

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2009-CP-22-01655

RECEIVED
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SC Court of Appeals

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trust Agreement dated November 16, 1998; Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan J. Mann and Angela M. Mann; Michael Cameron Foster, Sr. and Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill,

Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood, and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame, ... Respondents,

v.

Shipyard Village Council of Co-Owners, Inc., ... Appellant.

Shipyard Village Council of Co-Owners, Inc., ... Third-Party Plaintiff,

v.

Cincinnati Insurance Company, Travelers Insurance Company, Companion Property & Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American Guarantee and Liability Ins. Co., St. Paul Fire and Marine Insurance Company, and Illinois National Insurance Company, ... Third-Party Defendants.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

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3 Huggins, Frank S. Krouse and Barbara
4 T. Krouse, Judith W. Mill, William Mill
5 and Susan Mill, Gene R. Riley and
6 Patricia C. Riley, Harold LeMaster and
7 Patti LeMaster; Joseph P. Heaton and
8 Frances H. Heaton; Robert N. Kelly;
9 H.S. Keeter and Sandra C. Keeter;
10 Linda A. Mendicino; Captains Quarters
11 D-24 Association of Owners, Inc.,
12 Michael H. Sanders and Rebecca H.
13 Sanders, Ruth Gray Wheliss, David B.
14 Shivell and Nicki M. Shivell, Debra B.
15 Leeke, Joseph Alan Capobianco and
16 Lara Serro, Sharon Gibson Daniel, Gary
17 C. Andes and Andrea W. Andes, Jay
18 Hendler and Laura Hendler, Joy P.
19 McConnell, Charles W. Fortner, Judith
20 C. Woodson, Warren W. Riggs and
21 Charles G. Martin, Riggs Ventures, LLC
22 and SGS Beach Partners, LLC; Morgan
23 J. Mann and Angela M. Mann; Michael
24 Cameron Foster, Sr. And Laura Lee
25 Foster; Captains Quarters Unit D-31
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McGill and Carol G. McGill, Rick L.
Bledsoe and Susan H. Bledsoe,
Geoffrey A. Wienke and Pamela L.
Wienke, A. Donald Ross, III and Nancy
Kay Ross, Dennis J. Straw and
Roxanne B. Straw, and Resort
Investments of Litchfield, LLC; Georgia
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Daniel P. Duvall and Mary Lynn Duvall;
Victor A. Medina and Melinda Leigh
Medina; Judy P. Hamer; Boyce F. Miller
and Carole L. Miller, Raymond A.
Shingler and Louise O. Shingler, Paul

1 James R. Walker and Erika T. Walker,
 2 Kathy W. Underwood, Andrew J. Wingo,
 3 Jr. And Susan A. Wingo, Melanie S.
 4 Franklin, Lois E. Cooley, Trustee of the
 5 Lois E. Cooley Living Trust, B. Lee
 6 Smith and Margaret H. Smith, Jason A.
 7 Underwood and Camilla J. Wilson;
 8 Stewart South, LLC; Quarter South,
 9 LLC; Steven H. Frame and Kay B.
 10 Frame,

11 Plaintiff(s),

CIVIL ACTION NO.
 2009-CP-22-01655

12 vs.

13 Shipyard Village Council of
 14 Co-Owners, Inc.,

15 Defendant(s).

16 DEPOSITION OF: ROBERT ALLEN GALLAGHER

17 DATE: Friday, July 15, 2011

18 TIME: 10:00 a.m. through 4:42 p.m.

19 LOCATION: McNAIR LAW FIRM
 20 14361 Ocean Highway, 3rd Floor
 21 Pawleys Island, South Carolina

22 TAKEN BY: Attorneys for the Defendant(s)

23 COURT REPORTER: MADONNA M. PERKINS
 24 Registered Professional Reporter
 25 Certified Livenote Reporter

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24
25

1 documents, Mr. Gallagher, but I haven't asked you
2 about videos. Have you reviewed any videos of the
3 Shipyard Village A and B buildings?

4 A. No.

5 Q. Turning, please, to your Affidavit again.

6 As you might suspect, Mr. Gallagher -- do you have
7 it there?

8 A. Yes.

9 Q. Okay. We'll go through this in some detail.
10 But as I look at this, beginning at Page 9 of 11,
11 specifically Paragraph 7, your opinions are set out
12 in bold type at 7.1 through 7.4, correct?

13 A. Yes.

14 Q. Okay. Are you opinions regarding this case
15 that you have been asked to render, or will render,
16 captured within those paragraphs?

17 A. Yes, sir.

18 Q. Okay. Let me tell you why I ask, because
19 earlier in your testimony, and I don't mean to
20 mischaracterize it, but you said words to the
21 effect of you would be offering an opinion on the
22 amount of damages that could have been saved. And
23 let me just lay it out for you; I don't see that in
24 here in the Paragraph 7 series. It may be and you
25 may be able to explain that to me, but is

1 testimony, or excuse me, opinions regarding the
2 amount of damages that could have been saved
3 contained within Paragraph 7 of your Affidavit?

4 A. Yes, because if the owners had acted on the
5 advice that I was trying to provide, I believe that
6 they could have mitigated damages to the
7 structures. And there's obviously a dollar value
8 that I believe could have been mitigated based on
9 ultimately what was spent through the
10 Sutton-Kennerly work scope.

11 Q. Sure.

12 And do you have an opinion as to what
13 damages could have been mitigated, whether it's on
14 a percentage basis, a dollar basis or any other
15 basis?

16 A. I do, based upon a dollar value.

17 Q. And what is that opinion, sir?

18 A. I believe that if the owners had implemented
19 and acted on the advice that I was trying to offer
20 in 1993 and 1994, I believe that the owners could
21 have avoided at least \$2 million of damages to the
22 structural elements of the buildings.

23 And I believe that that is a conservative
24 number because I have not had the opportunity to go
25 through all of the Sutton-Kennerly and Structural

1 Preservation System's numbers to see, in the end,
2 ultimately how much money was spent to correct
3 structural damages in both the Shipyard buildings.

4 So, in essence, I've taken -- I know at
5 least what was in the bid documents for the
6 Sutton-Kennerly scope. In the base bids documents,
7 I know they were replacing all of the balcony floor
8 panels and that there were other concrete repair
9 considerations in those bid documents. And in my
10 estimation, that was -- and these are very
11 approximate numbers -- they were approximately \$3
12 million worth of concrete repairs.

13 Q. That's the balcony decks and what else?

14 A. Concrete repairs.

15 Q. Okay.

16 A. So Sutton-Kennerly, in the initial bid
17 documents, had about \$3 million worth of -- even in
18 their own budgets, they had about \$3 million worth
19 of dollar -- you know, money set aside to correct
20 the failing concrete floor panels and concrete
21 repairs in the super structure.

22 Now, what they ultimately ended up, you
23 know, paying, I don't know because there was a
24 large contingency set aside and I don't know how
25 much of that contingency was used to correct

1 concrete damage -- damages, excuse me.

2 Q. Okay. Is the \$2 million figure you just
3 gave reflected in your Affidavit?

4 A. No, sir.

5 Q. Okay. In rendering the opinions that you
6 rendered in your Affidavit there in Exhibit 1,
7 Mr. Gallagher, did you find yourself referring back
8 to any building codes or maintenance standards or
9 guidelines?

10 A. There were a few guidelines in the Tourney
11 Consulting Group reports that were relevant. And
12 there was one guideline outlined in the
13 Sutton-Kennerly report that was also relevant.

14 Q. Tell me what in the Tourney Consulting
15 report was relevant to your analysis.

16 MR. BELLAMY: Do you have a copy of
17 that or --

18 MR. MILLS: He's got it.

19 MR. BELLAMY: Oh, he's got it, yes.

20 BY MR. MILLS:

21 Q. I show it as Exhibit 6.6 to your Affidavit?

22 A. It's actually 6.7 to the actual report.

23 Q. Very well, thank you.

24 A. It's on Page 16. I think it's marked as
25 2452 on the same.

1 Q. I'm with you. Thank you.

2 A. Very last paragraph.

3 Q. I see you have it highlighted in your
4 version.

5 A. Yes. I have highlighted the entire
6 paragraph, but the component that I'd like to point
7 out is -- starts with the second sentence in that
8 paragraph: "This additional corrosion protection
9 could have been accomplished during initial
10 construction by techniques such as increased
11 concrete cover, higher quality concrete,
12 epoxy-coated reinforcing, corrosion-inhibiting
13 admixtures, or" -- and the key component here or
14 the key wording is "barrier coatings." The barrier
15 coatings is a critical element and is what I was
16 trying to get the Shipyard board of directors to
17 understand back in 1993/'94, that they needed to
18 protect the horizontal walking surfaces of the
19 structures. They were never protected. And when I
20 say "protected," I mean, some sort of a membrane to
21 keep the water and the salt from penetrating that
22 concrete.

23 When I was there in nineteen- -- when we
24 were there in 1990 performing the contract work,
25 they were not protected. I recommended that they

1 protect them in '93 and '94. And when I came back
2 in 2007, still nothing had been done to protect the
3 horizontal concrete surfaces of the A and B
4 buildings. And the barrier coating, if it had been
5 utilized, would have helped to protect the
6 reinforcing strands in those panels.

7 Q. Okay, thank you. You referenced also one
8 guideline in the SKA report?

9 A. Yes. And if you don't mind, can we back up
10 to Tourney real quick?

11 Q. Absolutely.

12 A. Also, on the very next page, Page 17, second
13 paragraph, the last sentence. Another way of
14 helping to protect the concrete and this particular
15 sentence reads, "A membrane or impermeable coating
16 can also act as a barrier to stop passage of carbon
17 dioxide and monoxide, thus halting the carbonation
18 process." Again, that is relevant to what I was
19 trying to get the board to understand.

20 If you go on to Page 18 of the Tourney
21 Consulting report.

22 Q. I'm with you.

23 A. If you go to the second paragraph, it also
24 states that, "Common barrier systems used for
25 waterproofing concrete or masonry structures will

1 few cracks that could have been addressed by epoxy
2 injection that have not have been -- had
3 progressed.

4 But by the time I visited the property in
5 1993, I felt that there was enough -- you know,
6 there was enough reoccurrence of these types of
7 cracks that warranted, you know, telling the
8 owners, you need to hire somebody to come evaluate
9 this. This is not a typical thing that happens
10 with concrete or shouldn't be happening. You need
11 to have it evaluated so it can be addressed
12 properly.

13 Q. Did you ever review the project with an
14 engineer?

15 A. I was never contacted after this letter.
16 When we go on to the next exhibit, in 1994, I was
17 called again to look at, specifically, problems
18 with the horizontal walking surfaces. So
19 apparently somebody within the association either
20 knew they had a problem or were concerned that they
21 had a problem because they not only called me in
22 '93 to come look at it, but they also called me
23 back in 1994 to evaluate it again.

24 Q. We'll get to that one, but do you know that
25 the same person who called you in '93 has called

1 you in '94? The '94 letter we are going to talk
2 about is 6.15.

3 A. Thank you.

4 Q. Yes, sir.

5 A. It's the same property management company
6 but a different individual.

7 Q. Okay. You read for me earlier the
8 concluding sentence in the first paragraph of your
9 April 9, 1993 letter, and it's referenced to "a
10 waterproof membrane to avoid future concrete
11 problems." Do you see that?

12 A. Yes.

13 Q. Did, in fact, Pro-Con Waterproofing, Inc. go
14 on to install a waterproof membrane?

15 A. No. The -- in fact, when I visited the
16 property in 2007, there were no waterproofing
17 membranes that had ever been applied to those
18 horizontal surfaces. And, in fact, it wasn't until
19 the Sutton-Kennerly work scope came out in 2009,
20 was the first time that somebody finally got the
21 owners to understand that they needed a waterproof
22 membrane on their horizontal surfaces. And it was
23 in and has been done in the -- or at least the bid
24 documents contained that component of construction.
25 They put horizontal waterproofing membrane on all

1 the horizontal walking surfaces.

2 Q. Mr. Gallagher, you can look at a horizontal
3 walking surface in 2007 and determine that there
4 has been no membrane placed for the intervening 14
5 years?

