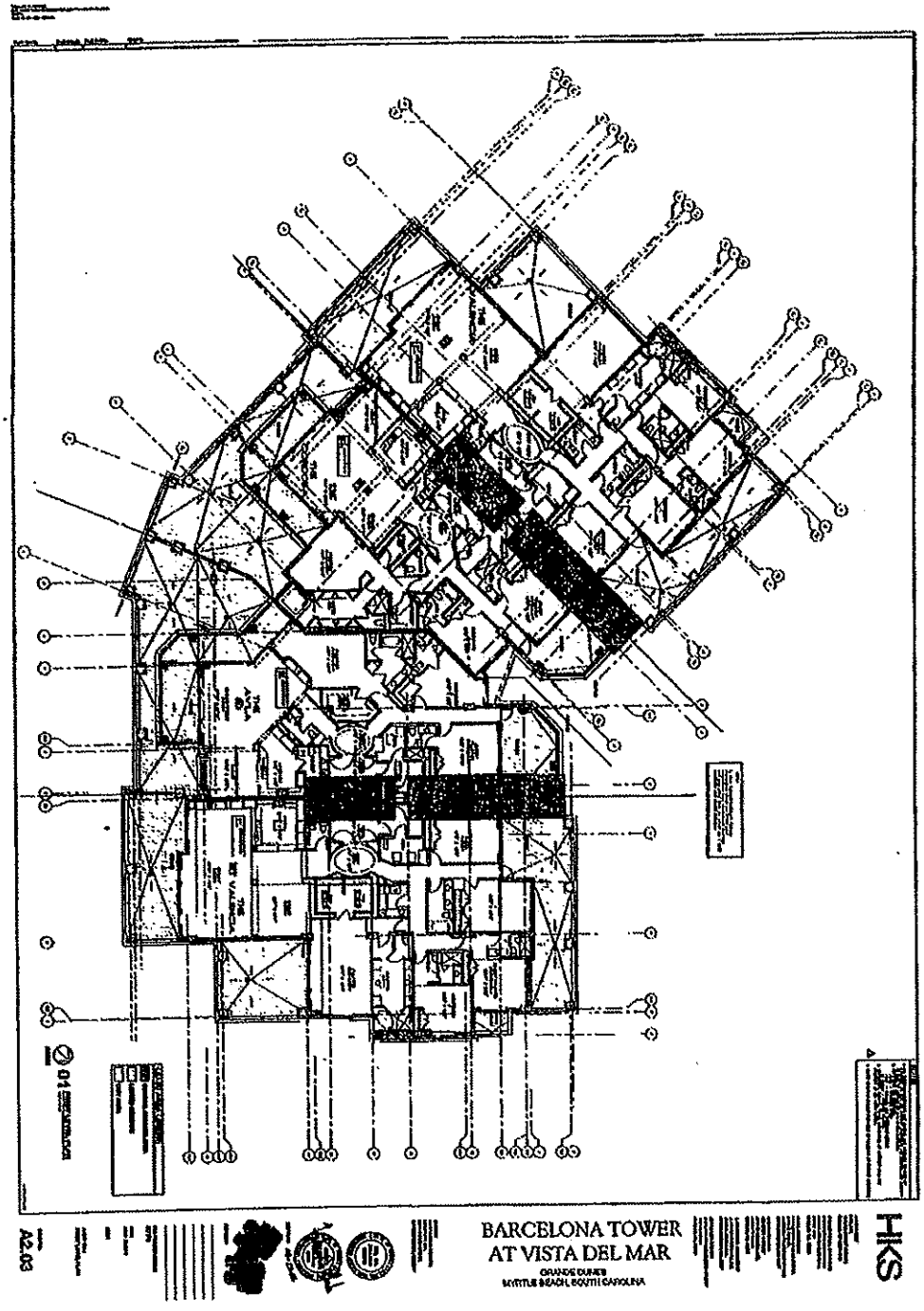


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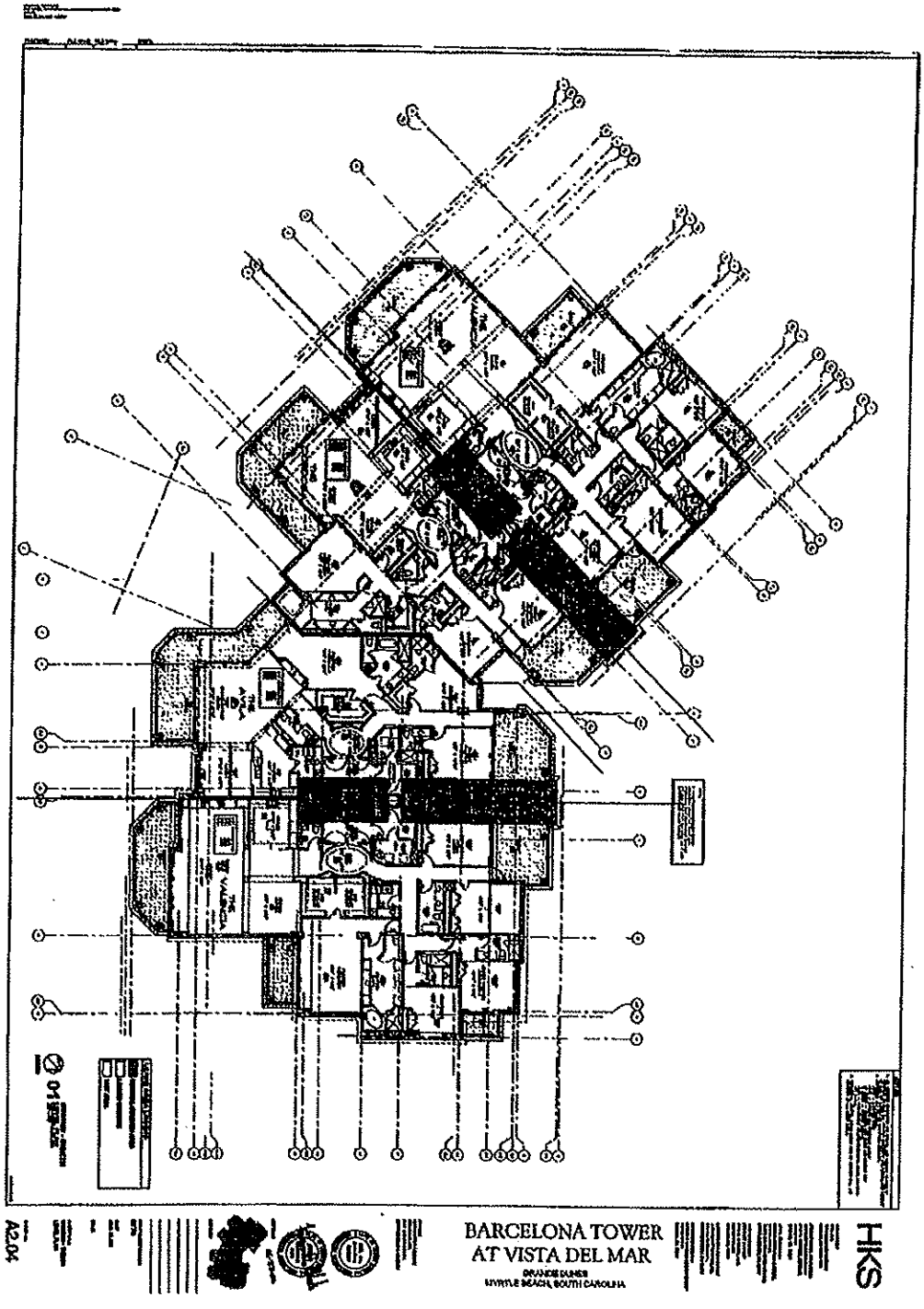


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A2.02
BARCELONA TOWER
AT VISTA DEL MAR
HKS



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A2.04

BARCELONA TOWER
AT VISTA DEL MAR

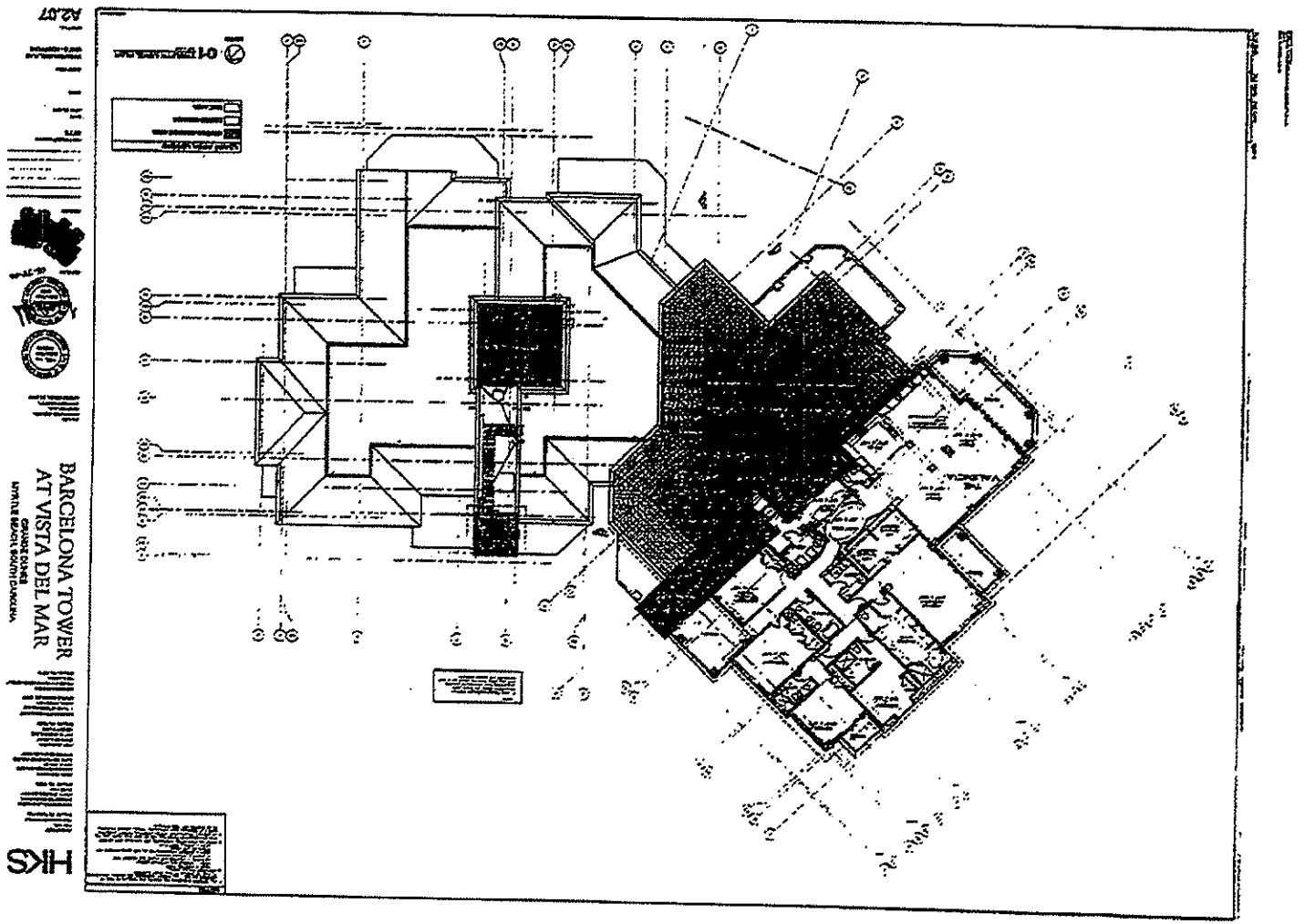
HKS

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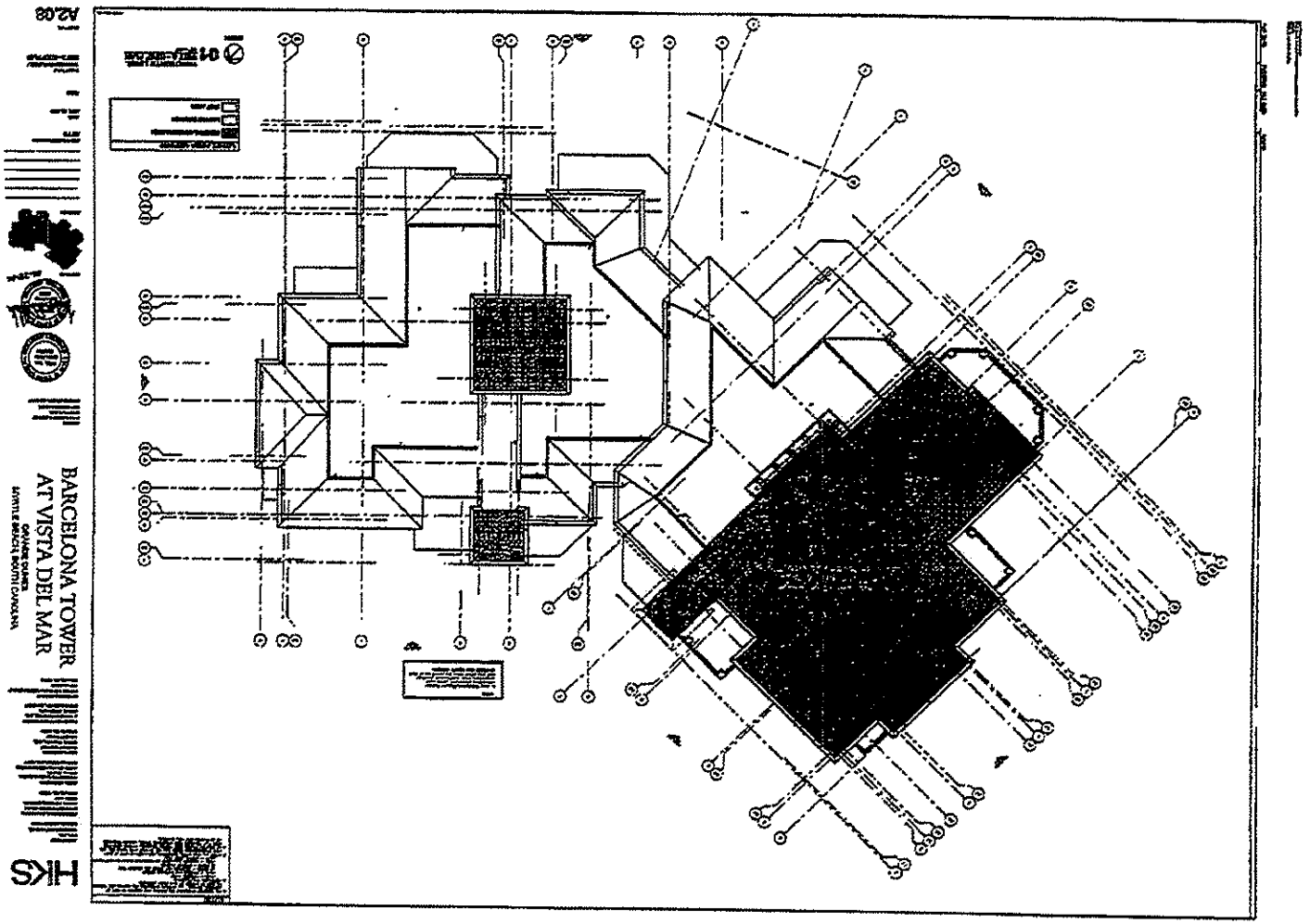
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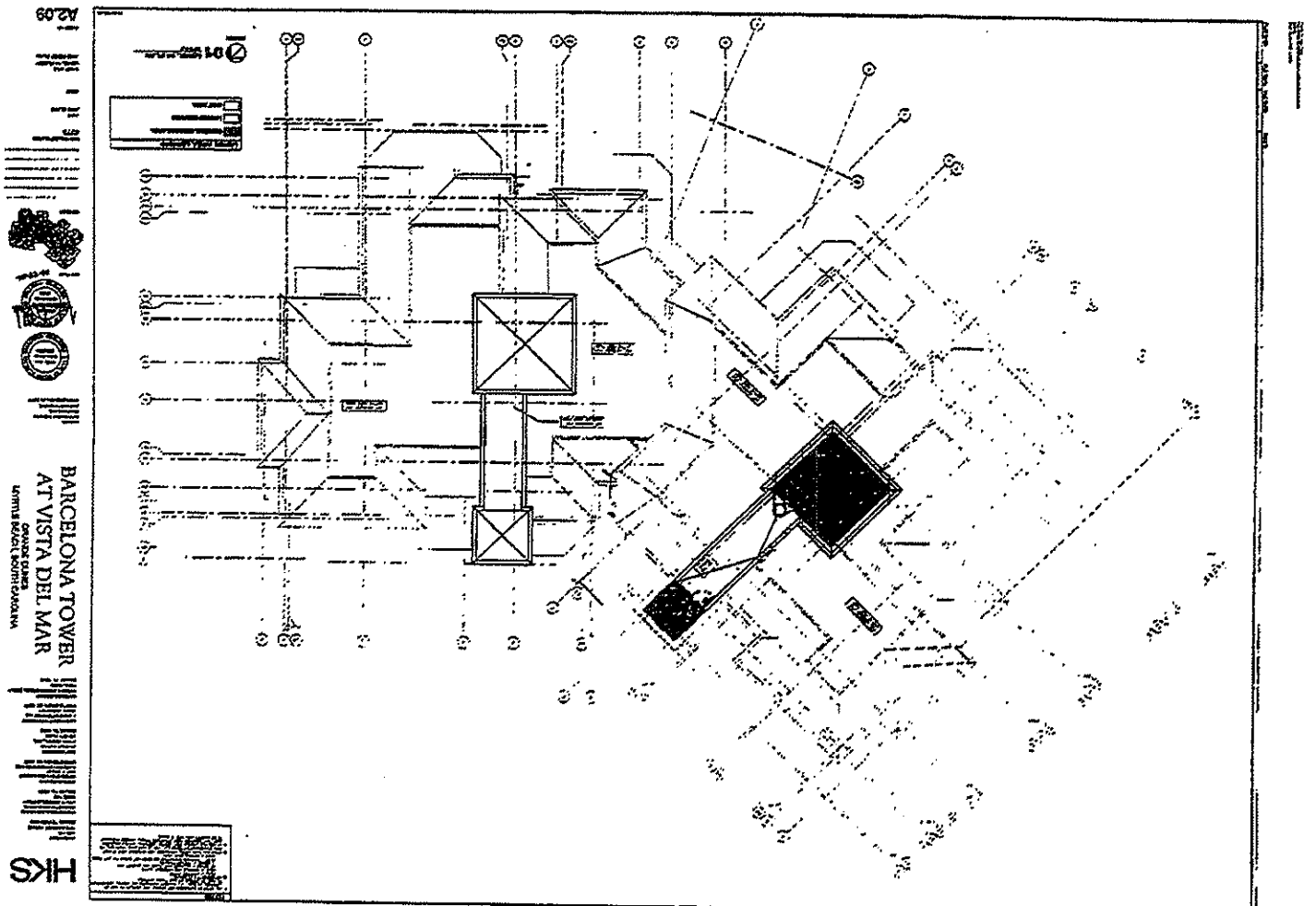
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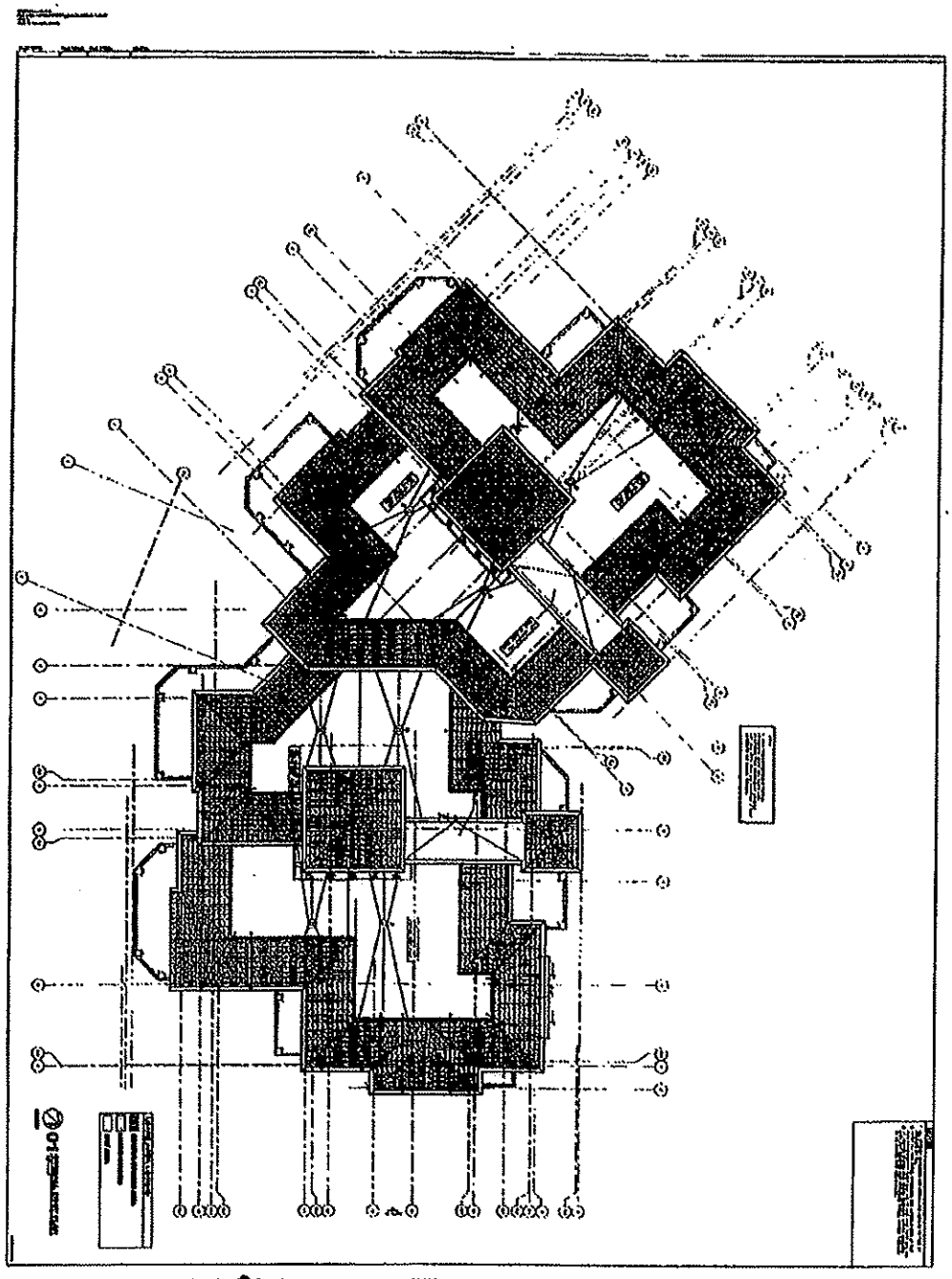


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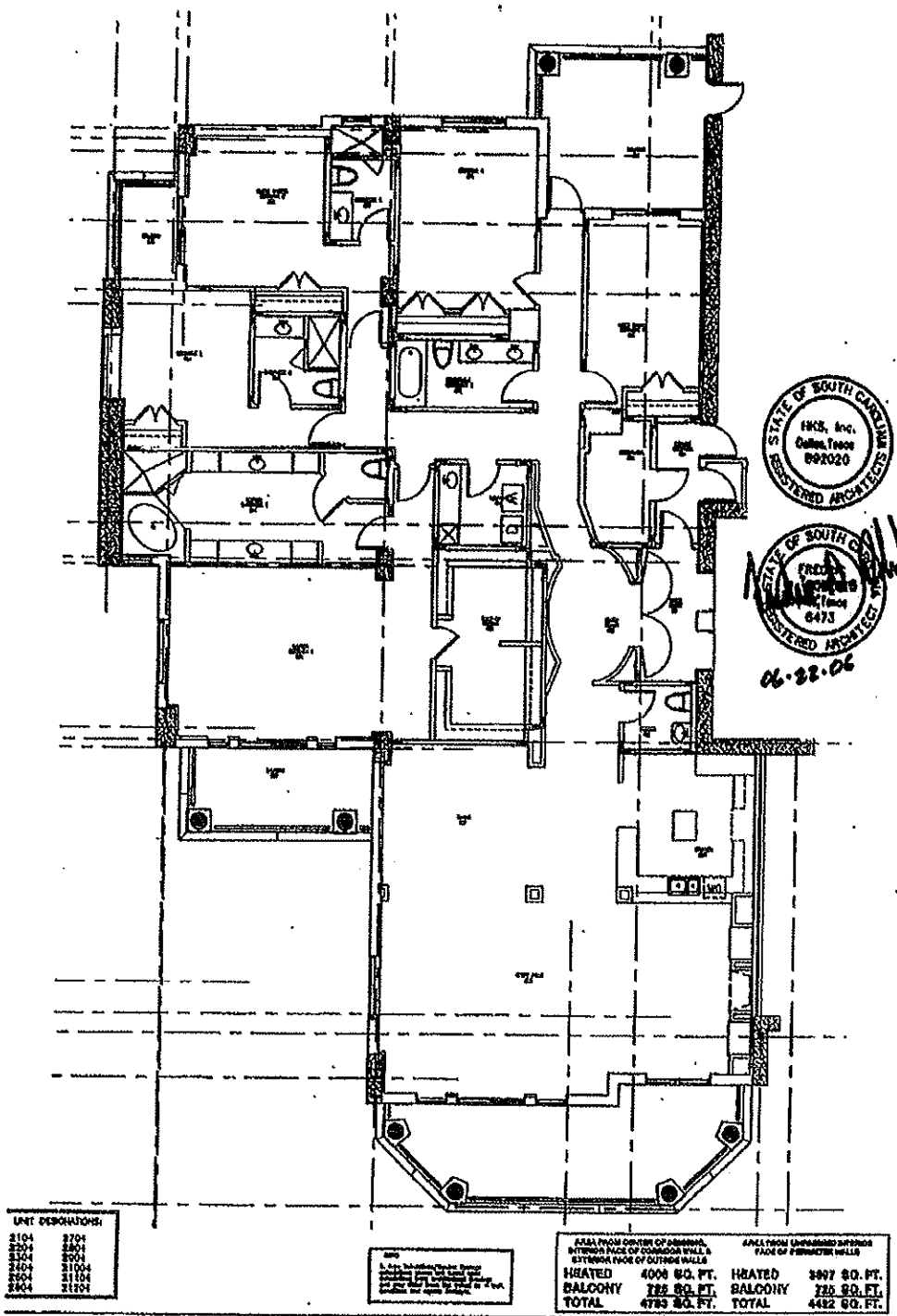
A2.10

BARCELONA TOWER
AT VISTA DEL MAR

HKS

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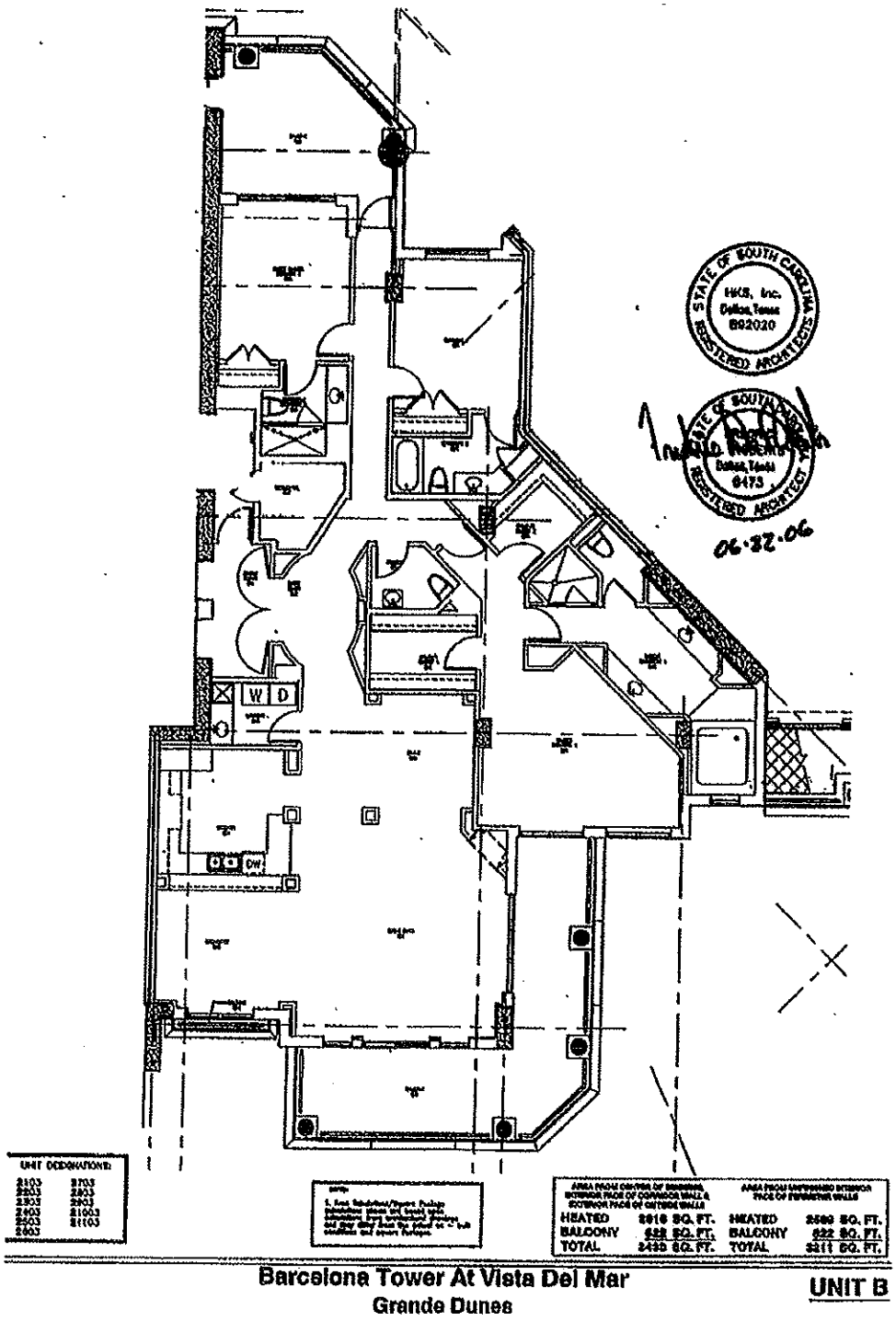
STATE OF SOUTH CAROLINA
HKS, Inc.
Dallas, Texas
992020
REGISTERED ARCHITECTS

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECT
6473

06.22.06

Barcelona Tower At Vista Del Mar
Grande Dunes
Myrtle Beach, South Carolina
JUNE 05, 2006

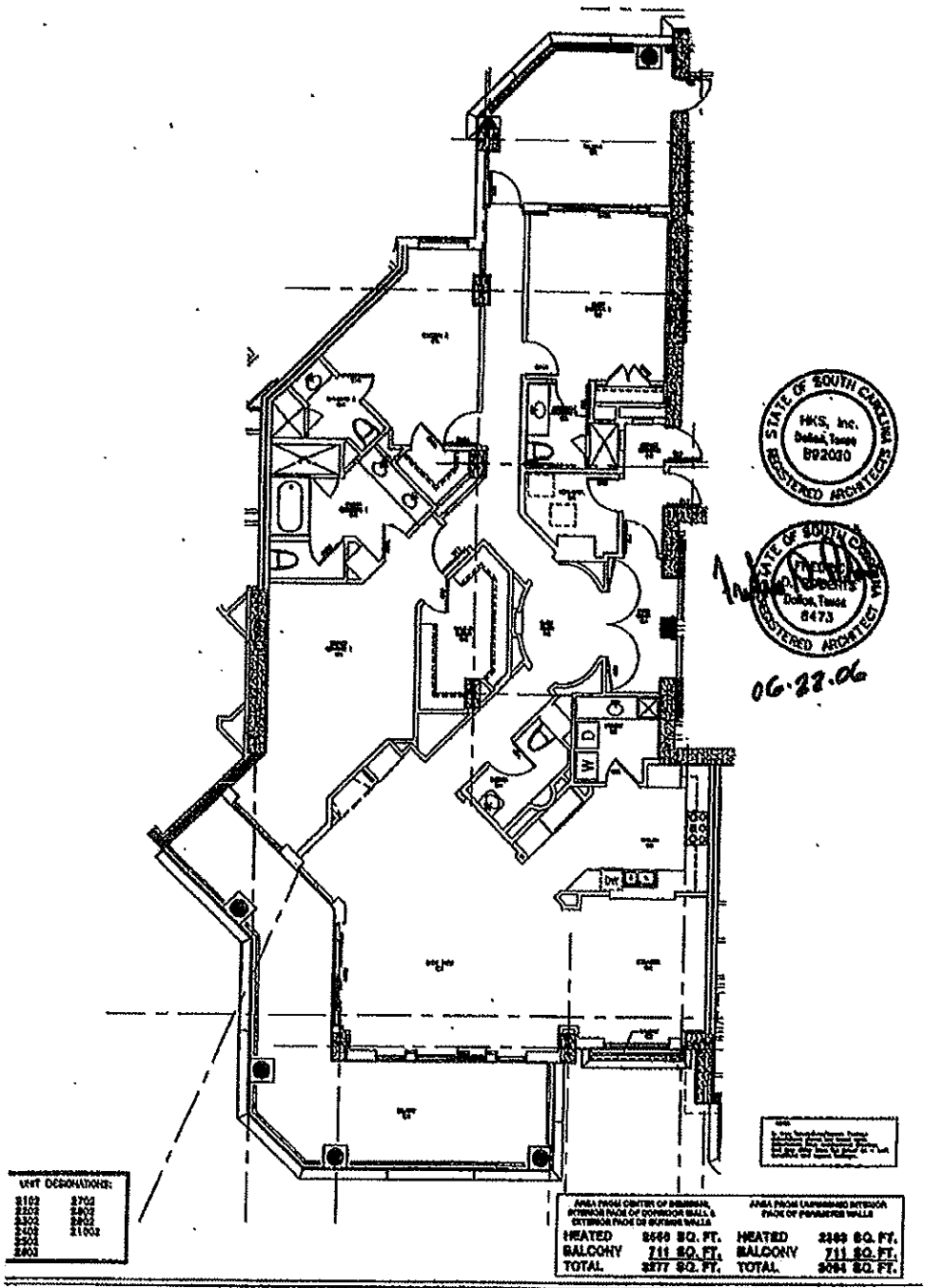
UNIT A



Barcelona Tower At Vista Del Mar
Grande Dunes

UNIT B

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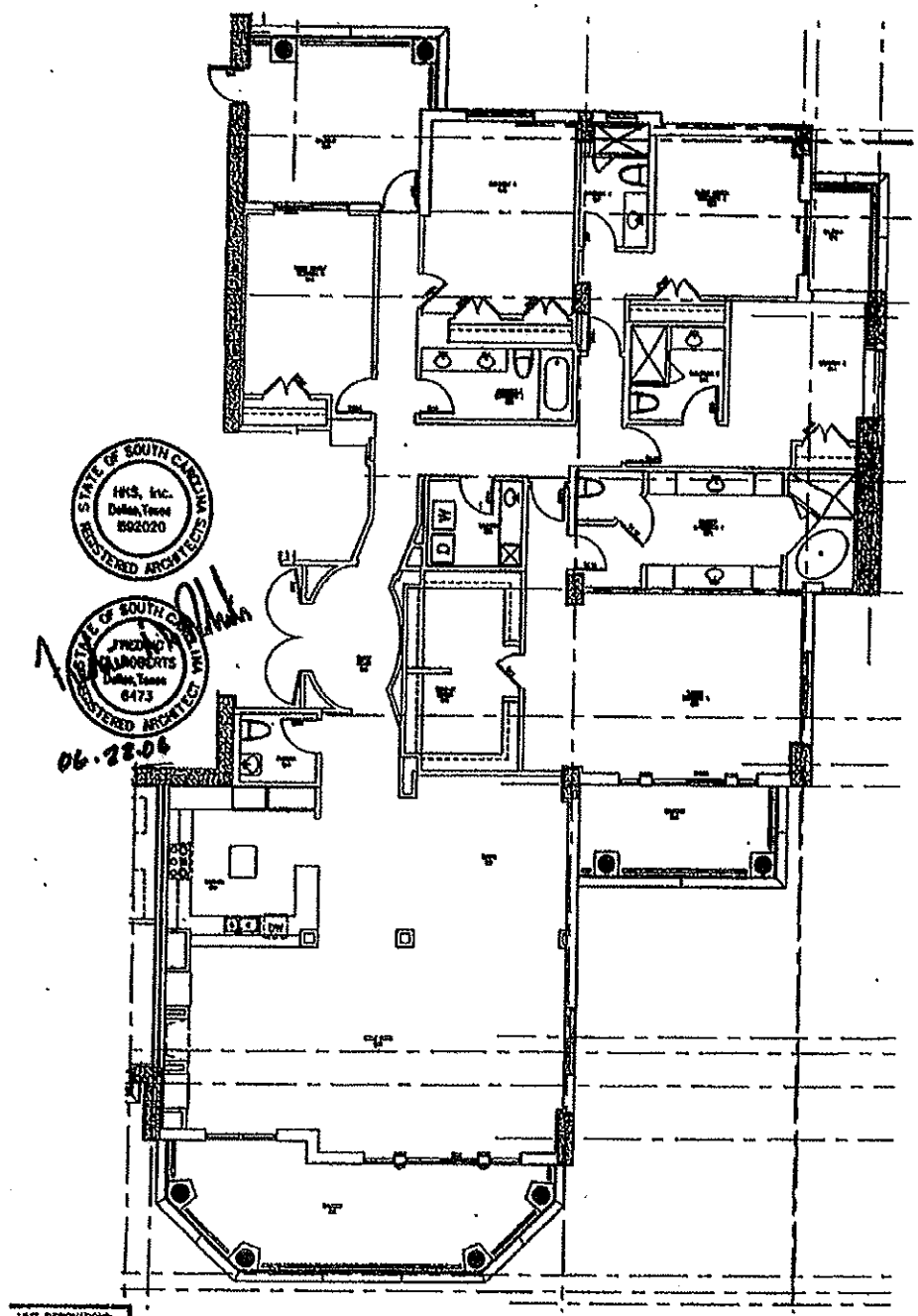


Barcelona Tower At Vista Del Mar
Grande Dunes
Myrtle Beach, South Carolina
JUNE 08, 2006

UNIT C

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Barcelona Tower At Vista Del Mar **UNIT D**

Grande Dunes

Myrtle Beach, South Carolina

JUNE 08, 2006

ARCHITECT'S CERTIFICATE
FOR
PHASE II OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Pursuant to S. C. CODE ANN. § 27-31-110 (1976), I certify that to the best of my knowledge the floor and unit plans attached to this First Amendment of Master Deed of The Vista Del Mar Horizontal Property Regime depict the dimensions, location and area of the Units and the General and Limited Common Elements of Phase II of the Vista Del Mar the Horizontal Property Regime.

HKS, INC.
1919 MCKINNEY AVENUE
DALLAS, TEXAS 75201

_____
(*signature*)

By: Fred Roberts

Its: PRINCIPAL

South Carolina Architect's License No.: 6473

Date: 06/22/06

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EXHIBIT "C"

Schedule of Assigned Values and Percentage Interests

This is a Schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in The Vista Del Mar Horizontal Regime. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

	Vista Del Mar			
	Units in Buildings/ Phases 1 & 2	**Assigned Value**	**% Interest**	**Parking Limited Common Area**
Phase I	1104	$3,000	1.72413 %	P-1104
	1204	$3,000	1.72413 %	P-1204
	1304	$3,000	1.72413 %	P-1304
	1404	$3,000	1.72413 %	P-1404
	1504	$3,000	1.72413 %	P-1504
	1604	$3,000	1.72413 %	P-1604
	1103	$2,500	1.43678 %	P-1103
	1203	$2,500	1.43678 %	P-1203
	1303	$2,500	1.43678 %	P-1303
	1403	$2,500	1.43678 %	P-1403
	1503	$2,500	1.43678 %	P-1503
	1603	$2,500	1.43678 %	P-1603
	1703	$2,500	1.43678 %	P-1703
	1102	$2,000	1.14942 %	P-1102
	1202	$2,000	1.14942 %	P-1202
	1302	$2,000	1.14942 %	P-1302
	1402	$2,000	1.14942 %	P-1402
	1502	$2,000	1.14942 %	P-1502
	1602	$2,000	1.14942 %	P-1602
	1702	$2,000	1.14942 %	P-1702
	1802	$2,000	1.14942 %	P-1802
	1101	$2,500	1.43678 %	P-1101
	1201	$2,500	1.43678 %	P-1201
	1301	$2,500	1.43678 %	P-1301
	1401	$2,500	1.43678 %	P-1401
Phase II	2104	$3,000	1.72413 %	P-104
	2204	$3,000	1.72413 %	P-204
	2304	$3,000	1.72413 %	P-304
	2404	$3,000	1.72413 %	P-404

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	Units in Buildings/ Phases 1 & 2	Assigned Value	% Interest	Parking Limited Common Area
	2504	$3,000	1.72413 %	P-504
	2604	$3,000	1.72413 %	P-604
	2704	$3,000	1.72413 %	P-704
	2804	$3,000	1.72413 %	P-804
	2904	$3,000	1.72413 %	P-904
	21004	$3,000	1.72413 %	P-1004
	21104	$3,000	1.72413 %	P-1104
	21204	$3,000	1.72413 %	P-1204
	2103	$2,500	1.43678 %	P-103
	2203	$2,500	1.43678 %	P-203
	2303	$2,500	1.43678 %	P-303
	2403	$2,500	1.43678 %	P-403
	2503	$2,500	1.43678 %	P-503
	2603	$2,500	1.43678 %	P-603
	2703	$2,500	1.43678 %	P-703
	2803	$2,500	1.43678 %	P-803
	2903	$2,500	1.43678 %	P-903
	21003	$2,500	1.43678 %	P-1003
	21103	$2,500	1.43678 %	P-1103
	2102	$2,500	1.43678 %	P-102
	2202	$2,500	1.43678 %	P-202
	2302	$2,500	1.43678 %	P-302
	2402	$2,500	1.43678 %	P-402
	2502	$2,500	1.43678 %	P-502
	2602	$2,500	1.43678 %	P-602
	2702	$2,500	1.43678 %	P-702
	2802	$2,500	1.43678 %	P-802
	2902	$2,500	1.43678 %	P-902
	21002	$2,500	1.43678 %	P-1002
	2101	$3,000	1.72413 %	P-101
	2201	$3,000	1.72413 %	P-201
	2301	$3,000	1.72413 %	P-301
	2401	$3,000	1.72413 %	P-401
	2501	$3,000	1.72413 %	P-501
	2601	$3,000	1.72413 %	P-601
	2701	$3,000	1.72413 %	P-701
	2801	$3,000	1.72413 %	P-801
Total	**66 Units**	**$174,000**	**100 %**	

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Four additional Buildings, or any lesser number of them, may be submitted in any order as Phases III through VI of the Regime. A Building may be composed of as little as twenty-five (25) Units with an Assigned Value of only $2,000 each, or as many as forty-five (45) Units with Assigned Values ranging between $2,000 and $3,000. As each phase is added, the total Assigned Value of all phases submitted and constituting the Regime at that time and the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building that may be constructed and submitted to the Regime as Phases III through VI, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Phase I Previously Submitted	$	61,500.00
Total Assigned Values in Phase II Submitted Herewith[1]	$	112,500.00
Maximum Possible Assigned Values in Phase III	$	105,000.00
Maximum Possible Assigned Values in Phase IV	$	105,000.00
Maximum Possible Assigned Values in Phase V	$	105,000.00
Maximum Possible Assigned Values in Phase VI	$	97,500.00
Total Maximum Assigned Values of the Project, If All Phases Are Constructed and Submitted	$	586,500.00

As an example, if Building 3 is composed of thirty-five (35) Units, each with an Assigned Value of $3,000, and is added as Phase III, the total Assigned Values in Phases I and II ($174,000) would be added to the additional Assigned Values in Phase III ($105,000), so that, following submission the total Assigned Values in Phase I through III would be $279,000. To determine the Percentage Interest of a Unit with an Assigned Value of $2,000 if Phase III is added to Phases I and II and those three (3) phases constitute the entire Regime, the following formula would be used:

ASSIGNED VALUE	$2,000	=	.716846%
TOTAL ASSIGNED VALUES	$279,000		

[1] Pursuant to Section 13.1 of the Master Deed, the Developer is hereby changing the total Assigned Value for Phase II from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $112,500 total Assigned Value set forth herein. In order to comply with Section 13.1 of the Master Deed, which requires that any such change cannot affect the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted, the Developer is hereby changing the total Assigned Value for Phase VI from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $97,500 total Assigned Value set forth herein. In accordance with Section 13.1 of the Master Deed, the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted ($586,500) has not been changed by virtue of this Amendment.

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Instrument#: 2009000031910, DEED BK: 3392 PG: 3120 DOCTYPE: 069 03/25/2009 at 04:02:12 PM, 1 OF 4 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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New TMS Number 1660005136
Sp 1660008082

STATE OF SOUTH CAROLINA	)	FOURTH AMENDMENT TO
	)	MASTER DEED OF THE VISTA DEL MAR
COUNTY OF HORRY	)	HORIZONTAL PROPERTY REGIME

THIS FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME ("the Fourth Amendment") is made this 20th day of March, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded December 4, 2003, in the Office of the Register of Deeds for Horry County (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime (the "Regime") upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14, Sections 14.2(b) and 14.7 of the Master Deed, the Developer retained the unilateral right to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the Regime and from the application of this Master Deed; and

WHEREAS, pursuant to this Fourth Amendment, Developer desires to amend the Master Deed to remove subdivided portions of the Common Area from the Regime and from the application of this Master Deed.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its unilateral right pursuant to Sections 14.2(b) and 14.7 of the Master Deed to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portions from the Regime and from the application of this Master Deed, said subdivided portions being identified on the Subdivision Plat described in Exhibit "A" as "Parcel 1", and does further declare as follows:

I. Definitions. Unless specifically defined herein, the capitalized words in this Fourth Amendment shall have the same meanings as set forth in the Master Deed.