6 A. Yes, sir.

7 Q. It's that obvious, you would know?

8 A. Oh, yes.

9 Q. Okay. Well, then let's see what happens
10 next sequentially with Pro-Con's work at Shipyard
11 Village. And sequentially, I show document -- or
12 Exhibit 6.21 to your Affidavit. Do you have that
13 in front of you, sir?

14 MR. BELLAMY: Which one is that?

15 MR. MILLS: I have got 2/4/94, Proposal
16 and Contract.

17 THE DEPONENT: Yes, I have that.

18 BY MR. MILLS:

19 Q. All right. Now, I take it this Proposal and
20 Contract you have in front of you, Exhibit 6.21,
21 has nothing to do with a waterproof membrane?

22 A. It has nothing to do with that.

23 Q. What's going on here, Mr. Gallagher?

24 A. The original construction of the A and B
25 buildings included some wood sheets of T1-11 that

1 Q. And as of March 9, 1994, you weren't
2 particularly concerned about the spalling of the
3 concrete, were you?

4 A. No, I was more concerned about the cracks
5 that were developing in the cantilever beams and
6 the ends of the panels, the floor panels.

7 Q. Okay. At the bottom of the page, the
8 paragraph beginning "Additional preventive
9 maintenance," do you see that?

10 A. I do.

11 Q. You again make reference to "the application
12 of a protective waterproof deck coating material,"
13 right?

14 A. Yes.

15 Q. Okay. That is -- and that was exactly the
16 kind of work that Pro-Con did, wasn't it?

17 A. Well, yes. I mean, it's a function; it's an
18 application that is intended to help protect
19 concrete members and protect the structure from
20 water penetration.

21 Regardless of whether Pro-Con did it or
22 another contractor was engaged to do it is not the
23 point here. The point is, I was trying to get this
24 association to understand that -- I'm trying -- if
25 you back up in the letter, I'm trying to help them

1 establish a maintenance program to address
2 maintenance and maintaining of all the assemblies,
3 not just the ones that I've worked on but all of
4 them.

5 So the recommendation, as in '93, is the
6 same in '94. I'm not trying to sell these people
7 anything. I'm trying to get them to understand
8 that there are distresses beginning to occur in
9 these cantilever beams and in these hollow core
10 floor planks. And I'm trying to get them to engage
11 in design professionals who are much more
12 knowledgeable about building stresses and building
13 loads than I am. I'm certainly not qualified to
14 look at that and come up with a repair scope. So
15 I'm trying to steer them in that direction. I'm
16 not trying to sell these people anything.

17 A waterproofing membrane, in my opinion,
18 would have gone a long way in protecting those
19 pre-cast floor panels and those beams underneath to
20 the point where they would not have sustained the
21 type of damage that they just had to deal with.

22 In fact, when I went back out there in 2007
23 and then again in 2009 to bid the Sutton-Kennerly
24 work scope, none of these issues had been
25 addressed. They never addressed these issues.

1 screwed to the side of the building at the floor
2 lines, and the association just wanted them
3 removed. They were warping; they looked terrible.
4 They just wanted them removed. And that's \$1800
5 per building is what this is -- this is the
6 contract to remove them from the building.

7 Q. And did Pro-Con, in fact, do that work?

8 A. We did.

9 Q. Appended to that is also a May 6, 1994
10 Proposal and Contract for the cleaning of all
11 exterior windows. Do you see that?

12 A. Yes, sir.

13 Q. Was that work actually performed?

14 A. It was.

15 Q. Okay. I'm curious, I recognize that it's
16 been some 16, 17 years, but looking at these
17 documents now, do these refresh your recollection
18 as to whether -- when you went back out there in
19 May of 1994 -- you said anything to anyone, any
20 owner, any board member, any representative of
21 Waccamaw Management about, Hey, guys, what about my
22 letter?

23 A. Well, you know, it's interesting that they
24 called me to go do these evaluations. I give them
25 the information in '93, and then they call me back

1 out there again in '94 to do another evaluation
2 and, you know, and I'm being directed, or I'm being
3 told I communicate through Waccamaw Management. I
4 never went to a board meeting. I never got in
5 front of the board, addressed the board, never did
6 any of that. My direction was -- always came
7 through and went back through Waccamaw Management
8 Company. And I'm sure I probably had that
9 conversation with them, hey, what's up with the
10 letter, you know, why didn't -- but, you know, I
11 put my findings in writing; I sent it through the
12 appropriate channels that I was directed to send it
13 to. Why they didn't respond? I don't know.

14 Q. And you have no specific recollection of
15 that issue being addressed? And by way of example,
16 I mean did Mr. Crocker or somebody else at Waccamaw
17 Management Company say, Bob, I got your letter
18 but...

19 A. I don't recall that whole conversation, but
20 I do know through the documents that Mr. Bellamy
21 provided me, that that letter that we just reviewed
22 was attached to a board meeting minutes. So if it
23 was attached to -- and, in fact, I read the
24 minutes, and it makes reference to my letter in
25 there. So sitting here today, I feel like the

1 board received it, the board read it, they
2 discussed it briefly, but then they tabled the
3 discussion according to their own minutes, and I've
4 never heard another word from them.

5 I didn't get another call about this
6 property until 2007 when MEC Engineering calls me
7 to ask me to come evaluate the very same things I
8 was evaluating in 1993 and 1994, the exact same
9 areas.

10 Q. Let me take a moment to look because
11 Mr. Bellamy provided me a copy of these minutes as
12 well that you just referenced. And I may or may
13 not have any questions about these for you.

14 MR. BELLAMY: I think, actually, y'all
15 provided that. It's your Bates Stamp.

16 That's your Bates Stamp right there, David.

17 MR. MILLS: I see them, yeah.

18 (Off-the-record conference.)

19 BY MR. MILLS:

20 Q. You did review these minutes of the
21 March 11, 1994 board meeting, Mr. Gallagher?

22 A. I did.

23 Q. And you just referenced earlier that the
24 review of your letter and the discussion resulting
25 therefrom by the board was tabled, correct?

1 THE DEPONENT: Because I saw and
2 removed some of the patches that were
3 performed by the previous contractor, and
4 there were some pretty extensive areas.

5 BY MR. MILLS:

6 Q. Okay. You don't know whether the
7 deteriorated conditions in the concrete were
8 visible to the naked eye in 1999, do you?

9 A. Many of those distresses had to be visible
10 because they patched them, somebody patched them.
11 I can't sit here today and say that Henderson
12 patched them all. Somebody made an attempt to
13 patch them. It was a poor attempt, in my opinion.
14 But yes, in 1999, those spalls in some locations
15 were to that extent (indicating). I mean, there
16 were some pretty bad areas.

17 Q. Okay. Moving to the Bid Cost Estimate.

18 (Off-the-record conference.)

19 BY MR. MILLS:

20 Q. The Bid Cost Estimate that's appended to
21 6.5, as of 2007; would PROCON have done this work,
22 the work reflected in the Bid Cost Estimate?

23 A. Are you asking were we capable of doing the
24 work, or would we have implemented this work scope?

25 Q. Both. Is the work reflected on this Bid

1 a contractor or a developer for a certain period of
2 time. It's also my understanding that if there are
3 building code violations, that that statute may or
4 may not apply. I mean, I'm not an attorney. I
5 don't have the understanding that you do.

6 Q. What's your general understanding of what
7 those periods of time are that an owner can go back
8 against a contractor or a design professional for
9 construction-related deficiencies?

10 A. I've heard 13 years, and then I've heard
11 that that's been changed to ten years.

12 MR. BELLAMY: Eight, it will be eight.

13 THE DEPONENT: Eight years.

14 BY MR. MILLS:

15 Q. But you don't know of your own knowledge?

16 A. No, sir.

17 Q. Okay.

18 A. But I don't think it says various regional
19 construction-related defects; it just says
20 problematic conditions.

21 Q. So those conditions didn't rise to the level
22 of defects in 1993 or 1994?

23 MR. BELLAMY: Can I -- I guess, Dave,
24 where are you trying to go with this?

25 Because --

1 MR. MILLS: Let's just see if the
2 Deponent can answer.

3 MR. BELLAMY: Okay.

4 THE DEPONENT: Well, the way I was
5 going to answer it was the board never hired
6 the engineer to find out what defects were
7 out there.

8 When I read through the Larry Elkin
9 report and I read through the Steve Geiger
10 report, the first professional and design
11 professional that ever came to this site, I
12 believe, was -- as far as the documents I
13 have -- was Spectrum Engineering in November
14 7, 2008.

15 Well, in that same timeframe, I think
16 Tourney and MEC -- I think everybody was
17 involved in at that point. But to my
18 knowledge, this association never once had a
19 qualified design person visit the property,
20 assess the buildings and advise them on how
21 to proceed with maintaining and preserving
22 their buildings.

23 And I even read in some of the meeting
24 minutes in Mr. Geiger's report where some of
25 the owners challenged the board and said --

1 in 1999, before they paid the
2 two-hundred-and-some-thousand-dollars to
3 have the buildings repaired -- there's a few
4 owners who raised the question, hey,
5 shouldn't we have the properties evaluated
6 by a design professional before we go off
7 and spend two-hundred-and-some-thousand
8 dollars. I think the board actually wanted
9 to spend \$300,000. And, yet, they failed to
10 do it.

11 The first real design team experts or
12 people who I consider -- and I do this for a
13 living, I repair buildings every day -- the
14 first qualified person from a design
15 standpoint that ever stepped foot on this
16 property was either 2007 or 2008.

17 BY MR. MILLS:

18 Q. And your recollection, from reviewing
19 Mr. Geiger's materials or the materials appended to
20 his report or the conclusions contained therein,
21 was that property owners were complaining as early
22 as 1999, that the board had not hired qualified
23 professionals to assess the building condition?

24 A. Yes.

25 Q. Whether in your capacity as an expert

1 witness in this case or as a licensed general
2 contractor or as a member of the property owner's
3 association board yourself, do you have an opinion
4 as to whether the Shipyard Village Council of
5 Co-Owners, Inc. was negligent?

6 A. Based on my experience with -- working for
7 condominium associations and being on a board, I
8 feel that the board was negligent in the fact that
9 they did nothing when I wrote them two different
10 letters and made some recommendations and advised
11 them to hire a competent person to come look at the
12 buildings. They tabled the discussion and never
13 did anything about it. And that was evident when I
14 returned to the property in 2007. They didn't even
15 address the simple things that I advised them to
16 address.

17 Q. Did that negligence occur, in your
18 estimation, Mr. Gallagher, in 1993 or 1994 or both?

19 A. I think both.

20 MR. MILLS: If you'll allow me a short
21 break to review my notes, I think we are
22 pretty near concluding.

23 (A recess transpired from 3:56 p.m.
24 through 4:01 p.m.)

25 BY MR. MILLS:

1 now he's on his own, and George Magee
2 regarding the water intrusion problems with
3 the windows in Buildings A and B.

4 MR. MILLS: Okay. I do not believe we
5 had that because if we had it, we would have
6 produced it to you, but I'm going to
7 double-check that.

8 MR. BELLAMY: Okay.

9 MR. MILLS: Mr. Gallagher, I thank you
10 for your time this fine Friday afternoon.
11 If you'll please answer any questions
12 Mr. Bellamy has for you.

13 EXAMINATION

14 BY MR. BELLAMY:

15 Q. In your opinion, had the board failed to
16 plan for the necessary repairs and maintenance to
17 Buildings A and B since their inception?

18 A. Yes.

19 Q. Okay. And what are you basing that on?

20 A. I'm basing that on the letters that I wrote
21 in 1993, '94, the follow-up investigation that I
22 performed in 2007, and then reading back through
23 Mr. Geiger's report of all of the meeting minutes
24 that took place that he had referenced in his
25 document about the problems that just -- apparently

1 just kept compounding and compounding and were
2 never really adequately addressed.

3 I also base it on Mr. Elkin's report who
4 provides an outline of things that occurred in a
5 timeline fashion.

6 And then finally, just the fact that if you
7 look at the magnitude of the work scope that had to
8 be performed by Sutton-Kennerly at those
9 properties, somebody failed to act along the way.
10 It just didn't get that way on its own.

11 Q. My final question, Mr. Gallagher, in your
12 opinion, did the majority of damages to Building C
13 and D, water intrusion damage, concrete damages,
14 occur before 1999?

15 A. Yes, sir.

16 Q. Okay. And what are you basing your opinion
17 on?

18 A. I'm basing my opinion upon the fact that I
19 was there on the site, doing investigations in
20 1993, also in 1994; then I came back in 2007, and
21 the conditions had gotten extreme. Things were
22 really in bad condition.

23 MR. BELLAMY: Okay. That's all I've
24 got, David.

25 (Off-the-record conference.)

1

2

EXAMINATION

3

BY MR. MILLS:

4

Q. Mr. Gallagher, just to follow-up to
Mr. Bellamy's last question. It is your opinion
that the majority of damages to Buildings C and D,
water intrusion damage, concrete damage, occurred
before 1999?

9

MR. BELLAMY: Buildings A and B.

10

MR. MILLS: I'm sorry, thank you. Let

11

me restate that.

12

BY MR. MILLS:

13

Q. It's your opinion that the majority of
damages to Buildings A and B, water intrusion
damage and concrete damage, occurred before 1999?

16

A. Yes.

17

Q. You're prepared to testify to a reasonable
degree of certainty in your field that by the time
you left the project in 1994, that the degree of
degradation in the buildings had reached more than
50 percent by 1999?

22

A. When you say "50 percent," what are you
making reference to?

24

Q. The majority that Mr. Bellamy used in his
question.

25

1 A. Yes. And I base that answer upon the fact
2 that when I came back in 2007 to investigate these
3 same areas, there were patches that had been made.
4 Those patches were not there when I was there in
5 '93, '94.

6 According to Larry Elkin's record, the next
7 major work that was done at the property was done
8 in 1999. So, therefore, those patches, I assume,
9 had to have been made in 1999, the ones that were
10 failing and that we could easily take apart. They
11 were everywhere on the cantilever beams and on the
12 underside of the panels.

13 So that's why I make the statement that
14 majority of the damage, you know, now, granted,
15 yes, damages were continuing beyond 1999, but the
16 bulk, I think, had already occurred, because
17 somebody attempted to try to patch it.

18 Q. Okay.

19 MR. MILLS: Thank you, Mr. Gallagher.

20 MR. BELLAMY: Thank you.

21 (The deposition concluded at 4:42 p.m.)

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, Madonna M. Perkins, Registered
3 Professional Reporter and Notary Public in and for
4 the State of South Carolina, do hereby certify that
5 the deponent, ROBERT ALLEN GALLAGHER, was duly
6 sworn by me to testify to the truth, and that the
7 above deposition, Pages 1 through 233, inclusive,
8 was recorded stenographically by me and transcribed
9 through computer-aided transcription by me to the
10 best of my ability.

11 I FURTHER CERTIFY that the foregoing
12 transcript is a true and correct transcript of the
13 testimony given by the said witness at the time and
14 place specified.

15 I FURTHER CERTIFY that I am neither attorney
16 or counsel for, nor related to or employed by any
17 of the parties to the action in which this
18 deposition is taken, or financially interested in
19 this action.

20 IN WITNESS WHEREOF, I have set my hand and
21 seal this 17th day of July, 2011.

22
23 Madonna M. Perkins
24 Registered Professional Reporter
25 Notary Public
My commission expires
September 19, 2015

Jim Poag

From: Katie Morrow (km@jbenmorrow.com)
Sent: Monday, January 28, 2008 12:50 PM
To: JJeblin@aol.com
Subject: Re: Shipyard Village

Good morning, Thanks for the e-mail. Very interesting that they admit water intrusion began when A& B were built but the association did not take responsibility until a year and a half ago. Where does it say in our by-laws that water intrusion is the individuals responsibility. We were only responsible for the windows and frames not the structure. I think the board failed to review the issue from the beginning. Oh well, the price we pay for condo ownership.

----- Original Message -----

From: JJeblin@aol.com
To: Fletcher00@aol.com
Cc: gacagracie@juno.com ; DBRAY@SBAAL.com ; wolcarter@verizon.net ; tmcassidy@optonline.net ; Gumless@aol.com ; lshirt@carolina.rr.com ; vickigal@sccoast.net ; rbrgb1@sccoast.net ; marian@sccoast.net ; eddiemeco@yahoo.com
Sent: Friday, January 26, 2008 12:38 PM
Subject: Re: Shipyard Village

Dear Ms. Fletcher,
I have spoken to Vicki Gallagher at KA Diehl, and she said that your request for contact information has been addressed and the list has been sent to you.
Your observation that the windows have not been replaced since the HOA took responsibility is absolutely correct, however I must take exception to the statement that nothing has been done to remedy the problems. The Board in fact has been very diligent in trying to investigate all the issues in the A and B buildings that pertain to structural integrity and water intrusion. Again you are correct when you say that there is more to the project than just replacing the windows. Unfortunately we lost a lot of valuable time in our dealings with our first hire, a very well recommended Forensic Architect. The Board is confident that our current Owners Representative, Mr. Eddie Stokes-PE is making a thorough study of the issues involved and is close to having enough fact finding done to put the project out for bid. A comprehensive report will be given at the annual HOA meeting on April 19, 2008.
Water intrusion began when A and B were built--the HOA took responsibility one and a half years ago. Please be patient and realize that we are working as hard as we can to arrive at a repair solution that satisfies us all.
Jack C. Eblin, D.D.S.

Who's never won? Biggest Grammy Award surprises of all time on AOL Music.



1/29/2008

BELLAMY LAW FIRM

SHIPYARD VILLAGE

P2340

0029

January 4, 2012

Mr. Howell V. Bellamy, III, Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.
P.O. Box 357
Myrtle Beach, SC 29578-0357

Re: Richard Fisher et al Plaintiffs
Vs
Shipyard Village Council of Co-Owners, Inc. Defendant

Dear Howell:

As President of Parades Consulting Services, Inc., I provide consulting services for community associations primarily in the areas of governance, management and fiduciary duty. I also provide expert witness services on litigation involving community associations. My *curriculum vitae* is attached hereto as Exhibit 1. I have been qualified by the State Courts of South Carolina as an expert witness in the field of community association management, community association governance and Board of Directors fiduciary duty for Developer controlled Boards and Owner controlled Boards. While I have not been qualified as such, I am confident I could also be qualified related to financial operations as I am a retired Certified Public Accountant with over 25 years of accounting experience related to community associations.

In response to your request, I have reviewed the following documentation related to this litigation:

1. The Master Deed, Bylaws and recorded amendments to the Master Deed.
2. The Complaint, answers to the Complaint and reports from Steve Geiger on behalf of the plaintiff and Larry Elkins on behalf of the defendant.
3. Minutes of all Board, Annual and Special owner meetings since inception of the Shipyard Village Council of Co-Owners, Inc. (SVCOC) in 1982 to present.
4. Various other documents provided that are relevant to this case.

After having thoroughly reviewed the above documents, I believe I have become very familiar with SVCOC, how it has been governed over the past twenty-nine years, the issues related to the condition of buildings A&B and the lack of reserves.

In an effort to clarify the issues, this report will be done in sections that provide a framework leading up to my professional opinions.

Community Associations and Governance

Community Associations essentially are legal entities established by recording governing documents in the county where the community is located and usually then incorporated as an eleemosynary non-profit corporation under the SC Non-Profit Corporation Act. There are two primary types of community associations. One type is referred to as a Condominium (Condo), whose documents and governance must comply with the SC Horizontal Regime Act (the Act). If the Condo is also incorporated under the SC Non-Profit Corporation Act, the Condo must also comply with its provisions. The other type of community association covers a wide variety of property and can be townhouses, residential neighborhoods, master planned communities, etc.

As SVCOC is a Condo, that will be the focus of further discussion. The Act is a specific statute that creates a Condo and provides specific provisions with which the Master Deed and Bylaws of the Condo must comply. **THERE IS NO OPTION.** One specific provision of the Act, Code 27-31-160, requires the By-Laws of a Condo to provide for "care, upkeep and surveillance of the property and its general or limited common elements". If the Condo is incorporated, the SC Non-Profit Corporation Act also provides general provisions to be used in the absence of any specific requirements in the Act, the Master Deed or the Bylaws.

Michael R. Parades, PCAM, 9 Harrill Ct., Charleston, SC 29412
Phone: 843-364-6962 Email: paradesm@gmail.com

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Thus, the duties, obligations and standards for governance of the Condo are governed by three specific documents:

- 1) the Act,
- 2) the recorded Master Deed and
- 3) the Bylaws.

If the Condo is incorporated, the SC Non-Profit Corporation Act may also provide general guidance as to duties, obligations and standards of governance in the absence of specific provisions within the three primary controlling documents.

Finally, the Master Deed is a contract that creates duties and obligations of the parties involved with the Condo. Those parties include the Developer, the Council of Co-Owners (SVCOC), the Board of Directors (BOD) and the unit owners. The Bylaws establish how the Condo will be governed. Together, the Master Deed and Bylaws create the fiduciary duties and obligations of the BOD, both the Developer controlled BOD and the Owner controlled BOD, with respect to the governance of SVCOC. As noted below, Section 5.6 of the Master Deed makes it an absolute requirement for the BOD to maintain, keep up and repair the property. *There is no option.*

Standards of Care Under the Act, the Master Deed, the Bylaws and Common Law

In virtually all Condos, the initial BOD is appointed and controlled by the Developer. As provided for in the SVCOC governing documents, the period of Developer control was to be for a maximum of five (5) years. In fact, the Developer retained control of SVCOC for almost seven (7) years. Another consideration impacting the operation of SVCOC is the fact that in May 1986, the independent management company, Quadrant, was replaced by the Developer owned management company, Waccanaw Management (WM).

Because the initial BOD is Developer controlled, its actions must be such that it keeps a clear line between actions as the SVCOC BOD and actions as Developer representatives. Just as with a member elected BOD, a Developer controlled BOD has the same, if not higher, fiduciary obligations to the owners they represent.

Once the Developer control period ends, the members of the BOD are elected by the membership of the Condo to represent the interests of all members. In addition to the duty to maintain, protect and enhance the common property of SVCOC by governing in accordance with the governing documents, members of the Board have fiduciary obligations to those owners they represent. The fiduciary obligations are the Duty of Care and the Duty of Loyalty. In the past, I prepared a summary to assist BOD members and managers as to what the above duties are and how they are characterized. This summary is extracted from a document published by the American Bar Association titled "Guidebook for Directors of Nonprofit Corporations, 2nd edition". The summary is attached to this report as Exhibit 2. I have used this summary all over the country when teaching managers and when consulting with BODs and Developers.

Of great importance is the Duty of Care. One key element of the Duty of Care is the obligation of each Board member to exercise independent judgment based on all facts and information available. To have all facts and information, a Director must ask questions and seek information needed to make reasonable independent decisions they believe will be in the best interest of the members they represent. Thus, when there is indication of a problem, a director should seek advice from appropriate experts to assist in making a decision that is in the best interest of the members.

If there are signs of problems with the buildings, such as water intrusion, the Board should engage a design professional to perform appropriate investigative techniques to determine what is actually wrong and what needs to be done. If there are legal questions regarding administration, Board duties, etc, the Board should seek legal advice, if there are questions regarding insurance issues and coverage, the Board should seek advice from its insurance carrier/agent and so on. Once the members of the Board have the advice, they are then in a position to make an informed decision regarding a course of action.

It should be noted that by design professional, I mean a licensed Architect or Engineer knowledgeable in building systems and how they are intended to function as a whole. Building maintenance supervisors, management agents and contractors are NOT design professionals. Similarly, legal advice should be sought from competent legal counsel that has no conflicts of interest with the community association's interest. I would consider legal counsel that represented a community association's developer, wrote the governing documents on behalf of the developer

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said represented the developer in litigation brought by the community association against the developer would have a serious conflict of interest if engaged by an insurance company to represent the community association in legal action brought by members of the community association against the community association.