II. Amendment of Exhibit "A" for Removal of Land. Exhibit "A" to the Master Deed, as amended, is hereby deleted in its entirety and replaced by Exhibit "A" attached hereto and made a part hereof by reference.

III. Conflict. If any term or condition of this Fourth Amendment conflicts with any term or condition of the Master Deed, the terms and conditions of this Fourth Amendment shall control. Otherwise, the terms and conditions of the Master Deed shall remain in full force and effect.

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IN WITNESS WHEREOF, the Developer has caused this FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: William Whitehead
Name: William F. Whitehead
Title: Executive Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 20th day of March, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by William F. Whitehead, its Executive Vice President.

(SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

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EXHIBIT "A"

Legal Description

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Tract A" comprising 5.853 acres, more or less, on a survey entitled, "Boundary Survey of a Portion of the Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc.", prepared by Survey Technology, Inc., dated February 25, 2002 and recorded in the ROD Office for Horry County in Plat Book 183 at Page 72, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

AND,

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising of 5.00 acres, more or less, on a survey entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

SAVING AND EXCEPTING THEREFROM,

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 1, 112,185 sq. ft., 2.58 acres" on a plat entitled "Subdivision Plat of Tax Parcel 166-00-08-092, Vista del Mar, Grande Dunes, Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Associated Land Surveyors, dated February 19, 2009 and recorded in Plat Book 243 at Page 215, in the ROD Office for Horry County, South Carolina (the "Subdivision Plat"), said parcel having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid Subdivision Plat, which is incorporated herein by reference.

The within conveyance is subject to all easements of record and/or upon the ground.

This being a portion of the premises conveyed to Vista Del Mar Condominiums, LLC by the following deeds: 1) Deed from Grande Dunes Development Company, LLC dated April 30, 2002 and recorded April 30, 2002 in the Office of the Register of Deeds for Horry County in Deed Book 2476 at Page 500; 2) Deed from Grande Dunes Development Company, LLC dated July 14, 2004 and recorded July 15, 2004 in the Office of the Register of Deeds for Horry

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County in Deed Book 2761 at Page 829; and 3) Corrective Deed from Grande Dunes Development Company, LLC dated June 20, 2006 and recorded June 21, 2006 in the Office of the Register of Deeds for Horry County in Deed book 3116 at Page 1140.

Portion of TMS #166-00-08-092

Instrument#: 2014000145738, DEED BK: 3784 PG: 920 DOCTYPE: 069 12/10/2014 at 01:11:07 PM, 1 OF 9 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AMENDED AND RESTATED EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT ("Agreement") is entered into by and between VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC., a South Carolina nonprofit corporation (hereinafter referred to as the "Association") and GDMB OCEAN, LLC, a Delaware limited liability company (hereinafter referred to as "GDMB") as of December 9, 2014.

WHEREAS, Vista Del Mar Condominiums, LLC ("Vista Del Mar") as owner and developer of certain property identified as Parcels 2A and 2B on that certain plat entitled "COMBINATION PLAT OF PARCELS 2A AND 2B, CITY OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Robert L. Bellamy & Associates, Inc., dated November 12, 2004, and recorded May 30, 2006 in Plat Book 214, Page 102 in the Office of the Register of Deeds for Horry County subjected the property to the terms of the Master Deed of The Vista Del Mar Horizontal Property Regime ("Master Deed") recorded December 4, 2003, in Deed Book 2672, Page 467 in the Office of the Register of Deeds for Horry County;

WHEREAS, pursuant to the terms of the Fourth Amendment to the Master Deed recorded March 25, 2009 in Deed Book 3392, Page 3120 and the Corrective Fourth Amendment to Master Deed recorded April 6, 2009 in Deed Book 3394, Page 1718, Vista Del Mar amended the Master Deed to remove a portion of the property identified and shown as "Parcel 1" (the "Benefitted Parcel") as further described in Exhibit A attached hereto and identified on a plat entitled "SUBDIVISION PLAT OF TAX PARCEL 166-00-08-092 VISTA DEL MAR, GRANDE DUNES, MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors, dated March 31, 2009, and recorded April 6, 2009 in Plat Book 243, Page 275 in the Office of the Register of Deeds for Horry County (hereinafter referred to as the "Plat");

WHEREAS, in conjunction with the removal of the Benefitted Parcel from the Master Deed and recordation of the Plat, an access easement was granted for the benefit of the Benefitted Parcel in order to allow pedestrian and vehicular ingress, egress, regress and access from the Benefitted Parcel to Ocean Boulevard over that certain portion of the property identified as "8.28 acres REMAINDER" on the Plat ("Condominium Parcel") through the area identified as "ACCESS EASEMENT" on the Plat and as further described in Exhibit B attached hereto ("Access Easement Area");

WHEREAS, Vista Del Mar conveyed the Benefitted Parcel to GDMB as evidenced by that certain Deed dated December 19, 2013, and recorded December 20, 2013 in Deed Book 3705, Page 397 in the Office of the Register of Deeds for Horry County which Deed benefits from all easements of record including the Access Easement as shown on the Plat;

WHEREAS, the parties hereto desire to restate and modify said Access Easement as provided herein.

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NOW, THEREFORE, in consideration of the sum of Ten and 00/100 ($10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GDMB and the Association agree as follows:

1. Grant of Easement. The Association has granted, bargained, sold and released, and by these presents does hereby grant, bargain, sell and release unto the owners of the Benefitted Parcel (the "BP Owner"), and for the benefit of the Benefitted Parcel, a non-exclusive, perpetual, assignable, transmissible, appurtenant, and forever transferable easement (the "Easement") on, over, within, through and across that certain portion of the Condominium Parcel more particularly described and shown as "ACCESS EASEMENT" on the Plat for the purpose of providing pedestrian and vehicular ingress, egress, regress and access to and from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel. The BP Owner shall have the right, but not the obligation to construct a pedestrian path on, over, within, through and across the Condominium Parcel in order to provide pedestrian ingress, egress, regress and access to and from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel.

2. Use of the Access Easement Area. The use of the Access Easement Area will be non-exclusive and for the use and benefit of the parties, their respective successors, successors-in-title, assigns, and such agents, guests, invitees, licensees, employees, servants and contractors.

3. Conditions, Restrictions and Reservations. The rights granted pursuant hereto are granted and conveyed subject to the following conditions, restrictions and reservations: each of the parties hereto, including its respective successors, successors-in-title, assigns, agents, contractors, guests, residents, invitees, employees, mortgagees, and licensees of the parties, shall exercise its rights under this Agreement in a manner which (i) does not unreasonably and materially disrupt or interfere with the rights of the other parties to use and enjoy their respective properties, (ii) does not unreasonably and materially disrupt or interfere with the rights of the other parties to exercise their rights under this Agreement for purposes which are consistent with those provided herein for facilitating the orderly operation of the respective properties, and (iii) complies with all applicable laws, rules, regulations, codes, ordinances, zoning codes, building codes and orders of each governmental authority having jurisdiction over the parties.

4. Alteration, Change, Relocation. The location of the Access Easement Area may not be altered, changed, or relocated without the prior written consent of the BP Owner or its successors and assigns. Any such alteration, change or relocation of the Access Easement Area shall not materially compromise the functionality of such easement and the party proposing any such alteration, change or relocation shall pay all expenses related to any such alteration, change or relocation.

5. Maintenance and Costs. At such time as the Benefitted Parcel is developed, the BP Owner shall be responsible for payment of fifty percent (50%) of the maintenance costs for the Access Easement Area, which maintenance costs shall first be approved by the BP Owner in writing. In the event a pedestrian path is constructed, the BP Owner shall be responsible for all reasonable costs associated with construction and maintenance of the pedestrian path from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel including the construction and maintenance of a gate to control access from Ocean Boulevard to said pedestrian path.

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Further, in the event the Benefitted Parcel is developed for any use other than a residential use, and the Association deems it appropriate to relocate its vehicular access entry gate from within the Access Easement Area to a portion of Vista Del Mar Lane outside the Access Easement Area, the BP Owner will pay all reasonable costs associated with relocation of the vehicular access entry gate to a location on the Condominium Parcel requested by the Association, provided such location does not interfere with the use of the Access Easement by the Benefitted Parcel.

6. No Merger of Easements. No present or future common ownership of the Benefitted Parcel or the Condominium Parcel shall be deemed a merger which would have the legal effect of extinguishing the Access Easement created by this Agreement. The Access Easement created hereby shall continue in effect despite any present or future common ownership of the servient and dominant estates unless and until terminated or otherwise modified as provided herein.

7. Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

9. Severability. If any term, covenant or condition of this Agreement or the application thereof to either party shall be held to be invalid or unenforceable, then the remaining terms, covenants and conditions of this Agreement shall not be affected, and shall be enforceable to the fullest extent permitted by law.

10. Binding Effect. This Agreement shall run with the land and the provisions of this Agreement shall be binding upon and enforceable against and shall inure to the benefit of parties, and their respective successors, successors-in-title and assigns. The easements and rights created by this Agreement are appurtenant. If for any reason the easements and rights created by this Agreement shall not be interpreted as appurtenant easements, such easements shall be deemed to be commercial easements in gross and assigned to each respective successor-in-title. Each party agrees that on conveyance of all or any part of the Benefitted Parcel or the Condominium Parcel, the subsequent grantee, by accepting such conveyance will thereby become a new party to and be bound by this Agreement.

SIGNATURE PAGES TO FOLLOW

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IN WITNESS WHEREOF, the parties have hereunto set their Hands and Seals the date and year first above mentioned.

WITNESSES:

VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC.,
a South Carolina nonprofit corporation

By: R. Ryan Blackmon

Its: VICE PRESIDENT

North
STATE OF ~~SOUTH~~ CAROLINA)
)
COUNTY OF ~~HORRY~~ Wake)

ACKNOWLEDGMENT

The within instrument was acknowledged before me this 9 day of December, 2014, by Vista Del Mar Condominium Association, Inc., a South Carolina nonprofit corporation, by R. Ryan Blackmon its Vice president

(SEAL)
Notary Public for ~~South Carolina~~ North Carolina
My Commission Expires: 2.8.19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

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IN WITNESS WHEREOF, the parties have hereunto set their Hands and Seals the date and year first above mentioned.

WITNESSES:

GDMB OCEAN, LLC,
a Delaware limited liability company

By: _____

Its: Steven Vining
Operating Member
Representative

STATE OF North Carolina)
)
COUNTY OF Wake)

ACKNOWLEDGMENT

The within instrument was acknowledged before me this 9 day of December, 2014, by GDMB Ocean, LLC, a Delaware limited liability company, by Steven Vining, its operating member representative.

_____ (SEAL)
Notary Public for North Carolina
My Commission Expires: 2-8-19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

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EXHIBIT "A"

BENEFITTED PARCEL

All that certain portion, piece, parcel or tract of land, situate, lying and being in the City of Myrtle Beach, Horry County, South Carolina, more particularly shown and designated as "PARCEL 1" on a plat entitled "SUBDIVISION PLAT OF TAX PARCEL 166-00-08-092 VISTA DEL MAR, GRANDE DUNES, MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors, dated March 31, 2009, and recorded April 6, 2009 in Plat Book 243, Page 275 in the Office of the Register of Deeds for Horry County, South Carolina ("Corrective Plat"), said parcel having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid Corrective Plat, which is incorporated herein by reference.

This being the same property conveyed to GDMB Ocean, LLC from Vista Del Mar Condominiums, LLC by Deed dated December 19, 2013 and recorded December 20, 2013 in Deed Book 3705, at Page 3087 in the Register of Deeds Office for Horry County.

TMS #: 166-00-08-136

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EXHIBIT "B"

DESCRIPTION OF A
ACCESS EASEMENT TO
PARCEL SIX, OCEAN TRACT 7, GRANDE DUNES
(FORMALLY SHOWN AS PARCEL 1, PLAT BOOK 243 AT PAGE 275)

DESCRIPTION of a Access Easement located in the Township of Myrtle Beach, County of Horry, State of South Carolina in accordance with a plat entitled Subdivision Plat of Tax Parcel 166-00-08-092, Vista Del Mar, Grande Dunes, by Associated Land Surveyors dated February 19, 2009, last revised March 31, 2009 and recorded in Plat Book 243 at Page 275, Horry County South Carolina.

Said Access Easement being more fully described as follows:

Beginning AT A ½" Iron Pipe, said pipe being the common corner with Parcel 1 GDMB Ocean LLC and the property of Vista Del Mar Condominiums, and located on the Southern public right of way of North Ocean Boulevard and having a South Carolina State Plane Coordinate Value of N 705,359.18 E 2,667,483.90 (NAD 83-2011),

Thence with the Southern public right of way of North Ocean Boulevard, along a curve to the left having a radius of 1105.00 feet, a central angle of 06°18'55", the chord of which bears South 85°29'57" East for a distance of 121.74', for an arc length of 121.80' to a point;

Thence across the property of Vista Del Mar Condominiums, South 04°51'40" West for a distance of 37.31 feet to a point;

Thence continuing across the property of Vista Del Mar Condominiums and private Vista Del Mar Lane, South 22°19'46" West for a distance of 96.90 feet to a ½" iron pipe;

Thence with the property of GDMB Ocean LLC, Vista Del Mar Condominiums and Vista Del Mar Lane for the next six (6) calls, (1) North 67°40'14" West for a distance of 40.38 feet to a ½" iron pipe;

Thence, (2) North 22°19'46" East for a distance of 6.84 feet to a 1/2" iron pipe;

Thence, (3) along a curve to the left with a radius of 39.07 feet, a central angle of 49°33'21", the chord of which bears South 02°26'55" East for a distance of 32.75 feet; for an arc length of 33.79 feet to a ½" iron pipe;

Thence, (4) along a reverse curve to the right having a radius of 88.83 feet, a central angle of 25°57'15", the long chord of which bears South 14°14'58" East for a distance of 39.90 feet, for an arc length of 40.24 feet to a ½" iron pipe;

Thence, (5) North 82°20'30" West for a distance of 40.86 feet to a 1/2" iron pipe;

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Thence, (6) North 07°39'30" East for a distance of 38.21 feet to a 1/2" iron pipe; the **POINT OF BEGINNING.**

Instrument#: 2014000145738, DEED BK: 3784 PG: 928 DOCTYPE: 069 12/10/2014 at 01:11:07 PM, 9 OF 9 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The Easement being transferred is located in Myrtle Beach, South Carolina, bearing Horry County Tax Map Number 166-00-08-092 (a portion) and was transferred by Vista Del Mar Condominium Association, Inc. to GDMB Ocean, LLC on December ___, 2014.

3. Check one of the following: The deed is

   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

   (c) XXX exempt from the deed recording fee because (See Information section of affidavit); Exemption Number 1 - Transfer of Realty Less Than $100.00.
   (If exempt, please skip items 4 – 7, and go to item 8 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

   (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

   (b) _____ The fee is computed on the fair market value of the realty which is _____.

   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or NO ____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes'" the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

   (a) Place the amount listed in item 4 above here: _____
   (b) Place the amount listed in item 5 above here: _____
   (If no amount is listed, place zero here.)
   (c) Subtract line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line6(c) above and the deed recording fee due is: $0.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____

Name: Robert Ryan Blackmon

Its: Vice President

SWORN to before me this 9th day of December, 2014

Notary Public for North Carolina

My Commission Expires: 2.8.19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

Instrument#: 2007000185146, DEED BK: 3304 PG: 2095 DOCTYPE: 001 12/31/2007 at 12:45:08 PM, 1 OF 6 COUNTY STAMPS: $1787.50 STATE STAMPS: $4225.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct
1660907073

EXHIBIT
E

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

GENERAL WARRANTY INDENTURE DEED

KNOW ALL MEN BY THESE PRESENTS, that **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, (the "Grantor") for and in consideration of the premises and the sum of ONE MILLION SIX HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED AND 00/100 ($1,624,900.00) DOLLARS to it in hand paid at and before the sealing of these presents by **DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000 AND JANET P. MERRITT, TRUSTEE, OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000, as tenants in common in equal shares,** the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto the said **DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000 AND JANET P. MERRITT, TRUSTEE, OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000, as tenants in common in equal shares,** (the "Grantee(s)"), his/her/its heirs, successors and assigns forever, the following described property to wit:

ALL AND SINGULAR, that certain unit known as **UNIT 2-101, VISTA DEL MAR HORIZONTAL PROPERTY REGIME,** a condominium established pursuant to the South Carolina Horizontal Property Act, Title 27, Chapter 31, Code of Laws of South Carolina (1976), as amended, and submitted by Master Deed dated November 26, 2003, and recorded December 4, 2003, in Deed Book 2672, at page 467 in the office of the Register of Deeds for Horry County, SC ("ROD"); and being located in the City of Myrtle Beach, SC; with the Plot Plan for the said Regime being recorded in the ROD in Plat Book 214, at page 158.

TOGETHER with an undivided interest in the common elements and the appurtenances thereto according to said Master Deed.

SUBJECT to all of the provisions of the said Master Deed, the provisions of the South Carolina Horizontal Property Act, the provisions of the By-Laws of Vista del Mar Condominium Association, and all other applicable covenants, conditions, reservations, restrictions, easements, and rights of way of record.

ALSO SUBJECT to the terms, conditions and provisions of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GRANDE DUNES MASTER ASSOCIATION dated April 24, 2000, and recorded April 26, 2000 in Book 2254, Page 1219 in the office of the ROD aforesaid, and as may be amended thereafter (the said instrument being referred to as the "Covenants").

BEING a portion of the property conveyed unto Vista del Mar Condominiums, LLC, a SC limited liability company, by deed of Grande Dunes Development Company, LLC, a SC limited liability company, by deed dated July 14, 2004, and recorded July 15, 2004 in the Office of the Horry County ROD in Deed Book 2761, at page 0829; with a Corrective

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Instrument#: 2007000185146, DEED BK: 3304 PG: 2096 DOCTYPE: 001 12/31/2007 at 12:45:08 PM, 2 OF 6 COUNTY STAMPS: $1787.50 STATE STAMPS: $4225.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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Deed dated June 20, 2006 and recorded June 21, 2006 in the Office of the Horry County ROD in Deed Book 3116 at page 1140.

Pursuant to S.C. Code Ann. Section 48-39-330 (1976), as amended, the Grantor discloses to the Grantee that the property or a portion thereof is or may be subject to statutory regulation imposed by The South Carolina Coastal Zone Act of 1977, S.C. Code Ann. Sections 48-39-10 et seq. (1976), as amended by the South Carolina Beach Management Act, S.C. Code Ann. Sections 48-39-270 et seq. (1976), hereinafter collectively called "the Acts". The Acts involve, and may subject the property to, the creation and existence of interim and final baselines, setback lines, the velocity zone and an erosion rate, all as is more fully defined in the Acts. Part or all of the property is or may be located seaward of the setback line, the minimum setback line or interim baseline, and has an erosion rate, all as determined by the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control, formerly the South Carolina Coastal Council (hereinafter, "OCRM"). All or part of the property is or may be within the velocity zone as determined by the Federal Emergency Management Agency. The Acts may also restrict the Purchaser's rights to build, repair or rebuild structures on the property. No structure may be constructed seaward of the setback lines without a permit issued by OCRM. Pursuant to the Acts, the locations of the baselines and interim and final setback lines are subject to change. The methodology utilized in determining the exact location of the setback lines and baselines on the property and the current applicable erosion rate may be obtained from OCRM. The methodology described above must be utilized in a case-by-case, property-by-property manner in order for an exact, surveyed determination to be made of the location of the baselines and setback lines. The Grantor makes no representation to the Grantee concerning the location of such baselines, setback lines, or the velocity zone, the effect of such regulation on the property, or the accuracy of the foregoing disclosure.

TMS No: 166-09-07-073

Grantee(s) Address: 105 Balzac Court, Cary, NC 27511

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said **DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000 AND JANET P. MERRITT, TRUSTEE, OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000, as tenants in common in equal shares**, his/her/its heirs, successors and assigns, forever.

AND the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, said premises unto the said Grantee, his/her/its heirs, successors and assigns, against itself and its successors and assigns, and any persons whomsoever lawfully claiming or to claim the same or any part thereof.

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ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE(S): The Grantee(s) by acceptance and execution of this General Warranty Indenture Deed acknowledge that this conveyance is subject to the provisions of the aforesaid Covenants.

WITNESS the Grantor's Hand and Seal this 31st day of December, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

VISTA DEL MAR CONDOMINIUMS, LLC,
a South Carolina limited liability company
By: Grande Dunes Development Company, LLC
Its: Member Manager
By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Name: Tony K. Cox
Title: Chief Real Estate Officer

Attest: _____
Name: Teeny Horak
Title: Chief Development Officer

Instrument#: 2007000185146, DEED BK: 3304 PG: 2098 DOCTYPE: 001 12/31/2007 at 12:45:08 PM, 4 OF 6 COUNTY STAMPS: $1787.50 STATE STAMPS: $4225.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 31st day of December, 2007, by **VISTA DEL MAR CONDOMINIUMS, LLC**, by Grande Dunes Development Company, LLC, its Member Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Tony K. Cox, its Chief Real Estate Officer as attested by Terry Horak, its Chief Development Officer

Ella W. Willis (SEAL)
Notary Public for South Carolina
My Commission Expires: 7-1-12
(AFFIX SEAL)

(Remainder of Page Intentionally Left Blank)

Instrument#: 2007000185146, DEED BK: 3304 PG: 2099 DOCTYPE: 001 12/31/2007 at 12:45:08 PM, 5 OF 6 COUNTY STAMPS: $1787.50 STATE STAMPS: $4225.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witness #1

Witness #2

ACKNOWLEDGED BY THE GRANTEE(S)

DENNIS M. MERRITT, TRUSTEE

JANET P. MERRITT, TRUSTEE

Date: December 31, 2007

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this 31st day of December, 2007 by **DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000 AND JANET P. MERRITT, TRUSTEE, OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000.**

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: 11/15/14
(AFFIX SEAL)

Instrument#: 2007000185146, DEED BK: 3304 PG: 2100 DOCTYPE: 001 12/31/2007 at 12:45:08 PM, 6 OF 6 COUNTY STAMPS: $1787.50 STATE STAMPS: $4225.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2019 Aug 09 12:35 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

STATE OF SOUTH CAROLINA **AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property being transferred is located at **122-101 Vista del Mar Lane, Myrtle Beach, SC**, bearing Horry County Tax Map Number 166-09-07-073, was transferred by **VISTA DEL MAR CONDOMINIUMS, LLC** to **DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000 AND JANET P. MERRITT, TRUSTEE, OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000, as tenants in common in equal shares** on December 31, 2007.

3. Check one of the following: ***The DEED is***
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c)_____ EXEMPT from the deed recording fee because (Exemption #___)
(Explanation if required_____.)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of **$1,624,900.00.**
(b)_____ The fee is computed on the fair market value of the realty which is $_____.
(c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES_____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
(a) $1,624,900.00 the amount listed in item 4 above
(b) $ 0.00 the amount listed in item 5 above (no amount place zero)
(c) $1,624,900.00 subtract line 6(b) from line 6(a) and place the result.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: **$6,012.50**.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: **GRANTOR**.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

VISTA DEL MAR CONDOMINIUMS, LLC
By: Grande Dunes Development Company, LLC
Its: Member Manager
By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Its: Chief Real Estate Officer

Attest: _____
Its: Chief Development Officer

Sworn to before me this
31st day of December, 2007.

_____
Notary Public for South Carolina
My Commission Expires: 7-1-12

ELECTRONICALLY FILED - 2019 Aug 13 10:54 AM - HORRY - COMMON PLEAS - CASE#2017CP2600424

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiff,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiffs,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet

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P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

TO: KENNETH R. MOSS and ROBERT E. LEE, Attorneys for Plaintiffs and Third-Party Defendants; and JAMES CHRISTOPHER CLARK, Attorney for Defendant Vista Del Mar Condominiums, LLC:

Defendants/Third-Party Plaintiffs Atlantic Development Company, LLC and Atlantic Coast Funding, LLC ("ADC" and "ACF") hereby submit this memorandum of law in support of their motion for summary judgment filed July 15, 2019.

I. Introduction

This case is a title dispute between the current record owner and a condominium association and its unit owners concerning a 2.58 Acre Tract and an easement once subject to a horizontal property regime.[1] Plaintiffs/Third Party Defendants assert the easement is void despite the homeowner's association conveying the easement and showing the easement on a recorded plat.

II. Facts

In 2003, the original developer submitted 5.853 acres of land and improvements to a Horizontal Property Regime named Vista Del Mar by recording an initial Master Deed. In June

[1] Plaintiffs' Amended Complaint describes the 2.58 Acre Tract as "Tract 1," and the easement as "Tract 2." Defendants ADC and ACF have separately moved for partial summary judgment with respect to the 2.58 Acre Tract. This memorandum in support of Defendants' motion for partial summary judgment concerns only the disputed easement.

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2006, the original developer conditionally submitted 5.00 acres of additional land and improvements to the terms of the Master Deed by recording the First Amendment to the Master Deed. In March 2009, by rights expressly granted to it in the Master Deed, the original developer removed the 2.58 Acre Tract from the Regime by recording the Fourth Amendment to the Master Deed and then a Corrective Fourth Amendment. The Corrective Fourth Amendment references a plat describing the 2.58 Acre Tract that was recorded in Plat Book 243 at Page 275, which shows an access easement and a street or road named Vista Del Mar Lane that border the 2.58 Acre Tract. *See* **Exhibit A** (Fourth Amendment) and **Exhibit B** (243/275 Plat).

In December 2013, the original developer recorded a deed conveying the 2.58 Acre Tract to GDMB Ocean, LLC ("GDMB Ocean") (the "GDMB Deed") and additionally assigned its rights as "Developer" under the Master Deed to GDMB Operations, LLC ("GDMB Operations") (the "GDMB Assignment"). In December 2014, Plaintiff Vista Del Mar Condominium Association ("VDMCA") conveyed an easement to GDMB Ocean, LLC over that area labeled "access easement" on the 243/275 Plat. *See* **Exhibit C** (Deeded Easement). GDMB later sold and transferred title to the 2.58 Acre Tract and the easement to ADC, along with other property. ADC then gave a mortgage on the property to ACF as security for a promissory note.

In 2017, Plaintiffs initiated this action and raised five claims in their complaint: 1) quiet title; 2) declaratory judgment; 3) equitable title; 4) equitable easement appurtenant; and 5) servitude appurtenant. ADC and ACF filed an answer to Plaintiffs' complaint in which ADC asserted counterclaims for a declaratory judgment. ADC and ACF now seek summary judgment in their favor on each of Plaintiffs' claims regarding the easement.

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III. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

IV. ANALYSIS

The parties dispute whether the access easement exists, which is a question of fact in a law action. *See, e.g., Smith v. Commissioners of Pub. Works of City of Charleston*, 312 S.C. 460, 465, 441 S.E.2d 331, 334 (Ct. App. 1994). However, the parties do not dispute any relevant facts—only how the law applies to the undisputed facts. As explained below, ADC, as owner of the 2.58 Acre Tract, holds a valid easement that Plaintiffs/Third-Party Defendants may not deny, and summary judgment should be granted in favor of ADC and ACF on the easement issue.

S.C. Code § 27-31-70 does not restrict easements.

Although Plaintiff VDMCA conveyed an express easement that was properly recorded to ADC's predecessor-in-title, Plaintiffs/Third-Party Defendants assert the easement is void pursuant to S.C. Code § 27-31-70. However, an easement is not a division of property under the statute.

Section 27-31-70 provides "[t]he common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership.

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Any covenant to the contrary shall be void." However, "[a]n easement is a right which one person has to use the land of another for a specific purpose[] and gives no title to the land on which the servitude is imposed." *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582 (2009) (quoting *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971)). "An easement is therefore not an estate in lands in the usual sense." *Id.*

South Carolina law is clear that easements are not a division of property because they do not convey title. In fact, easements are usage rights that may be of a permanent character and run to the land (i.e., an easement appurtenant). In *Douglas*, the South Carolina Supreme Court held a reserved easement did not cut down a fee simple title conveyed by deed because "the easement in . . . did not create an estate in the lands affected but only reserved a joint right to use the driveway." *Douglas*, 256 S.C. at 445, 182 S.E.2d at 722. Like *Douglas*, the access easement in this case conveyed a right to use a road over the property.

Accordingly, § 27-31-70 does not apply to easements because they are not "divisions or partitions" of property under South Carolina law.

Implied Easement by Plat

Multiple deeds conveying the 2.58 Acre Tract reference the plat showing the access easement. In Plat Book 243 at Page 275, the recorded plat identifies the 2.58 Acre Tract and the adjoining access easement. The fourth amendment to the Master deed, *see* Exhibit A, and the "Restated and Amended Easement," *see* Exhibit C, each reference the plat showing the easement. Accordingly, either deed created an implied easement as a matter of law.

An easement arises by implication where property is conveyed and an adjoining street is referenced in a plat, even though the deed is silent. *See Gooldy v. The Storage Center-Platt Springs*, LLC, 422 S.C. 332, 811 S.E.2d 779 (2018). A conveyance of land that references a map depicting

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streets conveys to the purchaser, as a matter of law, a private easement by implication with respect to those streets, whether or not there is a dedication to public use. *McAllister v. Smiley*, 301 S.C. 10, 389 S.E.2d 857 (1990); *Cason v. Gibson*, 217 S.C. 500, 61 S.E.2d 58 (1950). As between an owner who has conveyed lots according to a plat and the grantee, the dedication of a private easement is complete when the conveyance is made. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *see also Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965) (holding the purchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots were purchased and as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities.).

Here, there is no question that VDMC removed the 2.58 Acre Tract by deed, which referenced a plat showing the access easement. *See* Exhibits A & B. Moreover, there is no dispute VDMCA conveyed an easement by deed and referenced a plat showing the access road easement. *See* Exhibit C. An easement was created as a matter of law based on the plat showing the access road. In fact, language in the deed attached as Exhibit C stated "in conjunction with the removal of the Benefitted Parcel from the Master Deed and recordation of the Plat [book 243 at page 275], an access easement was granted for the benefit of the [2.58 Acre Tract] . . . ." Accordingly, the deeded easement attached as Exhibit C—titled "Amended and Restated Easement Agreement"—intended to confirm what had been created by the deed removing the 2.58 Acre Tract: that the 2.58 Acre Tract benefitted from an implied easement over the access road shown on the plat. *See* Exhibit B (plat showing the 2.58 Acre Tract and the Access Road). Accordingly, both the Fourth

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Amendment and the deeded easement contained the necessary elements to create an implied easement as a matter of law because both referenced the plat showing the easement.

Estoppel by Deed

Additionally, Plaintiffs/Third-Party Defendants are estopped from contesting the easement because a party may not challenge the validity of its own deed.

"Estoppel by deed precludes a party to a deed from asserting as against the other any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it." *See generally, Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000); *Hipps v. Hipps*, 288 S.C. 564, 568, 343 S.E.2d 669, 672 (Ct. App. 1986); 7 S.C. Jur. *Estoppel and Waiver* § 7.

As previously stated, VDMCA conveyed an access easement by deed and now it seeks to challenge its own deed. However, South Carolina law does not allow a party to a deed to challenge its own deed. In *Hipps*, the S.C. Court of Appeals held that several siblings could not challenge a sibling's widow's right to property because the siblings previously had deeded all of their interest to the disputed parcel to the deceased sibling. Effectively, a prior deed granting all of the siblings' interest in the disputed tract to another barred them from contesting the deed when the property went to a third party.

The *Hipps* facts are analogous to the facts in this case: VDMCA conveyed an easement, which ultimately came by conveyance to ADC and ACF, and VDMCA now asserts that its conveyance of the easement was void. Like *Hipps*, VDMCA is equitably estopped from contesting its own deed.

Moreover, Plaintiffs/Third-party Defendants are equitably estopped because VDMCA acted on their behalf, and they are therefore bound by VDMCA's acts.

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Equitable Estoppel

Moreover, Plaintiffs/Third-Party Defendants are equitably estopped from disputing the easement because Plaintiff VDMCA[2] conveyed the easement to ADC's predecessor in title.

"The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts." As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially." *See, e.g., Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

In this case, VDMCA indisputably conveyed an access easement that it now seeks to deny; the party receiving the easement believed it possessed the easement and acted upon that belief by subsequently conveying the easement; and VDMCA had at least constructive notice of the statute, which was in effect when the easement was conveyed. Moreover, ADC and ACF did not have knowledge that Plaintiffs/Third-Party Defendants would contest the validity of the VDMCA easement deed, relied upon that deed, and purchased property including the access easement. These facts are exactly those for equitable estoppel—when a party relies on a representation and then the other party seeks to reverse its prior representation.

[2] The other Plaintiffs and Third-Party Defendants are all members of Plaintiff VDMCA.

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Waiver

Plaintiffs/Third-Party Defendants waived their rights to contest the easement because they possessed constructive knowledge of the easement as of the Fourth Amendment in 2009, when the 2.58 Acre Tract was removed from the regime and the deed referenced a plat showing the access easement and the 2.58 Acre Tract.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended. The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387–88 (1992).

Plaintiffs/Third-Party Defendants, or their predecessors in title, have delayed challenging the easement since it was created in 2009 and therefore have waived their claim.

CONCLUSION

There are no genuine issues of material fact. Accordingly, this Court should grant ADC's and ACF's motion for partial summary judgment on Plaintiffs' Complaint and the Third-Party Defendants' claims related to the easement at issue and on ADC's counterclaim and third-party for an implied easement.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
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ATTORNEYS FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

August 13, 2019
Columbia, South Carolina

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EXHIBIT A

Instrument#: 2009000035880, DEED BK: 3394 PG: 1718 DOCTYPE: 069 04/06/2009 at 11:11:57 AM, 1 OF 5 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct 1660008136

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STATE OF SOUTH CAROLINA	)	CORRECTIVE FOURTH AMENDMENT TO
	)	MASTER DEED OF THE VISTA DEL MAR
COUNTY OF HORRY	)	HORIZONTAL PROPERTY REGIME

THIS CORRECTIVE FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME ("the Corrective Fourth Amendment") is made this 3rd day of April, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

W I T N E S S E T H:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded December 4, 2003, in the Office of the Register of Deeds for Horry County (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime (the "Regime") upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14, Sections 14.2(b) and 14.7 of the Master Deed, the Developer retained the unilateral right to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the Regime and from the application of this Master Deed; and

WHEREAS, pursuant to the Fourth Amendment to Master Deed of The Vista Del Mar Horizontal Property Regime dated March 20, 2009 and recorded March 25, 2009 at the ROD in Deed Book 3392 at Page 3120 (the "Original Fourth Amendment"), Developer amended the Master Deed removing a subdivided portion of the Common Area from the Regime and from the application of the Master Deed, said subdivided portion being more particularly described in that certain plat referenced in the Original Fourth Amendment's legal description and recorded at the ROD in Plat Book 243 at Page 215 (the "Original Plat"); and

WHEREAS, the Original Plat contained an error omitting one of the calls and has been corrected and revised by that certain Corrective Plat (defined in Exhibit "A" attached hereto) accurately depicting the subdivided portion of Common Area removed from the Regime and from the application of the Master Deed; and

WHEREAS, the Developer desires to amend the Master Deed by recording this Corrective Fourth Amendment replacing the legal description in Exhibit "A" with the attached Exhibit "A" legal description referencing the Corrective Plat.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its unilateral right pursuant to Sections 14.2(b) and 14.7 of the Master Deed to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portions from the Regime and from the application of

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this Master Deed, said subdivided portions being identified on the Corrective Plat described in Exhibit "A" as "Parcel 1", and does further declare as follows:

I. Definitions. Unless specifically defined herein, the capitalized words in this Corrective Fourth Amendment shall have the same meanings as set forth in the Master Deed.

II. Amendment of Exhibit "A" for Removal of Land. Exhibit "A" to the Master Deed, as amended, is hereby deleted in its entirety and replaced by Exhibit "A" attached hereto and made a part hereof by reference.

III. Conflict. If any term or condition of this Corrective Fourth Amendment conflicts with any term or condition of the Master Deed, the terms and conditions of this Corrective Fourth Amendment shall control. Otherwise, the terms and conditions of the Master Deed shall remain in full force and effect.

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IN WITNESS WHEREOF, the Developer has caused this CORRECTIVE FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Name: DEREK KRIDER
Title: President

Joella W. Willis

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Derek Krider, its President.

Joella W. Willis (SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

PPAB 1550465v1

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EXHIBIT "A"

Legal Description

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Tract A" comprising 5.853 acres, more or less, on a survey entitled, "Boundary Survey of a Portion of the Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc.", prepared by Survey Technology, Inc., dated February 25, 2002 and recorded in the ROD Office for Horry County in Plat Book 183 at Page 72, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

AND,

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising of 5.00 acres, more or less, on a survey entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

SAVING AND EXCEPTING THEREFROM,

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 1, 112,185 sq. ft., 2.58 acres" on a plat entitled "Subdivision Plat of Tax Parcel 166-00-08-092, Vista del Mar, Grande Dunes, Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Associated Land Surveyors, dated February 19, 2009, revised March 31, 2009, and recorded in Plat Book 243 at Page 275, in the ROD Office for Horry County, South Carolina (the "Corrective Plat"), said parcel having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid Corrective Plat, which is incorporated herein by reference.

The within conveyance is subject to all easements of record and/or upon the ground.

This being a portion of the premises conveyed to Vista Del Mar Condominiums, LLC by the following deeds: 1) Deed from Grande Dunes Development Company, LLC dated April 30, 2002 and recorded April 30, 2002 in the Office of the Register of Deeds for Horry County in Deed Book 2476 at Page 500; 2) Deed from Grande Dunes Development Company, LLC dated July 14, 2004 and recorded July 15, 2004 in the Office of the Register of Deeds for Horry

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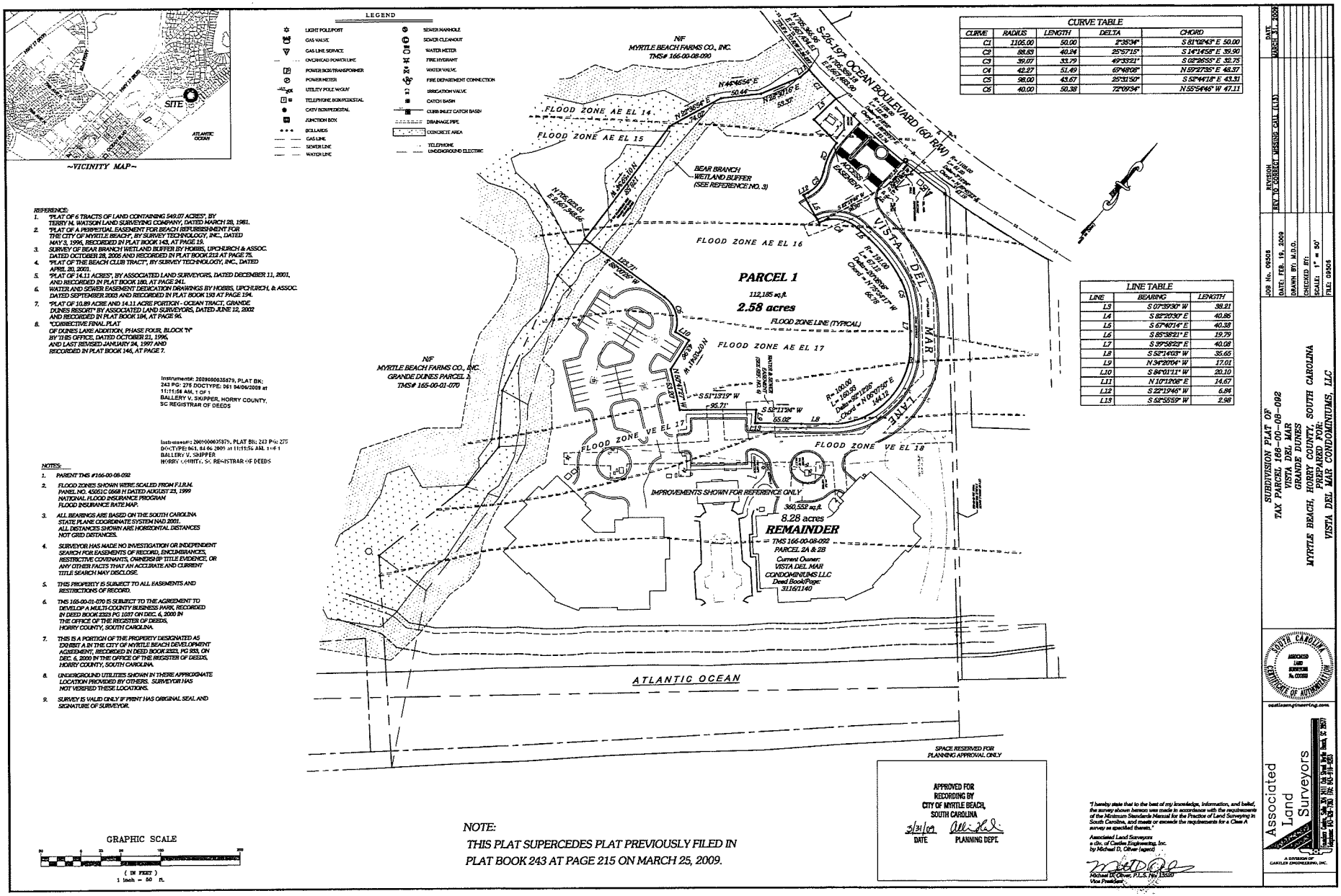
County in Deed Book 2761 at Page 829; and 3) Corrective Deed from Grande Dunes Development Company, LLC dated June 20, 2006 and recorded June 21, 2006 in the Office of the Register of Deeds for Horry County in Deed book 3116 at Page 1140.

Portion of TMS #166-00-08-092

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EXHIBIT B

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REFERENCE:
1. "PLAT OF 6 TRACTS OF LAND CONTAINING 549.07 ACRES", BY TERRY M. WATSON LAND SURVEYING COMPANY, DATED MARCH 28, 1981.
2. "PLAT OF A PERPETUAL EASEMENT FOR BEACH REFURBISHMENT FOR THE CITY OF MYRTLE BEACH", BY SURVEY TECHNOLOGY, INC., DATED MAY 3, 1996, RECORDED IN PLAT BOOK 143, AT PAGE 19.
3. SURVEY OF BEAR BRANCH WETLAND BUFFER BY HOBBS, UPCHURCH & ASSOC. DATED OCTOBER 28, 2005 AND RECORDED IN PLAT BOOK 213 AT PAGE 75.
4. "PLAT OF THE BEACH CLUB TRACT", BY SURVEY TECHNOLOGY, INC., DATED APRIL 20, 2001.
5. "PLAT OF 14.11 ACRES", BY ASSOCIATED LAND SURVEYORS, DATED DECEMBER 11, 2001, AND RECORDED IN PLAT BOOK 180, AT PAGE 241.
6. WATER AND SEWER EASEMENT DEDICATION DRAWINGS BY HOBBS, UPCHURCH, & ASSOC. DATED SEPTEMBER 2003 AND RECORDED IN PLAT BOOK 193 AT PAGE 194.
7. "PLAT OF 10.89 ACRE AND 14.11 ACRE PORTION - OCEAN TRACT, GRANDE DUNES RESORT" BY ASSOCIATED LAND SURVEYORS, DATED JUNE 12, 2002 AND RECORDED IN PLAT BOOK 184, AT PAGE 96.
8. "CORRECTIVE FINAL PLAT OF DUNES LAKE ADDITION, PHASE FOUR, BLOCK 'N' BY THIS OFFICE, DATED OCTOBER 21, 1996, AND LAST REVISED JANUARY 24, 1997 AND RECORDED IN PLAT BOOK 146, AT PAGE 7.

Instrument#: 2009060035879, PLAT BK: 243 PG: 275 DOCTYPE: 061 04/06/2009 at 11:11:56 AM, 1 OF 1
BALLERY V. SHIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Instrument#: 2009060035875, PLAT BK: 243 PG: 275 DOCTYPE: 061, 04/06/2009 at 11:11:56 AM, 1 OF 1
BALLERY V. SHIPPER
HORRY COUNTY, SC REGISTRAR OF DEEDS

NOTES:
1. PARENT TMS #166-00-08-092
2. FLOOD ZONES SHOWN WERE SCALED FROM F.I.R.M. PANEL NO. 45051C 0568 H DATED AUGUST 23, 1999 NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP.
3. ALL BEARINGS ARE BASED ON THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM NAD 2001. ALL DISTANCES SHOWN ARE HORIZONTAL DISTANCES NOT GRID DISTANCES.
4. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
5. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
6. TMS 165-00-01-070 IS SUBJECT TO THE AGREEMENT TO DEVELOP A MULTI-COUNTY BUSINESS PARK, RECORDED IN DEED BOOK 2323 PG 1037 ON DEC. 6, 2000 IN THE OFFICE OF THE REGISTER OF DEEDS, HORRY COUNTY, SOUTH CAROLINA.
7. THIS IS A PORTION OF THE PROPERTY DESIGNATED AS EXHIBIT A IN THE CITY OF MYRTLE BEACH DEVELOPMENT AGREEMENT, RECORDED IN DEED BOOK 2323, PG 933, ON DEC. 6, 2000 IN THE OFFICE OF THE REGISTER OF DEEDS, HORRY COUNTY, SOUTH CAROLINA.
8. UNDERGROUND UTILITIES SHOWN IN THERE APPROXIMATE LOCATION PROVIDED BY OTHERS. SURVEYOR HAS NOT VERIFIED THESE LOCATIONS.
9. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL AND SIGNATURE OF SURVEYOR.