The other important aspect of the BOD's fiduciary duty is the Duty of Loyalty. The BOD must act at all times in the best interests of the members, even if those actions may conflict with their own personal interests. In particular, a Developer controlled BOD must put the interests of the members ahead of its interests as the Developer when making decisions related to governance of the Condo. Finally, this Duty includes an obligation to keep the membership advised of significant issues and/or problems with the property.

In summary, it is important to remember that a community association is a business which is governed by a voluntary BOD, elected by the members of the community to govern the community in the best interests of the membership. In virtually all cases, a community association carries Directors & Officers (D&O) insurance to protect the association and its members from wrongful decisions and negligent acts by the Board of Directors. Again, in most community associations there is also an Umbrella Liability insurance policy that extends over the underlying liability policies, including D&O. In the case of SVCOC, there is a D&O policy in place with coverage for \$1 million and an Umbrella policy over the D&O with coverage for \$15 million.

Relevant Provision of the Act, the Master Deed and the By-Laws

As noted above, the three primary controlling documents do nothing less than create the absolute requirement for the BOD to repair and maintain the property and common elements and to do so in a fiduciary capacity. The Act contains specific provisions which must be included in the Master Deed and Bylaws. The relevant provisions are as follows:

SOUTH CAROLINA HORIZONTAL PROPERTY ACT (The Act):

Section 27-31-20. Definitions.

- (d) "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;
- (e) "Council of co-owners" means all the co-owners as defined in subsection (d) of this section; but a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum of the adoption of decisions;
- (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 buildings 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 construction 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;
- (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;

- (h) "Majority of co-owners" means fifty-one percent or more of the basic value in accordance with the provisions of SECTION 27-31-60.

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 27-31-150. Administration of property; bylaws.

The administration of the property constituted into horizontal property, whether incorporated or unincorporated, *SHALL* be governed by bylaws which shall be inserted in or appended to and recorded with the master deed or lease.

Section 27-31-160. Provisions required in bylaws; modification of system of administration.

The bylaws *MUST* necessarily provide for at least the following:

- (a) Form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal and, where proper, the compensation thereof;
- (b) Method of calling or summoning the co-owners to assemble; that a majority of at least fifty-one percent is required to adopt decisions; who is to preside over the meeting and who will keep the minutes book wherein the resolutions shall be recorded;
- (c) Care, upkeep and surveillance of the property and its general or limited common elements and services;
- (d) Manner of collecting from the co-owners for payment of the common expenses;
- (e) Designation and dismissal of the personnel necessary for the works and the general or limited common services of the property.

The sole owner of the property or, if there be more than one, the co-owners representing two thirds of the total value of the property, may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. No such modification may be operative until it is embodied in a recorded instrument which shall be recorded in the same office and in the same manner as was the master deed or lease and original bylaws of the horizontal property regime involved.

Section 27-31-170. Compliance with bylaws, rules, and regulations; remedy for noncompliance.

Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for civil action to recover sums due for damages or injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified in the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner.

Section 27-31-180. Records of receipts and expenditures.

The administrator or the board of administration, or other form of administration in the bylaws, shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the property and its administration, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general knowledge.

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Section 27-31-190. Expenses shall be shared.

The co-owners of the apartments are bound to contribute pro rata in the percentages computed according to SECTION 27-31-60 toward the expenses of administration and of maintenance and repair of the general common elements and, in the proper case, of the limited common elements of the property and toward any other expense lawfully agreed upon.

No co-owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him

Section 27-31-200. Unpaid assessments shall be paid from sales price.

Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro rata share in the expenses to which SECTION 27-31-190 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

- (a) Assessments, liens and charges for taxes past due and unpaid on the apartment; and
- (b) Payments due under mortgage instruments or encumbrances duly recorded

Section 27-31-280. Council of co-owners right of access.

The council of co-owners shall have the irrevocable right, to be exercised by the administrator or the board of administration, or other form of administration specified in the bylaws, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment of apartments.

Section 27-31-290. Limitation on liability of co-owners for common expenses.

The liability of each co-owner for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this chapter, the master deed or lease and the bylaws.

Master Deed of Shipyard Village HPR:

Section 5.6 Operation and Maintenance

"Except as specifically provided herein, the maintenance, repair, replacement, management, operation and use of the Common Elements and Limited Common Elements SHALL¹ be the responsibility of the Board."

¹ RESPONSES TO REQUEST FOR ADMISSIONS OF FACT DATED APRIL 21, 2011:

"1. Admit that the Defendant Shipyard Village Council of Co-owners, Inc ("Shipyard Village Council of Co-owners") has an affirmative duty to maintain, replace, and repair the common elements of Buildings A and B as required by the Master Deed and By-Laws of the Shipyard Village HPR. A copy of the Master Deed and By-Laws of Shipyard Village HPR is attached hereto, and marked as Exhibit Nos. 1 and 2. (The Master Deed of Shipyard Village Horizontal Property Regime dated July 7, 1984, and recorded on July 9, 1984, in Deed Book 201 at page 880, in the Office of the Register of Deeds for Georgetown County, South Carolina, and the Bylaws of Shipyard Village Horizontal Property Regime attached to the Master Deed dated July 7, 1982, recorded in Deed Book 201, at Page 929, on July 9, 2002, in the Register of Deeds Office in Georgetown County ("ROD"), South Carolina (20 pages)).

- Section 6.1 Enumeration of Expenses
"Except as otherwise provided herein, each Co-owner shall bear in proportion to his respective interest in the Common Elements the following expenses:"
a) Expenses incurred in operating, maintaining, improving, repairing and replacing the Common Elements
c) Contributions to provide sufficient reserves to make such major repairs or replacements to the Common Elements as may be required from time to time.
- Section 7.1 Council of Co-owners, Board of Directors and Manager
"The regime *SHALL* be administered by a Council of Co-owners, an incorporated association which *SHALL* act by and through a Board of Directors elected as herein provided."

ANSWER: The first sentence to Request to Admit No. 1 is Admitted.

RESPONSES TO REQUEST FOR ADMISSIONS OF FACT DATED JUNE 27, 2011

7. Admit that Sections 3.6, 4.3, 5.5, 5.6, 7.1, 7.4, 9.4, 9.6, 9.9, 12.1, 16.1, 16.2, and 16.4 of the Master Deed, as amended, impose affirmative duties on the Defendant and the individual A, B, C And D Unit Co-owners regarding the maintenance, replacement, and repair of their individual units and the regime's common elements. A copy of the Master Deed and By-Laws of the Shipyard Village HPR, including their amendments, are attached hereto, and marked as Exhibit Nos. 1-4. (The Master Deed of Shipyard Village Horizontal Property Regime dated July 7, 1984, and recorded on July 9, 1984, in Deed Book 201 at page 880, in the Office of the Register of Deeds for Georgetown County, South Carolina; First Amendment to Master Deed of Shipyard Village Horizontal Property Regime (1st Amendment) recorded August 5, 1998, in Deed Book 891 at Page 881, in the Office of the Register of Deeds for Georgetown County, South Carolina; Second Amendment to Master Deed of Shipyard Village Horizontal Property Regime (2nd Amendment) recorded January 19, 1999, in Deed Book 910 at Page 25, in the Office of the Register of Deeds for Georgetown County, South Carolina (said Second Amendment was recorded in Deed Book 942 at Page 46); and the Bylaws of Shipyard Village Horizontal Property Regime attached to the Master Deed dated July 7, 1982, recorded in Deed Book 201, at Page 929, on July 9, 2002, in the Register of Deeds Office in Georgetown County ("ROD"), South Carolina (20 pages)); and

ANSWER: Responding to the first sentence of Request to Admit No 7, the Defendant admits that it and all the Co-owners are bound by the Master Deed, as amended.

9. Admit that Sections 2.2, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.3, and 11.5 of the By-Laws, as amended, impose affirmative duties on the Defendant and the individual A, B, C And Unit Co-owners regarding the maintenance, replacement, and repair of their individual units and the regime's common elements. A copy of the Master Deed and By-Laws of the Shipyard Village HPR, including their amendments, are attached hereto, and marked as Exhibit Nos. 1-4. (See Exhibits 1-4 listed above under Request to Admit 7)

ANSWER: Responding to the first sentence of Request to Admit No 9, the Defendant admits that it and all the Co-owners are bound by the By-laws, as amended."

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- Section 7.2 Voting
"The affirmative vote of the Co-owners of fifty-one percent or more of the value of the Regime Property shall be required to adopt decisions submitted to the Co-owners for a vote pursuant to this Master Deed or By-laws; unless, however, *the Master Deed or Bylaws require a greater percentage for a particular act or decision and except as otherwise provided in Article XIV hereof.*"
- Section 7.4 Bylaws and Regulations
"The Council and the administration of the Regime *SHALL* be governed by (1) the Bylaws attached to this Master Deed as Exhibit E and hereby incorporated by reference herein, and (2) any regulations (Regulations) adopted pursuant to the Bylaws."
- Section 14.1 Amendments
"This Master Deed and all Exhibits incorporated by reference herein, including the By-Laws, *may be amended from time to time by resolution adopted by the affirmative vote of Co-owners of two-thirds (2/3) of the total interest in the Common Elements* subject to the following conditions: No amendment by the Co-owners shall be in violation of the Act and no amendment shall alter the dimensions of a Unit or the Percentage Interest in the Common Elements appurtenant thereto without the consent of the Co-owners of such Unit.
- Section 16.2 Compliance
"Each Co-owner shall comply strictly with the By-laws and with the administrative rules and regulations adopted pursuant thereto..."

By-laws of Shipyard Village HPR:

- Section 1.4 Voting
A Co-owner's voting rights and the vote required to adopt decisions shall be as set out in Article VII and Exhibit C and D of the Master Deed. *Holders of fifty-one (51%) percent OR MORE of the value of the Regime Property as a whole must vote affirmatively to adopt any matter before the Council. Votes can be cast only at meetings of the Council convened in accordance with the Bylaws...*
- Section 1.5 Consent
"Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action signed by all Co-owners entitled to vote, or, in the case of Units owned by two or more Co-owners, by the designated voting member."
- Section 2.1 Form of Administration
"The Council *SHALL* act by and through its Board of Directors."
- Section 2.2 Authorities and Duties
"In its discretion and as required by the Act, the Master Deed, and these Bylaws, the Board of Directors *SHALL* provide for the following:
(1) The contracting with a managing agent to provide for the surveillance and security of the Regime Property, the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same;
(4) The enactment of reasonable regulations governing the operation and use of Common Elements;
(6) The enforcement of the terms of the Master Deed, these Bylaws, and any regulations promulgated pursuant to the Bylaws;
(7) The general administration of the Council and the Regime on behalf of and for the benefit of all Co-owners."

- Section 2.14 Minutes of Meetings
"The Secretary of the Council *SHALL* prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of such minutes *SHALL* be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes *SHALL* be made available for examination and copying by any Co-owner at any reasonable time."
- Section 5.2 Budget
"The Board of Directors *SHALL* prepare, adopt and present or cause to be prepared and presented, to the Co-owners at their annual meeting an annual budget (the Budget) for the Regime for the next fiscal year. The Budget as adopted by the Board of Directors *SHALL* set forth with particularity the anticipated Common Expenses for the fiscal year together with the amount of reasonable reserves for payment of future Common Expenses and contingencies."
- Section 6.1 Maintenance by Manager
The Manager or the Board of Directors *SHALL* provide for the maintenance, repair and replacement of the Common Elements.
- Section 6.2 Maintenance by Co-owner
Except for Time Sharing Units, the Units *SHALL* be maintained in good condition and repair by their respective co-owners. Except for Co-owners of Time Sharing Units, each Co-owner shall also provide for the routine cleaning of all Limited Common Elements reserved for the use of his Unit.
- Section 6.3 Default by Co-owner
"In the event that any Co-owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Co-owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors *SHALL*, after giving such Co-owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such Co-owner by an Individual Assessment."
- Section 6.4 Expenses
"The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors, including losses by storm, fire or other casualty insured by the Council, *SHALL* be Common Expenses."
- Section 6.5 Improvements
The Board of Directors *SHALL* provide for the making of such improvements and additions to the Common Elements as may be approved from time to time by a majority of the Co-owners. The cost of such improvements *SHALL* be a Common Expense; provided, however, that no Co-owner *SHALL* without his consent be assessed in any one (1) year for the making of improvements to the Common Elements an amount in excess of one (1%) percent of the value of his Unit as set forth in the Master Deed unless such improvements have been approved by Co-owners holding two-thirds (2/3) of the Percentage Interest in the Common Elements.
- Section 7.3 Enforcement
"The Board of Directors *SHALL* enforce the terms of the Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations."

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The Problem(s)

SVCOOC consists of four (4) high rise buildings comprising 160 condos as follows:

- (1) Buildings A & B, completed in approximately 1982 with 40 condos in each, total 80 condos.
- (2) Buildings C & D, completed in approximately 1998 with 30 condos in each, total 60 condos.

Beginning in 1983 and continuously thereafter, numerous problems were reported to the BOD and Management Company by unit owners of Buildings A & B. These problems are addressed in greater detail in the reports of other experts in this case; however, in summary the problems relate to water intrusion from a variety of sources such as windows, stucco cracks, etc. The results of the on-going and continuous water intrusion have led to the inevitable deterioration of Common Elements, which now have required the expenditure of millions of dollars to correct the resulting damage caused by original design and construction defects and the negligent failure of the BOD to fulfill its obligations as set forth in the governing documents.

Building C & D were constructed in 1997/1998 with both buildings being submitted to SVCOOC in October 1998. Within a short time period after construction of Buildings C & D, water intrusion problems appeared due to original design and construction defects. In early 2001, legal action was commenced against the Developer and other parties for the design and construction defects on Buildings C & D. Despite the known water intrusion issues in Buildings A & B, the BOD did NOT authorize any forensic investigation to be done concurrent with the forensic investigation of Buildings C & D.

The Buildings C & D lawsuit was settled in 2006 and the proceeds from the lawsuit were used to perform the necessary repairs on Buildings C & D. Of note, the BOD found a less expensive alternative to do repairs to Buildings C & D resulting in a surplus of litigation proceeds of approximately \$1.5 million. As these proceeds were earmarked for Buildings C & D, the entirety should be set aside in a special maintenance reserve earmarked for future major repairs on Buildings C & D. Instead, the BOD put the entire surplus in the general maintenance reserve for use as the BOD sees fit. Finally, it is interesting to note that in January 2003, the BOD replaced the Developer owned management company, WM, with an independent management company, KA Diehl & Associates (Diehl).

In 2006, the Board of Directors finally engaged the first of several design professionals to conduct a forensic investigation of the on-going issues in Buildings A & B (this is the first time in over 20 years the Board engaged a design professional to investigate Buildings A & B). In 2007, 2008 and into 2009, additional design professionals were engaged to investigate and develop an action plan for the repairs of Buildings A & B. The final plan, which is now in progress, will result in Buildings A & B being finally repaired at a cost somewhere between \$13 million and \$14 million. The costs of the repair program are being paid for by ALL owners in the four (4) buildings in accordance with their percentage ownership interest.

Proposed Window & Sliding Door Amendments

It should also be noted that the initial design professional engaged in 2006 was engaged to investigate on-going reports of water intrusion around windows and doors. One outcome of this initial investigation was a recommendation by the BOD to amend the governing documents to make maintenance responsibility for windows and sliding doors, that are part of the building envelope, the responsibility of SVCOOC instead of unit owners. Thus, the relevant provisions of the governing documents are as follows:

- Section 14.1 of the Master Deed (see above), provides that the Master Deed "may be amended from time to time by resolution adopted by the affirmative VOTE of the Co-owners of two-thirds (2/3) of the total interest in the Common elements."
- Section 12 of the Master Deed (see above), provides "The affirmative VOTE of the Co-owners of fifty-one percent OR MORE SHALL be required to adopt decisions submitted to the Co-owners for a VOTE pursuant to this Master Deed and the Bylaws, UNLESS, however, the Master Deed or Bylaws require a greater percentage for a particular act or decision and except as otherwise provided in Article XIV hereof." As noted above, Article XIV requires an affirmative VOTE of two-thirds (2/3) of the total interest in the Common Elements.

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- Section 7.4 of the Master Deed provides that *"The Council and the administration of the Regime SHALL be governed by (1) the Bylaws..."* Thus, we must look to the Bylaws to determine how a VOTE is to be taken
- Section 1.4 of the Bylaws provides that *"Holders of fifty-one (51%) percent OR MORE of the value of the Regime Property as a whole must VOTE affirmatively to adopt any matter before the Council. VOTES can be cast only at meetings of the Council convened in accordance with the Bylaws..."* Thus, in order to VOTE on a proposed action, a meeting must be held.
- The first attempt to have the proposed amendment approved was at the annual meeting in 2006. As noted above, approval required 2/3rds of the membership interest to approve. The amendment as proposed was to make windows and sliding doors the maintenance responsibility of SVCOC. The amendment did NOT pass.
- In response, the BOD then initiated a mail referendum seeking consent for adoption of the proposed amendment without another meeting.
- Section 1.5 of the Bylaws provides that *"Any action which may be taken by a VOTE of the Co-owners may also be taken by written consent in such action signed by all Co-owners entitled to VOTE..."* Thus, for the proposed amendment to be adopted, 100% of the Co-owners were required to give their consent in writing. Not only did the BOD NOT obtain consent from 100% of the Co-owners but the BOD can NOT evidence they received any written consent since the consent forms that may have been received were not retained
- Despite the fact that unanimous consent was NOT obtained, the BOD advised the membership the amendment had passed and recorded an amendment, compounding their negligent action and negligent misrepresentation, by recording an amendment only making windows SVCOC maintenance responsibility in September 2006. There is no question this amendment is NOT valid.
- Subsequently, the BOD realized the alleged proposed amendment did not include sliding doors. Instead of starting over with the proposed amendment, the BOD negligently had a "Correction and Clarification" amendment recorded in November 2007. Clearly, this amendment is NOT valid since the original amendment was NOT valid.

In summary, in my professional opinion the proposed window/sliding door amendment was never approved by VOTE at a called meeting nor was unanimous consent obtained in the second effort to gain approval. As such, neither the third amendment nor the Correction and Clarification amendment are valid

It should also be noted that when adoption of the third amendment and Correction and Clarification amendments on the grounds that neither was approved in accordance with the provisions of the governing documents, the BOD, on advice of its legal counsel, called for a third VOTE at a meeting in 2009. At that meeting, less than fifty (50%) percent of the Co-owners VOTED in favor of the proposed amendment.

The Record

The minutes of BOD, Annual and Special Owner meetings ARE a major component of the official record of SVCOC from inception in 1982 to present. Plaintiff's expert witness, Steve Geiger, has done an excellent job in summarizing the minutes of all meetings and available correspondence since inception of SVCOC. Mr. Geiger's summary is attached to this report as Exhibit 3.

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Based on my review of the meeting minutes and Mr. Geiger's summary, the minutes clearly show the history of water intrusion into Building A & B from the first Annual meeting in 1983 to present.

From 1982 through October 1989, the BOD was controlled by the Developer. The record shows that the Developer controlled BOD was very aware of the water intrusion problems. At the first Annual owner meeting in April 1983, after reports by owners present of numerous window leaks, a motion was made, seconded and passed to engage a design professional to investigate the problem thereby enabling SVCOC to be in a position to take appropriate action against the Developer to solve the water intrusion problems.

Subsequent to the approved motion, the Developer controlled BOD President (an employee of the Developer) advised those members present the Developer was very aware of the problem, seeking solutions and that the members should "trust" the Developer would fix the problem. In response, the members agreed to let the Developer act and the BOD did NOT engage a design professional.

This was the first instance of the BOD and its President confusing their roles as BOD members with fiduciary obligations to the members of SVCOC and their role as employees of the Developer. As the record shows for the remaining years the BOD was controlled by the Developer, the response to reports of water intrusion and the related damage that was beginning to occur was the Developer was working on a solution.

At NO time did the Developer controlled BOD authorize engagement of a design professional, on behalf of SVCOC, to do a proper forensic investigation of the water intrusion problems and develop recommendations to correct the water intrusion and any damage that had occurred. Had a forensic investigation been authorized, it is likely the original design/construction defects that have now been documented and are being repaired, would have been identified. Had these design/construction defects been identified SVCOC could have taken action against the Developer and repair of the design/construction defects could have been accomplished for far less money than the costs now being incurred. Of equal importance, since Building C&D had not yet been built, the repair costs would have been born by the owners of Building A&B or by the Developer had legal action been taken against the Developer.

An additional concern during the Developer control period is the fact that in June 1986, the original independent management company resigned and was replaced by the Developer owned Management Company. While the reason for the original management company resignation is unknown, the engagement of the Developer owned Management Company provided greater control by the Developer to manage actions and communications to members related to the water intrusion issues and the resulting on-going damage to Common Elements of SVCOC.

At the April 30, 1988 Annual Meeting, the BOD President (an employee of the Developer) reported completion of projects including "...the sealing of the windows, sliding glass doors and building exteriors. He stated that part of this expense was paid by the Developer." There was no explanation as to what problems had been identified or how those problems were resolved by the Developer. It should be noted this is the last mention of any Developer involvement related to reported window and door leaks.

In October 1989, the control of the SVCOC transitioned to an owner elected BOD. The Developer owned Management Company continued as the management agent until December 2001.

Water intrusion problems continued to be reported resulting in acceptance of a proposal from Procon, Inc. in late 1990 to waterproof the exterior of Buildings A & B. The original proposal was to waterproof other important portions of the buildings such as walkways and stairwells. Due to lack of reserve funds, the BOD made the decision to do less than the full scope of the proposal. It should be noted that while reserves had been funded since inception, the Board appears to have had a tendency to use the maintenance reserve as a slush fund for unforeseen expenses such as insurance deductibles, unforeseen maintenance expenses, etc. Insurance deductibles and unforeseen maintenance expenses that should have been funded by special assessments to the members.

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Procon was asked to inspect its waterproofing work in 1993. Procon submitted a report on its inspection dated April 17, 1993, see exhibit 4. In that letter, Procon advised the BOD of conditions noted in areas that had not been waterproofed and recommended a structural engineer be retained to conduct further investigations. The recommendation was never reported at any subsequent BOD meeting nor was the members advised at the 1993 Annual meeting.

In 1994, Procon was again asked to inspect its work done in 1990. Procon's report letter dated March 9, 1994, see Exhibit 5, again advised the BOD of observations of exposed rebar and spalling concrete recommending a structural engineer be engaged to investigate the cause. The letter was acknowledged being received at the March 11, 1994 BOD meeting and action was tabled, NEVER to appear on the agenda again. At the 1994 Annual meeting, once again there was no mention of the report from Procon.

Over the ensuing years, there were numerous reports of water intrusion to the BOD. For whatever reason, the BOD typically understated or downplayed the water intrusion when reporting at an Annual meeting or avoided taking appropriate action by advising owners that water intrusion was from windows and doors, which were an owner responsibility. While some water intrusion may have been around windows, the BOD knew or should have known there were many other sources of water intrusion.

Finally, in 2006 the BOD decided to confront the numerous reports of water intrusion and owner cries for help with window replacement problems by proposing an amendment to the Master Deed to make windows and doors, which were part of the building envelope, the maintenance responsibility of SVCOC. As discussed above, the proposed amendment was NOT approved by the membership. At approximately the same time, the BOD finally engaged a design professional to investigate the reported water intrusion problems with windows and doors to develop a solution and program to make these components of the building envelope water tight.

At the Annual meeting in April 2006, members were given a report on the reason for the proposed amendment. As was typical, no mention of the damage occurring due to water intrusion was provided to the members. The vote on the proposed amendment did NOT pass. Subsequently the BOD again tried to have the amendment passed by mail referendum (Consent). As the record clearly shows, the BOD knew or should have known that the effort to gain approval by unanimous consent, as required by Section 1.5 of the Bylaws, was NOT achieved. Despite its knowledge, the BOD reported to the membership that the amendment had passed. Further, as the record clearly shows the amendment as recorded was flawed in that it only included windows. This resulted in a corrective amendment being recorded to add doors without any vote by the membership.