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD
C1	1105.00	50.00	2°35'34"	S 81°16'43" E 50.00
C2	88.53	40.94	25°57'15"	S 14°14'58" E 39.90
C3	39.07	33.79	49°33'21"	S 02°26'55" E 32.75
C4	42.27	51.49	69°48'08"	N 59°27'35" E 48.37
C5	98.00	43.67	25°31'50"	S 52°44'18" E 43.31
C6	40.00	50.38	72°09'34"	N 55°54'46" W 47.11

LINE TABLE

LINE	BEARING	LENGTH
L3	S 07°39'30" W	38.21
L4	S 82°20'30" E	40.86
L5	S 67°40'14" E	40.38
L6	S 85°58'21" E	19.79
L7	S 39°58'23" E	40.08
L8	S 52°14'03" W	35.65
L9	N 34°20'04" W	17.01
L10	S 84°01'11" W	20.10
L11	N 10°12'08" E	14.67
L12	S 22°19'46" W	6.84
L13	S 52°55'59" W	2.98

NOTE:
THIS PLAT SUPERCEDES PLAT PREVIOUSLY FILED IN PLAT BOOK 243 AT PAGE 215 ON MARCH 25, 2009.

"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."

Associated Land Surveyors
a div. of Cartles Engineering, Inc.
by Michael D. Oliver (agent)

Michael D. Oliver, P.L.S. No. 13520
Vice President

DATE: MARCH 31, 2009
REVISION: REV. TO CORRECT MISSING CAVA (LLC)
JOB No. 09308
DATE: FEB. 19, 2009
DRAWN BY: M.D.O.
CHECKED BY:
SCALE: 1" = 50'
FILE: 09308

SUBDIVISION PLAT OF
TAX PARCEL 166-00-08-092
VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR:
VISTA DEL MAR CONDOMINIUMS, LLC

SOUTH CAROLINA
ASSOCIATED LAND SURVEYOR No. 00000
CERTIFICATE OF AUTHORIZATION

carteslawengineering.com

Associated Land Surveyors
A DIVISION OF CARTLES ENGINEERING, INC.

0745

Defendants ADC & ACF_01475

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EXHIBIT C

Instrument#: 2014000145738, DEED BK: 3784 PG: 920 DOCTYPE: 069 12/10/2014 at 01:11:07 PM, 1 OF 9 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AMENDED AND RESTATED EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT ("Agreement") is entered into by and between VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC., a South Carolina nonprofit corporation (hereinafter referred to as the "Association") and GDMB OCEAN, LLC, a Delaware limited liability company (hereinafter referred to as "GDMB") as of December 9, 2014.

WHEREAS, Vista Del Mar Condominiums, LLC ("Vista Del Mar") as owner and developer of certain property identified as Parcels 2A and 2B on that certain plat entitled "COMBINATION PLAT OF PARCELS 2A AND 2B, CITY OF MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Robert L. Bellamy & Associates, Inc., dated November 12, 2004, and recorded May 30, 2006 in Plat Book 214, Page 102 in the Office of the Register of Deeds for Horry County subjected the property to the terms of the Master Deed of The Vista Del Mar Horizontal Property Regime ("Master Deed") recorded December 4, 2003, in Deed Book 2672, Page 467 in the Office of the Register of Deeds for Horry County;

WHEREAS, pursuant to the terms of the Fourth Amendment to the Master Deed recorded March 25, 2009 in Deed Book 3392, Page 3120 and the Corrective Fourth Amendment to Master Deed recorded April 6, 2009 in Deed Book 3394, Page 1718, Vista Del Mar amended the Master Deed to remove a portion of the property identified and shown as "Parcel 1" (the "Benefitted Parcel") as further described in Exhibit A attached hereto and identified on a plat entitled "SUBDIVISION PLAT OF TAX PARCEL 166-00-08-092 VISTA DEL MAR, GRANDE DUNES, MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors, dated March 31, 2009, and recorded April 6, 2009 in Plat Book 243, Page 275 in the Office of the Register of Deeds for Horry County (hereinafter referred to as the "Plat");

WHEREAS, in conjunction with the removal of the Benefitted Parcel from the Master Deed and recordation of the Plat, an access easement was granted for the benefit of the Benefitted Parcel in order to allow pedestrian and vehicular ingress, egress, regress and access from the Benefitted Parcel to Ocean Boulevard over that certain portion of the property identified as "8.28 acres REMAINDER" on the Plat ("Condominium Parcel") through the area identified as "ACCESS EASEMENT" on the Plat and as further described in Exhibit B attached hereto ("Access Easement Area");

WHEREAS, Vista Del Mar conveyed the Benefitted Parcel to GDMB as evidenced by that certain Deed dated December 19, 2013, and recorded December 20, 2013 in Deed Book 3705, Page 397 in the Office of the Register of Deeds for Horry County which Deed benefits from all easements of record including the Access Easement as shown on the Plat;

WHEREAS, the parties hereto desire to restate and modify said Access Easement as provided herein.

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NOW, THEREFORE, in consideration of the sum of Ten and 00/100 ($10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GDMB and the Association agree as follows:

1. Grant of Easement. The Association has granted, bargained, sold and released, and by these presents does hereby grant, bargain, sell and release unto the owners of the Benefitted Parcel (the "BP Owner"), and for the benefit of the Benefitted Parcel, a non-exclusive, perpetual, assignable, transmissible, appurtenant, and forever transferable easement (the "Easement") on, over, within, through and across that certain portion of the Condominium Parcel more particularly described and shown as "ACCESS EASEMENT" on the Plat for the purpose of providing pedestrian and vehicular ingress, egress, regress and access to and from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel. The BP Owner shall have the right, but not the obligation to construct a pedestrian path on, over, within, through and across the Condominium Parcel in order to provide pedestrian ingress, egress, regress and access to and from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel.

2. Use of the Access Easement Area. The use of the Access Easement Area will be non-exclusive and for the use and benefit of the parties, their respective successors, successors-in-title, assigns, and such agents, guests, invitees, licensees, employees, servants and contractors.

3. Conditions, Restrictions and Reservations. The rights granted pursuant hereto are granted and conveyed subject to the following conditions, restrictions and reservations: each of the parties hereto, including its respective successors, successors-in-title, assigns, agents, contractors, guests, residents, invitees, employees, mortgagees, and licensees of the parties, shall exercise its rights under this Agreement in a manner which (i) does not unreasonably and materially disrupt or interfere with the rights of the other parties to use and enjoy their respective properties, (ii) does not unreasonably and materially disrupt or interfere with the rights of the other parties to exercise their rights under this Agreement for purposes which are consistent with those provided herein for facilitating the orderly operation of the respective properties, and (iii) complies with all applicable laws, rules, regulations, codes, ordinances, zoning codes, building codes and orders of each governmental authority having jurisdiction over the parties.

4. Alteration, Change, Relocation. The location of the Access Easement Area may not be altered, changed, or relocated without the prior written consent of the BP Owner or its successors and assigns. Any such alteration, change or relocation of the Access Easement Area shall not materially compromise the functionality of such easement and the party proposing any such alteration, change or relocation shall pay all expenses related to any such alteration, change or relocation.

5. Maintenance and Costs. At such time as the Benefitted Parcel is developed, the BP Owner shall be responsible for payment of fifty percent (50%) of the maintenance costs for the Access Easement Area, which maintenance costs shall first be approved by the BP Owner in writing. In the event a pedestrian path is constructed, the BP Owner shall be responsible for all reasonable costs associated with construction and maintenance of the pedestrian path from Ocean Boulevard across the Condominium Parcel to the Benefitted Parcel including the construction and maintenance of a gate to control access from Ocean Boulevard to said pedestrian path.

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Further, in the event the Benefitted Parcel is developed for any use other than a residential use, and the Association deems it appropriate to relocate its vehicular access entry gate from within the Access Easement Area to a portion of Vista Del Mar Lane outside the Access Easement Area, the BP Owner will pay all reasonable costs associated with relocation of the vehicular access entry gate to a location on the Condominium Parcel requested by the Association, provided such location does not interfere with the use of the Access Easement by the Benefitted Parcel.

6. No Merger of Easements. No present or future common ownership of the Benefitted Parcel or the Condominium Parcel shall be deemed a merger which would have the legal effect of extinguishing the Access Easement created by this Agreement. The Access Easement created hereby shall continue in effect despite any present or future common ownership of the servient and dominant estates unless and until terminated or otherwise modified as provided herein.

7. Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

9. Severability. If any term, covenant or condition of this Agreement or the application thereof to either party shall be held to be invalid or unenforceable, then the remaining terms, covenants and conditions of this Agreement shall not be affected, and shall be enforceable to the fullest extent permitted by law.

10. Binding Effect. This Agreement shall run with the land and the provisions of this Agreement shall be binding upon and enforceable against and shall inure to the benefit of parties, and their respective successors, successors-in-title and assigns. The easements and rights created by this Agreement are appurtenant. If for any reason the easements and rights created by this Agreement shall not be interpreted as appurtenant easements, such easements shall be deemed to be commercial easements in gross and assigned to each respective successor-in-title. Each party agrees that on conveyance of all or any part of the Benefitted Parcel or the Condominium Parcel, the subsequent grantee, by accepting such conveyance will thereby become a new party to and be bound by this Agreement.

SIGNATURE PAGES TO FOLLOW

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IN WITNESS WHEREOF, the parties have hereunto set their Hands and Seals the date and year first above mentioned.

WITNESSES:

VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC.,
a South Carolina nonprofit corporation

By: Robert R. Blackmon

Its: VICE PRESIDENT

STATE OF ~~SOUTH~~ North CAROLINA)
)
COUNTY OF ~~HORRY~~ Wake)

ACKNOWLEDGMENT

The within instrument was acknowledged before me this 9 day of December, 2014, by Vista Del Mar Condominium Association, Inc., a South Carolina nonprofit corporation, by R. Ryan Blackmon its Vice president

Notary Public for ~~South Carolina~~ North Carolina (SEAL)
My Commission Expires: 2.8.19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

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IN WITNESS WHEREOF, the parties have hereunto set their Hands and Seals the date and year first above mentioned.

WITNESSES:

GDMB OCEAN, LLC,
a Delaware limited liability company

By: _____

Its: Steven Vining
~~Operating Member~~
Representative

STATE OF North Carolina)
)
COUNTY OF Wake)

ACKNOWLEDGMENT

The within instrument was acknowledged before me this 9 day of December, 2014, by GDMB Ocean, LLC, a Delaware limited liability company, by Steven Vining, its operating member representative.

_____ (SEAL)
Notary Public for North Carolina
My Commission Expires: 2-8-19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

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EXHIBIT "A"

BENEFITTED PARCEL

All that certain portion, piece, parcel or tract of land, situate, lying and being in the City of Myrtle Beach, Horry County, South Carolina, more particularly shown and designated as "PARCEL 1" on a plat entitled "SUBDIVISION PLAT OF TAX PARCEL 166-00-08-092 VISTA DEL MAR, GRANDE DUNES, MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors, dated March 31, 2009, and recorded April 6, 2009 in Plat Book 243, Page 275 in the Office of the Register of Deeds for Horry County, South Carolina ("Corrective Plat"), said parcel having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid Corrective Plat, which is incorporated herein by reference.

This being the same property conveyed to GDMB Ocean, LLC from Vista Del Mar Condominiums, LLC by Deed dated December 19, 2013 and recorded December 20, 2013 in Deed Book 3705, at Page 3087 in the Register of Deeds Office for Horry County.

TMS #: 166-00-08-136

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EXHIBIT "B"

DESCRIPTION OF A
ACCESS EASEMENT TO
PARCEL SIX, OCEAN TRACT 7, GRANDE DUNES
(FORMALLY SHOWN AS PARCEL 1, PLAT BOOK 243 AT PAGE 275)

DESCRIPTION of a Access Easement located in the Township of Myrtle Beach, County of Horry, State of South Carolina in accordance with a plat entitled Subdivision Plat of Tax Parcel 166-00-08-092, Vista Del Mar, Grande Dunes, by Associated Land Surveyors dated February 19, 2009, last revised March 31, 2009 and recorded in Plat Book 243 at Page 275, Horry County South Carolina.

Said Access Easement being more fully described as follows:

Beginning AT A ½" Iron Pipe, said pipe being the common corner with Parcel 1 GDMB Ocean LLC and the property of Vista Del Mar Condominiums, and located on the Southern public right of way of North Ocean Boulevard and having a South Carolina State Plane Coordinate Value of N 705,359.18 E 2,667,483.90 (NAD 83-2011),

Thence with the Southern public right of way of North Ocean Boulevard, along a curve to the left having a radius of 1105.00 feet, a central angle of 06°18'55", the chord of which bears South 85°29'57" East for a distance of 121.74', for an arc length of 121.80' to a point;

Thence across the property of Vista Del Mar Condominiums, South 04°51'40" West for a distance of 37.31 feet to a point;

Thence continuing across the property of Vista Del Mar Condominiums and private Vista Del Mar Lane, South 22°19'46" West for a distance of 96.90 feet to a ½" iron pipe;

Thence with the property of GDMB Ocean LLC, Vista Del Mar Condominiums and Vista Del Mar Lane for the next six (6) calls, (1) North 67°40'14" West for a distance of 40.38 feet to a ½" iron pipe;

Thence, (2) North 22°19'46" East for a distance of 6.84 feet to a 1/2" iron pipe;

Thence, (3) along a curve to the left with a radius of 39.07 feet, a central angle of 49°33'21", the chord of which bears South 02°26'55" East for a distance of 32.75 feet; for an arc length of 33.79 feet to a ½" iron pipe;

Thence, (4) along a reverse curve to the right having a radius of 88.83 feet, a central angle of 25°57'15", the long chord of which bears South 14°14'58" East for a distance of 39.90 feet, for an arc length of 40.24 feet to a ½" iron pipe;

Thence, (5) North 82°20'30" West for a distance of 40.86 feet to a 1/2" iron pipe;

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Thence, (6) North 07°39'30" East for a distance of 38.21 feet to a 1/2" iron pipe; the **POINT OF BEGINNING.**

Instrument#: 2014000145738, DEED BK: 3784 PG: 928 DOCTYPE: 069 12/10/2014 at 01:11:07 PM, 9 OF 9 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2019 Aug 13 10:54 AM - HORRY - COMMON PLEAS - CASE#2017CP2600424

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The Easement being transferred is located in Myrtle Beach, South Carolina, bearing Horry County Tax Map Number 166-00-08-092 (a portion) and was transferred by Vista Del Mar Condominium Association, Inc. to GDMB Ocean, LLC on December ___, 2014.

3. Check one of the following: The deed is

   (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

   (c) XXX exempt from the deed recording fee because (See Information section of affidavit); Exemption Number 1 - Transfer of Realty Less Than $100.00. (If exempt, please skip items 4 – 7, and go to item 8 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

   (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.

   (b) _____ The fee is computed on the fair market value of the realty which is _____.

   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes ____ or NO ____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes'" the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

   (a) Place the amount listed in item 4 above here: _____
   (b) Place the amount listed in item 5 above here: _____
   (If no amount is listed, place zero here.)
   (c) Subtract line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line6(c) above and the deed recording fee due is: $0.00.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

VISTA DEL MAR CONDOMINIUM ASSOCIATION, INC., a South Carolina nonprofit corporation

By: _____

Name: Robert Ryan Blackmon

Its: Vice President

SWORN to before me this 9th day of December, 2014

Notary Public for North Carolina

My Commission Expires: 2.8.19

ANN KATHRYN HICKS DANIELS NOTARY PUBLIC WAKE COUNTY, NC

ELECTRONICALLY FILED - 2019 Sep 04 9:49 AM - HORRY - COMMON PLEAS - CASE#2017CP2600424

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiffs,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiffs,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

NOTICE OF FILING

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth;

ELECTRONICALLY FILED - 2019 Sep 04 9:49 AM - HORRY - COMMON PLEAS - CASE#2017CP2600424

Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

TO: KENNETH R. MOSS, ESQUIRE AND ROBERT E. LEE, ESQUIRE, ATTORNEYS FOR PLAINTIFFS AND THIRD-PARTY DEFENDANTS; and JAMES CHRISTOPHER CLARK, ESQUIRE, ATTORNEY FOR DEFENDANT VISTA DEL MAR CONDOMINIUMS, LLC:

PLEASE TAKE NOTICE that Defendants/Third-Party Plaintiffs Atlantic Development Company, LLC and Atlantic Coast Funding, LLC, through their undersigned counsel, hereby file the following documents provided by the undersigned to The Honorable Larry B. Hyman, Jr., during the motion hearing on August 13, 2019, in the above-captioned matter.

1. Timeline of Undisputed Facts and Compilation of Applicable Statutes attached hereto and marked as **Exhibit 1**; and

2. Plat Book 243 at Page 275 attached hereto and marked as **Exhibit 2.**

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2019 Sep 04 9:49 AM - HORRY - COMMON PLEAS - CASE#2017CP2600424

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CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos
Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com
Email: harrydixon@callisontighe.com

ATTORNEYS FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

September 4, 2019

ELECTRONICALLY FILED - 2019 Sep 04 9:49 AM - HORRY - COMMON PLEAS - CASE#2017CP260424

EXHIBIT

1

ELECTRONICALLY FILED - 2019 Sep 04 9:49 AM - HORRY - COMMON PLEAS - CASE#2017CP260424

Vista Del Mar Condominium Association et al. vs. Atlantic Development Company, LLC and Atlantic Coast Funding, LLC et al.,
Case No. 2017-CP-26-0424

TIMELINE OF UNDISPUTED FACTS AND COMPILATION OF APPLICABLE STATUTES

12/4/2003 Master Deed of Vista Del Mar Horizontal Property Regime is recorded by Vista Del Mar Condominiums, LLC ("VDMC") as Developer.

- Provided for developing up to six total buildings with a maximum of 250 units. *See* § 14.2 "at any time during the Transition Period, the Developer will be entitled to expand the Regime in five additional phases to a total of two hundred fifty (250) Units . . ."

- Submitted 5.853 acres to the Regime, a portion of which included the 2.58 Acre Tract, the property at issue in this case. The plats and plans submitted therewith do not state, describe, or show, graphically or otherwise, that any part of the 2.58 Acre Tract is a common element as required by S.C. Code § 27-31-110.

- Describes Building 1 consisting of 25 Units located in an eight-story building. *See* §14.1 "The Regime as initially constituted (sometimes referred to herein as "Phase I") is composed of Building Number 1 which contains twenty-five (25) Units, as well as the Common Areas thereof, all as described and depicted on Exhibit "B" attached hereto."

- Sets forth numerous times and in numerous places VDMC's right as Developer to withdraw property, including the very first page, which provides in part:

  NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon . . . to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976), and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME, subject to the following, **INCLUDING BUT NOT LIMITED TO, THE RIGHT TO WITHDRAW UNIMPROVED PORTIONS OF THE LAND PURSUANT TO SECTION 14.2(b).** (emphasis in the original)

- Section 14.2(b) explained how property would be withdrawn:

  (b) Contraction; Withdraw of Unimproved Common Area.

  During the Transition Period, the Developer is entitled to **subdivide portions of the Common Area from the Project which are unimproved** with structures and **to remove the subdivided portion** upon the application of this

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Master Deed by filing one or more Amendments to this Master Deed (including amendments to the Exhibits). Solely, the Developer will execute an Amendment for itself and as attorney-in-fact for all Owners**.** An Amendment will be effective upon recording such Amendment in the ROD Office for Horry County. (emphasis added).

- Section 14.2(a) explained how property would be added:

  (a) Expansion; Conversion of Common Area.

  The Developer is entitled, but not obligated, **to expand the Regime during the Transition Period** by constructing additional Units on all or any portion of the Common Area and to submit said real property (or any portion thereof) and all improvements constructed thereon, to the Regime, from time to time, by filing one or more Amendments to this Master Deed . . . **Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD**.

- The Master Deed provides that no consent of the unit owners is required for the Developer to effect an expansion or contraction of the Regime.

  14.7 No Consent Required.

  Subject to the time limit set forth in Section 14.2 hereinabove, the Developer, its successors and assigns, **will have the absolute right to effect an expansion or contraction of the Regime** in accordance with this Section 14 and to file Amendments to this Master Deed without any action or consent on the part of any Owner or Mortgage holder . . . (emphasis added).

- Developer could exercise this unilateral right to withdraw property from the Regime during the "Transition Period," which the Master Deed defines as:

  [T]he time period commencing on the date of recording of the Master Deed and ending on the earlier of:

  1. December 31, 2017; or

  2. Three (3) months after conveyance in the ordinary course of Developer's business ninety-nine percent (99%) of the ***maximum number of Units to be contained in all phases of the Regime***, rounded down to the next whole number, to persons other than the developer; or

  3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to the Master Deed executed and filed of record by the Developer. (emphasis added).

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6/27/2006 First Amendment is recorded in which VDMC, the Developer, conditionally submitted 5.00 acres of additional land and improvements—a portion of which became the 2.58 Acre Tract—to the terms of the Master Deed. The First Amendment describes Building 2, consisting of forty-one 41 Units located in a 12-story Building. The First Amendment specifically provided that the land submitted "shall be **held, transferred, sold, conveyed**, given, donated, leased and occupied subject to the Master Deed . . ." (emphasis added). The First Amendment and the plats and plans submitted therewith do not state, describe, or show, graphically or otherwise, that any part of the 2.58 Acre Tract is a common element as required by S.C. Code § 27-31-110.

4/6/2009 VDMC records a Corrected Fourth Amendment removing the 2.58 Acre Tract from the Regime. It provides it was executed and recorded pursuant to Section 14.2(b) and 14.7 of the Master Deed, which sections are referenced above. The Fourth Amendment references a plat recorded in Plat Book 243 at Page 275 describing the 2.58 Acre Tract. That Plat shows an access easement to the 2.58 Acre Tract.

12/20/2013 VDMC conveys the 2.58 Acre Tract to GDMB Ocean, LLC ("GDMB Ocean") and assigns developer rights to GDMB Ocean.

11/7/2014 GDMB Ocean started the process to end the Transition Period by recording an amendment to the Master Deed, which voluntarily surrendered its authority as a class "B" member of the Association under the Master Deed. Under the provisions of the Master Deed related to the Transition Period, this meant the Transition Period would end in three months, or February 2015.

12/10/2014 GDMB Ocean records an Amended and Restated Easement on behalf of the Association conveying the easement created in Plat Book 243 at Page 275 to GDMB. It provides that "in conjunction with the removal of the [2.58 Acre Tract] from the Master Deed and recordation of the Plat, an access easement was granted for the benefit of the [2.58 Acre Tract] in order to allow pedestrian and vehicular ingress, egress, regress and access from the [2.58 Acre Tract] to Ocean Boulevard . . ."

2//7/2015 GDMB Ocean ends the Transition Period and unit owners take over control. The audited Financial Statements of the Association confirm the transition period ended on this date.

1/8/2016 GDMB Ocean sold and transferred title to the 2.58 Acre Tract, the Easement, and other property to Atlantic Development Company ("ADC"). ADC then gave a mortgage on the 2.58 Acre Tract to Atlantic Coast Funding as security for a promissory note.

1/25/2017 This lawsuit is filed.

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COMPILATION OF APPLICABLE STATUTES

SECTION 27-31-70. Common elements shall not be divided.

The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

SECTION 15-61-10. Partition is compellable between certain joint tenants and tenants in common; Determination if property is heirs' property.

(A) All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

SECTION 27-31-60. Property rights of apartment owner.

(a) **An 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**. 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 percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property.

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.

(b) The owner of any apartment embraced in the master deed and building plan shall have the right to require specific performance of any proposed common elements for recreational purposes set out in the master deed which are included in the next stage of the development that applies to recreational facilities in the event the additional stages of erection do not develop.

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SECTION 27-31-120. Designation of apartments on plans; conveyance or lease of apartment.

Each apartment must be designated, on the plans referred to in Section 27-31-110, by letter or number or other appropriate designation and any conveyance, lease, or other instrument affecting title to the apartment, which describes the apartment by using the letter or number followed by the words "in Horizontal Property Regime," is deemed to contain a good and sufficient description for all purposes. **Any conveyance or lease of an individual apartment is deemed to also convey or lease the *undivided interest* of the owner in the common elements, both general and limited, appertaining to the apartment without specifically or particularly referring to same**.

SECTION 27-31-20. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(f) "General common elements" means and includes:

(1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;

(2) The 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;

(3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;

(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;

(6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;

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(7) All 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;

(g) "Limited common elements" means and includes 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, finger piers, sanitary services common to the apartments of a particular floor, and the like;

SECTION 27-31-110. Plot plan and building plan.

There must be attached to the master deed or lease, at the time it is filed for record, 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.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
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ATTORNEYS FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

August 13, 2019
Columbia, South Carolina

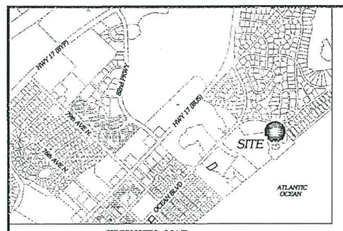
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EXHIBIT

2

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Defendants ADC & ACF_01475



~VICINITY MAP~

LEGEND

- LIGHT POLE/POST
- GAS VALVE
- GAS LINE SERVICE
- OVERHEAD POWER LINE
- POWER BOX/TRANSFORMER
- POWER METER
- UTILITY POLE W/GUY
- TELEPHONE BOX/PEDESTAL
- CATV BOX/PEDESTAL
- JUNCTION BOX
- BOLLARDS
- GAS LINE
- SEWER LINE
- WATER LINE
- SEWER MANHOLE
- SEWER CLEANOUT
- WATER METER
- FIRE HYDRANT
- WATER VALVE
- FIRE DEPARTMENT CONNECTION
- IRRIGATION VALVE
- CATCH BASIN
- CURB INLET CATCH BASIN
- DRAINAGE PIPE
- CONCRETE AREA
- TELEPHONE UNDERGROUND ELECTRIC

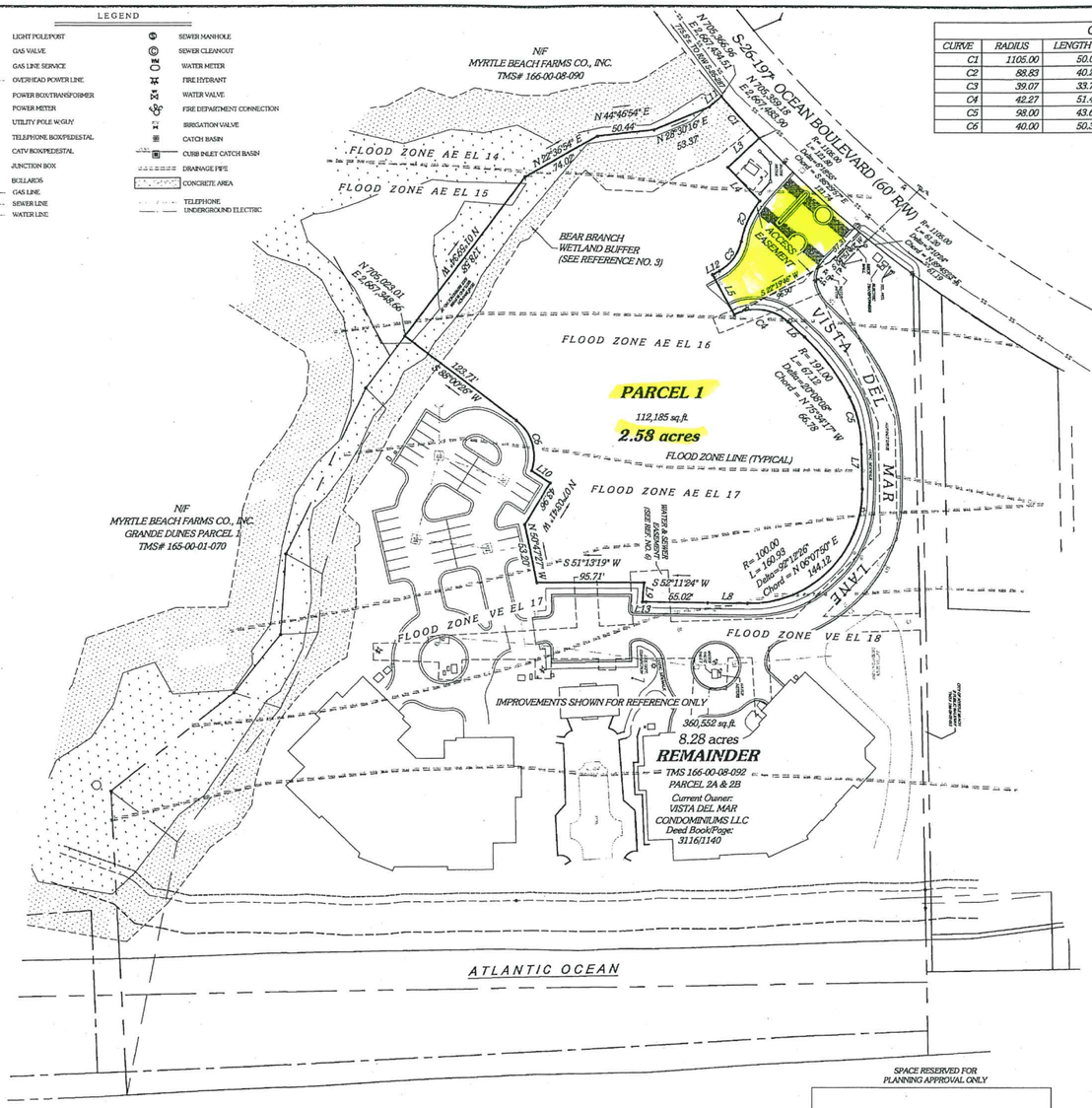
REFERENCE:
1. "PLAT OF 6 TRACTS OF LAND CONTAINING 549.07 ACRES", BY TERRY M. WATSON LAND SURVEYING COMPANY, DATED MARCH 28, 1981.
2. "PLAT OF A PERPETUAL EASEMENT FOR BEACH REFURBISHMENT FOR THE CITY OF MYRTLE BEACH", BY SURVEY TECHNOLOGY, INC., DATED MAY 3, 1996, RECORDED IN PLAT BOOK 143, AT PAGE 19.
3. SURVEY OF BEAR BRANCH WETLAND BUFFER BY HOBBS, UPCHURCH & ASSOC. DATED OCTOBER 28, 2005 AND RECORDED IN PLAT BOOK 212 AT PAGE 75.
4. "PLAT OF THE BEACH CLUB TRACT", BY SURVEY TECHNOLOGY, INC., DATED APRIL 20, 2001.
5. "PLAT OF 14.11 ACRES", BY ASSOCIATED LAND SURVEYORS, DATED DECEMBER 11, 2001, AND RECORDED IN PLAT BOOK 180, AT PAGE 241.
6. WATER AND SEWER EASEMENT DEDICATION DRAWINGS BY HOBBS, UPCHURCH, & ASSOC. DATED SEPTEMBER 2003 AND RECORDED IN PLAT BOOK 193 AT PAGE 194.
7. "PLAT OF 10.89 ACRE AND 14.11 ACRE PORTION - OCEAN TRACT, GRANDE DUNES RESORT" BY ASSOCIATED LAND SURVEYORS, DATED JUNE 12, 2002 AND RECORDED IN PLAT BOOK 184, AT PAGE 96.
8. "CORRECTIVE FINAL PLAT OF DUNES LAKE ADDITION, PHASE FOUR, BLOCK 'N'" BY THIS OFFICE, DATED OCTOBER 21, 1996, AND LAST REVISED JANUARY 24, 1997 AND RECORDED IN PLAT BOOK 146, AT PAGE 7.

Instrument#: 2009000035879, PLAT BK: 243 PG: 275 DOCTYPE: 061 04/06/2009 at 11:11:56 AM, 1 OF 1
BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Instrument#: 2009000035879, PLAT BK: 243 PG: 275 DOCTYPE: 061 04/06/2009 at 11:11:56 AM, 1 OF 1
BALLERY V. SKIPPER
HORRY COUNTY, SC REGISTRAR OF DEEDS

NOTES:
1. PARENT TMS #166-00-08-092
2. FLOOD ZONES SHOWN WERE SCALED FROM F.I.R.M. PANEL NO. 45051C 0568 H DATED AUGUST 28, 1999 NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP.
3. ALL BEARINGS ARE BASED ON THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM NAD 2001. ALL DISTANCES SHOWN ARE HORIZONTAL DISTANCES NOT GRID DISTANCES.
4. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
5. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
6. TMS 165-00-01-070 IS SUBJECT TO THE AGREEMENT TO DEVELOP A MULTI-COUNTY BUSINESS PARK, RECORDED IN DEED BOOK 2323 PG 1037 ON DEC. 6, 2000 IN THE OFFICE OF THE REGISTER OF DEEDS, HORRY COUNTY, SOUTH CAROLINA.
7. THIS IS A PORTION OF THE PROPERTY DESIGNATED AS EXHIBIT A IN THE CITY OF MYRTLE BEACH DEVELOPMENT AGREEMENT, RECORDED IN DEED BOOK 2323, PG 933, ON DEC. 6, 2000 IN THE OFFICE OF THE REGISTER OF DEEDS, HORRY COUNTY, SOUTH CAROLINA.
8. UNDERGROUND UTILITIES SHOWN IN THERE APPROXIMATE LOCATION PROVIDED BY OTHERS. SURVEYOR HAS NOT VERIFIED THESE LOCATIONS.
9. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL AND SIGNATURE OF SURVEYOR.

GRAPHIC SCALE
50 0 25 50 100 200
(IN FEET)
1 inch = 50 ft.



CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	CHORD
C1	1105.00	50.00	2°35'34"	S 81°02'43" E 50.00
C2	88.83	40.24	25°57'15"	S 14°14'58" E 39.90
C3	39.07	33.79	49°33'21"	S 02°26'55" E 32.75
C4	42.27	51.49	69°48'08"	N 59°27'35" E 48.37
C5	98.00	43.67	25°31'50"	S 52°44'18" E 43.31
C6	40.00	50.38	72°09'34"	N 55°54'46" W 47.11

LINE TABLE

LINE	BEARING	LENGTH
L3	S 07°29'30" W	38.21
L4	S 82°20'30" E	40.86
L5	S 67°40'14" E	40.38
L6	S 85°39'21" E	19.79
L7	S 39°58'23" E	40.08
L8	S 52°14'03" W	35.65
L9	N 34°20'04" W	17.01
L10	S 84°01'11" W	20.10
L11	N 10°12'08" E	14.67
L12	S 22°19'46" W	6.84
L13	S 52°55'59" W	2.98

SPACE RESERVED FOR PLANNING APPROVAL ONLY

APPROVED FOR RECORDING BY CITY OF MYRTLE BEACH, SOUTH CAROLINA
3/31/09 DATE
PLANNING DEPT.

NOTE:
THIS PLAT SUPERCEDES PLAT PREVIOUSLY FILED IN PLAT BOOK 243 AT PAGE 215 ON MARCH 25, 2009.

"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."

Associated Land Surveyors
a div. of Castles Engineering, Inc.
by Michael D. Oliver (agent)

Michael D. Oliver, P.L.S. No. 13320
Vice President

REVISION	DATE
REV. TO CORRECT MISSING CALL (L13)	MARCH 31, 2009

JOB No. 09506
DATE: FEB. 19, 2009
DRAWN BY: M.D.O.
CHECKED BY:
SCALE: 1" = 50'
FILE: 09506

SUBDIVISION PLAT OF
TAX PARCEL 166-00-08-092
VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA
PREPARED FOR:
VISTA DEL MAR CONDOMINIUMS, LLC

SOUTH CAROLINA ASSOCIATED LAND SURVEYORS No. C00351 CERTIFICATE OF AUTHORIZATION

castlesengineering.com

Associated Land Surveyors
A DIVISION OF CASTLES ENGINEERING, INC.
Grandee Centre, Suite 201 4411 Oak Street Myrtle Beach, SC 29577
Telephone 843-626-7153 FAX 843-916-2653

ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

Jim Koutrakos

From: Jim Koutrakos
Sent: Thursday, October 24, 2019 8:48 AM
To: Hyman, Larry B. Secretary (Allison M. Pogue); Hyman, Larry B.; Hyman, Larry B. Law Clerk ()
Cc: Robert E. Lee; Kenneth Moss; 'Laura Hunter'; Chris Clark; 'Monica Yates'; Harry Dixon; Kathy Romero; Katie Minton
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)
Attachments: VDMC Depo Transcript with Exhibits.pdf

Dear Judge Hyman,

Per your e-mail below, the deposition of the original developer took place on October 9. As you instructed, the deposition was limited to questioning concerning the termination of the transition period "option 2" in the master deed.

The transcript is attached.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>
Sent: Monday, September 09, 2019 12:34 PM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Mr. Koutrakos and Mr. Moss,
Within the next 30 days, please schedule a deposition of the original developer's representative for specific questioning concerning the termination of the transition period "option 2" in the master deed. Please submit a copy of the transcript from the deposition as soon as it is available. If necessary, I will reconvene and hear you on any issues raised on that testimony.

Thanks,
Judge Hyman

LBHjr/amp

Allison M. Pogue
Administrative Assistant
Honorable Larry B. Hyman, Jr., Circuit Court Judge
1301 Second Avenue, Suite 3B76
Conway, SC 29526
Phone: (843) 915-6711
Email: lhymansc@sccourts.org

From: Jim Koutrakos [mailto:jimkoutrakos@callisontighe.com]
Sent: Tuesday, September 3, 2019 5:02 PM
To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Judge Hyman,

Per your instructions at the August 13 hearing, wherein you asked for proposed orders, I have attached Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC's proposed order. I have also e-filed the same.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

From: Jim Koutrakos
Sent: Friday, August 02, 2019 4:55 PM
To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; 'Hyman, Larry B.' <lhymanj@sccourts.org>; 'Hyman, Larry B. Law Clerk (Robert Jenkins' <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <KathyRomero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Dear Judge Hyman,

I represent Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC in the above-referenced case. You are scheduled to hear my clients' motion for partial summary judgment on August 13 at 1:00 p.m. Per instructions provided by the clerk of court, requiring memos and briefs to be mailed and/or e-mailed to you 10 days prior to the hearing, I have attached my clients' motion which also serves as a memorandum of law. Due to the size of the exhibits, I will need to send this to you in three parts in two e-mails. I will provide you with a hard copy of the motion with all exhibits at the hearing.

By copy of this e-mail, I am notifying all counsel of this communication with the court.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
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ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

Jim Koutrakos

From: Jim Koutrakos
Sent: Thursday, October 24, 2019 8:48 AM
To: Hyman, Larry B. Secretary (Allison M. Pogue); Hyman, Larry B.; Hyman, Larry B. Law Clerk ()
Cc: Robert E. Lee; Kenneth Moss; 'Laura Hunter'; Chris Clark; 'Monica Yates'; Harry Dixon; Kathy Romero; Katie Minton
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)
Attachments: VDMC Depo Transcript with Exhibits.pdf

Dear Judge Hyman,

Per your e-mail below, the deposition of the original developer took place on October 9. As you instructed, the deposition was limited to questioning concerning the termination of the transition period "option 2" in the master deed.

The transcript is attached.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>
Sent: Monday, September 09, 2019 12:34 PM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Mr. Koutrakos and Mr. Moss,
Within the next 30 days, please schedule a deposition of the original developer's representative for specific questioning concerning the termination of the transition period "option 2" in the master deed. Please submit a copy of the transcript from the deposition as soon as it is available. If necessary, I will reconvene and hear you on any issues raised on that testimony.

Thanks,
Judge Hyman

LBHjr/amp

Allison M. Pogue
Administrative Assistant
Honorable Larry B. Hyman, Jr., Circuit Court Judge
1301 Second Avenue, Suite 3B76
Conway, SC 29526
Phone: (843) 915-6711
Email: lhymansc@sccourts.org

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To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
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Please let me know if you have questions.

Best regards,

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JimKoutrakos@CallisonTighe.com

ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

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To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; 'Hyman, Larry B.' <lhymanj@sccourts.org>; 'Hyman, Larry B. Law Clerk (Robert Jenkins' <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <KathyRomero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Dear Judge Hyman,

I represent Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC in the above-referenced case. You are scheduled to hear my clients' motion for partial summary judgment on August 13 at 1:00 p.m. Per instructions provided by the clerk of court, requiring memos and briefs to be mailed and/or e-mailed to you 10 days prior to the hearing, I have attached my clients' motion which also serves as a memorandum of law. Due to the size of the exhibits, I will need to send this to you in three parts in two e-mails. I will provide you with a hard copy of the motion with all exhibits at the hearing.

By copy of this e-mail, I am notifying all counsel of this communication with the court.

Best regards,

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ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP2600424

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HORRY
VISTA DEL MAR CONDOMINIUM ASSOCIATION; DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST; JOHN J. HAWKINS; AND ELEANOR N. HAWKINS,

Plaintiffs,

vs. CASE NO. 2017-CP-26-0424

VISTA DEL MAR CONDOMINIUMS, LLC; ATLANTIC DEVELOPMENT COMPANY, LLC; ATLANTIC COAST FUNDING, LLC; JOHN DOE, A NOMINAL DEFENDANT REPRESENTING ALL PERSONS OR ENTITIES UNKNOWN WHO MAY CLAIM AN INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THIS ACTION,

Defendants.

(CAPTION CONTINUED)

30(B)(6)

DEPOSITION OF: VISTA DEL MAR CONDOMINIUMS, LLC
DESIGNEE: APRIL DENDY
DATE: October 9, 2019
TIME: 12:19 p.m.
LOCATION: McAngus, Goudelock & Courie
2411 N. Oak Street
Myrtle Beach, South Carolina
TAKEN BY: Counsel for Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC
REPORTED BY: KAREN M. ERNST, CSR
Court Reporter

Job No. CS3571953

CAPTION CONTINUED:
ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC,

Third-Party Plaintiffs,

vs.

BARBARA P. SWARTZ; NANCY S. CASE; WINSTON-SALEM DALY DEVELOPMENT, LLC; CHARLES F. WEBER; MARK L. SKOWRON, AS TRUSTEE OF MARK L. SKOWRON REVOCABLE TRUST DATED APRIL 24, 2002 AND GAIL L. SKOWRON, AS TRUSTEE OF THE GAIL L. SKOWRON REVOCABLE TRUST DATED 04/24/2002; NORMAN W. TAYLOR, TRUSTEE OF THE NORMAN W. TAYLOR REVOCABLE LIVING TRUST DATED APRIL 28, 2008; TIM MITCHELL DEVELOPMENT, LLC; ERIC R. SKLUT AND LORI LEVINE SKLUT; FRED C. WAREHIME AND PATRICIA F. WAREHIME; JAMES W. BLACKBURN, III AND PEGGY S. BLACKBURN; BARBARA I. BOWSER; KHDH, LLC; BETH G. BAUKNIGHT; RODERICK D. SANDERS (OR HIS SUCCESSOR), AS TRUSTEE OF THE AMENDED AND RESTATED REVOCABLE DECLARATION OF TRUST OF ANNE MALLARD SANDERS U/A/D JANUARY 16, 2015; GGK PROPERTIES, LLC; LEON LEVINE AND SANDRA LEVINE; JOSEPH MOGLIA AND AMY H. MOGLIA; ANGELA M. MASON, AS TRUSTEE OF THE ANGELA MASON REVOCABLE TRUST DATED JUNE 9, 2003 AND AMENDED AND RESTATED MAY 27, 2007; DEXTER R. BARBEE, SR.; DANIEL M. TALBERT, SR.; CRAIG W. LAWTON; CRAIG W. LAWTON; DAVID N. DALTON; JANET W. WEED, TRUSTEE OF THE JANET W. WEED REVOCABLE TRUST UNDER TRUST INSTRUMENT DATED APRIL 17, 2013; ROBERT H. MESSIER, JR. AND JANICE H. MESSIER; JEFFREY SCHNEIDER, TRUSTEE FOR THE JEFFREY SCHNEIDER REVOCABLE TRUST DATED AUGUST 1, 2017; PHILLIP KLEINMAN AND CHARISSE D. KLEINMAN; STEPHEN GATTO AND CAMILLE GATTO; LUTZ REAL ESTATE, LP; ASTORG IMPORTS, INC.; ABLP PROPERTIES, LLC; SUTTON CHILDREN, LLC; DANIEL C. SCHUSTER AND MARDELL J. SCHUSTER; ROY C. PUTRINO AND EILEEN M. PUTRINO; SPENCER SQUIER AND SHERRI SQUIER; VDM 1004, LLC; ROGER B. MATHERLY AND BONNIE V. MATHERLY; ITAC 203, LLC; REBECCA R. SHROFF AND KERSI S. SHROFF; SANDRA P. LEVINE AND LORI ANN SKLUT, CO-TRUSTEES OF THE
(CAPTION CONTINUED)

CAPTION CONTINUED:
IRREVOCABLE TRUST F/B/O AMY BETH LEVINE DATED SEPTEMBER 18, 1986; DAVID E. LUKOWSKI; RICHARD B. KLINE AND LESLIE KLINE; JAMES P. APLINGTON AND CAROL D. APLINGTON; MICHAEL L. VAN GLISH AND JUDITH K. VAN GLISH; ANNA A. OLSEN; ANNE MARIE MURRAY; WILLIAM J. PRIDEMORE AND IRINA V. PRIDEMORE; WILLIAM B. DAVIDSON AND JULIA DAVIDSON; BRUCE ALEXANDER HENDERSON AND VALERIE SOKOLOV; MARK W. LEE; SUE DAVID KLINE; THOMAS MCKIERNAN AND ANNE MCKIERNAN; PHILIP H. STROBL AND AMY MOTT STROBL; JAMES M. FAIRCLOTH AND SYLVIA FAIRCLOTH; CHERYL JACKSON AND PHILLIP H. JACKSON; WELDON RIGGS AND TIFFANY RIGGS; JANET P. MERRITT, TRUSTEE OF THE JANET P. MERRITT LIVING TRUST U/A DATED MARCH 24, 2000; MELIA MOONEY PAVORIS; WILLIAM L. MANSFIELD AND PATRICIA S. MANSFIELD; STUART W. GIBBS AND HELEN R. GIBBS; MICHAEL R. BLACKBURN AND PAMELA M. BLACKBURN; JEFFREY G. EDWARDS AND TERESA T. EDWARDS; MICHAEL J. WILK,

Third-Party Defendants.

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFFS
VISTA DEL MAR CONDOMINIUM ASSOCIATION; DENNIS M. MERRITT, TRUSTEE OF THE DENNIS M. MERRITT LIVING TRUST; JOHN J. HAWKINS; AND ELEANOR N. HAWKINS:
WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC
BY: KENNETH R. MOSS
628 A Sea Mountain Highway
North Myrtle Beach, South Carolina 29582
843-281-9901
kennethmoss@wwpemlaw.com

ROBERT E. LEE LAW FIRM
BY: ROBERT E. LEE
(Telephonic Appearance)
111 Witcover Street
Marion, South Carolina 29571
843-423-1313
rel@rellawfirm.com

ATTORNEY FOR DEFENDANTS
ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC:

CALLISON TIGHE & ROBINSON, LLC
BY: DEMETRI K. KOUTRAKOS
1812 Lincoln Street, Suite 200
Columbia, South Carolina 29202
803-404-6900
jimkoutrakos@callisontighe.com

ATTORNEY FOR DEFENDANT
VISTA DEL MAR CONDOMINIUMS, LLC:

MCANGUS GOUDELOCK & COURIE, LLC
BY: JAMES CHRISTOPHER "CHRIS" CLARK
2411 N. Oak Street, Suite 401
Myrtle Beach, South Carolina 29578
843-848-6000
chris.clark@mgclaw.com

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BY MR. MOSS		
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REQUESTED INFORMATION INDEX

(No Information Requested)

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	DFT. EXH. 4, Exhibit "C", Schedule of Assigned Values and Percentage Interests	19	16
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	Master Deed of the Vista Del		
	Mar Horizontal Property Regime		
	dated November 7, 2014		

APRIL DENDY

being first duly sworn, testified as follows:

EXAMINATION

BY MR. KOUTRAKOS:

Q. Ms. Dendy, my name is Jim Koutrakos. I represent Atlantic Development Company and Atlantic Coast Funding, LLC. My clients are defendants in this action pending in the Horry County Court of Common Pleas.

Can you state your full name for the record, please?

A. April Blair Dendy.

Q. Are you an attorney?

A. Yes.

Q. Okay. Have you taken a deposition before?

A. I've been involved in them, but not taken them. Sorry.

Q. I'm going to go over some of the ground rules. I'm going to ask you a series of questions. If you don't understand a question, please ask me to rephrase, repeat the question. I'll be happy to do so.

A. Okay.

Q. If you do answer a question, I'm,

therefore, going to assume that you understood the question; is that fair?

A. Uh-huh.

Q. And you just said uh-huh. And so the court reporter is going to write down uh-huh. And so let's try to give verbal as opposed to nonverbal responses. Uh-huh and shaking the head we try to avoid. And so if I say that's a yes, I'm not doing it to be rude, I'm just doing it for the court reporter to accurately put down what you meant, okay?

A. Okay.

Q. Are you on any medications or suffering from any physical or mental condition that affects your memory or ability to tell the truth?

A. No.

Q. I don't know how long we're going to be. I suspect we're not going to be that long because we have a limited topic here. But if you need any breaks, please let me know.

Are also under the Rules of Civil Procedure, I'm required to inform you that if you need any clarifications, definitions, or explanations of anything that I ask or whoever is asking the question, that you ask them the question

for clarification, not your attorney.

Do you understand that?

A. Yes.

Q. In addition, if we do, in fact, take a break today, it's a good idea not to talk about the deposition because somebody can ask what you discussed during a break, even if you're talking to your attorney.

Do you understand that?

A. Yes.

Q. Okay. With that said, please tell me what you do for a living.

A. I'm vice president of Burroughs & Chapin in the commercial division. I handle asset management, acquisitions, and operations.

Q. And how long have you been with Burroughs & Chapin?

A. About going on nine years.

Q. Okay. And what did you do when you first started at Burroughs & Chapin?

A. I was associate counsel.

Q. Where did you go to law school?

A. University of South Carolina.

Q. What year did you graduate?

A. 2003.

Q. Where did you go --
A. I'm sorry, 2006. I graduated undergrad 2003.
Q. What is your undergraduate school?
A. USC.
Q. It appears you worked somewhere between Burroughs & Chapin and law school. Can you just tell me your work history?
A. So after law school, I got a master's in tax law from NYU for a year. In 2007, I started with Nelson Mullins and was with Nelson Mullins until I went to Burroughs & Chapin.
Q. And what kind of work did you do at Nelson Mullins?
A. Corporate healthcare law.
Q. When you were associate counsel at Burroughs & Chapin, what kind of work did you do? What kind of legal work did you do?
A. Primarily our leasing and a little bit of general contracts and things of that nature.
Q. So it would have been the year 2010 that you started at Burroughs & Chapin?
A. 2010 or '11. I can't remember off the top of my head. Sorry.
Q. Okay. I'm showing you what's been

marked as Defendants' Exhibit No. 1, which is a 30(b)(6) Notice of Deposition of Vista Del Mar Condominiums, LLC.

(DFT. EXH. 1, Amended Notice of Deposition of Defendant Vista Del Mar Condominiums, LLC dated October 2, 2019, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Have you seen this document before?

A. Yes.

Q. Do you know what Rule 30(b)(6) is of the South Carolina Rules of Civil Procedure?

A. I'm generally familiar with it, yes.

Q. And my understanding of the rule is that today I'm taking a deposition of Vista Del Mar Condominiums, LLC, on a specific topic, which is noted in Exhibit 1. And the way the rule works, this VDMC, if it's okay if I refer to it as VDMC, has designated somebody to testify about the topic. And we'll talk about the topic in a second, but I assume that's you; is that correct?

A. That's correct.

Q. And the topic that's listed is, quote, the termination of the transition period ("option 2") as referenced in the Master Deed of the Vista

Del Mar Horizontal Property Regime recorded December 4, 2003, in the Horry County Register of Deeds in Deed Book 2672 at page 467.

Did I read that correctly?

A. Yes.

Q. Are you prepared to testify about that particular topic today?

A. Yes.

Q. Are you knowledgeable about that particular topic today?

A. I'm knowledgeable as far as what I know for the company. I was not with the company obviously at that time.

Q. Okay. And just because I think Mr. Moss requested it, I'm going to go ahead and read Judge Hyman's email into the record. On September 9, 2019, Judge Larry Hyman, Larry B. Hyman, Jr., sent counsel an email that I'm going to read it into the record. It says, quote, Mr. Koutrakos and Mr. Moss, within the next 30 days, please schedule a deposition of the original developer's representative for specific questioning concerning the termination of the transition period, and it says in quotes, Option 2, closed quote, in the Master Deed. Please submit a

copy of the transcript from the deposition as soon as it is available. If necessary, I will reconvene and hear you on any issues raised on that testimony. Thanks, Judge Hyman. And that's the email. And so I've read that into the record.

And just also for the record, in the Notice of Deposition, which I signed, which is Exhibit No. 1, my intent was to mirror that exact language that Judge Hyman used. So whichever way you want to look at it, the way Judge Hyman described it or the way I described it in Exhibit 1, you are prepared to testify on that topic on behalf of VDMC; is that correct?

A. That's correct.

Q. Can you explain to me the relationship between Burroughs & Chapin and VDMC?

A. Yeah. Burroughs & Chapin is the parent company of our company. It owns -- it wholly owns Myrtle Beach Farms Company, Inc., as a subsidiary, which, in turn, owns Grande Dunes Development Company as a subsidiary. And then Vista Del Mar Condominium is a subsidiary of Myrtle Beach Farms -- or, I'm sorry, Grande Dunes Development Company.

Q. So through various other companies,

Burroughs & Chapin, for all intents and purposes, is the parent company of Vista Del Mar Condominiums?

A. Yeah, well --

MR. MOSS: Parent, parent, parent.

BY MR. KOUTRAKOS:

Q. Parent, parent, parent of a parent, right, through a chain that you described?

A. Yes.

Q. Are you familiar with the Vista Del Mar Horizontal Property Regime created by VDMC in 2003?

A. Yes.

Q. Based on your position with Burroughs & Chapin, do you have knowledge about VDMC, the Vista Del Mar Development and the documents related thereto?

A. Yes.

Q. Are you familiar with the Master Deed of the Vista Del Mar Horizontal Property Regime?

A. Yes.

MR. KOUTRAKOS: Let's go off the record for a second.

(Off-the-record conference.)

BY MR. KOUTRAKOS:

Q. I'm showing you what I've marked as

Exhibit 2 to your deposition.

(DFT. EXH. 2, Pages 4 and 5 of the Master Deed, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit 2 consists of pages 4 and 5 of the Master Deed. Can you explain what it -- I assume you've reviewed the definition of transition period in the Master Deed; is that right?

A. Yes.

Q. Do you know why there's a transition period in the Master Deed?

A. Can you rephrase your question?

Q. Do you know the purpose of the transition period of the Master Deed?

A. It governs the rights of the developer and timeframe for which they can develop the property.

Q. Okay.

A. A certain amount of things.

Q. Option 2 -- well, tell me what is Vista Del Mar Condominiums, LLC's position on the meaning of transition period as set forth in the Master Deed?

A. Can you rephrase the question?

Q. Okay. I told you I'd ask you a

confusing question. Okay. Okay.

My understanding of the transition period is that it ends on the earlier of three specific dates; is that correct?

A. That is correct.

Q. And if you look at Exhibit No. 2, starting with paragraph option No. 1, it says December 31, 2017. And I think nobody in this room contests that the transition period ended before that so it's not really relevant.

I'll skip over to No. 3, which is three months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to this Master Deed executed and filed of record by Developer. So that's option 3. No one disputes that happened on a specific date.

The question is option No. 2, and that's what the judge instructed us to ask VDMC questions about. So option No. 2, I assume you've read option No. 2, and you're familiar with it since it's the topic of this deposition; is that correct?

A. Yes.

Q. Tell me what does option 2 mean?

A. Option 2 means that the transition period remains open until December 31st, 2017, or three months after the conveyance in the ordinary course of Developer's business of 99 percent of the maximum number of Units to be contained in all phases of the Regime. So it's the right for the transition period to remain open until the developer has completed all phases allowed in the Master Deed.

Q. What does the clause in section in, I guess, option 2, the clause that says, quote, the maximum number of Units to be contained in all phases of the Regime, what does that mean?

A. I believe it's referenced in section 14 in Exhibit C, the 256 phases, 250 units.

Q. Okay. So let's go to, since you mentioned it and since I have a copy of that particular page, Defendants' 3 consists of pages 28 and 29 of the Master Deed.

(DFT. EXH. 3, Pages 28 and 29 of the Master Deed, was marked for identification.)

BY MR. KOUTRAKOS:

Q. And when you're referring to section 14, were you referring to section 14.2?

A. Yes.

Q. And tell me what does section 14.2 say?

A. Anything to the contrary contained in this Master Deed notwithstanding, at any time during the Transition Period, the Developer will be entitled to expand the Regime in five additional phases to a total of 250 Units as provided in this section 14 and as further described in Exhibit "C".

So it's just saying that the developer has the right to construct up to five additional phases 250 units total.

Q. Okay. And since that provision refers to Exhibit "C", just coincidently I have a copy of Exhibit "C" right here, and we'll make that Defendants' 4.

(DFT. EXH. 4, Exhibit "C", Schedule of Assigned Values and Percentage Interests, was marked for identification.)

BY MR. KOUTRAKOS:

Q. And show me on Exhibit "C" where it mentions the phases of the Horizontal Property Regime.

A. In the second paragraph beginning, Five additional Buildings, or any lesser number of them, may be submitted in any order as Phases II through

VI of the Regime. A Building may be composed of as little as 25 Units with an Assigned Value of 2,000, or as many as 45 Units with a statutory value of $3,000 each, or any combination of Units with statutory values ranging between $2,000 and $3,000.

Q. So is it VDMC's position that the maximum number of units in the regime was 250?

A. Yes.

Q. And how many phases, the maximum number of phases that the regime could have had?

A. Six.

Q. How many phases were actually completed?

A. Two.

Q. How many units were actually completed?

A. I believe it was -- the first building had 25, and the second building, I believe, had 41.

Q. We'll go over if you're not specific. We'll go over those numbers in a second.

Showing you what's been marked as Exhibit 5.

(DFT. EXH. 5, Exhibit "B", Site Plan and Floor Plans for the Vista Del Mar Horizontal Property Regime, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit No. 5 is Exhibit "B" to the Master Deed. Does this clarify how many units were in Phase I?

A. Yes.

Q. And what's that clarification? How many units?

A. 25 units were in Building 1.

Q. And then at some point in time, Phase II was constructed, correct?

A. Correct.

Q. Showing you what's been marked as Exhibit No. 6.

(DFT. EXH. 6, First Amendment to Master Deed of the Vista Del Mark Horizontal Property Regime (Phase II) dated June 27, 2006, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit No. 6 is the entirety of the First Amendment to the Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II).

Are you familiar with this document?

A. Yes.

Q. Is this a document through which Phase II was implemented?

A. Yes.

Q. And how many units were in Phase II?
A. 41.
Q. Okay. So we have 41 in Phase II, 25 in Phase I for a total of 66 units, correct?
A. Correct.
Q. At the time the First Amendment was signed and recorded, had the transition period ended?
A. No.
Q. If you look at Exhibit "B-1" to the First Amendment to the Master Deed, scratch that. I meant to go to Exhibit "C", which starts on the last three pages of Exhibit No. 6. Do you understand what Exhibit "C" is to the First Amendment?
A. Yes.
Q. Can you explain in your own words what it is?
A. Exhibit C is amending the Master Deed to show Phase I and Phase II of the development.
Q. The percentage interest of each unit in the common elements; is that correct?
A. Yes.
Q. If you look at the last page of Exhibit No. 6, my understanding of it is it goes through

the additional phases that are allowed.

Do you see that?

A. Yes.

Q. And what additional phases does it describe?

A. Four additional Buildings, or any lesser number of them, may be submitted as Phases III through VI of the Regime.

Q. Okay. And it's Vista Del Mar's -- it's VDMC's position that at the time of the filing of the First Amendment, the transition period had not ended?

A. That's correct.

Q. At some point in time, VDMC conveyed or assigned its rights as a developer to another entity; is that correct?

A. It, um --

Q. Let me back up if the question was confusing. At some point in time, did VDMC cease to be the developer of the Vista Del Mar Horizontal Property Regime?

A. Yes.

Q. Do you recall how it ceased to be the developer?

A. I believe it was in 2013 that it

assigned --

Q. It assigned its rights to another entity; is that right?

A. That's correct.

Q. And at that point in time, is it VDMC's position -- as to whether or not the transition period end, what is its position?

A. The transition period did not end.

Q. Showing you what's been marked as Exhibit No. 7.

(DFT. EXH. 7, Corrective Fourth Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime dated April 3rd, 2009, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit No. 7 is the Corrective Fourth Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime.

Do you understand what the Corrective Fourth Amendment did?

A. I do.

Q. Okay. Can you explain to me what was the effect of the Corrective Fourth Amendment?

A. It was to remove a subdivided portion from the application of the Master Deed.

Q. Okay. At the time of the execution and recording of the Corrective Fourth Amendment, had the transition period expired?

A. No.

Q. At the time of the filing of the Corrective Fourth Amendment, how many phases had been constructed at the Vista Del Mar Horizontal Property Regime?

A. Two.

Q. How many units had been constructed?

A. 66.

Q. Had the maximum number of units -- let me start that question over.

Had the maximum number of units to be contained in all phases of the Regime, had they been sold at the time of the recording of the Corrective Fourth Amendment, Exhibit No. 7?

A. No.

MR. MOSS: What was the question, maximum number of units?

MR. KOUTRAKOS: I asked her whether the maximum number of units -- at the time of the recording of the Corrective Fourth Amendment, had the maximum number of units to be contained in the Regime had sold.

BY MR. KOUTRAKOS:

Q. Showing you what's been marked as Exhibit No. 8.

(DFT. EXH. 8, Assignment of Declarant and Developer Rights in Connection with the Grande Dunes Development dated December 19, 2013, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit No. 8 is entitled Assignment of Declarant and Developer Rights in Connection with the Grande Dunes Development.

Are you familiar with this document?

A. Yes.

Q. Can you explain to me, at least as it relates to the Vista Del Mar Horizontal Property Regime what the effect of this document is or was?

A. VDMC, Vista Del Mar Condominiums, assigned its right as the developer under the Master Deed to GDMB Operations.

Q. At the time of the execution recording of Exhibit No. 8, had the transition period expired?

A. No.

Q. You were an employee of Burroughs & Chapin at the time; is that correct?

A. I was.

Q. Do you have any knowledge of anybody contesting whether the transition period had expired at the time of the recording of this assignment in 2013?

A. No.

Q. I'm showing you what's been marked as Exhibit No. 9, which the highlighting is mine. I marked the wrong one, but it's only on a couple things.

(DFT. EXH. 9, Title to Real Estate Limited Warranty Deed dated December 19, 2013, was marked for identification.)

BY MR. KOUTRAKOS:

Q. Exhibit No. 9 is a Title of Real Estate Limited Warranty Deed. It's recorded December 20, 2013. And it's a deed from Vista Del Mar Condominiums, LLC, to GDMB Ocean, LLC.

Did I describe it correctly?

A. Yes.

Q. Are you familiar with this document?

A. Yes.

Q. Do you understand what this document did?

A. Yes.

Q. What did it do?
A. Transferred 2.5 acres -- 2.58 acres from Vista Del Mar Condominiums to GDMB Ocean.
Q. At that point in time, which is coincidently the same date as the Assignment of Declarant Rights of GDMB Ocean, had the transition period ended?
A. No.
Q. At that point in time, did GDMB Ocean, who, I guess, was a developer of the Vista Del Mar Horizontal Property, did it have the right to complete Phases III, IV, V, and VI if it wanted to?
MR. MOSS: Object to the form.
THE WITNESS: Yes.
BY MR. KOUTRAKOS:
Q. Prior to VDMC conveying away or assigning its rights as developer, it too had -- can you tell me whether or not it too had the right to construct additional phases of the Vista Del Mar Horizontal Property Regime?
MR. MOSS: Object to the form.
THE WITNESS: Yes.
BY MR. KOUTRAKOS:
Q. What was the first time that you heard of the contention or allegation that the transition

period ended when VDMC was still the developer?

MR. MOSS: Object to the form of that question. Ask to clarify. Are you asking her if she heard or when VDMC heard?

MR. CLARK: Object to the form as speaking objection. I think the question was clear.

But go ahead and answer.

BY MR. KOUTRAKOS:

Q. I'll ask the question. When was the first time VDMC heard an allegation or claim that the transition period had ended prior to VDMC assigning its rights as developer?

A. Not until the time of the lawsuit.

Q. When you say the lawsuit, you're talking about this lawsuit?

A. Yes.

Q. Do you know whether at the time of the recording of the First Amendment whether all the units in Phase I had been sold?

A. Not off the top of my head.

Q. Okay. I assume once VDMC assigned its declarant rights or developer rights to GDMB Ocean, it had no further involvement with the Vista Del Mar Horizontal Property Regime; is that correct?

A. That's correct.
Q. Does VDMC have any knowledge of when the -- or does it take a position as to when the transition period pursuant to the terms of the Master Deed, in fact, ended?
A. Can you repeat the question? Sorry.
Q. Okay. Does Vista Del Mar Condominiums, LLC, have a position as to when, in fact, the transition period ended pursuant to the terms of the Master Deed?
A. Our position is that it would have ended in accordance with the transition period in the Master Deed when the developer -- I think it was No. 3 -- when they assigned their rights as the Class B member.
Q. Okay. And I'm showing you what would be, I believe, the final exhibit in your deposition -- let me write that -- which is Exhibit No. 10. There you go.
(DFT. EXH. 10, Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime dated November 7, 2014, was marked for identification.)
BY MR. KOUTRAKOS:
Q. Exhibit No. 10, are you familiar with

this document, which is titled Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime?

A. Yes.

Q. And VDMC is not a party to this document, correct?

A. That's correct.

Q. It was signed by GDMB Operations, LLC; is that right?

A. That's correct.

Q. And tell me what is VDMC's position as to what the effect of this document is, Exhibit No. 10?

A. This was to trigger the end of the transition period by GDMB surrendering its authority as a Class B member of the association.

Q. Okay. And there's some kind of time, 90 day time period that when you say triggers the time, is that what you're referring to?

A. Three months after, yes.

Q. So going back to where we started on Exhibit No., I believe it is, Exhibit 2, it has three dates for the transition period. The first date is December 31, 2017, which I don't think anybody here believes that's when the transition

period ended.

There is option No. 2, which is why we're here today because the judge wants to hear about option No. 2.

Did the transition period end because of option No. 2?

A. No.

MR. MOSS: Object to the form.

BY MR. KOUTRAKOS:

Q. Can you tell me whether it's VDMC's position as to whether or not the transition period ended pursuant to option No. 2?

A. Our position is that it did not end via option No. 2.

Q. Option No. 3 is the giving up of Class B shares, right?

A. Correct.

Q. Can you tell me whether or not it's VDMC's position as to whether option 3 triggered the end of the transition period?

A. Yes.

Q. And pursuant to which -- can you tell me pursuant to which exhibit?

A. You mean your exhibit numbers?

Q. Yeah.

A. Exhibit 10.
Q. Exhibit 10. That's the Amendment to Master Deed executed by GDMB Ocean?
A. That's correct. GDMB Operations, LLC, yes.
Q. Okay. When VDMC executed and recorded the Corrective Fourth Amendment, can you tell me whether VDMC could have built another phase of the regime?
MR. MOSS: Object to the form.
THE WITNESS: Yes. At the time of the Fourth Amendment, VDMC would have been able to complete...
BY MR. KOUTRAKOS:
Q. How about after?
A. Yes.
Q. That's all the questions I have. Thank you.
MR. MOSS: Do you have any, Chris?
MR. CLARK: No.

EXAMINATION

BY MR. MOSS:
Q. It's Ms. Denton, right?
A. Dendy.
Q. Dendy, D-e-n-d-y?

A. Uh-huh.
Q. Thank you for correcting me on that.
My name is Kenneth Moss. And Robert Lee, who's on the phone, and I represent Vista Del Mar Condominiums Horizontal Property Regime and three individual owners as plaintiffs. And we also represent a whole bunch of the third party defendants that Mr. Koutrakos' client brought into this case.
And so I'd like to ask you in preparation for your deposition today, on behalf of Vista Del Mar Condominiums, LLC, other than Vista Del Mar Condominium's attorney, who did you talk to?
A. I reviewed our internal documents. None of the parties that were with the company at this time -- at the time this all took place are still with the company.
Q. Okay. Do you know who those parties were at the company at the time all this took place?
A. Yes, I know the majority of the parties.
Q. Did you attempt to talk to them?
A. I don't have a way to get in touch with

them.

Q. So that's a no?

A. No.

Q. Okay. At some point it's obviously a decision was made by Vista Del Mar Condominiums, LLC, they would not build anymore units after Phase II; is that right?

A. No.

Q. Well, they didn't build anymore units.

A. We would have maintained our rights under the Master Deed to develop.

Q. Thank you for that, but that's not exactly my question.

A. What was your question?

Q. Do you know when a decision was made by anyone at Vista Del Mar Condominiums, LLC, to build an additional phase or to not build an additional phase?

A. I know that we would have maintained our right to build the additional phases.

Q. Thank you for that answer, but that's not really the question I asked.

Do you know when a decision was made by the management of Vista Del Mar Condominiums, LLC, that they were not going to build a third phase or

fourth phase or fifth phase?

A. I can't speculate as to that.

Q. So you don't know. Okay.

Did you ask anyone that was in the prior management of Vista Del Mar Condominiums, LLC, in preparation for today?

A. I did not speak with anybody that was with the company at that time, no.

Q. Okay. Did you review any -- well, first off, was there a board for Vista Del Mar Condominiums, LLC, or was there a manager?

A. It's a limited liability company so it's not going to have a board.

Q. Well, it could. Was there a manager or a group of managers?

A. It was member managed by Grande Dunes Development Company, its parent company.

Q. I wanted to ask you about your narration earlier about the corporate structure because I didn't see Myrtle Beach Farms in the litany or the layering of the company. Can I show you page 38 of the Master Deed? If you can see on the page, it kind of narrates the corporate structure. And the way I read it is the Vista Del Mar Condominiums, LLC, was signed by Grande Dunes

Development Company, its managing member, and that was signed off on by who?

A. Burroughs & Chapin.

Q. So Myrtle Beach Farms isn't even in this equation, is it?

A. I could have misspoke on that. Myrtle Beach Farms is a direct subsidiary of Burroughs & Chapin, and in separate and other development companies, Myrtle Beach Farms is sometimes also a member, so I might have been incorrect on speaking about that.

Q. And you might have been correct. We wouldn't necessarily know from this document if they were a member or not, would we, because this just tells us who the authorized signers are?

MR. CLARK: Object to the form of the question. Mischaracterizes the document.

THE WITNESS: Can you repeat the question?

BY MR. MOSS:

Q. As near as I can. As we sit here today, do you know if Myrtle Beach Farms was a member or a parent of Vista Del Mar Condominiums, LLC?

A. At this specific time, I can't tell you

that for 100 percent sure, no. I'd have to look back over the document.

Q. Do you know how many managers worked for Vista Del Mar Condominiums, LLC, during this time?

MR. KOUTRAKOS: I would object. It's beyond the scope of this deposition.

MR. MOSS: I note your objection. With all due respect, it's exactly within the scope of this deposition.

BY MR. MOSS:

Q. Do you know how many managers there were?

MR. CLARK: I'll join in the same objection. That is well beyond the scope of subsection 2.

THE WITNESS: I'm not really prepared to answer that. It's outside of what the notice was. And at this time, I don't know.

BY MR. MOSS:

Q. Okay. Well, the notice was exactly related to the second of three options for termination of the declarant control period; is that right?

A. Yes.

Q. And so if a decision was made there will be no more construction of condominiums within this regime, that would be relevant to the end of that control period, would it not?

MR. CLARK: Object to the form.

THE WITNESS: I would say that the documents control what had taken place.

BY MR. MOSS:

Q. So to be clear, you were notified about this topic, which was the end of -- the second of three options for the end of the declarant period. I'm not sure what they call it exactly.

MR. KOUTRAKOS: Transition period.

BY MR. MOSS:

Q. Transition period, the end of the transition period. And you didn't talk to anybody; is that right?

MR. CLARK: Object to the form of the question as mischaracterizes the prior testimony.

BY MR. MOSS:

Q. Did you talk to anybody to ask them their opinions on the transition period?

A. None of the individuals involved in this are with the company.

Q. So that's a no. And you didn't try to

contact them. You said that earlier.

And so what internal documents did you review that would give you guidance on whether or not a decision was made to not construct anymore condominiums and the timeframe for that decision?

A. The Master Deed and the amendments.

Q. Okay. Is that all you reviewed?

A. As far as related to -- yes, to the parties' intent to the development, yes.

Q. What about the intent not to develop any further? Any internal documents that you reviewed that would give guidance as to the decision that was made not to develop any more condominiums?

A. I saw nothing that would indicate that there was any decision to not develop.

Q. Okay. And I think -- correct me if I'm wrong in my understanding -- but you weren't involved in any of these decisions directly; is that right?

A. That's correct.

Q. And you didn't counsel anybody involving these decisions directly as an attorney, did you?

A. No.

Q. Did you ever review any business perspectives that would project sales or project internal investment or project cost?

A. No.

Q. Earlier you testified that the purpose of -- I'm talking about Exhibit No. 7, Defendants' Exhibit 7. Do you have that in front of you?

A. Yes.

Q. My notes aren't complete. Could you remind me what your opinion is as to the purpose of this document?

A. The Fourth Amendment was used to remove subdivided portion of the property of the Master Deed.

Q. Subdivide a portion of what?

A. Of the common area.

Q. In preparation for today, did you research anything about the definition of common area or the decision being made of what was common area and what was not common area?

A. Common area is defined in the Master Deed.

Q. Okay. So other than in the Master Deed -- first, did you review that?

A. The Master Deed?

Q. Yes.
A. Yes.
Q. Okay. Other than the Master Deed and the amendments to the Master Deed, did you review anything in preparation for today?
A. No.
Q. Okay. Did you find in your review of internal records in preparation for today any notification made about Vista Del Mar Condominiums' decision not to build anymore units?
MR. CLARK: Object to the form of the question.
MR. KOUTRAKOS: Object to the form of the question.
THE WITNESS: No.
BY MR. MOSS:
Q. To be clear, did you look for them?
A. I reviewed the Master Deed and the amendments. I was not at the company at the time. I was not involved in any communications.
Q. Okay. Well, earlier you mentioned some internal documents you reviewed so I'm trying to understand the scope of that review.
A. The Master Deed and the amendments.
Q. So that's the only internal documents

you reviewed?

A. Yeah. Those are the only documents that are relevant to this.

Q. Those are public documents, are they not?

A. Yeah. They're recorded documents.

Q. Earlier you used the word internal documents.

A. Well, I misspoke. I was referring to our Master Deed, which my terminology would be our internal documents, and the amendments to it.

Q. Okay.

A. We prepared those documents.

MR. MOSS: Can we go off the record for a minute?

MR. CLARK: Sure.

MR. KOUTRAKOS: Sure.

(Off-the-record conference.)

(A recess transpired.)

MR. MOSS: We can go back on the record.

BY MR. MOSS:

Q. Do you know when the last time the Vista Del Mar Condominium was sold to a third party purchaser?

A. Not off the top of my head.
Q. Have you looked for that in your review in preparation for today?
A. Yeah. I feel like it was the last unit of the Barcelona was sold in 2007 or 2008. I don't remember where, but I do remember seeing that.
Q. Do you know the maximum extent of real property that was identified to be phased into Vista Del Mar Condominiums in all phases?
A. I know that the total amount of property contributed at the time that we controlled it was approximately ten acres.
Q. Okay. And was the totality of the property that was added to the regime added in the first amendment -- the original Master Deed in the first amendment?
A. Can you repeat your question?
Q. I'll try and make it better. Do you know which filings actually brought real property into the condominium unit?
A. The original Master Deed.
Q. Okay.
A. And then the first amendment.
Q. Okay. And so are you aware of any other amendments that would have brought property

into the regime?

A. No.

Q. And, of course, the fourth amendment was to remove the property. Do you remember what the third amendment did?

A. I don't.

Q. What did the second amendment do?

A. Not off the top of my head.

Q. Is that as to the third or to the second?

A. I don't recall off the top of my head what the second or third amendment did.

Q. Would you agree with me after the Master Deed was filed or that upon the filing of the Master Deed, the developer at Vista Del Mar Condominiums, LLC, owned all of the units?

A. Can you repeat the question?

Q. Would you agree with me that upon the filing of the Master Deed, that the developer, Vista Del Mar Condominiums, LLC, owned all of the units?

A. At the creation of the Master Deed, the developer owned the units and Portofino Phase I.

Q. He owned all of them upon filing? Until it sold the first unit, it owned all of them;

is that correct?

A. It owned all of the units at the Portofino.

Q. Okay. And then when the First Amendment was filed to bring the second building in, the developer owned all of those units in the second phase for the period of time between the filing of the amendment and the first sale; is that right?

A. At the time of the first amendment.

Q. The filing of it?

A. The filing of it. Developer owned all the units in Barcelona.

Q. During these relevant timeframes when the developer owned units in the first phase upon the filing of the Master Deed, and when the developer owned units in the second phase upon the filing of the First Amendment, the developer would have been a co-owner of the other units, would it not?

MR. KOUTRAKOS: Object to the form.

MR. CLARK: Object to the form.

THE WITNESS: Can you rephrase the question?

BY MR. MOSS:

Q. I'll try. During any period of time the developer owned the condominium unit, the developer would have been the co-owner under the terms of the Master Deed, would it not?

MR. CLARK: Object to the form of the question. Exceeds the scope.

THE WITNESS: Can I see the Master Deed?

BY MR. MOSS:

Q. Sure. I'll hand you one of the two copies I've got in front of me.

MR. CLARK: Ken, do you have a specific reference that you're asking her?

MR. MOSS: I don't. She asked me for the Master Deed.

MR. CLARK: Well, she asked you for the Master Deed because your question arises within the definitions of the Master Deed. As you know, if you're going to examine a witness, you have to provide those materials and exhibits upon examination within two days from the date of the examination.

MR. MOSS: Chris, I'm well aware of that rule. She asked for the Master Deed. Do you not want me to give it to her?

MR. CLARK: No. I want you to give her that portion that's germane instead of having her fish through it.

MR. KOUTRAKOS: What was the question?

MR. MOSS: Time out. Why not lose the attitude with me?

MR. CLARK: I'm not going to lose the attitude with you. I'm not going to do that. I don't believe I have an uncivil attitude. I believe I'm being direct with you, and I believe it's appropriate because your questions are not sufficiently targeted to get the information that has been required by the Court. So I apologize if you think that I'm being attitudinal. It's not my intention.

MR. MOSS: I do think that.

MR. CLARK: Well, I think you're wrong.

MR. MOSS: How about toning it down just for the benefit of the doubt?

MR. CLARK: No, I'm not inclined to do that. But I am inclined to apologize to you for giving you the wrong impression because that's not my intention, and I do apologize for that. And I further really just want to try to get this witness to the specific page that or excerpt that you're

referring to.

MR. MOSS: I don't have a specific page. I asked a question of this witness, whether or not the developer was an owner, and she asked me for the Master Deed, so I handed it to her.

MR. CLARK: Well, she can find it. And if it's germane, and she can find it, she can speak to that.

MR. MOSS: If I can find it, I'll be happy to direct her to it.

THE WITNESS: I can say that the owner --

MR. CLARK: Please continue.

THE WITNESS: The owner and the developer under 2.2 are members of the association. The definition of owner means the record owner of fee simple title in and to any unit.

BY MR. MOSS:

Q. Are you looking at page 4?

A. I am.

Q. Okay. So the developer would be an owner, would it not, during the time that it owned the unit?

A. Assuming, yes.

Q. I'm assuming from your prior answer --

please correct me if I'm wrong -- you had no part of drafting this Master Deed or the language that's included in it?

A. I did not.

Q. Do you know who did?

A. I believe our attorney at the time was with Nexsen Pruet. I'm not sure specifically who drafted this particular document or any of the amendments.

Q. A lot of what's in this outline has been prepared for me. If it exceeds the scope, I'm not trying to. Did you review any internal documents or any documents of any kind about plans for the additional phases beyond the second phase?

A. I reviewed the Master Deed and the amendments.

Q. Okay.

A. I am not aware of any other documents.

Q. If you look at the Fourth Amendment, which I think Jim had.

MR. KOUTRAKOS: Exhibit 7.

MR. MOSS: Not Exhibit 7. This is actually the corrected one, I think, is it not?

MR. KOUTRAKOS: Yep.

BY MR. MOSS:

Q. Do you have Exhibit 7 in front of you?
A. I do.
Q. Do you know what the difference between the corrected Fourth Amendment and the original Fourth Amendment was?
A. I believe there was an issue with the plat in the original one, if I remember correctly.
Q. Do you know who this person is that signed the amendment? I guess it's the third page.
A. I don't know Derek Krider. He was gone before my time.
Q. Have you ever met him?
A. No.
Q. Have you ever talked to him?
A. No.
Q. Do you know who William Pritchard is?
A. I know of William Pritchard.
Q. Is William Pritchard still employed with any of the Burroughs & Chapin or Myrtle Beach Farms companies?
A. Not to my knowledge, no.
Q. So you know who he was. Have you tried to talk to him?
A. I have not talked to him.
Q. Okay. Do you know who Deborah Brown

is?

A. I do not know Deborah Brown personally.

Q. Have you talked to Deborah Brown?

A. No.

Q. How about Franklin Long?

A. I do not know Franklin Long.

Q. Have you ever talked to Franklin Long?

A. No.

Q. Okay. Have you reviewed in preparation for today any of Vista Del Mar Condominiums' business records?

A. No.

Q. Have you ever had occasion, not necessarily in preparation for today but at any time, to review any of their business records in terms of tax returns, check registers, disbursements, any of that?

A. No.

Q. Ever reviewed any closing statements?

A. No. This all occurred before my time.

Q. I understand.

Do you know if Vista Del Mar Condominiums, LLC, made any money on the first two phases?

MR. CLARK: Object to the form.

MR. KOUTRAKOS: Object to the form.

MR. CLARK: Calls for trade secret information. It's well outside the scope of the deposition.

You can answer.

MR. MOSS: In response to the objection, the very Notice of Deposition today and the option 2 that we're here to talk about in the end of transition period, the instruction says that three months after conveyance in the ordinary course of developer's business, 99 percent of the maximum units, and I'm now seeking to ask about the ordinary course of business of the developer.

MR. CLARK: That interpretation of ordinary course is so expansive as to include every financial disclosure or record, trade secret, or otherwise that's ever been generated by the company. I object to the form of the question, but I appreciate your position.

Ms. Dendy, you can answer.

THE WITNESS: Can you repeat the question?

BY MR. MOSS:

Q. Did you review any business records that deal with the business records of Vista Del

Mar Condominiums, LLC?

A. I did not.

Q. I have lots of questions, but I think they're beyond the scope of our limited purpose today so I'm not going to ask you any more at this time.

MR. CLARK: I have no follow-up questions.

MR. KOUTRAKOS: I have no follow-up questions.

(The witness, after having been advised of her right to read and sign this transcript, waives that right.)

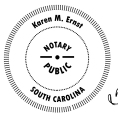
(The deposition was concluded at 1:34 p.m.)

CERTIFICATE OF REPORTER

I, Karen M. Ernst, Court 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 16th day of October, 2019, at Myrtle Beach, Horry County, South Carolina.



Karen M. Ernst
Court Reporter
My Commission expires
September 2, 2025

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.

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.

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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.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiff,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiff,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

AMENDED NOTICE OF DEPOSITION OF DEFENDANT VISTA DEL MAR CONDOMINIUMS, LLC PURSUANT TO RULE 30(b)(6), SCRCP AND AS DIRECTED BY THE HONORABLE LARRY B. HYMAN, JR.

DEFENDANT'S EXHIBIT 1 10/9/19 Denby

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth;

Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

TO: JAMES CHRISTOPHER CLARK, Attorneys for Defendant Vista Del Mar Condominiums, LLC:

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, and as directed by Judge Hyman on September 9, 2019, Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC, through their undersigned counsel, will take the deposition of the designee of Defendant Vista Del Mar Condominiums, LLC ("VDMC") from among the officers, directors, managing agents, or such other persons who consent to testify on its behalf and who are most knowledgeable regarding the following:

> The termination of the transition period ("option 2") as referenced in the Master Deed of the Vista Del Mar Horizontal Property Regime recorded December 4, 2003, in the Horry County Register of Deeds in Deed Book 2672 at Page 467.

Said deposition is to be taken upon oral examination, for the purpose of discovery and/or use as evidence in the above-captioned action, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day. VDMC shall designate the appropriate

officer(s), director(s), or managing agent(s) or other person(s) who can testify on behalf of VDMC to respond to the above area of inquiry.

Notice is further given as follows:

Date: October 9, 2019

Time: 12:00 p.m.

Place: McAngus Goudelock & Courie, L.L.C.
2411 North Oak Street, Suite 401
Myrtle Beach, SC 29577-3173

You are notified to appear and take such part in the examination as you may be advised and as shall be fit and proper.

PLEASE TAKE NOTICE that the deposing parties hereby identify all documents that have already been identified or exchanged in the discovery process as documents which may be used in the deposition pursuant to Rule 30 (j), SCRCP.

CALLISON TIGHE & ROBINSON, LLC

Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Email: jimkoutrakos@callisontighe.com
Email: harrydixon@callisontighe.com

ATTORNEYS FOR DEFENDANTS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

October 2, 2019

Vista Del Mar Condominium Association, *et al.*
vs.
Vista Del Mar Condominiums, LLC, *et al.*
Case No. 2017-CP-26-0424

CERTIFICATE OF SERVICE

I, Katie A. Minton, an employee of Callison Tighe & Robinson, LLC, do hereby certify that, on this date, I served the foregoing **AMENDED NOTICE OF DEPOSITION OF DEFENDANT VISTA DEL MAR CONDOMINIUMS, LLC PURSUANT TO RULE 30(b)(6), SCRCP AND AS DIRECTED BY THE HONORABLE LARRY B. HYMAN, JR.** upon counsel of record, via email and by depositing a copy of the same in the United States mail with proper first-class postage affixed thereon, addressed as follows:

Kenneth R. Moss, Esquire
Wright, Worley, Pope, *et al.*
628-A Sea Mountain Highway
North Myrtle Beach, SC 29582
(Attorneys for Plaintiffs)

Robert E. Lee, Esquire
P. O. Box 1096
Marion, SC 29571
(Attorneys for Plaintiffs)

James Christopher Clark, Esquire
McAngus Goudelock & Courie, LLC
2411 N. Oak Street, Suite #401
P. O. Box 1349
Myrtle Beach, SC 29578
(Attorneys for Defendant Vista Del Mar Condominiums, LLC)

Katie A. Minton

October 2, 2019

"Owner" means the record owner, whether one or more persons, of fee simple title in and to any Unit; excluding, however, those persons having such interest merely as security for the performance of an obligation.

"Percentage Interest" means the undivided percentage interest owned by each Owner as a tenant-in-common in the Common Areas. "Total Percentage Interest" means the aggregate of all the Percentage Interests.

"Plans" mean and include the site plan and the floor plans of the Project which are filed as an attachment to this Master Deed showing the boundaries of the Land, the horizontal and vertical location of the improvements and Common Areas of the Project thereon and certified by a lic ensed engineer or architect in accordance with the provisions of the Condominium Act.

"Project" means, collectively, the Land, the Building and all other improvements and structures located thereon, and all easements, rights and appurtenances belonging thereto, submitted to the Condominium Act by this Master Deed, as amended from time to time in accordance with the provisions hereof. For purposes hereof, including , but not limited to, insuring the Building and other insurable improvements, "Project" shall mean the Project as originally constructed or to be constructed by the Developer pursuant to its plans and specifications for the improvements, prior to the construction and installation of an Owner's betterments, improvements, upgrades and upfits pursuant to the Owner's and Developer Purchase and Sale Agreement and any addendum thereto. If Developer constructs and installs betterments, improvements, upgrades and upfits pursuant to the Purchase and Sale Agreements between the Developer and one or more Owners, the developer shall set forth in Exhibit "B" hereto the amount for which the developer constructed the Building, in which such Owners have Units, pursuant to the original plans and specifications. An Owner shall be responsible to insure its betterments, improvements, upgrades and upfits in excess of the Owner's allocable share of the Association's insurance charged pursuant to Assessments in proportion to the Owner's Statutory Percentage shown on Exhibit "C" hereto.

"Regime" means the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith.

"Regime Documents" means and includes this Master Deed, all Exhibits hereto, the Articles of Incorporation of the Association, the Bylaws and the Rules and Regulations, all as amended from time to time in accordance with the provisions thereof or in accordance with the laws of the State of South Carolina.

"Rules and Regulations" means the rules and regulations from time to time promulgated by the Board of Directors governing the use of the Common Areas and Units.

"Transition Period" means the time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. December 31, 2017; or

2. Three (3) months after the conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or

3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the

DEFENDANT'S EXHIBIT 10/9/19

Association by an express amendment to this Master Deed executed and filed of record by Developer.

"Trustee" means the Board of Directors acting as a fiduciary for the benefit of the Association and the Owners in holding certain funds and providing services as provided herein, or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use by an Owner, situate within the Unit boundaries described in this Master Deed, including Exhibit "B" attached hereto, as amended from time to time in accordance with the provisions of this Master Deed and constituting an "apartment" as defined in the Condominium Act. Each Unit will be identified in the architect's floor plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Area.

2. Administration

2.1 The Association.

The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Regime Documents, as the same may be amended from time to time, will govern the Association and the Owners.

2.2 Membership.

Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association that is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

2.3 Agreements.

The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

(a) The Association will not enter into any contractual arrangement with a term of longer than two (2) years without Member approval therefor by a majority of the votes cast by written ballot or in person or by proxy at a meeting at which a quorum is present; and

(b) Any professional management agreement entered into pursuant to Section 2.8 will provide that such contractual arrangement is subject to termination without cause and without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement.

Regime in a future phase may be changed by the Developer at the time Developer submits said Building and its Units to this Master Deed, provided that following such submission the total Assigned Values of all Units in the Project, if all phases are constructed and submitted, will not be greater or less than said totals contained in Exhibit "C".

13.2 Voting Rights.

Members and the Developer will be entitled to a vote in the Association and for all other purposes herein in accordance with the provisions of the Association's Articles of Incorporation attached hereto as Exhibit "D" and the By-Laws of the Association attached as Exhibit "E," and as the same may be hereafter amended.

(a) Voting by Multiple Owners. When any Unit is owned in the name of two or more persons, other than husband and wife, or entities, whether fiduciaries, or in any manner of joint or common ownership, the vote for such Unit will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners recorded in the ROD, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

14. The Development Plan For The Project

14.1 Phase I.

The Regime as initially constituted (sometimes referred to herein as "Phase I") is composed of Building Number 1 which contains twenty-five (25) Units, as well as the Common Areas thereof, all as described and depicted on Exhibit "B" attached hereto.

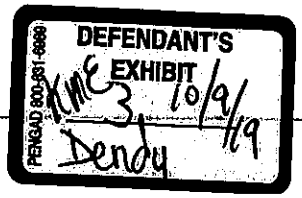
14.2 Reservation of Right to Expand and Contract.

Anything to the contrary contained in this Master Deed notwithstanding, at any time during the Transition Period, the Developer will be entitled to expand the Regime in five additional phases to a total of two hundred fifty (250) Units as provided in this Section 14 and as further described in Exhibit "C" hereto.

(a) Expansion; Conversion of Common Area.

The Developer is entitled, but not obligated, to expand the Regime during the Transition Period by constructing additional Units on all or any portion of the Common Area and to submit said real property (or any portion thereof) and all improvements constructed thereon, to the Regime, from time to time, by filing one or more Amendments to this Master Deed (including amendments to the Exhibits, including Exhibit "C" to reflect any required change in the Percentage Interests pursuant thereto and Section 13.1). Improvements as shall be so constructed by Developer shall be consistent with the quality and structure type of those constructed at the time this Master Deed is filed of record in the ROD, although additional Units may be laid out in different configurations, and different classes of accessory Units may be provided. Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD.

(b) Contraction; Withdraw of Unimproved Common Area.



During the Transition Period, the Developer is entitled to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the application of this Master Deed by filing one or more Amendments to this Master Deed (including amendments to the Exhibits). Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD Office for Horry County.