The record shows that for the remainder of 2006, 2007 and early 2008, the BOD consulted with at least three different design professionals in further investigation of the extent of the damage to the property and Common Elements due to water intrusion from various sources since original construction in 1982. At the annual meeting on April 19, 2008, the members received the FIRST comprehensive report detailing the extent of the damage and an estimated repair cost of \$12-13 million.

Owners in Buildings C&D, upon learning of the extent of the damage and the BOD's intended course of action questioned the plan of action and validity of the window/door amendments. Several of these owners engaged legal counsel to review the documents supporting the alleged passage of the amendment. After extensive communication between the C&D owner's legal counsel and the BOD's legal counsel, there was no resolution to the question of whether the proposed amendment had been passed in accordance with the Master Deed and Bylaws. As such, legal action was initiated by the C&D owners against SVCOC in January 2009. In June 2009, the BOD presented a proposed funding plan involving special assessments to all owners for approval of the membership. The proposed special assessment was NOT approved. As a point of interest, the needed funding was included in the operating assessments for 2010 and 2011 and the cost of windows and doors for buildings A & B was billed directly to the A&B owner with a reservation of right by the BOD to re-bill a portion of the cost of windows and doors to Buildings C & D owners depending on the outcome of the lawsuit by C&D owners against the BOD.

SUMMARY OF HISTORIC MAINTENANCE RESERVE FUNDING & EXPENDITURES

I have reviewed certain financial records of SVCOC provided to me to ascertain the BOD's actions with respect to adequate funding of the maintenance reserve as required by the Master Decd. In addition, I have reviewed the reported expenditures from the accumulated reserves to determine the pattern of expenditures from the reserves authorized by the BOD.

As noted earlier in my report, it has long been industry standard to have a reserve analysis done by a qualified professional to identify those long lived assets that require periodic cyclical repair or replacement. The primary reason to have a reserve study done is to ensure all physical assets are identified along with a reasonable estimate of repair/replacement cost and expected useful lives. In essence, this process provides the long term maintenance plan for a community. Once the assets are identified and their estimated lives and replacement costs determined, a funding plan can then be developed to ensure that over the course of the asset's life, adequate funds accumulated through the regular budgeted assessment are available when the time comes for repair/replacement of the asset.

It should be noted that the first time the BOD authorized and had a reserve study done was in late 2007 using 2008 as the test year. This was 25 years after Buildings A and B were built. The reserve study identified 86 items that would need repair or replacement one or more times over a 30 year period. Further, as the Maintenance Reserve Schedule, Exhibit 6, shows actual cash needs over the 30 year period will be \$7,921,666. A further breakdown of the cash needs shows the contribution to be provided by Buildings A & B owners would be \$4,304,373 and the contribution to be provided by Buildings C & D owners would be \$3,591,293. A large portion of the \$3,591,293 to be provided by Buildings C & D owners, the surplus proceeds from the Buildings C & D lawsuit of \$1.5 million, should already have been set aside in the maintenance reserve. In fact, these funds have been co-mingled and used as the BOD see fit.

A review of the in-house documentation supporting maintenance reserve funding from 1982 through 1997 (the year Building C and D came on line), clearly reflects a failure to consider all existing assets were considered, use of unreasonable estimated lives and inaccurate estimates of repair/replacement costs. Reserve funding for Building A and B through 1997 should have been approximately \$1.8 million. In fact, historical financial information indicates the total reserve funding from 1982 through 1997 was \$594,651, Exhibit 7. In addition, historical financial information provided indicates total expenditures from the maintenance reserve for the same time period was \$637,337 resulting in a shortfall of (\$42,686).

Review of meeting minutes indicate the BOD used the maintenance reserve as a source for funding several expenditures that were NOT related to how reserves were meant to be used. Examples of these type expenditures include insurance deductibles, unforeseen operating expenses and site improvements. Of the \$637,337 in expenditures, only \$249,234 was spent for structural repairs, painting, waterproofing and stucco repairs. The BOD's inappropriate use of maintenance reserves impacted SVCOC's ability to perform long term maintenance on existing assets due to lack of funding. For example, in 1990 Procon proposed waterproofing of all exterior surfaces. Due to lack of reserve funds, the scope of work was reduced to waterproofing just exterior walls. Had all exterior surfaces been waterproofed, it is highly likely the damage that is being repaired now would have been necessary.

Based on the BOD's negligent pattern of behavior from 1983 to 2010 in its funding and use of the maintenance reserve earmarked for Buildings A & B as discussed above, *it is my opinion that the co-owners in Buildings C & D have suffered monetary damages in excess of \$2,000,000 dollars as consequence of the BOD's negligent actions.* Furthermore, the co-owners in Buildings C & D have been subjected to excessive costs for reconstruction of Buildings A & B that should have been completed before Building C and D were built. *These excessive costs have resulted in additional monetary damages of approximately \$3,000,000 for a total of approximately \$5,000,000.*

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Other Expert Opinions

As part of my document review, I read closely the Professional Opinions given by Plaintiff's expert Steve Geiger and concur with his opinions as expressed.

I also closely reviewed the report of Defendant's expert Larry Elkins. Many of Mr. Elkins observations/opinions in reality support the opinions of Mr. Geiger. For example, in section 1) under his Shipyard Opinions, Mr. Elkins states "the BOD enlisted the assistance of technical experts and consultants to provide them guidance as to the conditions of Buildings A & B." This statement conflicts with reality. The BOD guidance provided all came from either the Management Company's site Maintenance Manager (who was not trained as a design professional nor licensed as a general contractor) or outside contractors providing quotations for work. Even more amazing, the BOD frequently took no action or sought cheaper alternatives. As Mr. Elkins so eloquently put it the BOD made choices "... within the constraints of their budgets." It is the BOD's responsibility to establish a budget that provides the funds necessary for repair, upkeep and maintenance of the property and Common Elements. If the budget was insufficient, the Board should have levied a special assessment to fund needed work when the work needed to be done.

In Mr. Elkins report, he clearly states that in 1993 "Procon recommended engaging an engineer (design professional) to survey the facility so that they can propose on the waterproofing scope of repairs." Obviously, Mr. Elkins did not understand the letter from Procon. The letter was a report requested by the BOD on the inspection of the waterproofing work done in 1990 by Procon. As part of the letter, Procon reported observations of other conditions indicating problems, which as a licensed general contractor, it would be ethically obligated to do. Again, it is amazing that the BOD totally ignored Procon's recommendation.

Mr. Elkins further states that in 1994 "Procon accepted an engagement to survey the facility so that they can recommend their own waterproofing scope of repairs." In fact, the BOD had requested Procon inspect their waterproofing work done in 1990 and conduct a general inspection of the exterior of the buildings. The letter submitted was the report of their inspection. Again, Procon reported their observations and noted other conditions observed during their inspection. Once again, Procon recommended engaging a design professional to more thoroughly inspect the conditions noted. The BOD accepted the report and tabled any action. It should be noted that Mr. Elkins attributes failure to Procon for not reporting defective windows, improper flashing and improper stucco repairs around windows from Hurricane Hugo repairs. The point here is that Procon was not asked to inspect these conditions.

The balance of Mr. Elkins' report continues in the same vein with numerous factual inaccuracies, blame shifting and outright fabrications. All culminating in item 6), wherein Mr. Elkins states: *"There is no evidence that the BOD had actual and/or constructive knowledge of damages and/or deficient conditions upon which they failed to act."* As the record clearly shows, the BOD had on-going and continuous reports of water intrusion, had at least two letters from a licensed general contractor reporting conditions more than sufficient to be of concern and recommending the BOD engage a design professional to more fully evaluate the symptoms of future catastrophe.

My Professional Opinions

After review of all documents provided, I would hereby submit my professional opinions based on my professional training, actual experience and knowledge having spent 20+ years in the Community Association industry as follows:

1. **NEGLIGENCE:** As the record clearly shows, beginning with the Developer controlled BOD and continuing with the Owner controlled BOD, each BOD has been negligent in fulfilling their specific duties as set forth in the Master Deed and By-laws as follows:
 - (a) Failing to properly maintain, repair, replace the common elements of Building A&B by NOT having a systematic annual inspection of the common elements to use as a basis for routine preventative maintenance of the Common elements;

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- (b) Failing to properly investigate reported leaks by NOT engaging one or more design professionals to conduct a proper forensic investigation of the cause of the reported leaks and any potential damage that may have been occurring to the Common elements;
- (c) In the case of the Developer controlled BOD, placing their loyalties to the Developer above their loyalties owed to SVCOC members as the BOD by NOT engaging a design professional to determine the impact on the building envelope from reported continuous water intrusion through unit windows;
- (d) In the case of the initial Owner controlled BOA, by NOT having a comprehensive building inspection done to ensure the buildings and Common elements were in good condition at turnover from the Developer;
- (e) Failing to act on recommendations of contractor's who reported symptoms of major problems and recommended the BOD engage a design professional to investigate;
- (f) Failing to have a Reserve Study done to support properly funding the maintenance reserve for future repair and replacement of Common elements;
- (g) Using the existing maintenance reserve as a "slush" fund for Common Expenses that should have been assessed to owners resulting in a seriously underfunded maintenance reserve;
- (h) Failing to have BOD meeting minutes accurately reflect reports and business conducted at BOD meetings by NOT including copies of relevant documents as part of the meeting minutes;
- (i) Failing to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to properly maintain, repair and replace Common Elements and Limited Common Elements in a timely manner thus contributing to the extraordinarily high cost of repairs to Buildings A and B which have increased substantially over time;
- (j) Failing to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to require the Unit Owners to maintain, repair and replace certain aspects of their Unit and associated Limited Common Elements thus contributing to the extraordinarily high cost of the repairs to Buildings A and B which have increased substantially over time;
- (k) The governing documents of the Shipyard Village Horizontal Property Regime impose an affirmative duty on the BOD to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings A and B;
- (l) Failing to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements as evidenced by regular reference to the lack of funding in the reserves account as reported in the meeting minutes and correspondence reviewed; and
- (m) The Third Amendment to the Master Deed was NOT properly passed/adopted by a 2/3rds VOIE of the Association members as required by Section 14.1 of the Master Deed and Section 1.3 of the By-Laws at the annual meeting in April 2006 as noted above. The record further indicates the Association members did NOT unanimously consent to the proposed amendment as required by Section 1.5 of the Bylaws, as noted above. In fact, the affidavit of Vickie Gallagher, the SVCOC community manager, clearly states no meeting was held for the re-vote.