14.3 Amenities; Required Expansion.]

Amenities may be, but will not be required to be, constructed as part of the expansion of the Regime pursuant to this Section 14.3, all such amenities being optional with the Developer. No Owner will have the right to require construction or addition to the Regime under any circumstances.

14.4 Assignability of Rights.

The Developer will be entitled to assign the rights reserved in this Section 14 to any person or entity by an instrument recorded in the ROD.

14.5 Application of Master Deed.

Upon the filing of the Amendment prescribed by Section 14.2 hereof, all definitions contained in this Master Deed will be deemed amended to the extent necessary to cause the additional real property and the improvements described in such Amendment to be treated as fully an integral part of the Project as if said real property and improvements constituted a portion of the Project as of the effective date hereof.

14.6 Annual Assessments for Additional Units and Working Capital Reserve.

The Annual Assessment with respect to the Units added to the Regime pursuant to this Section 14 will be equal to the then current Annual Assessment applicable to existing Units with equivalent Percentage Interests, pro rated on a per diem basis; provided, however, that as to any type of Unit being added to the Regime for which there is currently no Annual Assessment, the Annual Assessment will be proportionately increased or decreased based upon the Percentage Interest of such Units. Assessments regarding all of the additional Units will commence upon the recording of the Amendment prescribed by Section 14.2 hereof.

All obligations with respect to working capital provided for in Section 4.10 will be applicable upon the transfer of the additional Units by the Developer.

14.7 No Consent Required.

Subject to the time limit set forth in Section 14.2 hereinabove, the Developer, its successors and assigns, will have the absolute right to effect an expansion or contraction of the Regime in accordance with this Section 14 and to file Amendments to this Master Deed without any action or consent on the part of any Owner or Mortgage holder; provided, however, that to the extent any action on the part of any Owner is required by any third party to assure the expansion of the Regime as provided in this Section 14, each Owner, in accepting a deed to a Unit, agrees to undertake such actions and/or provide such consents as are reasonably requested, and expressly appoints the Developer his due and lawful attorney-in-fact, with full power of substitution, to execute all documents reasonably required to evidence the requisite action or consent.

Exhibit "C"

Schedule of Assigned Values and Percentage Interests

This is a schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in Vista Del Mar Horizontal Property Regime. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

Building and Units	Assigned Value	Statutory Percentage	Assigned Parking
Building 1			
1101	$2,500	4.06504%	P-1101
1102	$2,000	3.25203%	P-1102
1103	$2,500	4.06504%	P-1103
1104	$3,000	4.87805%	P-1104
1201	$2,500	4.06504%	P-1201
1202	$2,000	3.25203%	P-1202
1203	$2,500	4.06504%	P-1203
1204	$3,000	4.87805%	P-1204
1301	$2,500	4.06504%	P-1301
1302	$2,000	3.25203%	P-1302
1303	$2,500	4.06504%	P-1303
1304	$3,000	4.87805%	P-1304
1401	$2,500	4.06504%	P-1401
1402	$2,000	3.25203%	P-1402
1403	$2,500	4.06504%	P-1403
1404	$3,000	4.87805%	P-1404
1502	$2,000	3.25203%	P-1502
1503	$2,500	4.06504%	P-1503
1504	$3,000	4.87805%	P-1504
1602	$2,000	3.25203%	P-1602
1603	$2,500	4.06504%	P-1603
1604	$3,000	4.87805%	P-1604
1702	$2,000	3.25203%	P-1702
1703	$2,500	4.06504%	P-1703
1802	$2,000	3.25203%	P-1802
	$61,500	99.99998%	

Five additional Buildings, or any lesser number of them, may be submitted in any order as Phases II through VI of the Regime. A Building may be composed of as little as twenty-five (25) Units with an Assigned Value of only $2,000 each, or as many as forty-five Units with a statutory value of $3,000 each, or any combination of Units with statutory values ranging between $2,000 and $3,000. As each phase is added, the

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DEFENDANT'S EXHIBIT 10/9/19 Kane 4 Dendy
PENGAD 800-631-6989

total Assigned Value of all phases submitted and constituting the Regime at that time and the Percentage Interest of each Unit may be determined. In determining the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building, which may be constructed and submitted to the Regime as phases II through VI, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Buildings 1	$ 61,500.00
Maximum Possible Assigned Values[1] in Building 2	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 3	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 4	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 5	$ 105,000.00
Maximum Possible Assigned Values[1] in Building 6	$ 105,000.00
Total Maximum Assigned Values[1] of the Project, If All Phases Are Constructed and Submitted	$ 586,500.00

As an example, if Building 2 is composed of thirty-five (35) Units, each with an Assigned Value of $3,000, and is added as Phase II, the total Assigned Values in Phase I ($61,500) would be added to the additional Assigned Values in Phase II ($105,000), so that, following submission the total Assigned Values in Phases I and II would be $166,500. To determine the Percentage Interest of Unit a Unit with an Assigned Value of $2,000 if Phase II is added to Phase I and those two (2) phases constitute the entire Regime, the following formula would be used:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} \quad \frac{\$\ 2,000}{\$\ 166,500} = 1.20120\%$$

[1] The total Assigned Values of a building with only twenty-five (25) Units, with Assigned Value of $2,000 each is $50,000.00. The Developer may, but will not be required to, build a building with as many as thirty-five (35) Unit, each with an Assigned Value of $3,000, in which event the total assigned values in that building will be $105,000.00.

If the Phase II Building 2 is, instead, composed of only twenty-five (25) Units, each with an Assigned Value of $2,000, then the Percentage Interest of Unit a Unit with an Assigned Value of $2,000 would be calculated as follows:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} \qquad \frac{\$\,2{,}000}{\$111{,}500} \qquad = \qquad 1.79372\%$$

Exhibit "B"

Site Plan and Floor Plans

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

NOTE

Exhibit "B" is composed of a survey showing the location of Building 1 and other improvements, as well as the vertical location of each floor and the Units located thereon. Exhibit "B" also includes a set of floor plans for Building 1, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location affording access to each Unit. The survey for Building 1 has been recorded in Plat Book 193 at Page 192. The floor plans for Building 1 have been recorded in Condominium Cabinet D at Page 221. Said Exhibit further includes the matters set forth below, and includes the attached Building 1 certification letter by The Nichols partnership, Inc., architect of the above referenced plans, dated October 22, 2003 and recorded herewith.

Building 1 consists of twenty-five (25) Units located in an 8-story Building over two parking decks, identified on the floor plans as levels P1 and P2. Each Unit in the Building is individually numbered and described as Units 1101, 1102, 1103, 1104, 1201, 1202, 1203, 1204, 1301, 1302, 1303, 1304, 1401, 1402, 1403, 1404, 1502, 1503, 1504, 1602, 1603, 1604, 1702, 1703 and 1802. There are four Units on each of the first, second, third and fourth floors, three Units on each of the fifth and sixth floors, two Units on the seventh floor and one Unit on the eighth floor. Assigned parking spaces for the Units are on the two parking decks identified as levels P1 and P2.

Each of the Units in the Building has a separate entrance from a Common Area elevator and from a door off of an interior Common Area stairwell, and is a one-story flat. Units 1104, 1204, 1304, 1404 and 1504 (sometimes referred to as "A" Unit or a "Genova" Unit) each have 3 bedrooms, a media room, great room, morning room, 3 terraces and 3½ baths. Units 1103, 1203, 1303, 1403, 1503 and 1703 (sometimes referred to as a "B" Unit or a "Torino" Unit) each have 3 bedrooms, great room, morning room, 3 terraces and 3½ baths. Units 1102, 1202, 1302, 1402, 1502, 1602, 1702 and 1802 (sometimes referred to as a "C" Unit or an "Arenfano" Unit) each have 2 bedrooms, a media room, great room, morning room, 3 terraces and 2½ baths. Units 1101, 1201, 1301 and 1401 (sometimes referred to a "D" Unit or a "San Remo" Unit) each have 3 bedrooms, great room, morning room, 3 terraces and 3½ baths. Units 1603 and 1604, an "A" Unit and a "B" Unit have been combined and are shown on the floor plans as Unit 1603-1604, a 3 bedroom, 3½ bath Unit, with media room, two home offices, a family room, living room, dining room and 3 terraces

The locations of each Unit and the floor plan thereof for Building 1 is graphically shown on the plans of The Nichols Partnership, Inc. dated October 31, 2003, and the location of the building and the vertical locations of each floor and the Units and Common Areas located thereon are shown on the as-built survey of Hobbs Upchurch & Associates, P.A. dated October 21, 2003 shows the ground location of Building

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DEFENDANT'S EXHIBIT 5 10/9/19 Dendy
PENGAD 800-631-6989

adjacent to each Unit, including the railing thereof, is a Limited Common Area and is subject to restrictions as set forth elsewhere in this Master Deed.

Reference to areas as Common Areas, Limited Common Areas or common elements in this paragraph will be in addition to and read in conjunction with the further designations of Common Areas, Limited Common Areas and common elements set out in other portions of this Master Deed and the survey and floor plans making up the balance of this Exhibit "B". The asphalt roadways and parking areas around the Building and shown on the as-built survey are Common Areas. The parking spaces shown on the first two parking decks below the residential floors of Building 1, identified on the floor plans as levels P1 and P2, having numbers corresponding to the numbers of the Units and preceded by "P-" are Limited Common Areas of the said corresponding Units.

Exhibit "B" is deemed to include the attached certification letter of The Nichols Partnership, Inc., architects of the above referenced plans recorded simultaneously herewith. This Exhibit "B" will be amended if Phases II through VI, or any of them, become part of the Regime in accordance with the terms of this Master Deed.

For purposes of insuring the Project, of which the Building is a part, as set forth in Sections 1 (Definition of "Project"), 4.2(b) and 5.1(b), the initial "replacement cost" of Building 1 is $16,500,000.00.

6-22-06

544797

FILED
HORRY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) FIRST AMENDMENT TO
) MASTER DEED OF THE VISTA DEL MAR
) HORIZONTAL PROPERTY REGIME
COUNTY OF HORRY) (PHASE II)

THIS FIRST AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME (the "First Amendment") is made this 27th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded in the Horry County Register of Deeds Office (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14 of the Master Deed, the Developer retained the right to expand the Regime by submitting additional phases to the Regime; and

WHEREAS, pursuant to this First Amendment, Developer desires to amend the Master Deed to submit to the Regime Phase II and to include language clarifying the payment details of the Association's hazard insurance premium at the initial closings of the Units.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its right under the Master Deed to expand the Regime by adding Phase II to the Regime, more particularly described in the attached Exhibit "A-1" hereto, including without limitation one (1) Building, known as the "Barcelona Building" or "Building 2," such Building containing **forty-one (41) Units**, along with the Common Areas, which shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Master Deed, as amended by this First Amendment, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, and as further amended herby, and does further declare as follows:

I. Definitions. The words in this First Amendment, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Master Deed.

II. Addition of Section 4.11 for Phase II and all Future Phases.

Section 4.11 Hazard Insurance Premium Collected at Initial Closing. Notwithstanding anything to the contrary in this Master Deed, as amended, each Owner in Phase II (or future phases, if developed) who acquires title to their Unit from the Developer shall pay at the closing their Unit's share of the Association's annual hazard insurance premium in full for the entire year. Such payment shall

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DEFENDANT'S EXHIBIT 10/9/07

be collected at the closing of the Unit and paid directly to the Developer for reimbursement of sums already paid to the insurance company.

III. Addition of Exhibit "A-1" for Phase II. Exhibit "A" to the Master Deed is hereby amended by the addition thereto of Exhibit "A-1" attached hereto and made a part hereof by this reference.

IV. Addition of Exhibit "B-1" for Building 2. Exhibit "B" to the Master Deed is hereby amended by the addition thereto of Exhibit "B-1" attached hereto and made a part hereof by this reference, and the Plans of the Regime shall include the site plan and floor and Unit plans for Building 2 filed as an attachment to this First Amendment and referred to in Exhibit "B-1."

V. Amendment of Exhibit "C". Exhibit "C" to the Master Deed, the schedule of Assigned Values and Percentage Interests for the Regime, is deleted in its entirety; and a new Exhibit "C" which is attached hereto and made a part hereof by this reference, shall be substituted therefor.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. THE SIGNATURE PAGE IMMEDIATELY FOLLOWS.]

IN WITNESS WHEREOF, the Developer has caused this FIRST AMENDMENT TO MASTER DEED OF VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: William Pritchard
Name: William F. Pritchard
Title: Sr. Exec. Vice President

Attest: Franklin J. Long
Name: Franklin J. Long
Title: Corporate Secretary

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

The foregoing instrument was acknowledged before me this 21th day of June, 2006, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Wm. Pritchard, its Sr. Exec. VP, as attested by Franklin J. Long its Corporate Secretary.

Ella W. Willis (SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

CLT 967092v1

EXHIBIT "A-1"

LEGAL DESCRIPTION
FOR
PHASE 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising 5.00 Acres, more or less, on a plat entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina. Said parcel having such size, shape, location, dimensions, buttings and boundings as will by reference to said plat more fully appear.

The location of the building and improvements located on said tract of land is more particularly shown on that certain plat entitled "Closing Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated May 31, 2006, and recorded in Plat Book 214 at Page 158, in the ROD Office for Horry County, South Carolina.

HORRY COUNTY ASSESSOR
NEW PARCEL 166-09-07-040thru080
SPLIT FROM 166-00-08-092
Map Blk Parcel
6-27-06

EXHIBIT "B-1"

SITE PLAN AND FLOOR PLANS
BUILDING 2

VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Note

Exhibit "B-1" is composed of an as-built survey showing the location of Building 2 and other improvements, as well as the vertical location of each floor and the Units located thereon. Exhibit "B-1" also includes a site plan and set of floor and Unit plans for Building 2, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location of the Common Areas affording access to each Unit. The as-built survey for Building 2 has been recorded in the Horry County ROD in **Plat Book 214 at Page 158.** Exhibit "B-1" is deemed to include the attached Architect's Certificate for Building 2 dated June 22nd 2006, by HKS, Inc., architects of the above referenced plans, and recorded herewith.

The Phase II Building, Building 2, consists of forty-one (41) Units located in a 12-story Building over two parking decks, identified on the floor plans as levels P1 and P2. Each Unit in Building 2 is individually numbered and described as Units 2101, 2102, 2103, 2104, 2201, 2202, 2203, 2204, 2301, 2302, 2303, 2304, 2401, 2402, 2403, 2404, 2501, 2502, 2503, 2504, 2601, 2602, 2603, 2604, 2701, 2702, 2703, 2704, 2801, 2802, 2803, 2804, 2902, 2903, 2904, 21002, 21003, 21004, 21103, 21104, 21204. There are four Units on each of the first, second, third, fourth, fifth, sixth, seventh, and eighth floors, three Units on each of the ninth and tenth floors, two Units on the eleventh floor, and one Unit on the twelfth floor. Assigned parking spaces for the Units are on the two parking decks identified as levels P1 and P2.

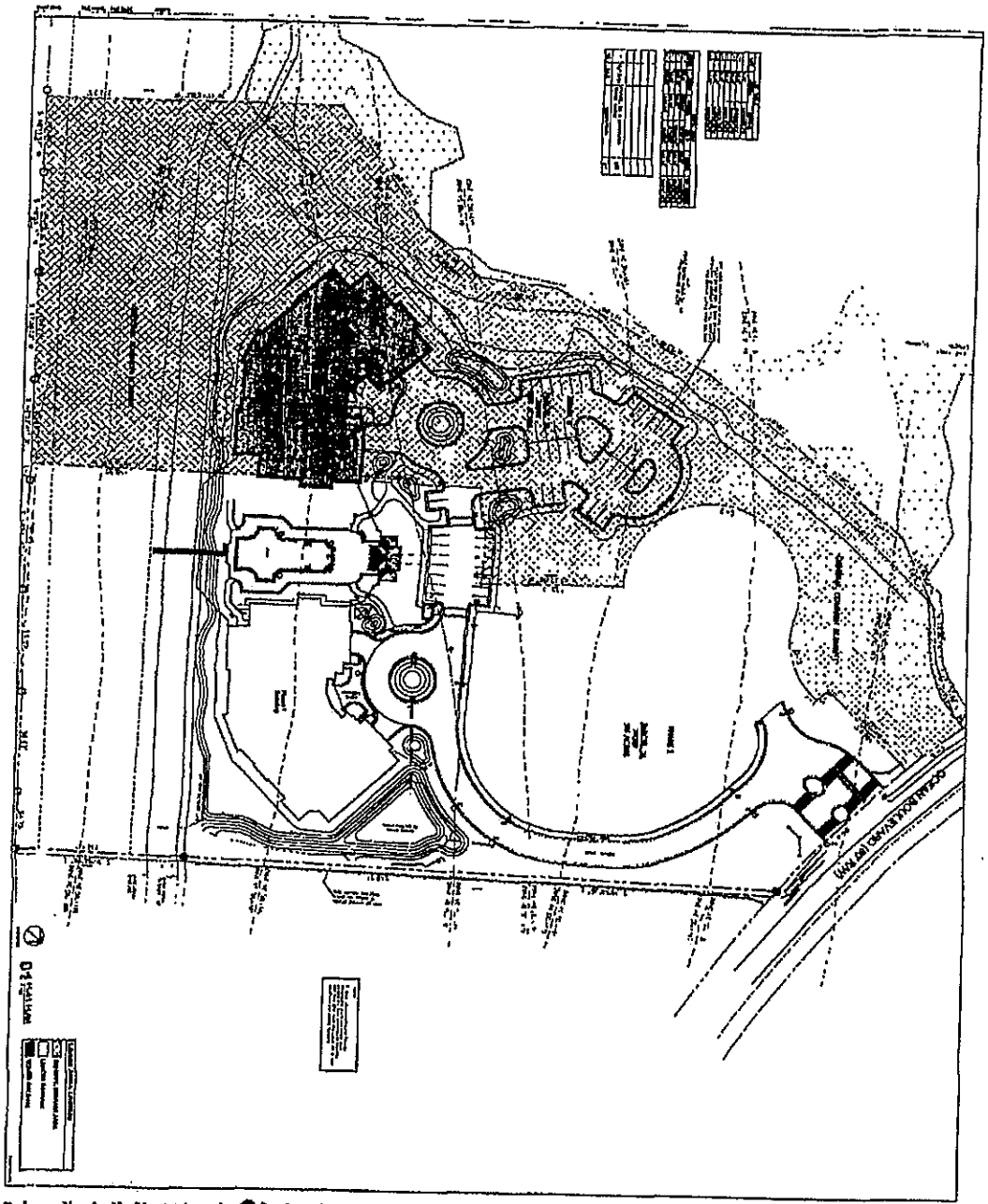
Each of the Units in Building 2 has a separate entrance from a Common Area elevator and from a door off of an interior Common Area stairwell, and is a one-story flat. **Units 2104, 2204, 2304, 2404, 2504, 2604, 2704, 2804, 2904, 21004, 21104, and 21204** (sometimes referred to as "A" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2103, 2203, 2303, 2403, 2503, 2603, 2703, 2803, 2903, 21003, and 21103** (sometimes referred to as "B" Units or "Cordoba" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2102, 2202, 2302, 2402, 2502, 2602, 2702, 2802, 2902, and 21002** (sometimes referred to as "C" Units or "Avilla" Units) each have three bedrooms, great room, kitchen, dining/breakfast area, and three and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: two terraces/balconies and an assigned parking space as shown on the attached Plans. **Units 2101, 2201, 2301, 2401, 2501,**

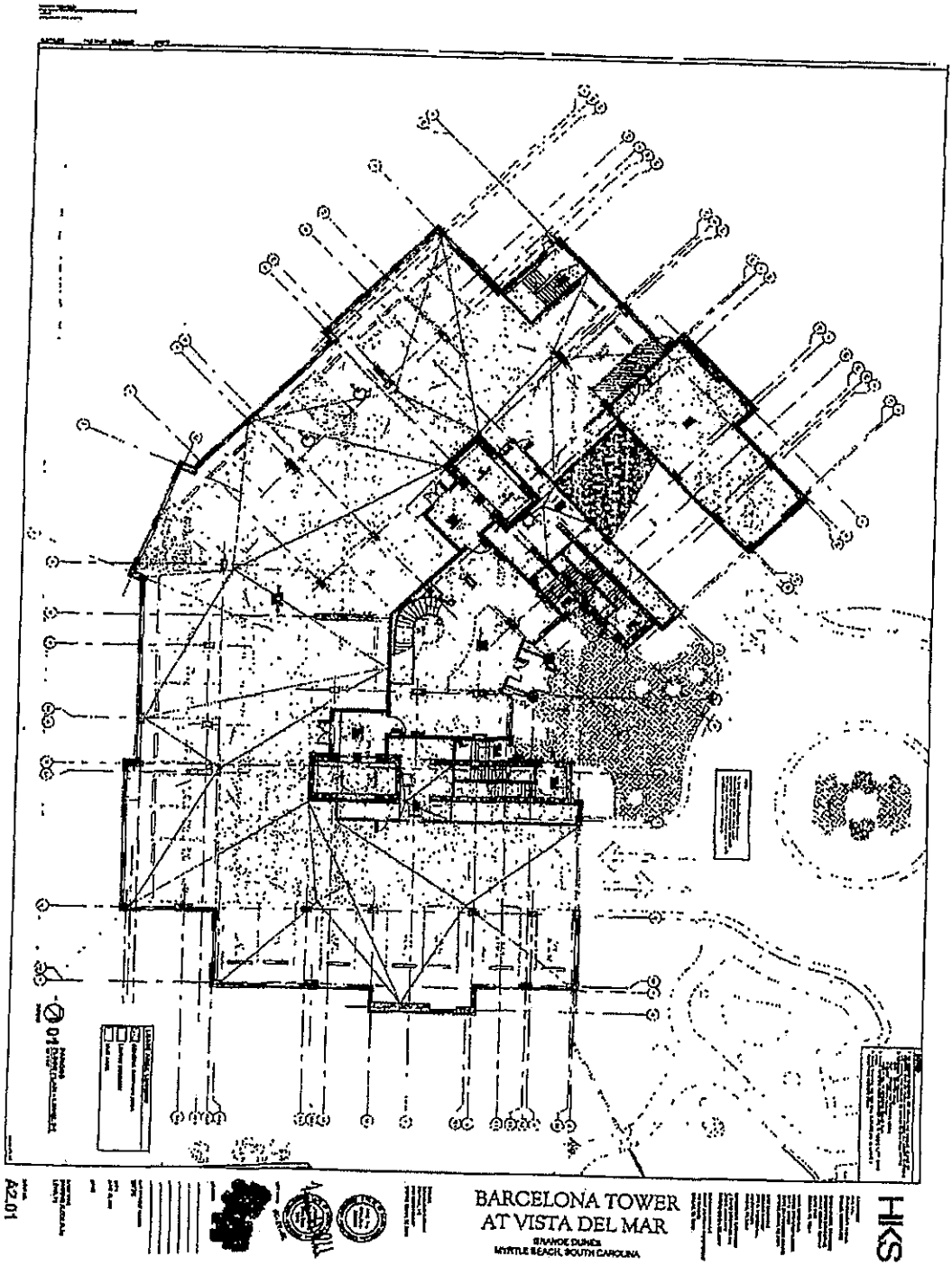
2601, 2701, and 2801 (sometimes referred to as "D" Units or "Valencia" Units) each have four bedrooms, a media room/5th bedroom, great room, kitchen, dining/breakfast area, and four and a half baths. In addition, each of these Units are exclusively served by the following Limited Common Areas: four terraces/balconies and an assigned parking space as shown on the attached Plans.

The locations of each Unit, Building 2, and the Common Areas making up Phase II are graphically shown on the aforementioned as-built survey and on the site plan and floor and Unit plans prepared by HKS, Inc., Architects attached hereto.

Reference to areas as Common Areas and Limited Common Areas in this Exhibit are in addition to and shall be read in conjunction with the further designations of Common Areas set out in other portions of this Master Deed and the as-built survey, site plan and floor plans making up the balance of this Exhibit "B-1".

OCEAN BOULEVARD (SC 9-A)
ATLANTIC OCEAN
GRAPHIC SCALE
ROBERT L. BELLAMY & ASSOCIATES, INC.
CONSULTING ENGINEERS, PLANNERS & SURVEYORS
SHEET 1 OF 1

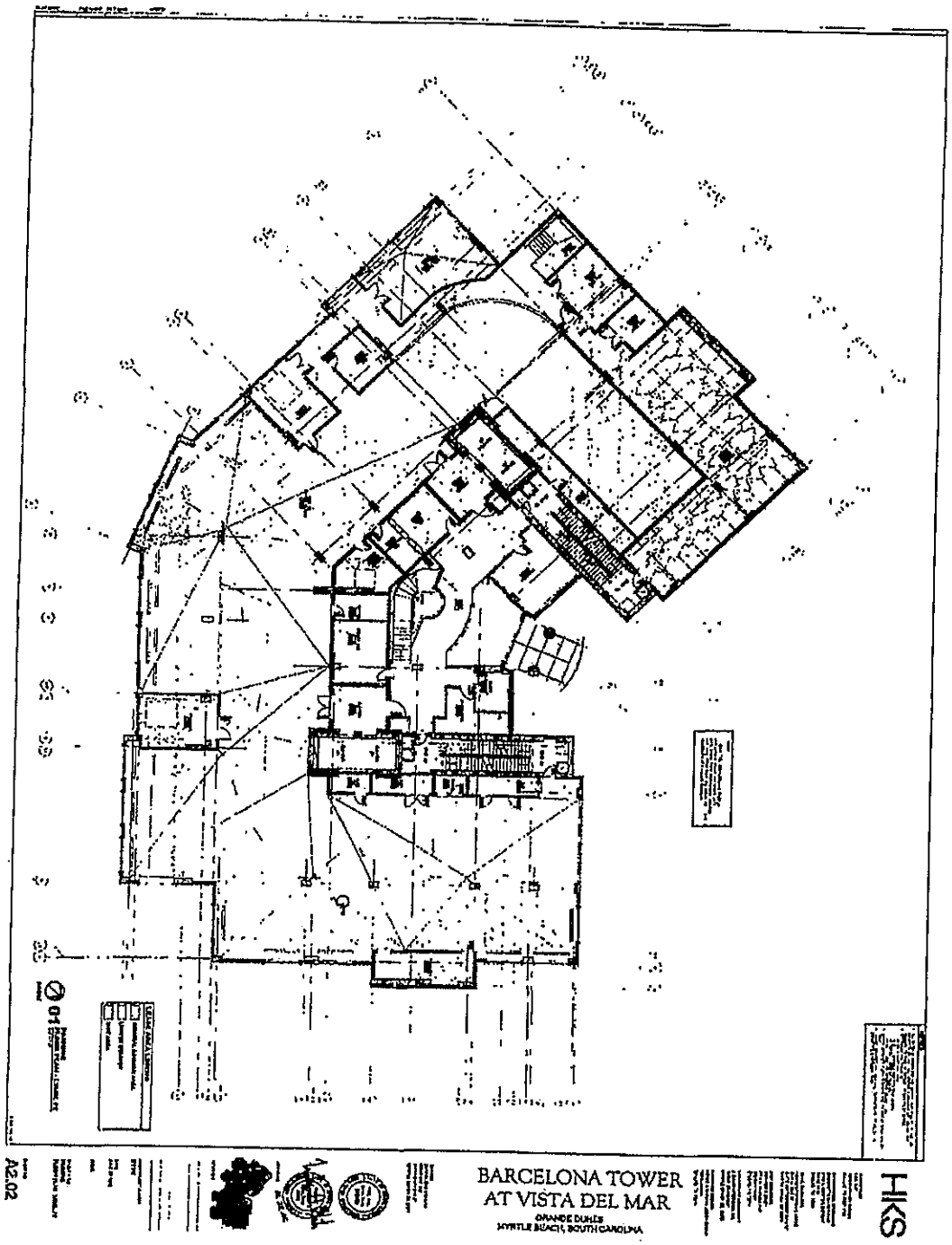

BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA
HKS
A0.00



BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

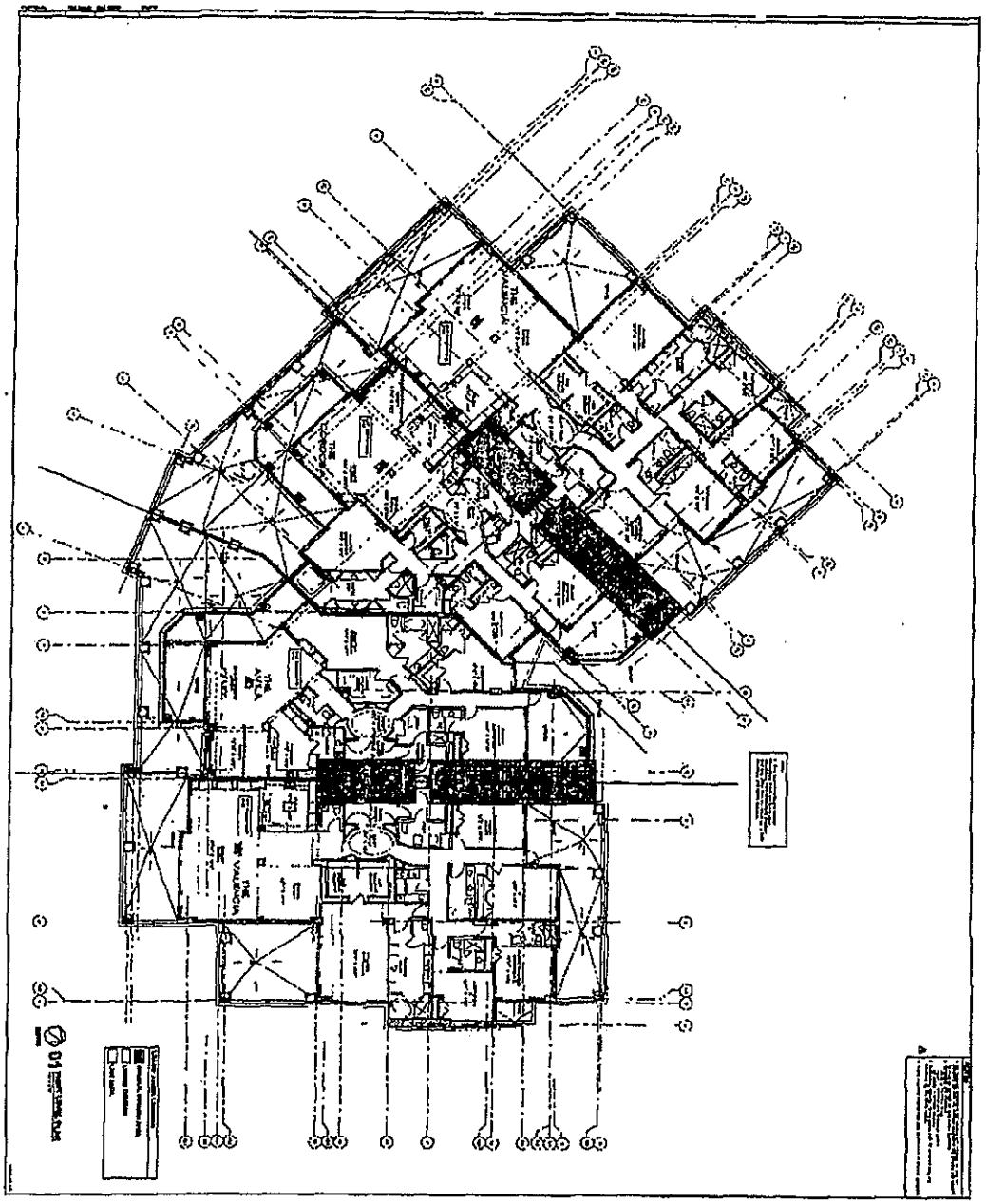
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BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

A2.02

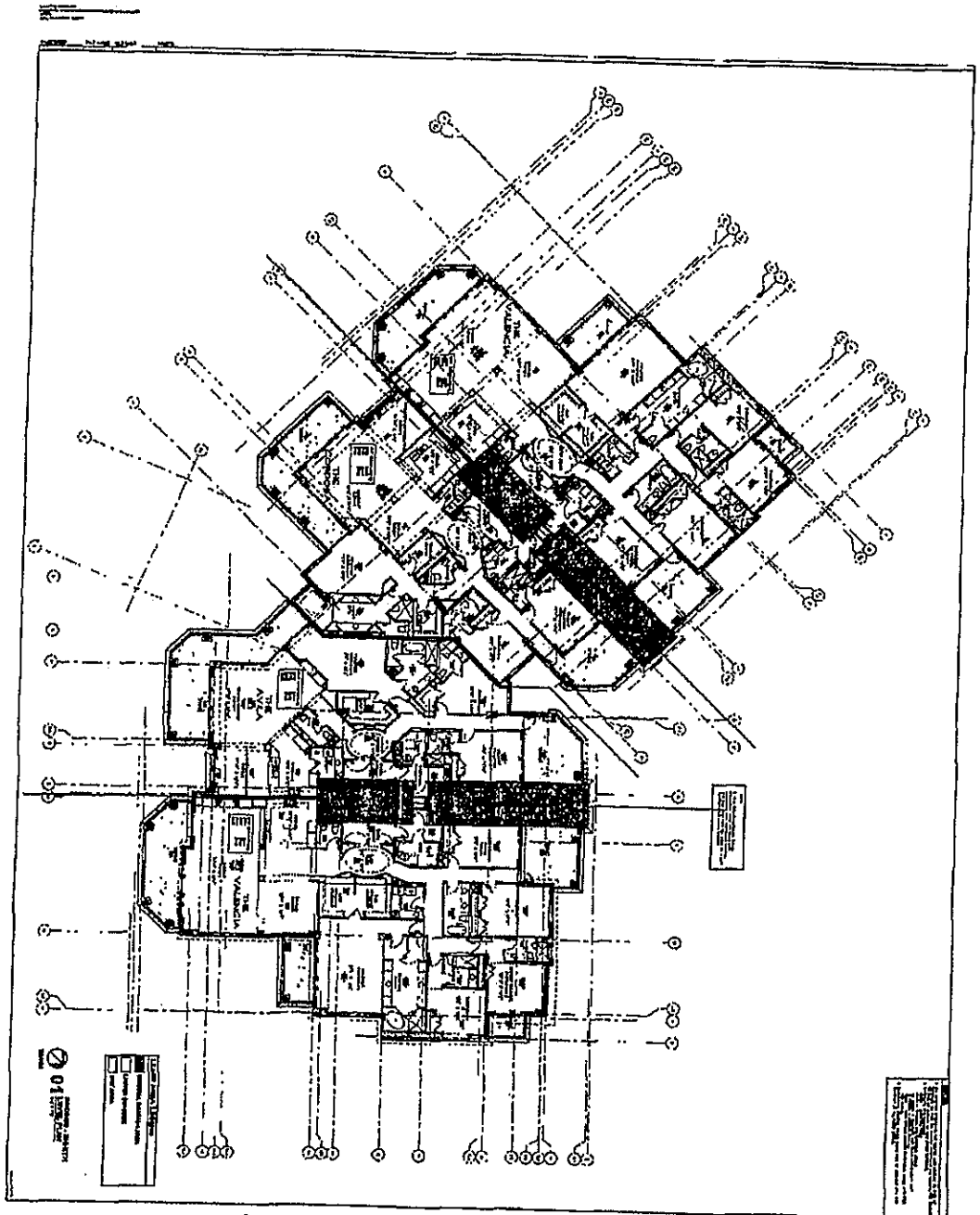


A2.03

BARCELONA TOWER
AT VISTA DEL MAR

GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

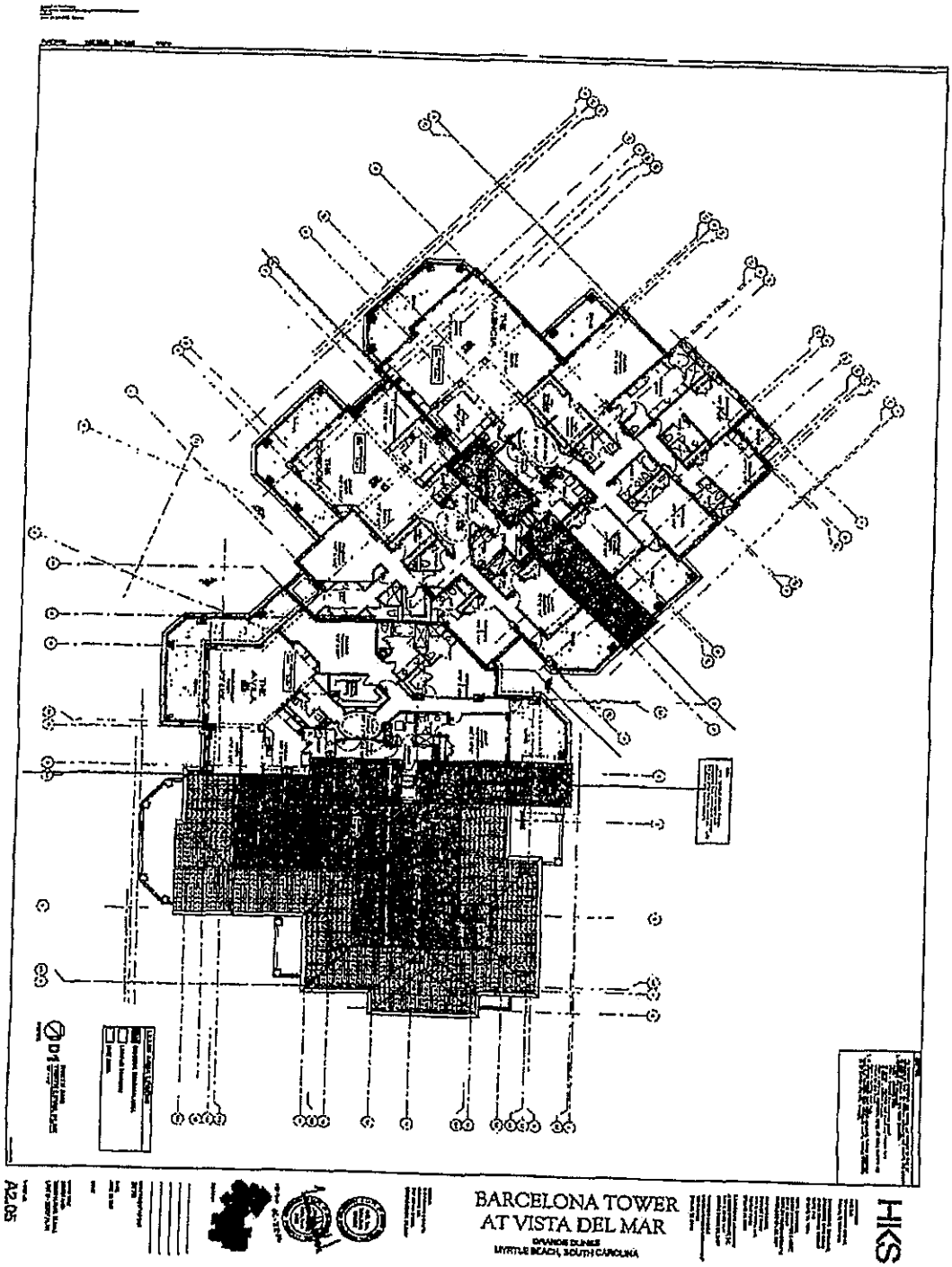
HKS



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BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

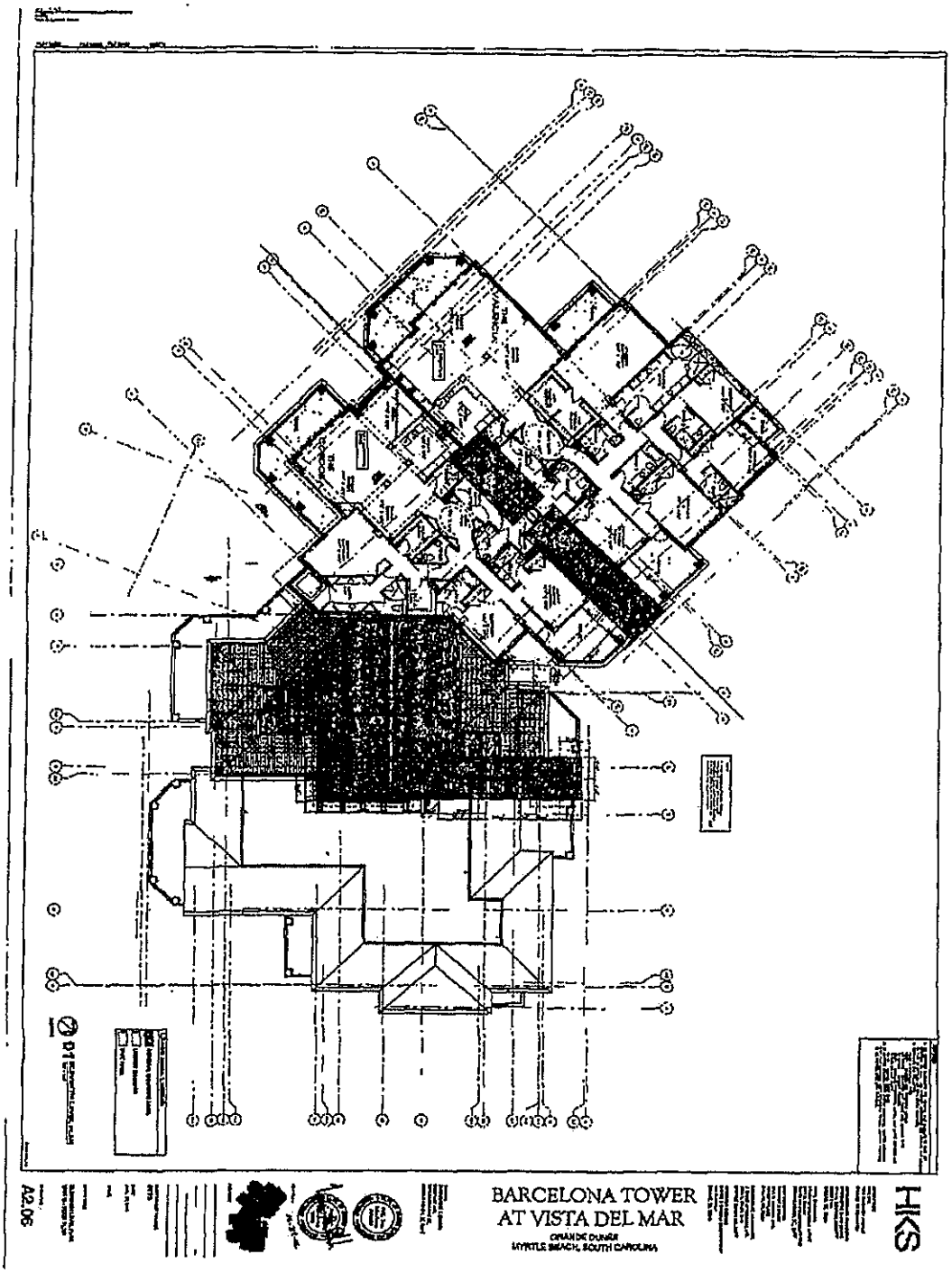


BARCELONA TOWER
AT VISTA DEL MAR

GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

A2.05

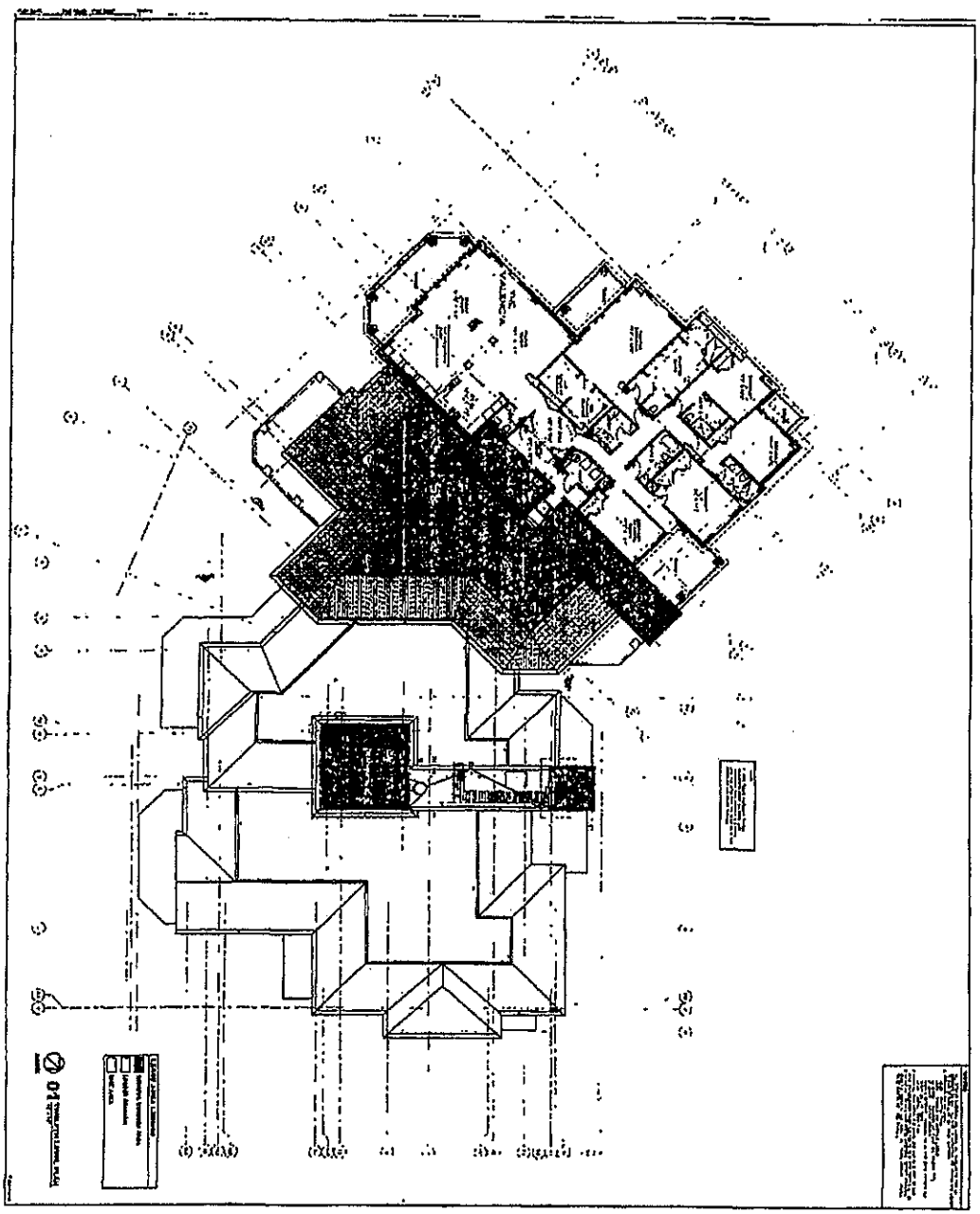


BARCELONA TOWER
AT VISTA DEL MAR

GRAND DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

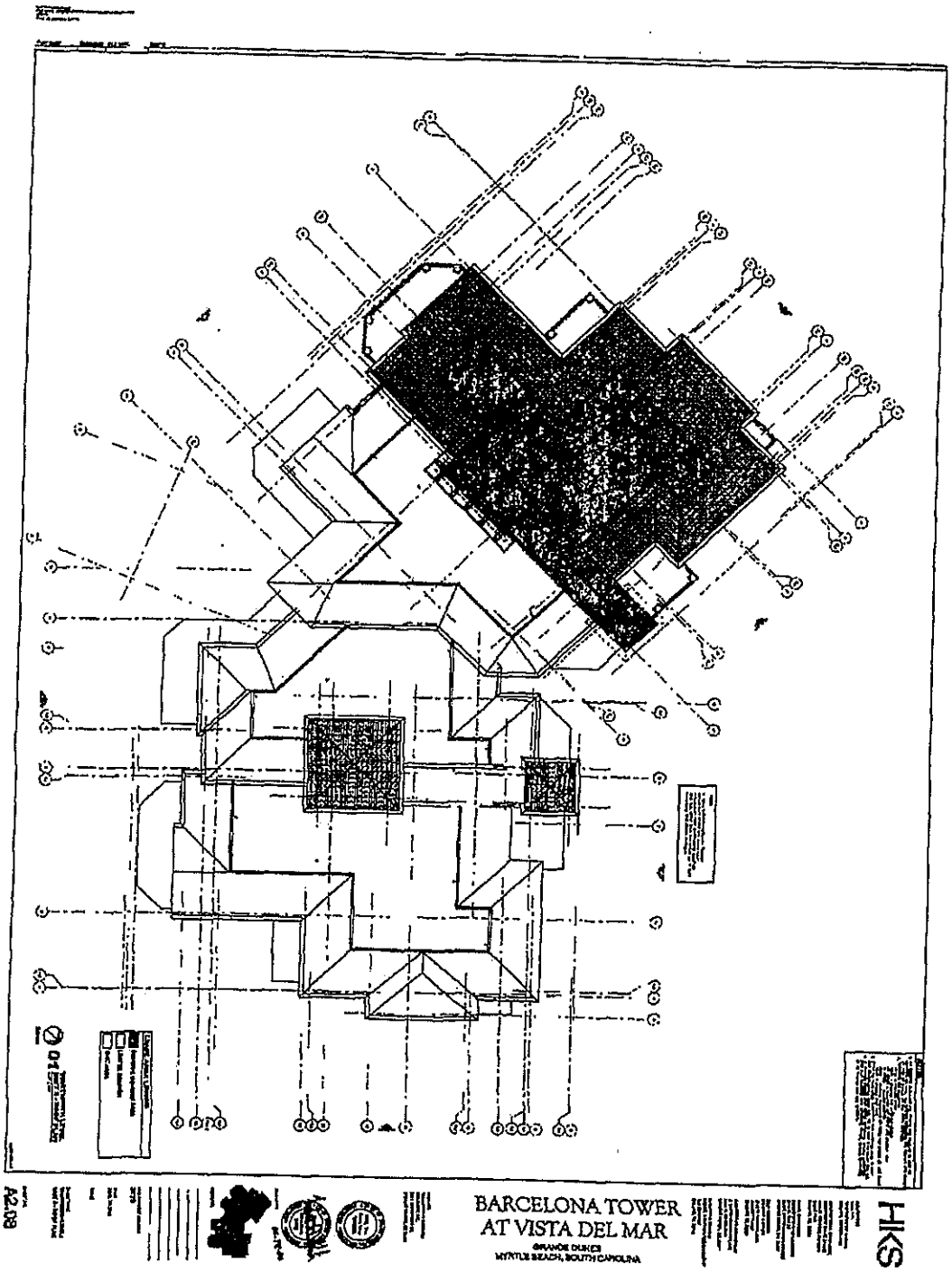
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BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

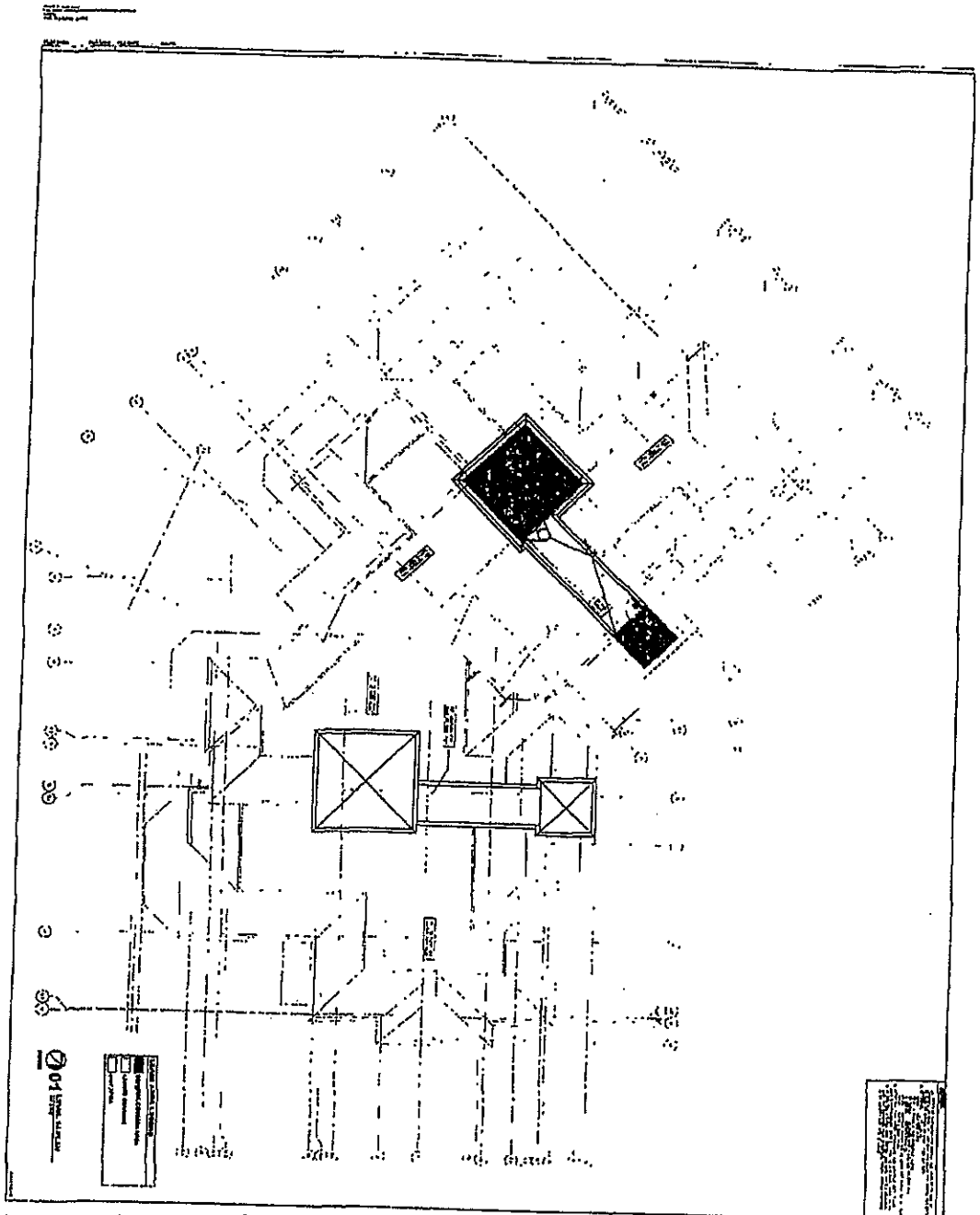
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BARCELONA TOWER
AT VISTA DEL MAR

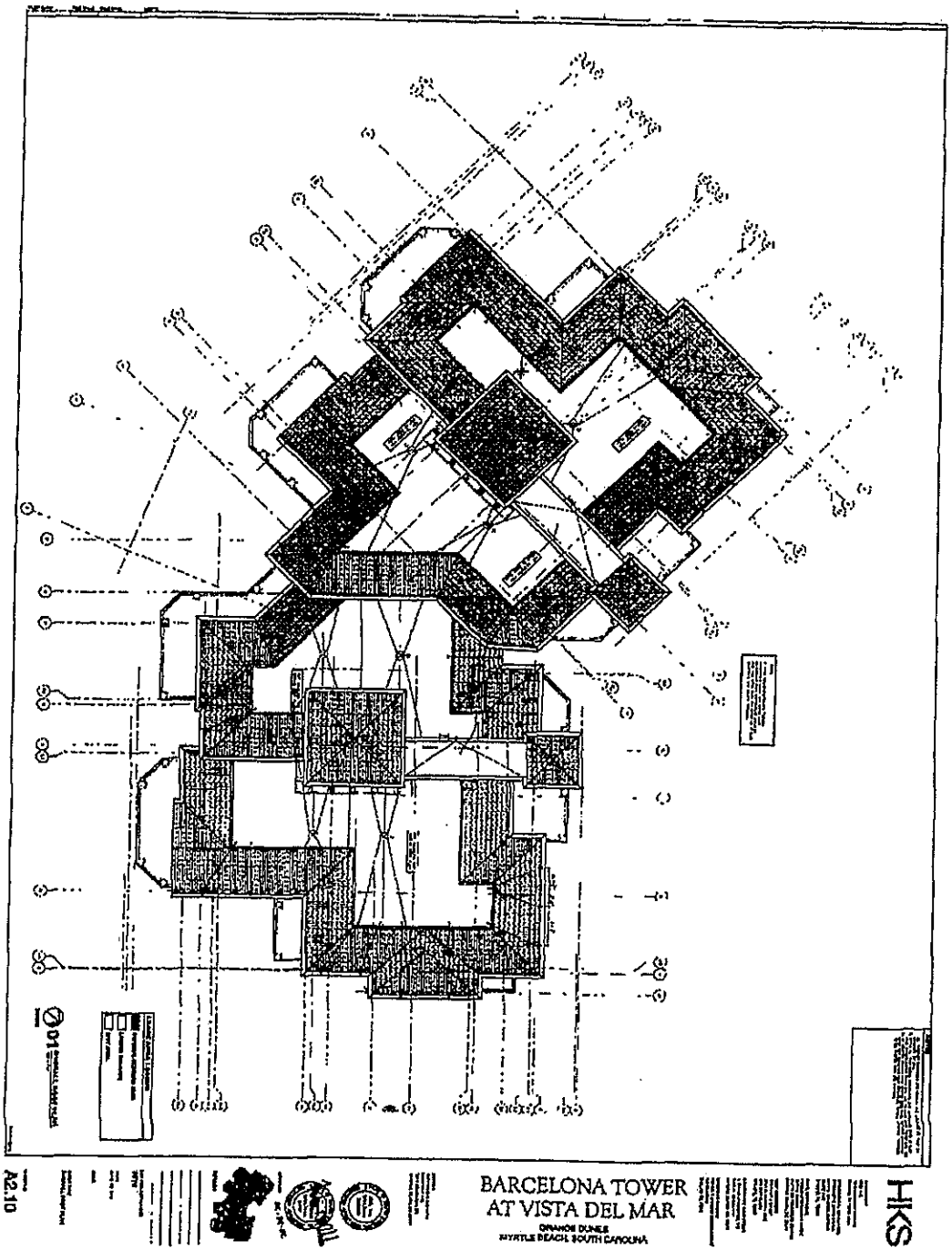
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BARCELONA TOWER
AT VISTA DEL MAR
GRANDE DUNES
MYRTLE BEACH, SOUTH CAROLINA

HKS

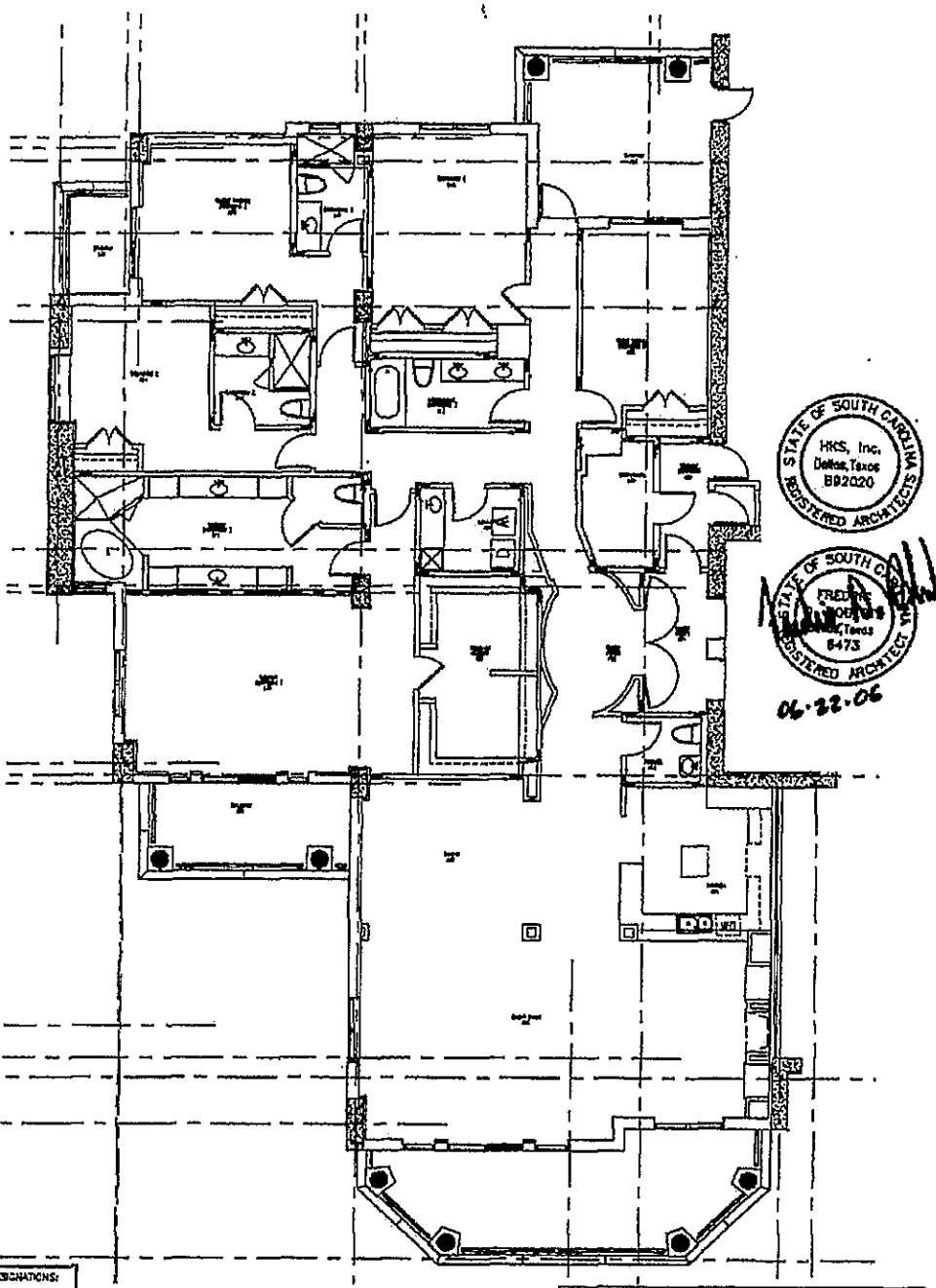
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A2.10

BARCELONA TOWER
AT VISTA DEL MAR

HKS



UNIT DESIGNATIONS:

2104	2704
2204	2804
2304	2704
2404	21504
2504	21104
2604	21304

AREA FROM CENTER OF DEMISING INTERIOR FACE OF EXTERIOR WALL & EXTERIOR FACE OF OUTSIDE WALLS		AREA FROM UNFINISHED INTERIOR FACE OF PERIMETER WALLS	
HEATED	4008 SQ. FT.	HEATED	3697 SQ. FT.
BALCONY	725 SQ. FT.	BALCONY	735 SQ. FT.
TOTAL	4733 SQ. FT.	TOTAL	4432 SQ. FT.

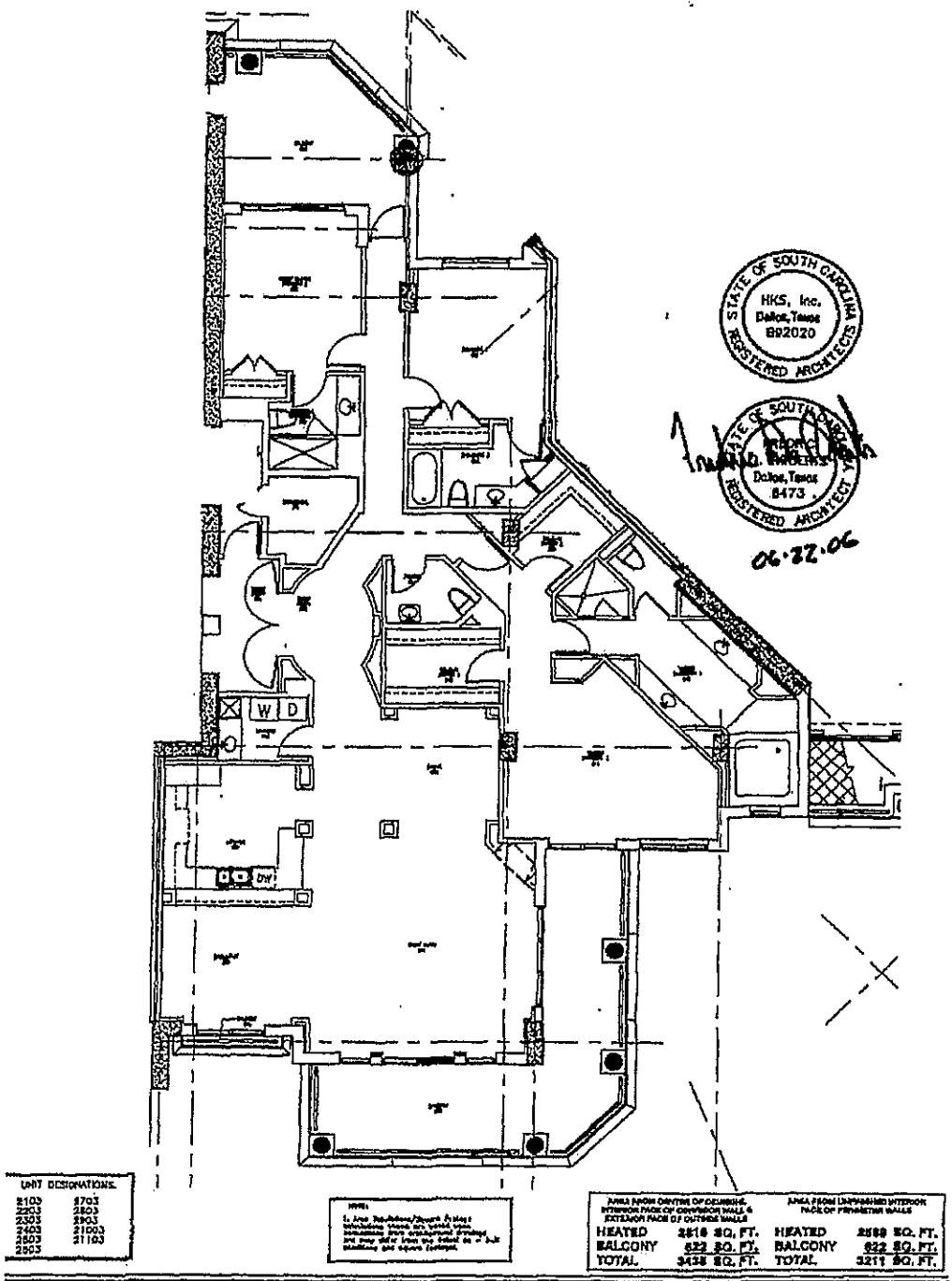
Barcelona Tower At Vista Del Mar

Grande Dunes

Myrtle Beach, South Carolina

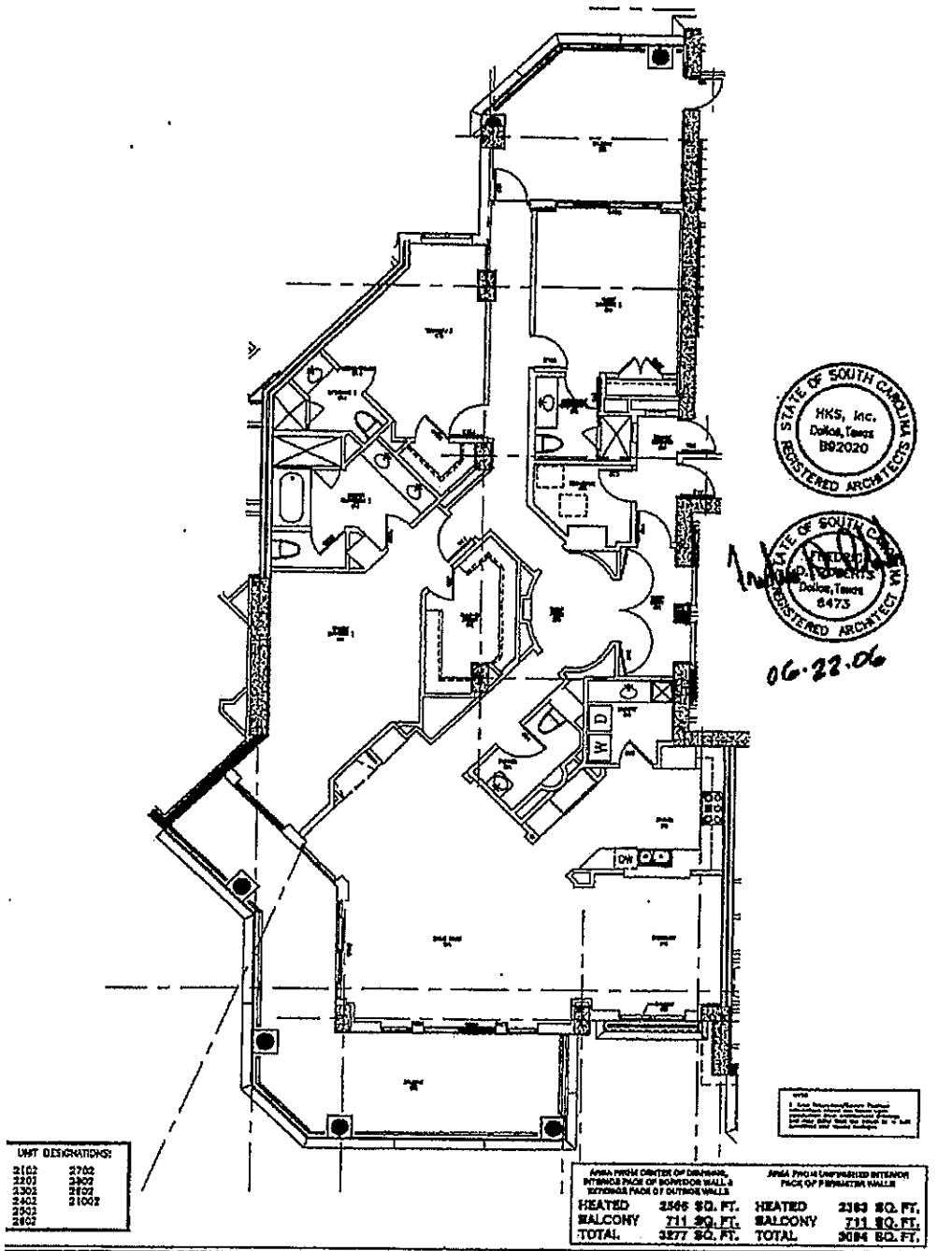
JUNE 05, 2006

UNIT A



Barcelona Tower At Vista Del Mar
Grande Dunes

UNIT B



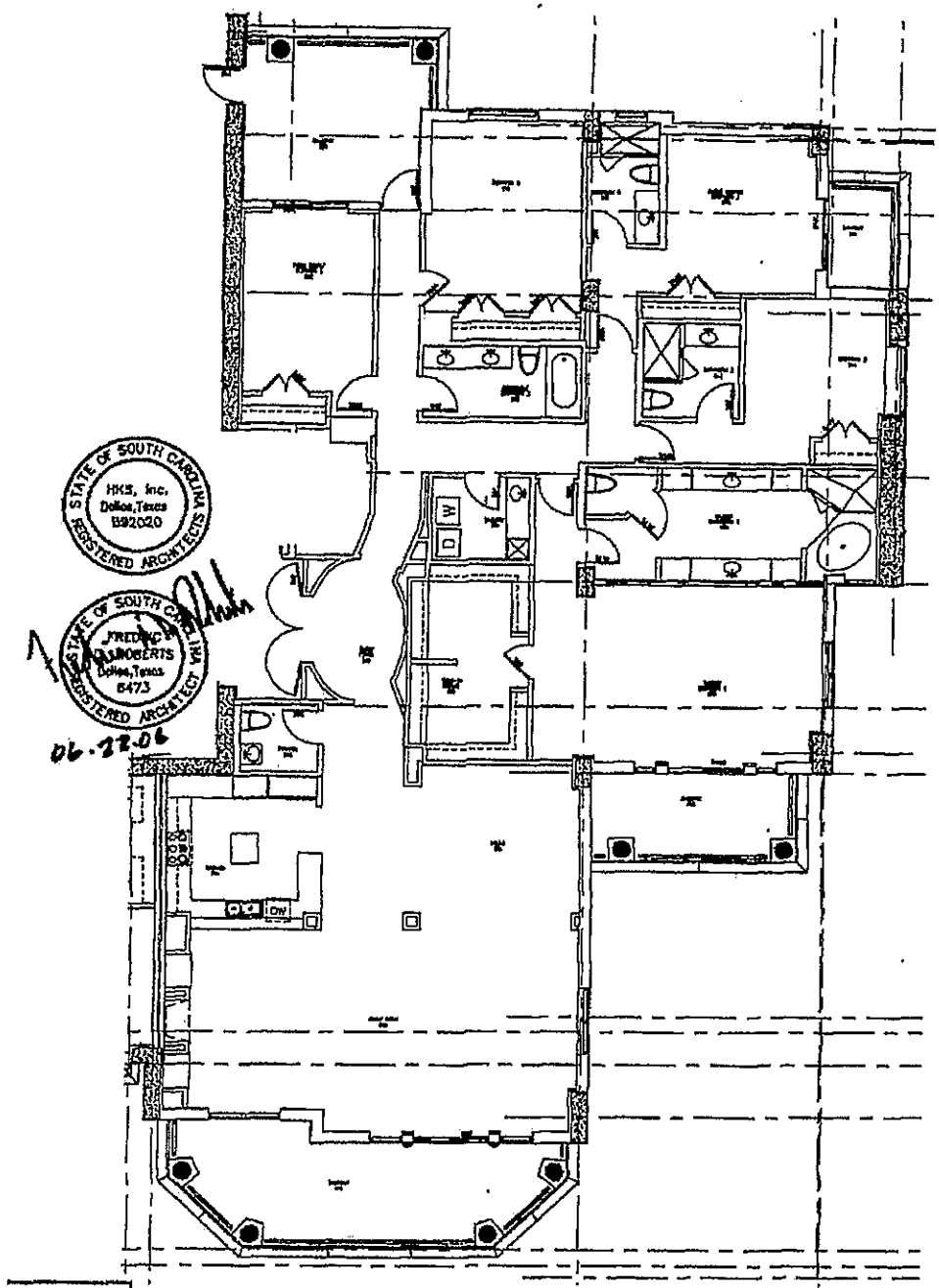
Barcelona Tower At Vista Del Mar

Grande Dunes

Myrtle Beach, South Carolina

JUNE 05, 2006

UNIT C



Barcelona Tower At Vista Del Mar — **UNIT D**

Grande Dunes

Myrtle Beach, South Carolina

JUNE 05, 2006

ARCHITECT'S CERTIFICATE
FOR
PHASE II OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME

Pursuant to S. C. CODE ANN. § 27-31-110 (1976), I certify that to the best of my knowledge the floor and unit plans attached to this First Amendment of Master Deed of The Vista Del Mar Horizontal Property Regime depict the dimensions, location and area of the Units and the General and Limited Common Elements of Phase II of the Vista Del Mar the Horizontal Property Regime.

HKS, INC.
1919 MCKINNEY AVENUE
DALLAS, TEXAS 75201

(*signature*)

By: **Fred Roberts**

Its: PRINCIPAL

South Carolina Architect's License No.: 6473

Date: 06/22/06

CLT 966586v1

EXHIBIT "C"

Schedule of Assigned Values and Percentage Interests

This is a Schedule of Assigned Values and Percentage Interests in the Common Areas appurtenant to Units in The Vista Del Mar Horizontal Regime. The Assigned Value is for statutory purposes only and has no relationship to the actual value of each Unit.

	Vista Del Mar			
	Units in Buildings/ Phases 1 & 2	**Assigned Value**	**% Interest**	**Parking Limited Common Area**
Phase I	1104	$3,000	1.72413 %	P-1104
	1204	$3,000	1.72413 %	P-1204
	1304	$3,000	1.72413 %	P-1304
	1404	$3,000	1.72413 %	P-1404
	1504	$3,000	1.72413 %	P-1504
	1604	$3,000	1.72413 %	P-1604
	1103	$2,500	1.43678 %	P-1103
	1203	$2,500	1.43678 %	P-1203
	1303	$2,500	1.43678 %	P-1303
	1403	$2,500	1.43678 %	P-1403
	1503	$2,500	1.43678 %	P-1503
	1603	$2,500	1.43678 %	P-1603
	1703	$2,500	1.43678 %	P-1703
	1102	$2,000	1.14942 %	P-1102
	1202	$2,000	1.14942 %	P-1202
	1302	$2,000	1.14942 %	P-1302
	1402	$2,000	1.14942 %	P-1402
	1502	$2,000	1.14942 %	P-1502
	1602	$2,000	1.14942 %	P-1602
	1702	$2,000	1.14942 %	P-1702
	1802	$2,000	1.14942 %	P-1802
	1101	$2,500	1.43678 %	P-1101
	1201	$2,500	1.43678 %	P-1201
	1301	$2,500	1.43678 %	P-1301
	1401	$2,500	1.43678 %	P-1401
Phase II	2104	$3,000	1.72413 %	P-104
	2204	$3,000	1.72413 %	P-204
	2304	$3,000	1.72413 %	P-304
	2404	$3,000	1.72413 %	P-404

	Units in Buildings/ Phases 1 & 2	Assigned Value	% Interest	Parking Limited Common Area
	2504	$3,000	1.72413 %	P-504
	2604	$3,000	1.72413 %	P-604
	2704	$3,000	1.72413 %	P-704
	2804	$3,000	1.72413 %	P-804
	2904	$3,000	1.72413 %	P-904
	21004	$3,000	1.72413 %	P-1004
	21104	$3,000	1.72413 %	P-1104
	21204	$3,000	1.72413 %	P-1204
	2103	$2,500	1.43678 %	P-103
	2203	$2,500	1.43678 %	P-203
	2303	$2,500	1.43678 %	P-303
	2403	$2,500	1.43678 %	P-403
	2503	$2,500	1.43678 %	P-503
	2603	$2,500	1.43678 %	P-603
	2703	$2,500	1.43678 %	P-703
	2803	$2,500	1.43678 %	P-803
	2903	$2,500	1.43678 %	P-903
	21003	$2,500	1.43678 %	P-1003
	21103	$2,500	1.43678 %	P-1103
	2102	$2,500	1.43678 %	P-102
	2202	$2,500	1.43678 %	P-202
	2302	$2,500	1.43678 %	P-302
	2402	$2,500	1.43678 %	P-402
	2502	$2,500	1.43678 %	P-502
	2602	$2,500	1.43678 %	P-602
	2702	$2,500	1.43678 %	P-702
	2802	$2,500	1.43678 %	P-802
	2902	$2,500	1.43678 %	P-902
	21002	$2,500	1.43678 %	P-1002
	2101	$3,000	1.72413 %	P-101
	2201	$3,000	1.72413 %	P-201
	2301	$3,000	1.72413 %	P-301
	2401	$3,000	1.72413 %	P-401
	2501	$3,000	1.72413 %	P-501
	2601	$3,000	1.72413 %	P-601
	2701	$3,000	1.72413 %	P-701
	2801	$3,000	1.72413 %	P-801
Total	**66 Units**	**$174,000**	**100 %**	

Four additional Buildings, or any lesser number of them, may be submitted in any order as Phases III through VI of the Regime. A Building may be composed of as little as twenty-five (25) Units with an Assigned Value of only $2,000 each, or as many as forty-five (45) Units with Assigned Values ranging between $2,000 and $3,000. As each phase is added, the total Assigned Value of all phases submitted and constituting the Regime at that time and the Percentage Interest of each Unit, a formula is employed using the Assigned Value of each Unit set forth in this Exhibit "C", as amended for each phase added, as the numerator and the total Assigned Values of all Units (including the phase being submitted and all phases previously submitted to the Regime) as the denominator. The resulting fraction will then be expressed as a percentage rounded to the nearest .00001. The total Assigned Values assigned to each Building that may be constructed and submitted to the Regime as Phases III through VI, if constructed and submitted, will be in accordance with the following schedule.

Total Assigned Values in Phase I Previously Submitted	$	61,500.00
Total Assigned Values in Phase II Submitted Herewith[1]	$	112,500.00
Maximum Possible Assigned Values in Phase III	$	105,000.00
Maximum Possible Assigned Values in Phase IV	$	105,000.00
Maximum Possible Assigned Values in Phase V	$	105,000.00
Maximum Possible Assigned Values in Phase VI	$	97,500.00
Total Maximum Assigned Values of the Project, If All Phases Are Constructed and Submitted	$	586,500.00

As an example, if Building 3 is composed of thirty-five (35) Units, each with an Assigned Value of $3,000, and is added as Phase III, the total Assigned Values in Phases I and II ($174,000) would be added to the additional Assigned Values in Phase III ($105,000), so that, following submission the total Assigned Values in Phase I through III would be $279,000. To determine the Percentage Interest of a Unit with an Assigned Value of $2,000 if Phase III is added to Phases I and II and those three (3) phases constitute the entire Regime, the following formula would be used:

$$\frac{\text{ASSIGNED VALUE}}{\text{TOTAL ASSIGNED VALUES}} = \frac{\$2,000}{\$279,000} = .716846\%$$

[1] Pursuant to Section 13.1 of the Master Deed, the Developer is hereby changing the total Assigned Value for Phase II from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $112,500 total Assigned Value set forth herein. In order to comply with Section 13.1 of the Master Deed, which requires that any such change cannot affect the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted, the Developer is hereby changing the total Assigned Value for Phase VI from a maximum of $105,000 (as set forth in the original Exhibit "C" to the Master Deed) to the $97,500 total Assigned Value set forth herein. In accordance with Section 13.1 of the Master Deed, the total Assigned Value of all the Units if all the phases of the Regime are constructed and submitted ($586,500) has not been changed by virtue of this Amendment.

Instrument#: 2009000035880, DEED BK: 3394 PG: 1718 DOCTYPE: 069 04/06/2009 at 11:11:57 AM, 1 OF 5 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct 1680008136

STATE OF SOUTH CAROLINA	)	CORRECTIVE FOURTH AMENDMENT TO
	)	MASTER DEED OF THE VISTA DEL MAR
COUNTY OF HORRY	)	HORIZONTAL PROPERTY REGIME

THIS CORRECTIVE FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME ("the Corrective Fourth Amendment") is made this 3rd day of April, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, the Developer, by "Master Deed of The Vista Del Mar Horizontal Property Regime" dated November 26, 2003, recorded December 4, 2003, in the Office of the Register of Deeds for Horry County (the "ROD") in Deed Book 2672 at Page 467, as further amended (hereinafter referred to as the "Master Deed"), created a horizontal property regime (the "Regime") upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to Article 14, Sections 14.2(b) and 14.7 of the Master Deed, the Developer retained the unilateral right to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the Regime and from the application of this Master Deed; and

WHEREAS, pursuant to the Fourth Amendment to Master Deed of The Vista Del Mar Horizontal Property Regime dated March 20, 2009 and recorded March 25, 2009 at the ROD in Deed Book 3392 at Page 3120 (the "Original Fourth Amendment"), Developer amended the Master Deed removing a subdivided portion of the Common Area from the Regime and from the application of the Master Deed, said subdivided portion being more particularly described in that certain plat referenced in the Original Fourth Amendment's legal description and recorded at the ROD in Plat Book 243 at Page 215 (the "Original Plat"); and

WHEREAS, the Original Plat contained an error omitting one of the calls and has been corrected and revised by that certain Corrective Plat (defined in Exhibit "A" attached hereto) accurately depicting the subdivided portion of Common Area removed from the Regime and from the application of the Master Deed; and

WHEREAS, the Developer desires to amend the Master Deed by recording this Corrective Fourth Amendment replacing the legal description in Exhibit "A" with the attached Exhibit "A" legal description referencing the Corrective Plat.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its unilateral right pursuant to Sections 14.2(b) and 14.7 of the Master Deed to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portions from the Regime and from the application of

DEFENDANT'S EXHIBIT 7 10/9/19 Dendy
PENGAD 800-631-6989

this Master Deed, said subdivided portions being identified on the Corrective Plat described in Exhibit "A" as "Parcel 1", and does further declare as follows:

I. Definitions. Unless specifically defined herein, the capitalized words in this Corrective Fourth Amendment shall have the same meanings as set forth in the Master Deed.

II. Amendment of Exhibit "A" for Removal of Land. Exhibit "A" to the Master Deed, as amended, is hereby deleted in its entirety and replaced by Exhibit "A" attached hereto and made a part hereof by reference.

III. Conflict. If any term or condition of this Corrective Fourth Amendment conflicts with any term or condition of the Master Deed, the terms and conditions of this Corrective Fourth Amendment shall control. Otherwise, the terms and conditions of the Master Deed shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this CORRECTIVE FOURTH AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

VISTA DEL MAR CONDOMINIUMS, LLC

By: Grande Dunes Development Company, LLC
Its: Member-Manager

By: Burroughs & Chapin Company, Inc.
Its: Managing Member

By: _____
Name: DEREK KRIDER
Title: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, by Grande Dunes Development Company, LLC, its sole Member-Manager, by Burroughs & Chapin Company, Inc., its Managing Member by Derek Krider, its President.

_____ (SEAL)
NOTARY PUBLIC for South Carolina
My Commission expires: 7-1-12
(AFFIX SEAL)

PPAB 1550465v1

EXHIBIT "A"

Legal Description

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Tract A" comprising 5.853 acres, more or less, on a survey entitled, "Boundary Survey of a Portion of the Ocean Tract at Grande Dunes for Myrtle Beach Farms Company, Inc.", prepared by Survey Technology, Inc., dated February 25, 2002 and recorded in the ROD Office for Horry County in Plat Book 183 at Page 72, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

AND,

All that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 2B" comprising of 5.00 acres, more or less, on a survey entitled "Combination Plat of Parcels 2A and 2B, City of Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Robert L. Bellamy & Associates, Inc., Consulting Engineers, Planners & Surveyors, dated November 12, 2004, last revised May 24, 2006, and recorded in Plat Book 214 at Page 102, in the ROD Office for Horry County, South Carolina, said property having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid survey, said survey being incorporated herein by reference;

SAVING AND EXCEPTING THEREFROM,

All that certain piece, parcel or tract of land situate, lying and being in the City of Myrtle Beach, in the County of Horry, State of South Carolina, being shown and designated as "Parcel 1, 112,185 sq. ft., 2.58 acres" on a plat entitled "Subdivision Plat of Tax Parcel 166-00-08-092, Vista del Mar, Grande Dunes, Myrtle Beach, Horry County, South Carolina, Prepared for: Vista Del Mar Condominiums, LLC", prepared by Associated Land Surveyors, dated February 19, 2009, revised March 31, 2009, and recorded in Plat Book 243 at Page 275, in the ROD Office for Horry County, South Carolina (the "Corrective Plat"), said parcel having such metes, bounds, courses and distances as more fully appear by reference to the aforesaid Corrective Plat, which is incorporated herein by reference.

The within conveyance is subject to all easements of record and/or upon the ground.

This being a portion of the premises conveyed to Vista Del Mar Condominiums, LLC by the following deeds: 1) Deed from Grande Dunes Development Company, LLC dated April 30, 2002 and recorded April 30, 2002 in the Office of the Register of Deeds for Horry County in Deed Book 2476 at Page 500; 2) Deed from Grande Dunes Development Company, LLC dated July 14, 2004 and recorded July 15, 2004 in the Office of the Register of Deeds for Horry

County in Deed Book 2761 at Page 829; and 3) Corrective Deed from Grande Dunes Development Company, LLC dated June 20, 2006 and recorded June 21, 2006 in the Office of the Register of Deeds for Horry County in Deed book 3116 at Page 1140.

Portion of TMS #166-00-08-092

Instrument#: 2013000158194, DEED BK: 3705 PG: 3116 DOCTYPE: 046 12/20/2013 at 03:21:54 PM, 1 OF 11 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Prepared by:

Zeb M. Thomas, Esq.
Nelson Mullins Riley & Scarborough LLP
3751 Robert Grissom Parkway, Suite 300
Myrtle Beach, South Carolina 29577
(843) 448-3500

Cross Reference:

Deed Book 2254, Page 1219
Deed Book 2330, Page 744
Deed Book 3315, Page 1096
Deed Book 3076, Page 008
Deed Book 2656, Page 004
Deed Book 3355, Page 1171
Deed Book 2672, Page 467
Horry County, South Carolina Records

ASSIGNMENT OF DECLARANT AND DEVELOPER RIGHTS IN CONNECTION WITH THE GRANDE DUNES DEVELOPMENT

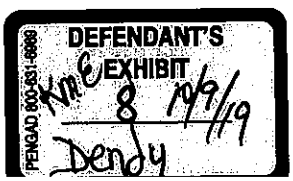
THIS ASSIGNMENT OF DECLARANT AND DEVELOPER RIGHTS IN CONNECTION WITH THE GRANDE DUNES DEVELOPMENT ("Agreement") is dated as of December 19, 2013, and effective December 20, 2013 (the "Effective Date"), by and between **GDMB OPERATIONS LLC**, a Delaware limited liability company ("Assignee"), and **GRANDE DUNES DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company ("Seller"), **VILLA MARBELLA DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, **VILLA VENEZIA DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, and **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company (collectively with the Seller, the "Assignor"). Assignee and Assignor are together referred to herein as the "Parties," and sometimes individually as a "Party." Capitalized terms used but not defined in this Agreement shall have the meanings assigned thereto in the Master Declaration (as defined below).

WHEREAS, the following master deeds and declarations of covenants, conditions, and restrictions recorded in the office of the Register of Deeds for Horry County, South Carolina, as such documents may have been supplemented and amended from time to time (collectively, the "Master Deeds and Declarations") in connection with the Grande Dunes Development located in Myrtle Beach, South Carolina, have been executed by a party comprising the Assignor as hereafters set forth:

(i) The Master Declaration of Covenants, Conditions, and Restrictions for Grande Dunes Master Association recorded with the register of deeds of Horry County, South Carolina on April 26, 2000, in Deed Book 2254 at Page 1219, as amended and supplemented from time to time (the "Master Declaration"), executed by Grande Dunes Development Company, LLC, as "Declarant;"

(ii) The Declaration of Covenants, Conditions, and Restrictions for the Village at Grande Dunes recorded with the register of deeds of Horry County, South Carolina on December 29, 2000, in Deed Book 2330 at Page 744, as amended and supplemented from time to time, executed by Grande Dunes Development Company, LLC, as "Declarant;"

(iii) The Declaration of Covenants, Conditions, and Restrictions for the Members Club Village at Grande Dunes recorded with the register of deeds of Horry County, South Carolina on February 14, 2008, in Deed Book 3315 at Page 1096, as amended and supplemented from time to time, executed by Grande Dunes Development Company, LLC, as "Declarant;"



(iv) The Declaration of Covenants, Conditions, and Restrictions for Seville recorded with the register of deeds of Horry County, South Carolina on April 6, 2006, in Deed Book 3076 at Page 8, as amended and supplemented from time to time, executed by Grande Dunes Development Company, LLC, as "Declarant;"

(v) The Master Deed of The Villa Marbella Horizontal Property Regime recorded with the register of deeds of Horry County, South Carolina on October 21, 2003 in Deed Book 2656 at Page 4, as amended and supplemented from time to time, executed by Villa Marbella Development Company, LLC, as "Developer;"

(vi) The Master Deed of Villa Venezia Horizontal Property Regime recorded with the register of deeds of Horry County, South Carolina on August 7, 2008 in Deed Book 3355 at Page 1171, as amended and supplemented from time to time, executed by Villa Venezia Development Company, LLC, as "Developer;" and

(vii) The Master Deed of The Vista Del Mar Horizontal Property Regime recorded with the register of deeds of Horry County, South Carolina on December 4, 2003 in Deed Book 2672 at Page 467, as amended and supplemented from time to time, executed by Vista Del Mar Condominiums, LLC, as "Developer."