Despite repeated requests, NO evidence has been presented that the written consent of any of the co-owners was obtained. By incorrectly assuming that the provisions of the Third and Fourth Amendments to the Master Deed were properly adopted, the BOD is unfairly assessing the Plaintiffs for costs that are the responsibility of the Unit Owners in Buildings A and B; and

- (n) Failed and is currently failing to properly assess the co-owners in Buildings A and B for costs that are their responsibility pursuant to the Master Deed and its Amendments. Although the plaintiffs acknowledge that some costs for the repairs should be shared, they are unjustly being over-assessed for work to correct damage and distress to the Units and contributory damages to Common and Limited Common Elements that are the responsibility of the Unit Owners in Buildings A and B pursuant to the Master Deed and its Amendments. Furthermore, the Plaintiffs are being over-assessed for the BOD's failure to maintain and repair the Common Elements and Limited Common Elements of Buildings A and B; and
- (o) In allowing any claims that the regime property owners may have had against any potentially responsible party to be barred by the applicable statute of limitation or repose or by res judicata, such that the regime property owners will be forced to expend substantial amounts of money to repair, replace, and reconstruct substantial portions of Building A and B's common elements and the individual units; and
- (p) Ignoring recommendation of one or more contractors. Specifically, Pracon sent a letter dated April 9, 1993 reporting on its inspection of their waterproofing work in 1990. In that letter, the contractor reported observations of symptoms indicating potentially serious problems with various concrete structural systems and recommended the BOD engage a structural engineer to do further investigation. Receipt of the letter was NOT acknowledged at the next BOD meeting and NEVER acted upon.
- (q) Again in 1994, Pracon by letter dated March 9, 1994 reported on its inspection of the condition of the buildings and again recommending the BOD engage a structural engineer to evaluate symptoms of concrete structural issues. While this letter was acknowledged at the subsequent BOD meeting, action was tabled and NEVER addressed at subsequent meetings.
- (r) Case law, see Queen's Grant HPR vs Daniel International Corp clearly establishes the duty of a BOD when it has information indicating the possibility of design/construction defects to wit "*Should the Regime NOT uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains, it may be liable to the homeowners for its omissions.*" By ignoring the numerous on-going water intrusion reports, by ignoring and failing to act on recommendations by Pracon to engage a design professional to determine the source of water intrusion and the damages being incurred, the SVCOC BOD was grossly negligent in its duties to the homeowners by allowing the statutory period to pursue recovery for any and all potential construction defects to pass. Had the BOD acted timely, it is a certainty the conditions found fifteen years later would have been found in 1995 and action against the Developer commenced. Further, the damage to the property and Common Elements resulting from continuous water intrusion would have cost far less to repair AND the damage would have been repaired long before Buildings C & D were constructed.
- (s) In using the existing maintenance reserves to fund unusual operating expenses such as hurricane deductibles, emergency repairs, etc resulting in depletion of the maintenance reserve to the point that funds were not available for projects to be funded from the maintenance reserves. An example is the proposal to waterproof the buildings in 1990 that was significantly modified due to lack of reserves

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Funding to the maintenance reserve is to ensure there are funds for the large cyclical maintenance needs of existing assets. The maintenance reserve should NOT be used to fund Common expenses such as insurance deductibles; and

- (i) Failure to engage design professional(s) to investigate reports of water intrusion and potential damages to common elements. Specifically, on several occasions the record reflects one or more BODs knew or should have known serious problems existed in Buildings A&B. Rather than engaging appropriate design professionals to investigate the symptoms of the problems, the BOD either ignored logical actions or tabled taking any action. Examples include:
- During the Developer control period, it was reported to the membership the Developer was working to resolve the water intrusion problem. At the Annual meeting, April 30, 1988, it was reported "the sealing of the windows, sliding glass doors and building exteriors" had been completed. This is the only report on the Developer efforts to resolve on-going water intrusion problems. In essence, the Developer put a "Band-Aid" on the problem. Subsequently, after Owners took control in 1989, there were continued reports of water intrusion through various components of the building envelope. The owner BOD took NO action to investigate and determine the true source of the problem. It should be noted that had the BOD engaged a design professional in 1989/1990, it is extremely likely the building deficiencies would have been identified and action against the Developer begun. It is also very likely the extent of damage would have been significantly less than what is now being repaired. Further, the owner BOD by NOT investigating the problem allowed the statutory time period to file an action against the Developer to lapse.
 - In 1993 and again in 1994, the Owner BOD received reports from its waterproofing contractor, Procon, indicating serious potential structural deficiencies due to on-going water intrusion at surfaces that had not previously been waterproofed with a recommendation to engage a design professional to do a proper forensic investigation. The BOD ignored the recommendation. Had the BOD acted, it is very likely the serious building deficiencies would have been identified and legal action been taken against the Developer. It should also be noted that had action against the Developer been taken at this time, the damage to the Common elements would not be anywhere near the order of magnitude of the existing damage now.
 - In 2001, after Building C&D came on line and found they had on-going water intrusion, the BOD engaged a design professional to conduct a forensic investigation. The results of that investigation led to legal action against the Developer. That action was eventually settled and the net proceeds were sufficient to repair the damage that existed and set aside reserves for future maintenance needs. While the BOD is to be commended for moving forward on legal action for Building C&D, it was grossly negligent in not have a forensic investigation done at the same time of Building A&B. Had there been a forensic investigation done on Building A&B, it is likely the lawsuit filed for C&D would have included A&B. It is also likely the cost to repair the damage at that time would be substantially less than it is now.
- (u) Opinions (a) through (i) as stated above clearly evidence that the C and D Co-owners have been damaged in an amount in excess of their assessment to repair and reconstruct Buildings A and B and as such their assessment should be zero.
2. **NEGLIGENT MISREPRESENTATION:** From the beginning of SVCOC, the record reflects the fact that the BOD did not advise the owners of the serious problems existing in Buildings A&B. Minutes of BOD meetings are very general in nature and for the most part do not include, as part of the minutes, reports received from contractors engaged to provide services, inspections, etc regarding the condition of the buildings. In addition, minutes of Annual owners meetings as a rule respond to queries from owners in a very general way without any content, even though each BOD knew or should have known there were serious problems with Buildings A&B.

- (a) From the inception of SVCOC, the BOD appears to have intentionally not disclosed to the members the true condition of the buildings. During the Developer control period, the standard response to any comments/questions from owners about water intrusion problems was that the Developer was aware of the problems and working to solve them. The reality was the Developer was doing just enough to keep the problem quiet to avoid being sued by the members. This was a clear breach of the fiduciary duty of loyalty (act in the best interest of the members).
- (b) Other examples include the 1993 and 1994 letters from Procon reporting on building conditions and recommending the BOD engage a structural engineer to evaluate what appears to be the beginning of serious problems. Neither of these letters were mentioned at the Annual meetings in 1993 or 1994.
- (c) A review of the record clearly indicates that Annual meetings were highly choreographed. The BOD, as part of its Annual report, should have advised the members of the serious problems. They did NOT.
- (d) The meeting minutes and other correspondence reviewed indicates the seriousness of the defects and deficiencies of Common Elements and Limited Common Elements of Buildings A and B were downplayed by the BOD; and
- (e) The Annual meeting in 2006 appears to be the first time all owners were given an indication of the window problems in Building A&B with an order of magnitude of the potential cost to replace the windows. There was no report on the potential damage that might be occurring due to water intrusion.
- (f) The BOD knew or should have known the proposed amendment to the Master Deed was not adopted in accordance with the provisions of the Master Deed and Bylaws. Despite this knowledge, the BOD advised all Co-owners the proposed amendment had been passed and recorded the Third Amendment in September 2006. As such, Plaintiffs as well as all other owners have been damaged to the extent of legal fees incurred for legal counsel related by the BOD as well as Plaintiffs from the time Plaintiffs challenged the proposed amendment to present.
- (g) The negligent misrepresentation of conditions by the BOD is a clear breach of the fiduciary obligations of the BOD.

3. FAILURE TO ACT IN GOOD FAITH

Each member and the BOD as a whole has an absolute duty to act in good faith, with the care an ordinary and prudent person in a like position would exercise and in a manner the director/BOD reasonably believes to be in the best interests of the corporation and its members. The record clearly shows this standard was NOT met.

SUMMARY

The standards for the BOD, whether Developer controlled or Owner controlled, are governed by three specific documents. These documents are the South Carolina Horizontal Property Act, the recorded Master Deed and the Bylaws. Each of these documents creates specific duties and obligations of the BOD. An examination of these documents reveals the BOD of a horizontal property regime is absolutely required to maintain, keep up and repair the property. The Horizontal Property Act requires the Bylaws of a horizontal property regime provide for "care, upkeep and surveillance of the property and its general or limited common elements and services. The Master Deed requires the BOD to maintain and repair the general and limited common elements of the property and makes this responsibility that of the BOD. The Bylaws provide the same requirements for care, upkeep and surveillance of the property. Thus, the operative governing documents governing the BOD is nothing less than an absolute requirement to repair and maintain the common elements and to do so in a fiduciary capacity.

Parades Preliminary Report
January 4, 2012

The record is clear that every BOD for the past 29 years has known or should have known of the serious problems with Buildings A&B. The BOD had numerous signs of problems, had recommendations to engage design professionals to investigate, document and make recommendations for repairs needing to be done. Had the BOD acted timely, the repair cost that is now approximately \$12 million dollars would have been far less because the damage would have been repaired more than fifteen (15) years ago. Of equal importance, the damage would have been repaired before Building C&D had been built and as such, none of the plaintiffs would have been paying for the repairs of Building A&B.

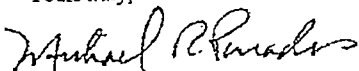
Based on the above, it is my professional opinion the plaintiffs should NOT have any liability for repairs to Building A&B. It is further my opinion that the owners in A&B should NOT have had to pay anywhere near what their cost is today had the BOD fulfilled its fiduciary duties.

CLOSING

The opinions expressed in this report are based solely on the information made available to me through the date of the report and are given with a reasonable degree of certainty based on my qualifications and work experience. Requests for additional information are on-going; therefore, I expect additional relevant documents supporting my opinions will be produced at some point. Accordingly, I reserve the right to amend this report pending receipt of additional documents requested.

Thank you for the opportunity to provide assistance in support of the plaintiff's claims for justice.

Yours truly,



Michael R. Parades, PCAM

Attachments

EXHIBIT 1

MICHAEL R. PARADES, PCAM
9 Harrill Ct., Charleston, SC 29412
Phone: 843-364-6962 Email: paradesm@gmail.com

EXPERIENCE

7/09-Present Realtor-Dunes Properties

Community Association Consulting: Provide consulting services to community associations in primary areas of governance, management and fiduciary duty. Services as expert witness in litigation involving community associations. Other services available on request.

12/05-6/09 DISTRICT MANAGER-SC-Sentry Management, Inc. Supervise and manage delivery of professional management services for Community Association clients in South Carolina.

1/88-12/05 PRESIDENT/CEO - CCM Management, Inc. AAMC, Charleston, S.C. Supervise and manage delivery of professional management services for Community Association clients. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight; supervision of all financial operations for each Community including monthly billings, collections, payments for services and financial statement preparation. Provide other specialized services such as insurance claim negotiations; services as insurance trustee; construction project management; coordination of litigation by Communities and services as expert witness for Community management

6/87-12/87 REGIME ADMINISTRATION MANAGER - Seabrook Island Ocean Club Incorporated, Charleston, S.C. Manage property operations for 22 Property Owner Associations totaling 827 units. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight; supervision of all financial statement preparation

1985-4/87 CONTROLLER - Seabrook Island Ocean Club Incorporated, Charleston, S.C. Managed all financial matters for the resort corporation, the real estate limited partnership and for the wholly owned utility company; prepared and coordinated all work required by external auditors for tax returns, SEC filings and annual audits; originated corporate policies and procedures; formulated 20 million dollar operating and capital budget forecasts; supervised preparation and analysis of financial statements cash management; scheduled work flow prioritization of 26 people in three departments and preparation of biweekly payroll for over 400 people; organized and participated in 15 million dollar asset purchase by new owners; and prepared for initial stock offering. Supervised and scheduled all data processing systems including complete hardware replacement and software upgrades, resulting in an improved information processing system which increased operations efficiency and reduced costs.

MICHAEL R. PARADES, PCAM

- 1983 - 1985 ACCOUNTING MANAGER - Support Systems International Incorporated, Charleston, S.C. Managed and systematized monthly financial statements for 125 cost centers, including consolidated financial statements for parent manufacturing corporation and sales and service subsidiaries; supervised, prepared and executed financial data reviews, budget variance reports, multi-state tax filings, and annual detailed analysis for external auditors; assessed corporate policies and procedures; developed and recommended changes to perpetuate an efficient organization and reduce costs; and organized and supervised transition period after 50 million dollar purchase of primary competitor.
- 1979 - 1983 SENIOR ACCOUNTANT - Deloitte Haskins & Sells, Columbia, S.C. In charge of various audits with primary emphasis in Real Estate Development, Hospitality, Health Care Industries, and Governmental Accounting.
- 1978 - 1979 BOOKKEEPER - Addlestone International Corporation, Charleston S.C. Responsible for payroll, inventory, accounts payable, and associated records of parent corporation and subsidiaries.
- 1967 - 1976 UNITED STATES NAVY - Nuclear trained Machinist's Mate, submarine qualified. Attained qualifications as Engineering Officer of the Watch and Engineering Watch Supervisor. Honorably discharged.