WHEREAS, Seller, with the joinder of certain other Seller affiliated parties, entered into with Assignee an Amended and Restated Agreement of Sale and Purchase of Certain Property and Other Assets Located in Myrtle Beach, South Carolina, dated effective as of August 30, 2013, as amended by the First Amendment thereof, dated October 28, 2013, the Second Amendment thereof, dated November 8, 2013, the Third Amendment thereof, dated December 3, 2013, and the Fourth Amendment thereof, dated December 17, 2013 (collectively, the "Contract"); and

WHEREAS, pursuant to the terms of the Contract and this Agreement, Assignor has agreed to assign its rights, title, interest, powers, privileges and immunities if any, as "Declarant" or "Developer," as the case may be, under the Master Deeds and Declarations, and all of its rights, title, and interest if any, under the bylaws and articles of incorporation of the Grande Dunes Master Association, The Golf Village Property Owners' Association, Members Club Village Property Owners Association, Seville Property Owners Association, Villa Marbella Condominium Association, Villa Venezia Condominium Owners' Association, and Vista Del Mar Condominium Association, each a South Carolina nonprofit corporation (such associations are collectively, the "Associations") (such bylaws and articles of incorporation of the Associations are collectively, the "Associations Governing Documents"), and Assignee has agreed to assume all obligations of Assignor as "Declarant" and "Developer," as the case may be, under such Master Deed and Declarations and Associations Governing Documents, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, warranties and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Assignment and Assumption of Declarant and Developer Rights.** Effective as of the Closing Date, subject to those Reserved Rights (as hereafter defined), Assignor hereby assigns, sells, transfers and sets over (collectively, the "Assignment") to Assignee, subject to and reserving the Reserved Rights, all of Assignor's rights, title, interest, powers, privileges and immunities, if any, in and to, and all of Assignor's burdens, obligations and liabilities, as the "Declarant" or "Developer," in connection with, the Master Deeds and Declarations and the Associations Governing Documents, including any amendments and supplements thereto as may have been entered into from time to time.

Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities of Assignor as the "Declarant" or "Developer," as the case may be, to be observed, performed, paid or discharged from and after the Closing (but not those duties, covenants, obligations, or liabilities that arose and accrue to the period prior to the Closing) in connection with such Master Deeds and Declarations and the Associations Governing Documents, excluding those retained by Assignor pursuant to the Reserved Rights.

2. **Reserved Rights**. Notwithstanding the Assignment, Assignor hereby reserves the following rights, title, interest, powers, privileges and immunities under such Master Deeds and Declarations and the Associations Governing Documents (the "Reserved Rights"):

(a) the Declarant's right and power under Section 2.3(a) of the Master Declaration to submit certain property described in the attached **EXHIBIT "A"** which is incorporated herein by reference which is either owned by Assignor or otherwise submitted with the consent of the owner, to the plan and operation of the Master Declaration together with the right to designate its Designated Community Type and to form and designate a Subordinate Development, Subordinate Declaration, and Subordinate Association for such property under the Master Declaration or permit its inclusion with the existing Subordinate Development known as Cipriana;

(b) the Assignor's right and power, as Declarant under the Master Declaration and Master Declarant under the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Cipriana Park dated January 26, 2011 and recorded February 2, 2011 in Deed Book 3502 at Page 2196 in the office of the Register of Deeds for Horry County, South Carolina, as amended and supplemented from time to time (the "Cipriana Declaration"), to exclusively approve, and exclusively require its approval, to any changes or amendments to the Cipriana Declaration;

(c) with respect to acts or omissions of Assignor occurring on or prior to the Effective Date of this Agreement, the Declarant's and Developer's rights, powers, privileges, defenses, and immunities as a Bound Party under all such Master Deeds and Declarations and the Associations Governing Document, including all those rights, defenses, claim limitations, immunities, mandatory procedures for non-exempt claims, and other terms and conditions with respect to the alternate dispute resolution requirements and all litigation and dispute resolution processes set forth therein; and

(d) the Declarant's and Developer's rights, powers, privileges, defenses, and immunities as a Bound Party under the Cipriana Declaration and all such other master deeds and declarations and associations governing documents involving or appertaining to the development of the Grande Dunes development other than those under the Master Deeds and Declarations and the Associations Governing Documents which are being assigned by this Agreement, including all those rights, defenses, claim limitations, immunities, mandatory procedures for non-exempt claims, and other terms and conditions with respect to the alternate dispute resolution requirements and all litigation and dispute resolution processes set forth therein.

For the avoidance of doubt, this Assignment does not transfer, convey or assign to Purchaser any right, title or interest in Excluded Personal Property (as defined in the Contract), including but not limited the Advances (as defined in the Contract).

2. **Further Actions.** Each Party shall use all commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable laws, and execute and deliver such documents and other papers as may be required or appropriate to carry out the provisions of this Agreement and to enable the performance of the transactions contemplated herein.

3. **Miscellaneous.**

(a) Notices. All notices, requests and other communications to any Party hereunder must be in writing and given in the manner and to the addresses set forth in the Contract.

(b) Amendment. No amendment, modification or supplement of or to this Agreement will be effective unless made in writing and signed by each of the Parties.

(c) Waiver. No waiver shall be deemed to have been made by any Party of any of its rights hereunder unless the same shall be in writing and signed by the waiving Party. Such waiver, if any, shall be a waiver only in respect to the specific instance involved and shall in no way impair the rights of the waiving Party or the obligations of the other Parties in any other respect and at any other time.

(d) Assignment. All terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns. No provision of this Agreement shall be assignable by any Party without the prior written consent of the other Party.

(e) Interpretation of Agreement. The section headings used in this Agreement are for reference and convenience only and will not enter into the interpretation of this Agreement.

(f) Severability. In the event that any one or more terms or provisions hereof shall be held void or unenforceable by any court or arbitrator, all remaining terms and provisions hereof shall remain in full force and effect.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the substantive law of the State of South Carolina.

(h) Counterparts. This Agreement may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission, each of which will be deemed an original, but all of which together constitute one and the same instrument. This Agreement shall become effective when counterparts have been signed by each Party and delivered to the other Party, it being understood that the Parties need not sign the same counterpart.

[Signature Pages Follows]

IN WITNESS WHEREOF, the Assignor and Assignee have duly executed this Agreement as of the day and year first above written.

ASSIGNEE:

GDMB OPERATIONS LLC,
a Delaware limited liability company

Witness #1

By: _____
Name: Steve Vining
Title: Authorized Person

Witness #2

STATE OF SOUTH CAROLINA }
}
COUNTY OF HORRY }

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19 day of December, 2013, by Steve Vining, Authorized Person of **GDMB OPERATIONS LLC**, a Delaware limited liability company, on behalf of the company.

_____ [L.S.]
Notary Public for South Carolina
My Commission Expires: 02-04-2018

Instrument#: 2013000158194, DEED BK: 3705 PG: 3121 DOCTYPE: 046 12/20/2013 at 03:21:54 PM, 6 OF 11 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ASSIGNOR:

GRANDE DUNES DEVELOPMENT COMPANY, LLC,
a South Carolina limited liability company

Witness #1

Witness #2

By:
Name: Chad Carlson
Title: Senior Vice President

STATE OF SOUTH CAROLINA }
}
COUNTY OF HORRY }

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19th day of December, 2013, by Chad Carlson, Vice President of **GRANDE DUNES DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, on behalf of the company.

[L.S.]
Notary Public for South Carolina
My Commission Expires: 6/5/2017

Instrument#: 2013000158194, DEED BK: 3705 PG: 3122 DOCTYPE: 046 12/20/2013 at 03:21:54 PM, 7 OF 11 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

VILLA MARBELLA DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

Witness#1

Witness #2

By:
Name: Chad Carlson
Title: Senior Vice President

STATE OF SOUTH CAROLINA }
} ACKNOWLEDGMENT
COUNTY OF HORRY }

The foregoing instrument was acknowledged before me this 19th day of December, 2013, by Chad Carlson, Vice President of **VILLA MARBELLA DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, on behalf of the company.

[L.S.]
Notary Public for South Carolina
My Commission Expires: 6/5/2017

Instrument#: 2013000158194, DEED BK: 3705 PG: 3123 DOCTYPE: 046 12/20/2013 at 03:21:54 PM, 8 OF 11 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

VILLA VENEZIA DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

Ellen Hall
1st Witness

By: _____
Name: Chad Carlson
Title: Senior Vice President

_____
2nd Witness

STATE OF SOUTH CAROLINA }
} ACKNOWLEDGMENT
COUNTY OF HORRY }

The foregoing instrument was acknowledged before me this 19th day of December, 2013, by Chad Carlson, Vice President of **VILLA VENEZIA DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, on behalf of the company.

_____ [L.S.]
Notary Public for South Carolina
My Commission Expires: 6/5/2017

VISTA DEL MAR CONDOMINIUMS, LLC,
a South Carolina limited liability company

Ellen Hall
1st Witness

Joan Mulcahy
2nd Witness

By: _____
Name: Chad Carlson
Title: Senior Vice President

STATE OF SOUTH CAROLINA }
} ACKNOWLEDGMENT
COUNTY OF HORRY }

The foregoing instrument was acknowledged before me this 19 day of December, 2013, by Chad Carlson, Vice President of **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, on behalf of the company.

Joan Mulcahy [L.S.]
Notary Public for South Carolina
My Commission Expires: 4/9/2017

EXHIBIT "A"

CIPRIANA PARK FUTURE DEVELOPMENT

All that certain piece, parcel, or tract of land, **together with any improvements, fixtures, and personal property of the Seller located thereon,** situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, containing 57.00 acres, more or less, (approximately 12.02 acres, more or less, after subtracting the exceptions set forth below) and being shown as "REMAINDER TMS 165-00-01-416 TMS 165-00-01-424 PARCEL A-3 2,482,956 sq. ft. 57.00 acres" on a plat entitled "SUBDIVISION PLAT OF PARCEL A-3 INTO PARCELS A-3 AND A-4 AT GRANDE DUNES MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors for Grande Dunes Development Company, LLC, dated June 9, 2010 and recorded July 2, 2010 in Plat Book 249 at Page 86 in the office of the Register of Deeds for Horry County, SC.

LESS AND EXCEPT FROM CIPRIANA PARK FUTURE DEVELOPMENT

All those certain pieces, parcels, or tracts of land, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, containing a total of 21.14 acres, more or less, and being shown as "PARCEL C-1A" (5.23 acres) and "PARCEL C-1B" (15.91 acres) on a plat entitled "SUBDIVISION PLAT OF 5.23 ACRE PARCEL C-1A AND 15.91 ACRES PARCEL C-1B FROM TAX PARCEL 165-00-01-416 AND TAX PARCEL 165-00-01-424 GRANDE DUNES MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors for Westlake Capital, Inc., dated May 20, 2010 and recorded July 2, 2010 in Plat Book 249 at page 87.

ALSO, LESS AND EXCEPT FROM CIPRIANA PARK FUTURE DEVELOPMENT

All those certain pieces, parcels, or tracts of land, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, containing 9.79 acres, more or less, and being shown as "PORTION OF TRACT A-3 TMS 165-00-01-466 PIN 39400000274 Current Owner: GRANDE DUNES DEVELOPMENT CO., LLC 426,546 sq. ft. 9.79 acres" on a plat entitled "SUBDIVISION PLAT OF 9.79 ACRE 'CIPRIANA' PHASE 2 TOWN CENTER AT GRANDE DUNES MYRTLE BEACH, HORRY COUNTY, SOUTH CAROLINA" prepared by Associated Land Surveyors for Westlake Capital, Inc., dated June 6, 2012 and recorded June 29, 2012 in Plat Book 255 at page 20.

ALSO, LESS AND EXCEPT FROM CIPRIANA PARK FUTURE DEVELOPMENT

All those certain pieces, parcels, or tracts of land, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, containing 14.05 acres, more or less, and being shown as "NEW PARCEL 611,847 SQ FT 14.05 ACRES" on a plat entitled "SUBDIVISION PLAT OF 14.05 ACRE 'CIPRIANA' PHASE 3 GRANDE DUNES MYRTLE BEACH, HORRY COUNTY, SOUTH

CAROLINA" prepared by Associated Land Surveyors for Westlake Capital, Inc., dated April 29, 2013 and recorded May 15, 2013 in Plat Book 258 at page 13.

TMS #: 165-00-01-466

THIS tract is a portion of the land conveyed to Grande Dunes Development Company, LLC by Myrtle Beach Farms Company, Inc. by its deed dated September 17, 2007 and recorded September 19, 2007 in Deed Book 3277 at Page 2487 in the Office of the Register of Deeds for Horry County, SC.

Instrument#: 2013000158189, DEED BK: 3705 PG: 3087 DOCTYPE: 001 12/20/2013 at 03:21:49 PM, 1 OF 6 COUNTY STAMPS: $467.50 STATE STAMPS: $1105.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

TMS Number correct 1660008136

Deed #17

STATE OF SOUTH CAROLINA	)	**TITLE TO REAL ESTATE**
	)	**LIMITED WARRANTY DEED**
COUNTY OF HORRY	)	

KNOW ALL MEN BY THESE PRESENTS, that **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company ("***Grantor***"), for Five Dollars and other good and valuable consideration paid to Grantor at and before the sealing of these presents by **GDMB OCEAN LLC**, a Delaware limited liability company ("***Grantee***"), whose address is 840 Newport Center Drive, Newport Beach, CA 92660, in the State aforesaid, the receipt and legal sufficiency of which are hereby acknowledged, subject to the Permitted Exceptions (as defined below), has granted, bargained, sold, conveyed and released, and by these Presents does grant, bargain, sell, convey and release, unto Grantee, its successors and assigns, the following described property, together with any and all of Grantor's improvements thereon (collectively, the "**Premises**"), to wit:

DESCRIPTION OF PREMISES CONVEYED

See Exhibit A-1 attached hereto and incorporated herein by reference.

GRANTEE'S MAILING ADDRESS: For the purposes of this Title to Real Estate Limited Warranty Deed Grantee's mailing address is as follows:

c/o GDMB Associates LLC, 840 Newport Center Drive, Newport Beach, CA 92660

TOGETHER WITH ALL AND SINGULAR, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in any wise incident or appertaining.

THIS CONVEYANCE IS MADE SUBJECT TO "all matters of record" to the extent encumbering or otherwise affecting all or any portion of the Premises (the "**Permitted Exceptions**").

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular, the said Premises before mentioned unto Grantee, its successors and assigns forever.

DEFENDANT'S EXHIBIT 9 10/9/19 Dendy
PENGAD 800-631-6989

AND SUBJECT TO THE PERMITTED EXCEPTIONS, Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular the said Premises unto Grantee, its successors and assigns, against itself and its successors and assigns, against all persons whomsoever lawfully claiming, or to claim, the same or any part thereof by, under or through Grantor.

[Remainder of Page Intentionally Left Blank]

Instrument#: 2013000158189, DEED BK: 3705 PG: 3089 DOCTYPE: 001 12/20/2013 at 03:21:49 PM, 3 OF 6 COUNTY STAMPS: $467.50 STATE STAMPS: $1105.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

WITNESS its hand and seal this 19 day of December, 2013.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Ellen Hall

Witness #1

Jane M Neal

Witness #2

VISTA DEL MAR CONDOMINIUMS, LLC, a South Carolina limited liability company

By:

Name: Chad Carlson

Title: Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19th day of December, 2013, by Chad Carlson, Vice President of **VISTA DEL MAR CONDOMINIUMS, LLC**, a South Carolina limited liability company, on behalf of the company.

Jane M Neal [L.S.]
Notary Public for South Carolina
My Commission Expires: 6/5/2017

Instrument#: 2013000158189, DEED BK: 3705 PG: 3090 DOCTYPE: 001 12/20/2013 at 03:21:49 PM, 4 OF 6 COUNTY STAMPS: $467.50 STATE STAMPS: $1105.00 RALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

EXHIBIT A-1

LEGAL DESCRIPTION

OCEAN TRACT 7 (F/K/A OCEAN TRACT 2):

All that certain piece, parcel, tract of land, situate, lying and being in the City of Myrtle Beach, Dogwood Neck Township, Horry County, South Carolina, containing 2.58 acres and being shown as "PARCEL 1" on a plat entitled "SUBDIVISION PLAT OF TAX PARCEL 166-00-08-092, VISTA DEL MAR, GRAND DUNES" prepared by Associated Land Surveyors for Vista Del Mar Condominiums, LLC, dated February 19, 2009 with last revision March 31, 2009 and recorded April 6, 2009 in Plat Book 243 at Page 275 in the office of the Register of Deeds for Horry County, SC.

DERIVATION: A PORTION OF THIS tract is a portion of the land conveyed to Vista Del Mar Condominiums, LLC by Grande Dunes Development Company, LLC, by its deed dated April 30, 2002 and recorded April 30, 2002 in Deed Book 2476 at Page 500, Office of Register of Deeds for Horry County. A PORTION OF THIS tract is a portion of the land conveyed to Vista Del Mar Condominiums, LLC by Grande Dunes Development Company, LLC, by its deed dated July 14, 2004 and recorded July 15, 2004 in Deed Book 2761 at Page 829, Office of Register of Deeds for Horry County and corrective deed dated June 20, 2006 and recorded June 21, 2006 in Deed Book 3116 at Page 1140, Office of Register of Deeds for Horry County.

TMS #: 166-00-08-136

Instrument#: 2013000158189, DEED BK: 3705 PG: 3091 DOCTYPE: 001 12/20/2013 at 03:21:49 PM, 5 OF 6 COUNTY STAMPS: $467.50 STATE STAMPS: $1105.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located in the County of Horry and bearing Horry County Tax Map No. ***166-00-08-136***, and was transferred by ***Vista Del Mar Condominiums, LLC*** to ***GDMB Ocean LLC*** on December 19, 2013.

3. Check one of the following: The deed is

   (a) __X__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

   (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

   (c) _____ exempt from the deed recording fee because (See Information section of affidavit): (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.).

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

   (a) __X__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of ***$424,550.00***.

   (b) _____ The fee is computed on the fair market value of the realty which is .

   (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes or No **X** to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is .

6. The deed recording fee is computed as follows:

(a) _____	Place the amount listed in item 4 above here:	***$424,550.00***
(b) _____	Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	***$0.00***
(c) _____	Subtract Line 6(b) from Line 6(a) and place result here:	***$424,550.00***

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is ***$1,571.00***.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: ***Seller***.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Instrument#: 2013000158189, DEED BK: 3705 PG: 3092 DOCTYPE: 001 12/20/2013 at 03:21:49 PM, 6 OF 6 COUNTY STAMPS: $467.50 STATE STAMPS: $1105.00 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Seller:

VISTA DEL MAR CONDOMINIUMS, LLC, a South Carolina limited liability company

Sworn to before me this 19th day of December, 2013

Notary Public for South Carolina
My Commission Expires: 4/5/2017

By:
Name: Chad Carlson
Its: Vice President

Instrument#: 2015000010277, DEED BK: 3794 PG: 3312 DOCTYPE: 069 01/27/2015 at 12:01:18 PM, 1 OF 2 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

R

STATE OF SOUTH CAROLINA	)	AMENDMENT TO
	)	MASTER DEED OF THE VISTA DEL MAR
COUNTY OF HORRY	)	HORIZONTAL PROPERTY REGIME

THIS AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME (the "Amendment") is made to be effective as of November 7, 2014 (the "Effective Date"), by GDMB OPERATIONS LLC, a Delaware limited liability company ("GDMB").

W I T N E S S E T H:

WHEREAS, Vista Del Mar Condominiums, LLC ("VDM"), by execution and recording of the Master Deed of the Vista Del Mar Horizontal Property Regime dated November 26, 2003, recorded December 4, 2003, in the Office of the Register of Deeds for Horry County (the "ROD") in Deed Book 2672 at Page 467, as further amended (the "Master Deed"), established the horizontal property regime (the "Regime") upon certain property situated in Horry County, South Carolina; and

WHEREAS, pursuant to the Assignment of Declarant and Developer Rights in Connection with the Grande Dunes Development dated as of December 19, 2013, and effective December 20, 2013, recorded in the ROD in Deed Book 3705 at Page 3116 (the "Assignment"), the terms of which are incorporated herein by reference, VDM assigned to GDMB its remaining rights as "Developer" as such term is defined in the Master Deed (but VDM did not assign to GDMB the duties, covenants, obligations and liabilities of VDM arising prior to the effective date of the Assignment); and

WHEREAS, pursuant to the definition of "Transition Period" in Section 1 of the Master Deed and the Transition Provisions set forth in Section 15 of the Master Deed, GDMB by this Amendment desires to voluntarily surrender its authority as a Class "B" Member of the Vista Del Mar Condominium Owners' Association (the "Association");

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that GDMB does hereby exercise its unilateral right pursuant to the definition of "Transition Period" in Section 1 of the Master Deed and the Transition Provisions set forth in Section 15 of the Master Deed, and all other applicable provisions of the Master Deed, to voluntarily surrender its authority as a Class "B" Member of the Association. This Amendment triggers the beginning of the "Transition Period" as defined in the Master Deed, and GDMB will give notice of a meeting of the Association to elect a new Board of Directors of the Association in accordance with the terms of the Master Deed.

Because GDMB does not own any Units in the Regime, upon the election of a new Board of Directors of the Association, or the end of the Transition Period as provided in the Master Deed (which occurs first), GDMB will not be a member of, and shall not have any vote with respect to the governance or operation of, the Association.

GDMB did not assume, and nothing herein or otherwise shall be construed as evidencing GDMB's assumption of, any duties, covenants, obligations or liabilities of any nature whatsoever of VDM

DEFENDANT'S EXHIBIT 10/9/19

or any other party concerning (i) the design, development, sale, operation, maintenance or repair of the land and the improvements that are subject to the Regime, (ii) the governance of the Association or the performance of the Association's duties and obligations by the directors appointed by VDM or any other party or by the officers of the Association, or (iii) any other activities or conduct of any nature whatsoever occurring prior to the effective date of the Assignment, which duties, covenants, obligations and liabilities expressly were not assumed by GDMB under the terms of the Assignment.

Unless specifically defined herein, the capitalized words in this Amendment shall have the same meanings as set forth in the Master Deed.

If any term or condition of this Amendment conflicts with any term or condition of the Master Deed, the terms and conditions of this Amendment shall control. Otherwise, the terms and conditions of the Master Deed shall remain in full force and effect.

IN WITNESS WHEREOF, GDMB has caused this AMENDMENT TO MASTER DEED OF THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME to be executed to be effective as of the day and year first above written.

WITNESSES:

GDMB OPERATIONS LLC,
a Delaware limited liability company

1st Witness

Steven J. Vining
Operating Member Representative

Rachel Vradenburgh
2nd Witness

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

ACKNOWLEDGEMENT

Execution of the foregoing instrument was acknowledged before me this 26th day of January, 2015, by Steven J. Vining the Operating Member Representative of GDMB Operations LLC, a Delaware limited liability company.

Notary Public for North Carolina (SEAL)

My Commission expires: 8-3-2015

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiff,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiffs,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S NOTICE OF MOTION AND MOTION TO RECONSIDER

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet

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P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

TO: KENNETH R. MOSS and ROBERT E. LEE, Attorneys for Plaintiffs and Third-Party Defendants; and JAMES CHRISTOPHER CLARK, Attorney for Defendant Vista Del Mar Condominiums, LLC:

YOU WILL PLEASE TAKE NOTICE that Defendants/Third-Party Plaintiffs Atlantic Development Company, LLC and Atlantic Coast Funding, LLC ("ADC" and "ACF") hereby move the Court, pursuant to Rule 59(e), SCRCP; Rule 56, SCRCP; and applicable caselaw, to reconsider its denial of their motion for partial summary judgment and for an order reconsidering, altering, and amending the Court's November 8, 2019 order denying ADC and ACF's motion for partial summary judgment (the "Order"). Written notice of the entry of the Order was received by counsel for ADC and ACF on November 8, 2019.

This motion is based upon the pleadings and other matters filed in this action, the arguments of counsel, the evidence and arguments presented in conjunction with the Court's hearing on ADC and ACF's motion for partial summary judgment, the arguments to be presented at the hearing of this motion, and the rules of court. For the reasons set forth below, the Court should reconsider, alter, and amend the Order and grant ADC and ACF partial summary judgment.

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I. INTRODUCTION

The Order's holdings are contrary to the applicable law and facts of this case:

- The Order misapplied binding appellate precedent governing the application of S.C. Code Ann. § 27-31-70 and wrongly interpreted it to be both an absolute bar yet somehow subject to an unwritten "all owners consent" exception;
- The Order erroneously held that the developer could not remove property because it owned un-sold units in the development;
- The Order erroneously held the Fourth Amendment was void because it did not say "attorney in fact" on the signature block;
- The Order erroneously held the Transition Period language was ambiguous;
- The Order erroneously held the removed property was a common element; and
- The Order both relied on evidence outside the record and failed to consider evidence in the record.

II. PROCEDURAL HISTORY[1]

In 2017, Plaintiffs initiated this action and raised five claims in their complaint: 1) quiet title; 2) declaratory judgment; 3) equitable title; 4) equitable easement appurtenant; and 5) servitude appurtenant. Specifically, Plaintiffs asserted a parcel of land (the 2.58 Acre Tract[2]) and an easement (not addressed in the Order) were improperly removed from a horizontal property regime in violation of S.C. Code Ann. § 27-31-70, and that the instruments evidencing the removal

[1] The facts of this case are largely undisputed and recited in the motions for summary judgment by ADC and ACF, the proposed order submitted to the Court by ADC and ACF, and the Order.

[2] The 2.58 Acre Tract is the portion of disputed property identified in Plaintiffs' complaint and further described in the motion for summary judgment by ADC and ACF as well as the Order.

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and subsequent conveyance were void. As this Court recognized in the Order, Plaintiffs' claims depend on the interpretation of S.C. Code Ann. § 27-31-70 and the language in the master deed of this horizontal property regime (the "Master Deed"), most importantly the timeline providing for the termination of the developer's rights under the Master Deed (the "Transition Period").

ADC and ACF filed an answer to Plaintiffs' complaint in which ADC asserted counterclaims for a declaratory judgment and to quiet title to the 2.58 Acre Tract. Additionally, ADC raised third-party claims for a declaratory judgment and to quiet title to the 2.58 Acre Tract against each owner of the individual units subject to the Regime.

ADC and ACF moved for summary judgment in their favor on each claim raised by Plaintiffs. ADC also sought summary judgment in its favor on its counterclaim and third-party claim to quiet title to the 2.58 Acre Tract. The Plaintiffs did not file a motion for summary judgment, but did submit a memorandum opposing the motion filed by ADC and ACF. The hearing was held on the matter before the Honorable Larry Hyman on August 13, 2019. After taking the motion under advisement and instructing the parties to take one deposition on a limited issue, the Court denied ADC and ACF's motion for partial summary judgment in the Order entered November 8, 2019.

III. LEGAL STANDARD

"[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) "A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree." *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297

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S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988) (cited by *Johnston v. Bowen*, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993)). "[W]hether to reconsider a motion for summary judgment is within the trial judge's discretion." *Brown v. Pearson*, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997).

IV. ARGUMENT

A. The Order misinterpreted S.C. Code Ann. § 27-31-70 by reading language into that statute and applying an implausible interpretation of the language.

S.C. Code Ann. § 27-31-70 provides:

> The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

It does not state, either explicitly or implicitly, that common elements may never be transferred from a property association, nor does it state that common elements may only be transferred upon approval of all owners of the common elements. Had that been the intent of the legislature, it could have simply stated that common elements may not be transferred.

The Court plainly erred in interpreting S.C. Code Ann. § 27-31-70 by alternatively finding that the statute both completely bars removal[3] but also stating that regime common elements may be divided and removed with the approval of all unit owners. *Cf.* Order at 10 ("the co-owners own a percentage of the common elements, which is permanent in character, and cannot be altered without their approval") *and id.* at n. 3 ("VDMC removed a common element and did so without

[3] In addition to the legal error of this holding, it also has the practical effect of declaring the division of the 2.58 Acre Parcel and subsequent conveyances void. This is effectively a grant of summary judgment to the Plaintiffs, despite the fact that they did not request summary judgment. As such, it raises the potential necessity of an immediate appeal. In addition to the other grounds for reconsideration, the Court should reconsider the effect of this ruling on the case. If the Court simply intended to deny summary judgment and permit additional discovery, it should withdraw its opinion and simply provide a denial of ADC and ACF's motion.

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the co-owners' approval.") *with id.* at 10 ("the Court holds that any covenant or agreement within the Master Deed that allows common elements to be removed, partitioned, or divided is void as a matter of law"). These legal findings are plainly contradictory. Further, the Court improperly reads into the statute language that simply does not exist: indeed, nothing in the statute states common elements may be divided by the unanimous consent of the co-owners. The fact is that neither of these interpretations is correct.

As ADC and ACF assert, § 27-31-70 requires that unit owners in the regime hold title to the common elements as undivided interests in the whole of the common elements. It precludes a partition action but does not preclude division and transfer of common elements prior to vesting, as explained in *Reyhani* (below). The Court's wholesale adoption of the Plaintiffs' position means the 2.58 Acre Tract is forever and always a common element, incapable of being sold even with the consent of all co-owners—a complete restraint on alienation. The statute was not written with an eye towards the absurd outcome of a complete restriction on ever selling any property submitted to a horizontal property regime. Accordingly, this Court should reconsider the Order and grant summary judgment on the § 27-31-70 issue in favor of ADC and ACF.

B. The Order misapplied binding appellate precedent (*Reyhani*) that required summary judgment in favor of ADC and ACF on Plaintiffs' claims.

The Court also misinterpreted the only reported case to interpret S.C. Code Ann. § 27-31-70, *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 494 S.E.2d 465 (1997). The Court held *Reyhani* stands for the proposition that § 27-31-70 bars removal of property from the common elements. To the contrary, *Reyhani* explicitly allowed property to be removed from a horizontal property regime pursuant to § 27-31-70.

In *Reyhani*, the Supreme Court of South Carolina held that "once common elements are set aside **and vested** in the co-owners, such co-owners may not be unilaterally deprived of their

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interests in the common elements." *Reyhani*, 329 S.C. at 211, 494 S.E.2d at 468 (cited in the Order at 8) (emphasis added). Importantly, the facts in this case are analogous to *Reyhani*'s facts except here the developer's rights had not expired—the 2.58 Acre Tract had **not vested** in the regime owners because the provisions of the Master Deed allowed the removal of unimproved property until the end of the Transition Period. Therefore, the owners held the property subject to the developer's right to divest it under the Master Deed's terms. Accordingly, a faithful application of *Reyhani* requires the Court find that common elements may be removed and transferred prior to the date on which they are vested in the unit owners.[4] This requires an analysis of the specified vesting date in this case, and, as set forth below, dictates that summary judgment be granted in favor of ADC and ACF.[5]

C. The Order wrongly held the developer could not remove the 2.58 Acre Tract because it was a co-owner.

The Order held "[t]he Developer owned unsold units in the Regime and was by definition an owner or co-owner," depending on the cited provision. The Court reasoned that the developer, as a co-owner, cannot remove common area from the regime because "common elements…shall not be the object of an action for partition or division of the co-ownership." Order at 11 (citing S.C. Code Ann. § 27-31-70). Although the developer certainly owned units at some point, § 27-31-70 does not prevent a developer who owns units from removing property where a master deed allows it. In fact, this interpretation in the Order is a complete misreading of § 27-31-70. The

[4] At the hearing, the Court correctly compared this right in the Master Deed to a right of reverter ostensibly because the owners held the property subject to the developer's right to divest it under the Master Deed's terms.

[5] The Court in the Order also improperly relied upon various unpublished opinions. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR.

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statute prevents "an action for partition or division of the co-ownership." In other words, a co-owner may not file a partition suit to sell or divide the common elements. There is no allegation or factual dispute on this issue—the developer did not file a partition or division action based on its status as a co-owner. Rather, the master deed allowed the developer to remove property. Accordingly, the conduct prohibited by co-owners did not occur in this case, and § 27-31-70 did not prevent the developer based on its status as a co-owner from removing the 2.58 Acre Tract where the Master Deed allowed it.

D. The words "attorney in fact" do not need to appear on the Fourth Amendment[6] for it to be valid, and in any event, this issue was not properly before the Court.

This finding was improper because Plaintiffs never pled or argued this issue until Plaintiffs' counsel raised it in their response in opposition to ADC and ACF's motion for summary judgment, which was filed less than two business days before the hearing. The legal effect of the signature was not discussed at the hearing—other than counsel for ADC and ACF stating that the issue was not pled—and was never briefed by ADC and ACF. Therefore, the issue was not properly before the Court.

Moreover, the authority cited in the Order in no way holds that a failure to stamp the words "attorney in fact" on the Fourth Amendment voids that deed. *Queen's Grant* addressed a developer's reserved right to unilaterally amend restrictive covenants and recited strict compliance with the terms of the amendment right as an element. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 350, 628 S.E.2d 902, 907 (Ct. App. 2006). The case actually upheld that developer's right to unilaterally modify restrictive covenants (which, as the case noted, fall outside of the horizontal property act).

[6] As noted in ADC and ACF's motion for partial summary judgment, the Fourth Amendment is the deed that removed the 2.58 Acre Tract.

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Likewise, *Snow v. Smith* upheld a developer's unilateral amendment of restrictive covenants (because it complied with the factors stated in *Queen's Grant*) where no procedure was outlined in the covenants. *Snow v. Smith*, 416 S.C. 72, 91, 784 S.E.2d 242, 251 (Ct. App. 2016) ("The Grantors reserved the right to amend in the Restrictions and stated that right was for their benefit and they could do so at any time. The Amendment met the requirements in *Queen's Grant* to allow the amending of restrictive covenants."). Neither case states anything about a rigid formality of reciting "attorney in fact" where the document granting that attorney in fact power is recited in the deed.

In fact, looking at the Fourth Amendment shows it clearly references the attorney in fact power granted the developer under the Master Deed:

> *Compare* page one of the Fourth Amendment:
>
> > NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby exercise its unilateral right pursuant to Sections 14.2(b) and 14.7 of the Master Deed to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portions from the Regime and from the application of this Master Deed . . . .
>
> *With* Section 14.2 of the Master Deed:
>
> > During the Transition Period, the Developer is entitled to subdivide portions of the Common Area from the Project, which are unimproved with structures, and to remove the subdivided portion from the application of this Master Deed by filing one or more Amendments to this Master Deed (including amendments to the Exhibits). Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners. An Amendment will be effective upon recording such Amendment in the ROD Office for Horry County.

Clearly, the Master Deed allowed the developer to unilaterally amend the Master Deed and remove unimproved common area on its own behalf and on behalf of the owners. Citing this provision from the Master Deed in the Fourth Amendment meets any strict compliance requirement—"Solely the Developer will execute" and solely the developer did execute.

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Additionally, if the Fourth Amendment is void because of the missing words "attorney in fact," then so are all amendments that do not contain these specific words. Several amendments add property back to the regime, including the disputed property. In fact, the First Amendment to the Master Deed,[7] which added the entire second phase and a significant portion of the 2.58 Acre Tract, would be void because it would have required the same missing attorney in fact signature.[8] In that case, building two of the regime would not be part of the regime. Certainly, such an interpretation strains reason and creates unnecessary chaos for the Plaintiffs. Accordingly, this Court should reverse its Order on this issue.

E. The end of the Transition Period in the Master Deed is capable of only one reasonable interpretation.

In holding that the language governing the end of the Transition Period was ambiguous, the Order erroneously held Plaintiffs' interpretation—that the Transition Period ended when all units actually ever sold were sold—was reasonable. Rather, Plaintiffs' interpretation was clearly unreasonable because the end of the Transition Period could only ever be known in hindsight and it would require disregarding express language that says "all phases of the Regime."

The Master Deed defined Transition Period as:

> [T]he time period commencing on the date of recording of the Master Deed and ending on the earlier of:
>
> 1. December 31, 2017; or
>
> 2. Three (3) months after conveyance in the ordinary course of Developer's business ninety-nine percent (99%) of the ***maximum number of Units <u>to be</u> contained <u>in all phases</u> of the Regime***, rounded down to the next whole number, to persons other than the developer; or

[7] A copy of the First Amendment was attached to ADC and ACF's Motion for Summary Judgment.

[8] Section 14.1 of the Master Deed allowed additions and also contained the language "Solely the Developer will execute an Amendment for itself and as attorney in-fact for all Owners."

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3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to the Master Deed executed and filed of record by the Developer.

Indisputably, the Master Deed provided that the developer could build up to six total phases and 250 units, and the maximum number of additional buildings and units were never built. The developer's failure to *actually* build additional buildings and units does not explain how the developer's rights and the Transition Period could reasonably end when all units that were actually constructed were completed. In April 2008, (just after Plaintiffs' assert the Transition Period ended) the 2.58 Acre Tract was owned by the developer. Under Plaintiffs' interpretation, the developer could not have built another building despite a master deed giving the developer the right to build another four buildings (in addition to the two then completed). Moreover, the Transition Period definition expressly states that the Transition Period is triggered after conveyance of "the ***maximum number of Units to be contained in all phases of the Regime***." *See, e.g., CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." It is generally unreasonable to fail to consider some words and render them meaningless when interpreting a document, whether statute or deed.). Accordingly, this Court should reconsider its ruling that Plaintiffs' interpretation was reasonable and grant partial summary judgment on this issue in favor of ADC and ACF.

F. The 2.58 Acre Tract was never a common element because it did not fit the statutory definition and was not shown on any plat or map as a common element. Therefore, § 27-31-70 did not apply to it.

The Order held the 2.58 Acre Tract was the land on which the building stands and rationally of common use. However, under the statute, "General common elements" means and includes:

(1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land

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> developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;
>
> (2) The 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;
>
> (3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;
>
> (4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;
>
> (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;
>
> (6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;
>
> (7) All 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).[9]

The 2.58 Acre Tract is not "[t]he land . . . on which the apartment or building stands" nor is it "rationally of common use or necessary to its existence." The statute sets forth a list of required common elements and then allows the developer to choose what else to provide. Unimproved property like the 2.58 Acre Tract is not integral to the use and operation of the regime property, which explains why it is not an enumerated item in the statute. Effectively, the General Assembly allowed the parties to decide what property apartment owners would hold in common.

Further evidence of this statutory approach is shown by S.C. Code Ann. § 27-31-110, which requires that a map or plat be filed with a master deed describing certain aspects of the property and that "common elements, both general and limited, must be shown graphically in so

[9] The Order did not find the 2.58 Acre Tract was a limited common element.

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far as possible and must be described in detail in words and figures." Despite the statute, the 2.58 Acre Tract was never shown on any map or plat filed as a common element. Certainly, Plaintiffs never identified any map showing it as a common element and do not dispute that no map showed it as common element. The Master Deed placed a building and 5.853 acres of land under the Master Deed. The First Amendment submitted an additional building and 5.00 acres to the Master Deed. The plats referenced in the Master Deed and the plat attached to the First Amendment do not describe the 2.58 Acre Tract as a common element at all. In contrast, the access common areas and limited common areas for each building are described as common areas in the respective survey and site plans of each building in both the Master Deed. Accordingly, the 2.58 Acre Tract was not a common element.

G. The Order suffers from numerous other defects.

The Order should be reconsidered in light of the record before the Court in this case because the Order considered both matters outside the record and failed to consider evidence in the record:

- Property Tax Payments—The Order relied on property tax payments when there is no evidence in the record related to property tax payments. These taxes were first mentioned by Plaintiffs' counsel at the summary judgment hearing, were not addressed in any pleadings, and were not filed as exhibits to any document or at the hearing.
- Missing Discovery—The Order states discovery is incomplete because of a missing 30(b)(6) deposition. However, the Court after the hearing instructed the parties to depose Defendant Vista Del Mar Condominiums, LLC "for specific questioning concerning the termination of the transition period 'option 2' in the master deed."

That deposition took place and the transcript was submitted to the Court well before the Order was issued.[10]

Moreover, denying summary judgment in favor of ADC and ACF to allow Plaintiffs more time for other, unknown discovery should not happen here—Plaintiffs filed their case in 2017 and have had over two years to conduct meaningful discovery but have not yet done so. *See Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001) ("Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery."); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact."). Certainly, Plaintiffs

---

[10] On September 9, 2019, the Court sent an e-mail to counsel which provides in full as follows:

> Mr. Koutrakos and Mr. Moss,
>
> Within the next 30 days, please schedule a deposition of the original developer's representative for specific questioning concerning the termination of the transition period "option 2" in the master deed. Please submit a copy of the transcript from the deposition as soon as it is available. If necessary, I will reconvene and hear you on any issues raised on that testimony.
>
> Thanks,
>
> Judge Hyman

That deposition took place on October 9, 2019, and counsel provided the transcript to the Court by e-mail dated October 24, 2019. See **Exhibit A**.

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have not identified any discovery they desire and have not yet had an opportunity to seek. Plaintiffs failed to submit any affidavits as required by Rule 56(f), SCRCP.

In light of these defects, this Court should reconsider the Order based on the record before it.

V. CONCLUSION

For these reasons, ADC and ACF request that this Court reconsider its Order and enter summary judgment in their favor on Plaintiffs' complaint as well as on ADC's counterclaim and third-party claim to quiet title to the 2.58 Acre Tract.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos
Demetri K. Koutrakos, SC Bar No. 11318
Harry A. Dixon, SC Bar No. 103509
1812 Lincoln Street, Suite #200
P. O. Box 1390
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Facsimile: 803-404-6902
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Email: harrydixon@callisontighe.com

ATTORNEYS FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS ATLANTIC DEVELOPMENT COMPANY, LLC AND ATLANTIC COAST FUNDING, LLC

November 18, 2019
Columbia, South Carolina

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EXHIBIT A

ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP260424

Jim Koutrakos

From: Jim Koutrakos
Sent: Thursday, October 24, 2019 8:48 AM
To: Hyman, Larry B. Secretary (Allison M. Pogue); Hyman, Larry B.; Hyman, Larry B. Law Clerk ()
Cc: Robert E. Lee; Kenneth Moss; 'Laura Hunter'; Chris Clark; 'Monica Yates'; Harry Dixon; Kathy Romero; Katie Minton
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)
Attachments: VDMC Depo Transcript with Exhibits.pdf

Dear Judge Hyman,

Per your e-mail below, the deposition of the original developer took place on October 9. As you instructed, the deposition was limited to questioning concerning the termination of the transition period "option 2" in the master deed.

The transcript is attached.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
Office: (803) 404-6900
Direct Dial: (803) 404-6966
Mobile: (803) 603-9079
Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

From: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>
Sent: Monday, September 09, 2019 12:34 PM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: RE: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Mr. Koutrakos and Mr. Moss,
Within the next 30 days, please schedule a deposition of the original developer's representative for specific questioning concerning the termination of the transition period "option 2" in the master deed. Please submit a copy of the transcript from the deposition as soon as it is available. If necessary, I will reconvene and hear you on any issues raised on that testimony.

Thanks,
Judge Hyman

LBHjr/amp

Allison M. Pogue
Administrative Assistant
Honorable Larry B. Hyman, Jr., Circuit Court Judge
1301 Second Avenue, Suite 3B76
Conway, SC 29526
Phone: (843) 915-6711
Email: lhymansc@sccourts.org

From: Jim Koutrakos [mailto:jimkoutrakos@callisontighe.com]
Sent: Tuesday, September 3, 2019 5:02 PM
To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; Hyman, Larry B. <lhymanj@sccourts.org>; Hyman, Larry B. Law Clerk () <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <kathyromero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: Proposed Order-- Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Judge Hyman,

Per your instructions at the August 13 hearing, wherein you asked for proposed orders, I have attached Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC's proposed order. I have also e-filed the same.

Please let me know if you have questions.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
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Facsimile: (803) 404-6902
JimKoutrakos@CallisonTighe.com

ELECTRONICALLY FILED - 2019 Nov 18 3:49 PM - HORRY - COMMON PLEAS - CASE#2017CP260424

From: Jim Koutrakos
Sent: Friday, August 02, 2019 4:55 PM
To: Hyman, Larry B. Secretary (Allison M. Pogue) <lhymansc@sccourts.org>; 'Hyman, Larry B.' <lhymanj@sccourts.org>; 'Hyman, Larry B. Law Clerk (Robert Jenkins' <lhymanlc@sccourts.org>
Cc: Robert E. Lee <rel@rellawfirm.com>; Kenneth Moss <KennethMoss@wwpemlaw.com>; 'Laura Hunter' <LauraHunter@wwpemlaw.com>; Chris Clark <chris.clark@mgclaw.com>; 'Monica Yates' <monica.yates@mgclaw.com>; Harry Dixon <harrydixon@callisontighe.com>; Kathy Romero <KathyRomero@callisontighe.com>; Katie Minton <katieminton@callisontighe.com>
Subject: Vista Del Mar, et al v. GDMB Ocean, et al.; (2017-CP-26-00424)

Dear Judge Hyman,

I represent Defendants Atlantic Development Company, LLC and Atlantic Coast Funding, LLC in the above-referenced case. You are scheduled to hear my clients' motion for partial summary judgment on August 13 at 1:00 p.m. Per instructions provided by the clerk of court, requiring memos and briefs to be mailed and/or e-mailed to you 10 days prior to the hearing, I have attached my clients' motion which also serves as a memorandum of law. Due to the size of the exhibits, I will need to send this to you in three parts in two e-mails. I will provide you with a hard copy of the motion with all exhibits at the hearing.

By copy of this e-mail, I am notifying all counsel of this communication with the court.

Best regards,

Demetri "Jim" K. Koutrakos
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, 2nd Floor
Post Office Box 1390 (29202-1390)
Columbia, South Carolina 29201
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2017-CP-26-00424
Vista Del Mar Condominium Association, Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust, John J. Hawkins and Eleanor N. Hawkins,	)	
Plaintiffs,	)	MEMORANDUM IN OPPOSITION TO ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S MOTION TO RECONSIDER
vs.	)	
GDMB Ocean, LLC, GDMB Operations LLC, Vista Del Mar Condominiums, LLC, Atlantic Development Company, LLC, Atlantic Coast Funding, LLC, and John Doe, a Nominal Defendant Representing all Persons or Entities Unknown Who May Claim an Interest in the Property that is the subject of this action,	)	
Defendants.	)	
Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,	)	
Third Party Plaintiff,	)	
vs.	)	
Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.	)	

WWPEM, PLLC
SC-6791-003

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Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs;)

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Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,	)
Third-Party Defendants.	)

The Plaintiffs, Vista Del Mar Condominium Association ("Association"), Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust ("Merritt"), John J. Hawkins ("J. Hawkins"), Eleanor N. Hawkins ("E. Hawkins")(hereinafter collectively referred to as "Plaintiffs"), and Third-Party Defendants respectfully submit this Memorandum in Opposition to Defendants Atlantic Development Company, LLC ("Atlantic Development") and Atlantic Coast Funding, LLC's ("Atlantic Funding")(hereinafter collectively referred to as "Movants") Motion to Reconsider ("Motion") following the denial of their Motion for Summary Judgment. For the reasons set forth below, the Plaintiffs and Third Party Defendants pray that the Court deny the Motion.

Movants' main arguments are consistent with what the Court has already heard: that the 2.58 Acre Tract ("Removed Tract") was not a statutory common element, that the developer was able to remove the Removed Tract pursuant to the Master Deed, that Removed Tract was removed before the transition period ended, and that S.C. Code §27-31-70 did not void this removal.

BACKGROUND

The Master Deed of the Vista Del Mar Horizontal Property Regime (hereinafter "Master Deed") was filed with the Horry County Registrar of Deeds on December 4, 2013. **See Exhibit A to Plaintiffs and Third Party Defendants' Memorandum in Opposition to Atlantic Development Company, LLC's and Atlantic Coast Funding, LLC's Motion for Summary**

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Judgment (hereinafter "Opposition Motion"), Master Deed of the Vista Del Mar Horizontal Property Regime. The Developer at the time was Defendant Vista Del Mar Condominiums, LLC ("VDMC"). Id. at 3. On June 27, 2006, VDMC recorded the First Amendment to the Master Deed and added additional property to the Regime for Phase II. **Exhibit B to Opposition Motion**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1. This additional property contained 5.0 acres as shown on the plat recorded in Plat Book 214 at Page 102 in the Horry County Registrar of Deeds. VDMC proceeded to build on the property and sold its last remaining unit for the Regime on or about December 31, 2007. **Exhibit E to Opposition Motion**, Dennis Merritt Deed.

On or about March 25, 2009, VDMC filed a Fourth Amendment to the Master Deed in an attempt to remove a portion of the additional property added into the Regime. A corrective fourth amendment followed and was filed on April 6, 2009 (Fourth and Corrective Fourth Amendment hereinafter referred to as "Partition Amendment"). **Exhibit C to Opposition Motion**, Fourteenth Amendment and Corrective Fourth Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime. The Partition Amendment purported to remove 2.58 acres from the Regime as recorded in Deed Book 3705 at Page 3087 in the Horry County Registrar of Deeds ("Removed Tract"). However, Plaintiffs and Third Party Defendants asserted that the purported removal was ineffective as a matter of law. The Removed Tract was then sold and conveyed by VDMC to GDMB Ocean, LLC on or about December 19, 2013.

On December 19, 2013 with an effective date of December 20, 2013, Grande Dunes Development Company, LLC, Villa Marbella Development Company, LLC, Villa Venezia Development Company, LLC and Vista Del Mar Condominiums, LLC as Assignor and GDMB Operations, LLC entered into an Assignment of Declarant and Developer Rights in Connection

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with the Grande Dunes Development.[1] After this transaction, GDMB Ocean, LLC or GDMB Operations, LLC granted an access easement interest over portions of the common area of the Regime purportedly on behalf of the Association (hereinafter "Access Easement"). The Removed Tract and Access Easement were sold and conveyed to Atlantic Development Company, LLC.[2] Plaintiffs and Third Party Defendants brought this quiet title action asserting that they did not consent to, join in, or in any way ratify the removal and sale of Removed Tract or the Access Easement and that these transactions were void as a matter of law pursuant to S.C. Code §27-31-70. Movants, however, continue to contend that the Master Deed and its amendments were effective and that the statute relied upon by Plaintiffs and Third Party Defendants does not void the transactions.

STANDARD OF REVIEW

Movant's motion to reconsider was filed pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. "The decision whether to reconsider a motion for summary judgment is within the trial judge's discretion." Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (S.C. App. 1996)(citing PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 375 S.E.2d 331 (Ct.App.1988)).

ARGUMENT

"In Elam v. South Carolina Department of Transportation, our supreme court explained: [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood,

[1] By instrument recorded in Deed Book 3705 at Page 3116, records of Horry County, South Carolina.
[2] Title to Real Estate Limited Warranty Deed was recorded in the records of Horry County on January 08, 2016 in Deed Book 3884 at Page 1242.

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failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." State Farm Mut. Auto. Ins. Co. v. Goyeneche, Appellate Case No. 2016-000840 (S.C. App. Dec. 18, 2019)(citing Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004).

It appears in this instance the Movants filed their Motion to Reconsider due to the former instance wherein they imply that the court misunderstood or failed to fully consider and they wish for the court to reconsider its ruling. However, in this case, the Court had the benefit of two detailed opposing memorandums of law, oral arguments, and opposing proposed orders for its consideration of all matters related to the summary judgment motion. Despite these lengthy and tedious discussions, the Movants assert that the Court misinterpreted §27-31-70, misapplied case precedent, and failed to apply reasonable interpretations to the Master Deed. The substance of the Movants' arguments remain the same as was presented at the time of the hearing; however, it appears that the Movants did raise additional issues in their request for reconsideration - Movants asserted that the property tax payment issue and whether the words "attorney in fact" were necessary for the Fourth Amendment to be valid were not properly before the court and that the discovery argument was not updated to reflect its current status.

I. The Removed Tract was a common element that, pursuant to statute, could not be divided, partitioned, or removed from the Regime.

Plaintiffs and Third Party Defendants contend that the order was correct in holding that "…any covenant or agreement within the Master Deed that allows common elements to be removed, partitioned, or divided is void as a matter of law." Order Denying Atlantic Development Company, LLC's and Atlantic Coast Funding, LLC's Motion for Summary

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Judgment, pg. 10. As stated previously, pursuant to the Horizontal Property Act, "The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void." S.C. Code §27-31-70. Further, a unit owner has 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… The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property." S.C. Code §27-31-60(a). "Once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer." Reyhani v. Stone Creek Cover Condo. II Horizontal Prop. Regime, 494 S.E.2d 465,468 (Ct. App. 1997). Rivers Point Row v. Palms, an unpublished opinion, further supports preservation of common element real property submitted into a horizontal property regime. Rivers Point Row Horizontal Prop. Regime v. Palms Props., LLC (S.C. App., 2013).

Movants continue to contend that because the Removed Tract was undeveloped that it did not fit the statutory definition of common element and therefore the statutory provisions prohibiting removal does not apply. Plaintiffs and Third Party Plaintiffs, however, do not agree and assert firmly that the Removed Property was in fact developed.

The court properly stated that the Horizontal Property Act includes as general common elements "the land whether leased or in fee simple…on which the apartment or building stands… and all 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 §27-31-20(f). A

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condominium building was constructed on a 5.0 acre parcel of land that was submitted to the Vista Del Mar Horizontal Property Regime in the First Amendment to Master Deed, **Exhibit B to Opposition Motion**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1. This additional property contained 5.0 acres as shown on the plat recorded in Plat Book 214 at Page 102 in the Horry County Registrar of Deeds. Plaintiffs and Third Party Plaintiffs contend that the court was correct in its holding that once the additional land was submitted to the Regime, it became a common element and was then part of the "land… on which the building stands." Additionally, it was an element of the property that was "in existence . . [and]. . rationally of common use."

Additionally, and more importantly, in this case the Master Deed defined *Common Area* as "…all of the Regime property after excluding the Units." **Exhibit A to Opposition Motion**, p. 2. The Master Deed further defined *Regime* as "…the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith." Id. at 4. Therefore, the Master Deed specifically categorized all property excluding the Units as a common area, which directly exemplifies that the Removed Tract was expressly defined as a common area of the horizontal property regime. Further, even the Partition Amendment clearly states that the "… Developer amended the Master Deed removing a subdivided portion of the **Common Area** from the Regime and from the application of the Master Deed…" **Exhibit C to Opposition Motion**, pg. 1 (*bold and underlined emphasis added*). Lastly, even the Partition Amendment expressly stated that a common area was being removed. Therefore, Plaintiffs and Third Party Defendants believe the record clearly confirms that the Removed Tract was a common area and that the Order was correct in holding the Removed Tract was such.

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Movants continue to argue that because the Master Deed and First Amendment did not have a map or plat specifically describing the Removed Tract as a common element as required under S.C. Code 27-31-110 that the Removed Tract cannot be considered a common element. The statutory requirement states that "Other common elements, both limited and general, must be shown graphically insofar as possible and must be described in detail in words and figures." S.C. Code 27-31-110. As stated previously, as the statute requires as much detail as possible, it certainly does not require every single detail. Plaintiffs and Third Party Defendants assert that any question as to whether a part of the Regime is a common element is answered and defined in the Master Deed. The Master Deed defines *Common Area* as "…all of the Regime property after excluding the Units." **Exhibit A to Opposition Motion**, p. 2. The Removed Tract was also expressly Regime property after the filing of the First Amendment to the Master Deed, **Exhibit B to Opposition Motion**, First Amendment to Master Deed of the Vista Del Mar Horizontal Property Regime (Phase II), pg. 1.

Plaintiffs and Third Party Defendants believe this case to be clear in that the Removed Tract was a common element pursuant to statute and the Master Deed and therefore agree with the court's order holding it as such. The Horizontal Property Act unmistakably mandates that the common elements cannot be divided or partitioned and that the co-owners own a percentage of the common element, which is permanent in character, and cannot be altered without their approval. S.C. Code §27-31-70; S.C. Code §27-31-60(a). In this case, VDMC removed a common element and, if the court considers it an alteration, did so without the co-owners' approval. **Exhibit C to Opposition Motion**, pg. 1. Plaintiffs and Third Party Defendants further clarify that if the removal was not an alteration, it would not matter whether the co-owners approved or not as the removal would still be void subject to S.C. Code §27-31-70. Plaintiffs and

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Third Party Defendants, therefore, contend that the order was correct in holding that the removal of the Removed Tract from the Regime was void by operation of law pursuant to S.C. Code §27-31-70 and that further clarification would be needed to distinguish that alterations would require the co-owners approval and that removal is not an alteration.[3]

II. Even if removal of the Removed Tract from the Regime was not void by operation of law, the Developer lost its ability to amend the Master Deed to withdraw the Removed Tract because the transition period had lapsed.

As Movants argue, there are several instances in the Master Deed which states that the Developer has the ability to withdraw unimproved property from the Regime during the transition period. Movants continue to assert that there is only one reasonable interpretation of the Transition Period language.

Plaintiffs and Third Party Defendants contend that issues of material fact remain with regards to when the transition period ended. The Master Deed defines the "Transition Period" as the "…time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. December 31, 2017; or
2. Three (3) months after the conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or

[3] See Windham v. Riddle, 672 S.E.2d 578, 582-83 (2009)("In construing a deed, the intention of the grantor must be ascertained and effectuated, **unless that intention contravenes some well settled rule of law of public policy**.")(bolded for emphasis).

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3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to this Master Deed executed and filed of record by Developer." **Exhibit A to Opposition Motion**, pg. 5.

Movants assert that the transition period ended when GDMB Operations chose to end it in 2015, pursuant to option number three (3) above. However, Plaintiffs and Third Party Defendants argue that the transition period ended on or about March 31, 2008, three months after the last unit constructed was sold, pursuant to option two (2) above.[4] Plaintiffs and Third Party Defendants believe this schism exists due to the parties attributing different meanings to option number two (2).

"A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." DNR v. Town of McClellanville, 345 S.C. 617, 623 (S.C., 2001) (citing Hawkins v. Greenwood Development Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997); 17A Am.Jur.2d Contracts § 338). Whether the language is ambiguous is a question of law for the court; however, if it is determined to be ambiguous evidence may be used by the parties to establish the intent and then it becomes a question of fact. Id.

In this case, the Developer stated in the Master Deed that it had the right to "…expand the Regime in five additional phases to a total of two hundred fifty (250) Units…" **Exhibit A to Opposition Motion**, pg. 28. While the Regime could be expanded, phases three through five were never added to the Regime. See generally **Exhibit A to Opposition Motion**. Therefore, the Regime consisted solely of two phases, the last unit of which was sold on or about December 31,

[4] See Plaintiffs'Amended Complaint,¶17 ("Upon information and belief VDMC sold its last remaining unit in Vista Del Mar Horizontal Property Regime on or about December 31, 2007. With the filing of this conveyance the "transition period", as defined in the Master Deed, would have begun and the transition period would have expired on or about March 31, 2008.")

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2007. Plaintiffs and Third Party Defendants' believe that the reading of the second option establishes that the transition period was to end three months after the conveyance of ninety-nine percent (99%) of the maximum number of units contained in all phases of the Regime, and the Regime only ever contained two phases. Therefore, the transition period should have ended on or about March 31, 2008, which is prior to the removal and conveyance of the Removed Tract and the grant of the Access Easement.[5]

On the other hand, the Movants argue that the maximum number of units would be two hundred fifty (250) units, the total units that could have been contained if all phases were added to the Regime. Their position is that because ninety-nine percent (99%) of the potential two hundred fifty (250) units were not conveyed, option number two (2) was never triggered. Because there are two different meanings and interpretations for the same provision, the Court must hold that the provision is ambiguous and is consequently a question of fact for the fact finder. As a result, Plaintiffs and Third Party Defendants continue to contend that summary judgment is not appropriate. Robinson v. Estate of Harris, 662 S.E.2d 420, 422 (S.C. App., 2008)(citing Moore v. Weinberg, 373 S.C. 209, 215-16 (Ct. App. 2007)("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.")

III. The Court did order that a 30(b)(6) deposition be taken of Defendant Vista Del Mar Condominiums, LLC regarding the termination of the transition period for option 2, which was completed.

The proposed order was submitted ahead of the deposition of the 30(b)(6) witness deposition as requested by the court. A designated witness was deposed regarding the

[5] Although Movants assert that Dan Schuster, the Association's 30(b)(6) witness noted the transition period ended in 2015 and the Association's financial statement stated as such as well, Plaintiffs and Third Party Defendants take the position that it does not change the fact that the transition period **should have ended** in 2008.

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termination of the transition period for option 2; however, opposing counsel did not allow any further testimony concerning the remainder of the issues of the case and objected to some questioning as exceeding the scope of the deposition. E.g., **Exhibit 1**, Deposition Transcript of April Dendy, p. 38, 47, 53. Furthermore, the witness appeared to have completed no investigation of the issue ahead of the deposition and was not directly involved before or during the transition period:

> 9 Q. Are you knowledgeable about that
> 10 particular topic today?
> 11 A. I'm knowledgeable as far as what I know
> 12 for the company. I was not with the company
> 13 obviously at that time. Id. at 13.

> 23 Do you know when a decision was made by
> 24 the management of Vista Del Mar Condominiums, LLC,
> 25 that they were not going to build a third phase or
> 1 fourth phase or fifth phase?
> 2 A. I can't speculate as to that.
> 3 Q. So you don't know. Okay.
> 4 Did you ask anyone that was in the
> 5 prior management of Vista Del Mar Condominiums,
> 6 LLC, in preparation for today?
> 7 A. I did not speak with anybody that was
> 8 with the company at that time, no. Id. at 35-36.

> 21 Q. Did you talk to anybody to ask them
> 22 their opinions on the transition period?
> 23 A. None of the individuals involved in
> 24 this are with the company.
> 25 Q. So that's a no. And you didn't try to
> 1 contact them. You said that earlier.
> 2 And so what internal documents did you
> 3 review that would give you guidance on whether or
> 4 not a decision was made to not construct anymore
> 5 condominiums and the timeframe for that decision?
> 6 A. The Master Deed and the amendments. Id. at 39-40.

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Therefore, discovery still remains incomplete and Plaintiffs and Third Party Defendants continue to assert that a granting of summary judgment at this time would be reversible error; however, the order should be amended to accurately reflect the correct status. Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537, 543 (1991).

IV. Plaintiffs and Third Party Defendants agree that the attorney-in-fact signature and tax issues were not properly before the court for this motion.

Plaintiffs and Third Party Defendants agree with Movants that any reference to the lack of execution of the amendments by the developer as attorney-in-fact and the potential preferential tax treatment the developer received by submitting the land into the regime were not properly before the court for their Motion for Summary Judgment. Therefore, Plaintiffs and Third Party Defendants agree that the order should be altered removing those portions only.

V. Conclusion

In conclusion, Plaintiffs and Third Party Plaintiffs continue to maintain that the applicable law voids the removal of the Removed Tract and, even if it does not void the transactions, issues of material fact still remain that must be determined in trial and therefore the Order should be upheld.

Respectfully submitted,

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January 25, 2020

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2017-CP-26-00424

Vista Del Mar Condominium Association, Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust, John J. Hawkins, Eleanor N. Hawkins, Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G. Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee,

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Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; and Michael J. Wilk,

Appellants,

vs.

Vista Del Mar Condominiums, LLC,

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Atlantic Development Company, LLC,
Atlantic Coast Funding, LLC, and
John Doe, a Nominal Defendant
Representing all Persons or Entities
Unknown Who May Claim an Interest in
the Property that is the subject of this action,

Respondents.

NOTICE OF APPEAL

The above named appellants, by and through their undersigned attorneys, appeals the Order of the Honorable Larry B. Hyman dated February 20, 2020. Appellants' counsel was served with a clocked copy of the Order on February 20, 2020. A copy of the Order against which appeal is made is attached hereto and made part of this Notice by reference.

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March 20, 2020

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2017-CP-26-0424

Vista Del Mar Condominium Association; Dennis M. Merritt, Trustee of the Dennis M. Merritt Living Trust; John J. Hawkins; and Eleanor N. Hawkins,

Plaintiffs,

vs.

Vista Del Mar Condominiums, LLC; Atlantic Development Company, LLC; Atlantic Coast Funding, LLC; John Doe, a nominal Defendant representing all persons or entities unknown who may claim an interest in the property that is the subject of this action,

Defendants.

Atlantic Development Company, LLC and Atlantic Coast Funding, LLC,

Third-Party Plaintiffs,

vs.

Barbara P. Swartz; Nancy S. Case; Winston-Salem Daly Development, LLC; Charles F. Weber; Mark L. Skowron, as Trustee of Mark L. Skowron Revocable Trust dated April 24, 2002 and Gail L. Skowron, as Trustee of the Gail L. Skowron Revocable Trust dated 04/24/2002; Norman W. Taylor, Trustee of the Norman W. Taylor Revocable Living Trust dated April 28, 2008; Tim Mitchell Development, LLC; Eric R. Sklut and Lori Levine Sklut; Fred C. Warehime and Patricia F. Warehime; James W. Blackburn, III and Peggy S. Blackburn; Barbara I. Bowser; KHDH, LLC; Beth G.

ORDER GRANTING DEFENDANTS ATLANTIC DEVELOPMENT COMPANY, LLC'S AND ATLANTIC COAST FUNDING, LLC'S MOTION TO RECONSIDER, VACATING THIS COURT'S PRIOR ORDER DENYING SUMMARY JUDGMENT, AND GRANTING SUMMARY JUDGMENT

Bauknight; Roderick D. Sanders (or his successor), as Trustee of the Amended and Restated Revocable Declaration of Trust of Anne Mallard Sanders u/a/d January 16, 2015; GGK Properties, LLC; Leon Levine and Sandra Levine; Joseph Moglia and Amy H. Moglia; Angela M. Mason, as Trustee of the Angela Mason Revocable Trust dated June 9, 2003 and amended and restated May 27, 2007; Dexter R. Barbee, Sr.; Daniel M. Talbert, Sr.; Craig W. Lawton; Craig W. Lawton; David N. Dalton; Janet W. Weed, Trustee of the Janet W. Weed Revocable Trust under Trust Instrument dated April 17, 2013; Robert H. Messier, Jr. and Janice H. Messier; Jeffrey Schneider, Trustee for the Jeffrey Schneider Revocable Trust dated August 1, 2017; Phillip Kleinman and Charisse D. Kleinman; Stephen Gatto and Camille Gatto; Lutz Real Estate, LP; Astorg Imports, Inc.; ABLP Properties, LLC; Sutton Children, LLC; Daniel C. Schuster and Mardell J. Schuster; Roy C. Putrino and Eileen M. Putrino; Spencer Squier and Sherri Squier; VDM 1004, LLC; Roger B. Matherly and Bonnie V. Matherly; ITAC 203, LLC; Rebecca R. Shroff and Kersi S. Shroff; Sandra P. Levine and Lori Ann Sklut, Co-Trustees of the Irrevocable Trust F/B/O Amy Beth Levine dated September 18, 1986; David E. Lukowski; Richard B. Kline and Leslie Kline; James P. Aplington and Carol D. Aplington; Michael L. Van Glish and Judith K. Van Glish; Anna A. Olsen; Anne Marie Murray; William J. Pridemore and Irina V. Pridemore; William B. Davidson and Julia Davidson; Bruce Alexander Henderson and Valerie Sokolov; Mark W. Lee; Sue David Kline; Thomas Mckiernan and Anne Mckiernan; Philip H. Strobl and Amy Mott Strobl; James M. Faircloth and Sylvia Faircloth; Cheryl Jackson and Phillip H. Jackson; Weldon Riggs and Tiffiany Riggs; Janet

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P. Merritt, Trustee of the Janet P. Merritt Living Trust U/A dated March 24, 2000; Melia Mooney Pavoris; William L. Mansfield and Patricia S. Mansfield; Stuart W. Gibbs and Helen R. Gibbs; Michael R. Blackburn and Pamela M. Blackburn; Jeffrey G. Edwards and Teresa T. Edwards; Michael J. Wilk,

Third-Party Defendants.

This matter is before the Court on a motion to reconsider this Court's order denying summary judgment on Plaintiffs' claims to the 2.58 Acre Tract[1] and a motion for partial summary judgment on Plaintiffs' claims to the Access Easement. Both motions were filed by Defendants/Third-Party Plaintiffs Atlantic Development Company, LLC and Atlantic Coast Funding, LLC ("ADC" and "ACF"). Both motions for partial summary judgment seek summary judgment for ADC and ACF on Plaintiffs' claims as well as summary judgment for ADC on its counterclaims and third-party claims for a declaratory judgment and to quiet title against Plaintiffs and Third-Party Defendants.

The Court initially heard the summary judgment motion for the 2.58 Acre Tract on August 13, 2019. Demetri K. Koutrakos, Esquire and Harry A. Dixon, Esquire appeared on behalf of ADC and ACF. Kenneth R. Moss, Esquire appeared on behalf of Plaintiffs and Third-Party Defendants. James Christopher Clark, Esquire appeared on behalf of Defendant Vista Del Mar Condominiums, LLC ("VDMC"). This Court denied ADC and ACF's motion by written order entered on November 8, 2019 ("November 8, 2019 Order").

[1] Plaintiffs' Amended Complaint describes the 2.58 Acre Tract as "Tract 1" and an Access Easement as "Tract 2."

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ADC and ACF timely filed a motion to reconsider. This Court heard argument on the motion to reconsider on January 27, 2020 and again on February 18, 2020. Demetri K. Koutrakos, Esquire and Harry A. Dixon, Esquire appeared on behalf of ADC and ACF. Kenneth R. Moss, Esquire appeared on behalf of Plaintiffs and Third-Party Defendants. Monica W. Yates, Esquire appeared on behalf of VDMC. On February 18, 2020, the Court also heard argument on the motion for summary judgment on the Access Easement.

This matter is now ripe for decision. The Court finds that it improvidently entered the Order Denying ADC and ACF's motion for summary judgment on the 2.58 Acre Tract. Accordingly, ADC and ACF's motion to reconsider is granted, and the November 8, 2019 Order denying summary judgment is vacated. Moreover, both motions for partial summary judgment by ADC and ACF are granted for the reasons set forth below.

I. FACTS

In December 2003, VDMC created the Vista Del Mar Horizontal Property Regime (the "Regime") by executing a Master Deed. At the same time, VDMC created Plaintiff Vista Del Mar Condominium Association (the "Association"). The Master Deed gave VDMC certain rights as "Developer," including the right to withdraw unimproved portions of property from the Regime[2] and the right to add property to the Regime. The Master Deed also provided for developing up to

[2] For example, the Master Deed provided:

> NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" Attached Hereto And All Improvements Located Thereon . . . to the provisions of Sections 27-31-10 et seq. of the South Carolina Code Of Laws (1976), And Hereby Creates Thereon A Horizontal Property Regime (Sometimes Termed "Condominium Ownership") to be known as THE VISTA DEL MAR HORIZONTAL PROPERTY REGIME, subject to the following, **INCLUDING BUT NOT LIMITED TO, THE RIGHT TO WITHDRAW UNIMPROVED PORTIONS OF THE LAND PURSUANT TO SECTION 14.2(B)**.

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six total buildings with a maximum of 250 units subject to the Regime and limited the Developer's ability to withdraw property from the Regime to a defined "Transition Period":

> [T]he time period commencing on the date of recording of the Master Deed and ending on the earlier of:
>
> 1. December 31, 2017; or
>
> 2. Three (3) months after conveyance in the ordinary course of Developer's business of ninety-nine percent (99%) of the maximum number of Units to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or
>
> 3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to the Master Deed executed and filed of record by the Developer.

VDMC initially submitted 5.853 acres of land and improvements to the Regime with the Master Deed. In June 2006, VDMC conditionally submitted an additional 5.00 acres and improvements to the terms of the Master Deed by recording an amendment to the Master Deed. A portion of each of these property submissions became the disputed 2.58 Acre Tract.

In March 2009, VDMC removed the 2.58 Acre Tract from the Regime by recording another amendment ("Fourth Amendment") to the Master Deed. The Fourth Amendment referenced a plat ("243/275 Plat") describing the 2.58 Acre Tract and an Access Easement. VDMC subsequently conveyed the 2.58 Acre Tract to GDMB Ocean, LLC ("GDMB Ocean") and assigned its rights as "Developer" under the Master Deed to GDMB Operations, LLC ("GDMB Operations") (the "GDMB Assignment"). In December 2014, the Association and GDMB Ocean, LLC entered into an Amended and Restated Easement Agreement reiterating the easement over that area labeled "Access Easement" on the 243/275 Plat.

On November 7, 2014, GDMB Operations started the process to end the Transition Period by an amendment to the Master Deed that voluntarily surrendered its authority as a class "B"

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member of the Association under the Master Deed. Under the Master Deed, this meant that the Transition Period would end on February 7, 2015. Daniel Charles Schuster, who served on the Association board in 2015, stated the Transition Period ended in February 2015,[3] and the Association's financial statements from 2015 stated that the Transition Period ended in February 2015. Although the Master Deed for the Regime planned for a total of six phases and a maximum of 250 units, it is undisputed that only two buildings and 66 units were ever completed.

On January 8, 2016, GDMB sold the 2.58 Acre Tract and other property to ADC. ADC then gave a mortgage on the 2.58 Acre Tract to ACF as security for a promissory note.

II. RELEVANT PROCEDURAL HISTORY

In 2017, Plaintiffs filed this action asserting claims for 1) quiet title, 2) declaratory judgment, 3) equitable title, 4) equitable easement appurtenant, and 5) servitude appurtenant. ADC and ACF answered Plaintiffs' complaint in which ADC asserted counterclaims for a declaratory judgment and to quiet title. Additionally, ADC raised third-party claims for a declaratory judgment and to quiet title against each individual unit owner in the Regime (the Third-Party Defendants). ADC and ACF now seek summary judgment in their favor on each claim raised by Plaintiffs, and ADC seeks summary judgment in its favor on its counterclaim and third-party claim to quiet title.

III. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

[3] In his deposition, Schuster stated everyone understood the Transition Period ended in 2015: "**Q.** Okay. So in February of 2015, everybody -- the Regime, the Association -- operated under the assumption that the Transition Period ended, and the Developer was ceding control of the board to the members of the Association? **A.** Yes."

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of law." Rule 56(c), SCRCP. In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (standard for summary judgment "mirrors" standard for directed verdict).

IV. ANALYSIS

A. THE 2.58 ACRE TRACT

Plaintiffs assert the 2.58 Acre Tract is theirs because VDMC's removal was void. Specifically, Plaintiffs assert S.C. Code Ann. § 27-31-70 completely bars removing property subject to a horizontal property regime and the Transition Period had ended when VDMC attempted to remove the 2.58 Acre Tract.

In their motion for summary judgment, ADC and ACF assert Plaintiffs' claims to the 2.58 Acre Tract fail as a matter of law because VDMC properly removed the 2.58 Acre Tract. Specifically, ADC and ACF assert 1) § 27-31-70 does not bar a developer from removing property subject to a horizontal property regime where the master deed allows it and 2) the Transition Period had not ended when VDMC removed the 2.58 Acre Tract.

The parties do not dispute any material facts. Rather, the parties dispute how a statute applies to these facts and the meaning of language in a deed—both legal questions for the Court.

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The Court must construe the Master Deed as a whole, and the Master Deed unambiguously provides that unimproved land submitted to the Regime could be removed by, or revert back to, the Developer, similar to a right of reversion. ADC and ACF describe this as a conditional submission, but the thought is the same. The Master Deed unambiguously provides the Developer had the right to add and remove unimproved property from the Regime. Per the terms of the Master Deed and general principles of law, each unit owner who purchased a unit in the Regime took title subject to these rights of the Developer.[4] These principles form the basis for some of the rulings set forth herein.

1. S.C. Code Ann. § 27-31-70 Did Not Void the Removal of the 2.58 Acre Tract from the Regime.

(a) *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime* Recognized Property May Be Withdrawn from a Horizontal Property Regime Where the Master Deed Allows It.

ADC and ACF assert *Reyhani*[5] allowed VDMC to do exactly what it did—withdraw property from a horizontal property regime.

Conversely, Plaintiffs assert *Reyhani* supports their position that a developer may not remove property once the property becomes subject to a horizontal property regime.

After thoroughly analyzing *Reyhani*, the Court concludes *Reyhani* rejected Plaintiffs' interpretation of § 27-31-70. *Reyhani* addressed a title dispute over a roughly one-acre lot previously submitted to a horizontal property regime. *Reyhani*, 329 S.C. at 207–08, 494 S.E.2d at 466. The facts were complicated by a foreclosure on a large development where a small parcel was

[4] For example, Section 17.10 of the Master Deed provides that, "[i]n accepting a Deed to any unit, the Grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Master Deed and the Exhibits, as amended . . . ."

[5] *Reyhani V. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 494 S.E.2d 465 (1997).

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subject to a horizontal property regime. *Id.* at 208–09, 494 S.E.2d at 466. The master deed, as amended as part of a court order resolving the foreclosure, allowed development of the regime property until a certain date. *Id.* at 208–09, 494 S.E.2d at 466–67. After that date passed, the plaintiff purchased the disputed lot, which had been part of the regime property. *Id.* at 210, 494 S.E.2d at 467. The unit owners and association then asserted title to the disputed lot and alleged the disputed lot was a general common element under the terms of the master deed. *Id*. The plaintiff disagreed and asserted that he owned the property in compliance with the master deed as amended. *Id*. The court ultimately held the plaintiff did not take title in compliance with the master deed and that the disputed lot had become a general common element of the horizontal property regime. *Id.* at 213–14, 494 S.E.2d at 469.

The court based its rulings on the language of the master deed to which all unit owners are bound. The court stated, "once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements" and cited § 27-31-70 without analysis. *Id.* at 211, 494 S.E.2d at 468. Importantly, the court then looked to the terms of the master deed to determine when the common elements became vested in the co-owners. *Id.* at 212, 494 S.E.2d at 468. Implicitly, the court rejected Plaintiffs' interpretation of § 27-31-70 and held that common element property may be removed from the regime or conveyed according to the terms of the applicable master deed. *Id*. The *Reyhani* master deed, as amended, allowed the undeveloped property of the horizontal property regime to be developed until a certain date, but after that date, it declared the land would become a general common element. *Id*.[6] That

[6] The *Reyhani* fact pattern addresses matters and concepts involved in this case—a conditional submission of property (or a right of reversion) and a Transition Period. The *Reyhani* master deed allowed regime property to be developed during a certain time frame (like the Transition Period here), and it appears Reyhani could have acquired title to the disputed property had he done so before the development deadline expired.

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date had passed by the time the *Reyhani* plaintiff purchased the disputed lot, and the court held the plaintiff did not acquire title because his lot had become a general common element—title had vested in the unit owners in the regime. *Id*.

Although *Reyhani* did not elaborate on the application of § 27-31-70, the court was clear that the terms of the master deed determined the parties' rights when the disputed property was subject to a horizontal property regime. As such, *Reyhani* clearly did not apply § 27-31-70 as Plaintiffs would here—it did not interpret § 27-31-70 as a complete bar to the *Reyhani* plaintiff's claim to the property. Accordingly, the Court concludes *Reyhani* implicitly rejected Plaintiffs' interpretation of § 27-31-70 and that applying *Reyhani* in this case—where the parties do not dispute the Master Deed allowed the 2.58 Acre Tract to be removed—means VDMC properly removed the 2.58 Acre Tract.

(b) The Plain Language of § 27-31-70 Did Not Prevent Removing Property from the Regime.

Even if *Reyhani* were not dispositive, ADC and ACF assert that § 27-31-70 is unambiguous, and simply provides that apartment owners must hold title to the common elements in undivided interests and creates an exception to the general right to partition property held in common. Accordingly, ADC and ACF assert § 27-31-70 did not prevent VDMC from removing the 2.58 Acre Tract.

Conversely, Plaintiffs assert § 27-31-70 completely prevents any removal of horizontal regime property and therefore the removal of the 2.58 Acre Tract by VDMC was void.

S.C. Code Ann. § 27-31-70 provides:

> The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another

meaning." *State v. Ramsey*, 409 S.C. 206, 209, 762 S.E.2d 15, 17 (2014). Moreover, "words in a statute must be construed in context, and the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *Eagle Container Co., LLC v. Cty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895–96 (2008).

The Court concludes § 27-31-70 is unambiguous. The statute declares only how apartment owners must hold title to the common elements and creates an exception to the general right to partition property held in common. Other statutes in the Horizontal Property Act support this interpretation. The statute immediately preceding § 27-31-70 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* . . . ." S.C. Code Ann. § 27-31-60(a) (emphasis added). Additionally, § 27-31-120 provides that "[a]ny conveyance or lease of an individual apartment is deemed to also convey or lease the *undivided interest of the owner in the common elements*, both general and limited, appertaining to the apartment without specifically or particularly referring to same." *Id.* at § 27-31-120 (emphasis added). Reading these statutes together clarifies what was intended: an ownership interest in a unit must include an undivided interest in the whole of a regime's common area, and unit owners may not convey some or all of the common area property tied to their units. Section 27-31-70 does not prevent changes in what property makes up the total common area.

Furthermore, the meaning of the first part of the statute is clarified by the second part's ban on partition or division of commonly held property. Ordinarily, "[a]ll joint tenants and tenants in common who hold, jointly or in common . . . shall be compellable to make severance and partition . . . ." *See* S.C. Code Ann. § 15-61-10. However, § 27-31-70 provides that, because apartment

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owners hold title to the common elements as an undivided whole, those apartment owners may not invoke the statutory right to partition those common elements.

Finally, applying Plaintiffs' interpretation of S.C. Code Ann. § 27-31-70 would lead to an absurd result: no horizontal property regime common element could ever be conveyed—even if every unit owner agreed. *See generally Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (courts will not adopt an absurd interpretation of a statute that the General Assembly could not have intended). Taking Plaintiffs' theory one step further, undeveloped property, once submitted to a horizontal property regime, could not be developed into units because part of the property would be changed from common area to separately owned units. Accordingly, the Court concludes § 27-31-70 does not apply as Plaintiffs assert and did not void the removal of the 2.58 Acre Tract from the Regime.

(c) S.C. Code Ann. § 27-31-70 Did Not Apply to the 2.58 Acre Tract Because It Was Not a Statutory Common Element.

Finally, ADC and ACF assert that even if the Court were to assume § 27-31-70 applies as Plaintiffs suggest, the 2.58 Acre Tract was not a common element under the statute.

The Horizontal Property Act clearly defines "general common elements" and omits unimproved property from the definition:

> "General common elements" means and includes:
>
> (1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;
>
> (2) The 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;
>
> (3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

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> (4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;
>
> (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;
>
> (6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;
>
> (7) All 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).[7]

The Court concludes § 27-31-70 does not apply to the 2.58 Acre Tract because it is not a common element as defined under the statute. The record reveals there is no genuine dispute that the 2.58 Acre Tract is entirely unimproved property, and the statutory definition does not include unimproved land as a common element subject to the Horizontal Property Act. The 2.58 Acre Tract is neither "[t]he land . . . on which the apartment or building stands"; "yards" or "gardens"; "necessary to [the property's] existence, upkeep, and safety"; or an element "rationally of common use."[8] No other enumerated item under the statute comes close to describing the 2.58 Acre Tract. Accordingly, § 27-31-70—which applies to "[t]he common elements, both general and limited,"—does not apply to the 2.58 Acre Tract.[9]

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[7] The parties do not dispute that the 2.58 Acre is not a limited common element.

[8] Plaintiffs and Third-Party Defendants claim there is an issue of fact on this issue, but the Court does not see one. There is no question the 2.58 Acre Tract is unimproved. Plaintiffs and Third-Party Defendants mentioned payment of property taxes at the hearing, but the Court does not find that to be relevant. They submitted no affidavits or evidence to show that the 2.58 Acre Tract is anything more than unimproved land.

[9] The Court also notes S.C. Code Ann. § 27-31-110 requires "[o]ther common elements, both general and limited, must be shown graphically in so far as possible and must be described in detail in words and figures" on plats or maps filed with a master deed. Indisputably, the 2.58 Acre was

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2. The Transition Period Ended in February 2015, and the Removal of the 2.58 Acre Tract Occurred within the Transition Period.

ADC and ACF assert the Master Deed provided three ways for the Transition Period to end, and none of the triggering events occurred until GDMB Operations voluntarily ended the Transition Period in 2015—well after VDMC removed the 2.58 Acre Tract in 2009.

Conversely, Plaintiffs assert the Transition Period ended when 99.9% of the units actually built were sold in 2008.

"In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed." *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009) (internal citations and punctuation omitted). "The interpretation of a deed is an equitable matter." *Heritage Fed. Sav. & Loan*, 318 S.C. at 539, 458 S.E.2d at 564. Moreover, "[t]he determination of the grantor's intent when reviewing a clear and unambiguous deed is a question of law for the court." *Hunt v. Forestry Comm'n*, 358 S.C. 564, 568, 595 S.E.2d 846, 848 (Ct. App. 2004).

The Court concludes the deed is unambiguous and the Transition Period ended in February 2015. The Master Deed provided that the Transition Period began "on the date of recording of the Master Deed" and "end[ed] on the earlier of":

1. December 31, 2017;[10] or

2. Three (3) months after conveyance in the ordinary course of Developer's business of **ninety-nine percent (99%) of the maximum number of Units**

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not shown as a common element on any of the plats or maps filed with the Master Deed. This is an additional reason why the 2.58 Acre Tract was not a common element.

[10] The parties agree that the Transition Period ended before December 31, 2017.

to be contained in all phases of the Regime, rounded down to the next whole number, to persons other than the Developer; or

3. Three (3) months following the date the Developer surrenders its authority as a Class "B" Member of the Association to appoint and remove directors and officers of the Association by an express amendment to the Master Deed executed and filed of record by the Developer.

Indisputably, VDMC removed the 2.58 Acre Tract in 2009. In December 2013, VDMC conveyed the 2.58 Acre Tract to GDMB Ocean and its rights as "Developer" under the Master Deed to GDMB Operations. In November 2014, GDMB Operations executed an amendment to the Master Deed that began the three-month process to end the Transition Period using the third method provided in the definition of Transition Period—by surrendering its rights. Accordingly, VDMC removed the 2.58 Acre Tract from the Regime well before the Transition Period ended.

In contrast, Plaintiffs' assertion that the Transition Period ended in March 2008 because the second method was triggered disregards the plain language of the Master Deed. In fact, the second method in the Master Deed specifically provided for the Transition Period to terminate if the Developer sold 99.9% of "the maximum number of Units to be contained in all phases of the Regime." Indisputably, the Master Deed provided for the possibility of six total phases, four of which never were built.

Moreover, the record reflects that the Association, the Unit Owners, and GDMB Operations (as the Developer under the Master Deed) understood that the Transition Period ended in 2015. Mr. Schuster testified that the Transition Period ended in 2015, and the Association's own 2015 financial statement stated the Transition Period ended in 2015. On these facts, there is no genuine dispute as to when the Transition Period ended: it ended in February 2015.

Accordingly, the Court concludes the Transition Period ended in 2015 when GDMB Operations voluntarily ended it because the plain language of the Master Deed shows the second

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method of triggering the Transition Period could not have occurred in 2008 when nowhere near the 250 possible units had been built.

II. THE ACCESS EASEMENT

The parties dispute whether the access easement exists, which is a question of fact in a law action. *See, e.g., Smith v. Commissioners of Pub. Works of City of Charleston*, 312 S.C. 460, 465, 441 S.E.2d 331, 334 (Ct. App. 1994). However, the parties do not dispute any relevant facts—only how the law applies to the undisputed facts. As explained below, ADC, as owner of the 2.58 Acre Tract, holds a valid easement that Plaintiffs/Third-Party Defendants may not deny, and summary judgment should be granted in favor of ADC and ACF on the easement issue.

A. The Access Easement is a valid, express easement.[11]

Plaintiffs assert the Amended and Restated Easement Agreement is void because the Association agreed to the easement agreement after the developer started the end of the Transition Period, the Master Deed does not allow the Access Easement, and conveying the easement is an ultra vires act by the Association.

Conversely, ADC and ACF assert the Access Easement is valid because the developer validly controlled the Association until the end of the Transition Period, the Master Deed allows it, and the Association could grant the easement.

As stated above, GDMB Operations, who then held the developer's rights under the master deed, began the end of the Transition Period voluntarily in November of 2014. In December 2014, the Association and GDMB Ocean entered into the access agreement. While the end of the Transition Period meant the Association would no longer be under developer control, nothing in

[11] To be clear, S.C. Code § 27-31-70 also does not restrict easements for the same reasons explained in IV.A.1. above.

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the master deed indicates that the Association would be restricted in any way during that period. Accordingly, the Court concludes the timing is irrelevant.

Moreover, the Master Deed does not bar the Association from conveying the access easement. In fact, the Master Deed specifically provides "the Board of Directors will be entitled to grant additional permits, licenses, and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project." Nor is there any indication that granting the easement is an ultra vires act—the bylaws of the Association provide "[i]n addition to any other power contained herein or in the Master Deed, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act."

Accordingly, ADC is clearly entitled to the Access Easement under the deeded Amended and Restated Easement Agreement.

B. Even if the express Access Easement were void, ADC has an implied easement by plat.

Plaintiffs assert no implied easement was created when VDMC conveyed its property to GDMB Ocean because VDMC did not own the parcel burdened by the Access Easement.

Conversely, ADC and ACF assert the easement arose when VDMC filed the Fourth Amendment to the Master Deed removing the 2.58 Acre Tract because the Fourth Amendment referenced the 243/275 Plat, which showed the Access Easement.

An easement arises by implication where property is conveyed and an adjoining street is referenced in a plat, even though the deed is silent. *See Gooldy v. The Storage Center-Platt Springs*, LLC, 422 S.C. 332, 811 S.E.2d 779 (2018). As between an owner who has conveyed lots according to a plat and the grantee, the dedication of a private easement is complete when the conveyance is made. *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *see also Blue Ridge Realty*

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Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965) (holding the purchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots were purchased and as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities.).

An easement arose as a matter of law where the amendment removing the 2.58 Acre Tract referenced the 243/275 Plat showing the Access Easement. It is immaterial whether VDMC did not own the burdened parcel when it conveyed the 2.58 Acre to GDMB Ocean. Accordingly, the Court finds an easement implied by plat arose as a matter of law even if the deeded easement were somehow invalid.

V. CONCLUSION

The Court has carefully considered the pleadings in this case, the evidence in the record, the memoranda of law submitted by the parties, and the arguments from counsel at the hearing. For the reasons explained, the Court concludes unimproved property may be withdrawn from a horizontal property regime when the master deed allows it, S.C. Code § 27-31-70 did not prevent removal of the 2.58 Acre Tract from the Regime, and the Master Deed clearly allowed the 2.58 Acre Tract to be removed. Moreover, the Master Deed limited the time for removal to a defined Transition Period, which ended in February 2015 rather than March 2008. Finally, the deeded Access Easement is valid, and even if it were not, an easement implied by plat arose as a matter of law. Accordingly, the removal of the 2.58 Acre Tract was valid and so are the subsequent conveyances of the 2.58 Acre Tract and Access Easement.

IT IS THEREFORE HEREBY ORDERED that ADC and ACF's motion to reconsider is **GRANTED**, the November 8, 2019 Order is **VACATED**, and summary judgment is **GRANTED** in favor of ADC and ACF on all of Plaintiffs' claims. Furthermore, summary judgment is **GRANTED** on ADC's counterclaim and third-party claims to quiet title in favor of ADC against Plaintiffs and the Third-Party Defendants.

Accordingly, the Court further orders that ADC owns the 2.58 Acre Tract free and clear of any right, title, claim, lien, or interests of Plaintiffs, Third-Party Defendants, and anyone claiming under them, but subject to the mortgage given by ADC to ACF. The Court further orders that the access easement described herein is valid, it benefits ADC, and runs with the title to 2.58 Acre Tract.

The Court further orders that a certified copy of this Order be recorded with the Horry County Register of Deeds in the grantor index under the names of Plaintiffs and the Third-Party Defendants and in the grantee index under Atlantic Development Company, LLC.

This Order resolves all pending claims in this case other than the crossclaim by ADC against VDMC.

IT IS SO ORDERED.

[Judge's Signature Page Follows]

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Horry Common Pleas

Case Caption: Vista Del Mar Condominium Association , plaintiff, et al VS Vista Del Mar Condominiums LLC , defendant, et al

Case Number: 2017CP2600424

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

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.

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November 30, 2020

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