EDUCATION

- 1977 - 1979 COLLEGE OF CHARLESTON, Charleston, S.C., Bachelor of Science, Business Administration, Summa Cum Laude. Honors include awarded Alumni Medal in 1979 and Wall Street Journal Award in 1980.

PROFESSIONAL DESIGNATIONS

- 1981 Certified Public Accountant(CPA) by South Carolina, retired 2005
- 1998 Professional Community Association Manager (PCAM) by National Board of Certification for Community Association Managers (NBC-CAM).
- 2003-2006 Accredited Association Management Company (AAMC) by National Board of Certification for Community Association Managers (NBC-CAM)
- 2005 Qualified as Expert Witness in SC State Court in matters related to Community Association Management, Community Association Governance and Board Fiduciary Duties
- 2009 Licensed as Real Estate Salesman by SC Real Estate Commission
- 2010 Qualified by SC Real Estate Commission as Instructor for classes related to Homeowner Associations.

MEMBERSHIPS

Community Associations Institute (CAI)
Association of Professional Community Managers
CAI-PMMP National Faculty
Community Associations Institute of South Carolina (CAI-SC)-Past President
Past Vice chair CAI-SC Legislative Action Committee
SC Association of Realtors and National Association of Realtors

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

Courtside Villa I Owners Assn.	Settlement in favor of Courtside I
Courtside Villa II Owners Assn.	Settlement in favor of Courtside II
Racquet Club Villa Owners Assn.	Settlement in favor of Racquet Club
Pelican Watch Villa Owners Assn.	Settlement in favor of Pelican Watch
Atrium Villa Owners Assn.	Settlement in favor of Atrium
Shadowwood Villa Owners Assn.	Settlement in favor of Shadowwood
Beach Club Villa Owners Assn.	Settlement in favor of Beach Club
Links Clubhouse Villa Owners Assn.	Settlement in favor of Links Clubhouse
Yacht Harbor Villa Owners Assn.	Settlement in favor of Yacht Harbor
Riverside Villa Owners Assn.	Verdict in favor of Riverside with punitive damages awarded.
Stono Watch Villa Owners Assn.	Settlement in favor of Stono Watch
Little Oak Condominium Assn.	Settlement in favor of Little Oak
Pointe James Property Owners Assn.	Settlement in favor of Pointe James POA

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

3 Chisolm Street HOA, Inc	As former Management Company/Manager
Montclair POA, Inc	As former Management Company/Manager

Lawsuits Involved as Expert Witness

Kenneth Schneider vs Board of Directors Bohicket Marina Villa Owners Assn.

Case certified as a class action. Jury verdict in favor of Mr. Schneider. Verdict was appealed to the SC Court of Appeals and upheld. I was qualified as an expert witness in matters of Community Association governance, management and Board fiduciary duties.

I was engaged as an expert witness on behalf of Mr. Schneider by Leath, Bouch & Crawford

Bluebeards Castle Villas I Board of Directors
Bluebeards Castle Hilltop Villas Board of Directors,
Bluebeards Castle Villas III Board of Directors

Vs

Fairfield Resorts, Inc., Equivest Finance Inc., RCI Resort Management, Inc.,
Equivest Capital, Inc., John S. Cavanaugh and Bluebeard's Castle Pirates Pension

This was an action in the Superior Court of the Virgin Islands. The case was settled in favor of the Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiffs by Rogers Townsend and Thomas

MRP Addendum-Lawsuits

Louis and Brenda Distefano vs Board of Directors Windswept Villas III, HPR
Breach of fiduciary responsibility. Settlement in favor of Distefano

I was engaged as an expert witness on behalf of the Plaintiffs by Leath Bouch & Crawford.

Montecito Enclave, L.L.P., et al vs Guggenheim Enclave, LLC et al

This was an action alleging failure to disclose and improper maintenance. Defendant paid nuisance settlement to be released from the lawsuit.

I was engaged as an expert witness on behalf of the Defendant by Buist Moore Smythe & McGee.
The Defendant has been dismissed from the lawsuit.

Blackhurst vs Spences Point Council of Co-Owners, HOA Services and Land Property Management.

This is an action involving a fire at the property resulting in death of an owner. Plaintiff is alleging Wrongful death. The lawsuit was settled and payment from the Defendant's insurance policy made to the Plaintiff.

I was engaged as an expert witness on behalf of Defendant Spences Point by Halio & Halio.

Jay Kalan and Kalan Enterprises, Plaintiffs
Vs Peckerhead Pub, Lynne Wilkin and Michael Godfrey, Defendants and Third Party Plaintiffs
Vs Dry Creek, LLC, Nathaniel Rackett, Heritage Plaza HPR, Hilton Head Kitchen and Bath and Kenneth Schultz, Third Party Defendants.

This lawsuit has been dismissed.

I have been engaged as an expert witness on behalf of the Defendants/Third Party Plaintiffs by the Law Offices of Fletcher M. Johnson

Ellington Woods I, II, III, IV, V, Alan Arthur and John Doe
Vs
Dunes West Property Owners Association, Inc.

This is an action related to alleged breach of Covenants by the Defendant. This action has been settled in favor of the plaintiffs.

I was engaged as an expert witness on behalf of the Plaintiffs by Tecklenburg & Jenkins

MRP Addendum-Lawsuits

Susan K. Bryant vs Board of Directors for Ellington Woods III HOA

This was an action alleging negligence and breach of fiduciary responsibilities. The lawsuit has been dismissed.

I was engaged as an expert witness on behalf of the Defendants by Clawson & Staubes.

Distant Island Community Association vs Mark Christmus

This is a Covenant compliance action. The lawsuit has been settled in favor of the Plaintiff.

I was engaged as an expert witness on behalf of the Plaintiff by Ashley Twombly.

Misty Lake Association, Inc. vs Bridlebridge Homeowners' Association, Inc.

This case is primarily a dispute over the obligation of the Defendant to pay assessments to the Plaintiff. The case is being heard in Lexington County, SC Master-in-Equity. This case ended with Master-in-Equity ruling in favor of Bridlebridge Homeowner's Association, Inc.

I was engaged as an expert witness on behalf of the Plaintiff by Rogers, Townsend & Thomas. The case is in trial phase with the Master awaiting certain additional information that was not stipulated in Court. Defendant counsel stipulated my qualifications as an expert witness and the Master qualified me accordingly as an expert witness in matters of community governance, community management and Board fiduciary obligations.

Various Kensington Place owners individually vs M.U.I. Corporation and Kensington Place Owners Association.

This is primarily a Breach of Fiduciary Duties action against the Developer and the Developer controlled Board of Directors.

I have been engaged as an expert witness on behalf of the Plaintiffs by Leach Bouch & Crawford. The lawsuit is awaiting trial.

Rivers Point Row POA vs John B. Hagerty, John W. Derbyshire, Linda L. Derbyshire and Rivers Point Row, LLC.

This is an action for Breach of Fiduciary Duty and failure to disclose against the Developer. I have been hired by as an expert witness on behalf of the Defendants by Wills & Massalon. The lawsuit was settled in favor of the Plaintiffs.

MRP Addendum-Lawsuits

John Schuler & Jeff Merrell vs Hyperion Towers Homeowners Assn Board of Directors

This is a class action for Breach of Fiduciary Duty by the Board of Directors. I have been engaged as an expert witness on behalf of the Plaintiffs by the Stanley Law Firm. The lawsuit is in the discovery phase.

Bruce Langson, Representing a class of similarly situated people vs Lyons Cove Homeowners Assn Board of Directors.

This is a class action for Breach of Fiduciary Duty by the Board of Directors. I have been engaged as an expert witness on behalf of the Plaintiffs by the Stanley Law Firm. The lawsuit is in the discovery phase.

Bluffton Village Lot 11 Horizontal Property Regime and Bluffton Village Lot 11 Owners' Association, Inc. Plaintiffs

vs Bluffton Village, LLC f/k/a Rowkris Development I, LLC, Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc., The Pro Framing Corporation, Pro Plastering & Stucco, Inc., American Block Company, Inc. d/b/a Builders Plus Distribution Company, Inc., Pawa Roofing, Inc., Shelter Wood Windows, A Division of Shelter Superstore Corporation and Park-Vue Patio Doors, A Division of Merrill Millwork, Inc., Defendants

AND Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc. Third Party Plaintiff

Vs Golden Triangle Repair, Inc., Tupelo Builders, Inc. William Vitto Architect, Inc., William Vitto, Individually, Pro Plastering and Stucco, Inc., Pro-Slab, Inc., Fox Interiors, Malphrus Construction Company, SOCAR, Inc., Shaw Manufacturing's Wrought Iron Works, Hydro-Stop Inc. and Don Brashears, Joan M. Burr, George York, Mary Vaux and Jan Horan, Third-Party Defendants,

This case is a design/construction defect case in which Defendant and Third-Party Plaintiff have denied liability and counterclaimed failure to maintain against the Board of Directors. I have been engaged as an expert witness on behalf of the Defendant and Third-Party Plaintiff (Strecansky & Co) by Rogers, Townsend & Thomas. The lawsuit has been settled.

Bluffton Village Lot 13 Horizontal Property Regime and Bluffton Village Lot 13 Owners' Association, Inc. Plaintiffs

vs Bluffton Village, LLC f/k/a Rowkris Development I, LLC, Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc., James Hilton, Synco Enterprises, The Pro Framing Corporation, Pro Plastering & Stucco, Inc., American Block Company, Inc. d/b/a Builders Plus Distribution Company, Inc., Pawa Roofing, Inc., Shelter Wood Windows, A Division of Shelter Superstore Corporation and Park-Vue Patio Doors, A Division of Merrill Millwork, Inc., Defendants

MRP Addendum-Lawsuits

AND Strecansky & Co., Inc. a/k/a Strecansky & Co. of the Low Country, Inc. Third Party Plaintiff

Vs Golden Triangle Repair, Inc., Tupelo Builders, Inc. William Vitto Architect, Inc., William Vitto, Individually, Pro Plastering and Stucco, Inc., Pro-Slab, Inc., Fox Interiors, Malphrus Construction Company, SOCAR, Inc., Shaw Manufacturing's Wrought Iron Works, Hydro-Stop Inc. and James A. Buckdey, Nannette Manning, Tony A. Ritter, Jr., B.J. Frazier and Stephanie Brooke Mendenhall, Third-Party Defendants,

This case is a design/construction defect case in which Defendant and Third-Party Plaintiff have denied liability and counterclaimed failure to maintain against the Board of Directors. I have been engaged as an expert witness on behalf of the Defendant and Third-Party Plaintiff (Strecansky & Co) by Rogers, Townsend & Thomas. The lawsuit has been settled

Jay Kalan, MD and Kalan Enterprises, Inc, Plaintiffs

Vs

Peckerhead Pub LLC, Lynne D. Wilken and Michael E. Godfrey, Defendants and 3rd Party Plaintiffs

Vs

Dry Creek LLC, Nathaniel Rackett, Heritage Plaza HPR and Hilton Head Kitchen and Bath, Inc., 3rd Party Defendants

This case involved breach of Board fiduciary duty and failure to maintain against the Developer Board. I was engaged as an expert witness on behalf of the defendants by The Law Offices of Fletcher Johnson. The case has been dismissed.

Simmons Pointe HOA, Inc., Plaintiff

Vs

Patricia Tynor, Defendant and 3rd Party Plaintiff

Vs

Ravenel Associates, Inc. and John Collins, 3rd Party Defendants

This case started as a association lien foreclosure action where the defendant counterclaimed against the management company and Board President alleging breach of fiduciary duty and other causes.

I have been engaged as an expert witness on behalf of Ravenel Associates, Inc. by Clawson & Staubes. The case is in the discovery phase.

Michael McNulty, Plaintiff (2010 CP 31-1313)

Vs

Al Shadwick, Jack Shadwick, Cross Creek Plantation POA, Inc., Cross Creek Plantation Country Club, Inc., Cross Creek Development of Oconee, Inc., John Doe 1, John Doe 2, John Doe 3 Defendants

MRP Addendum-Lawsuits

Lawsuit by plaintiff for access to records and require compliance with governing documents and SC Non Profit Corporation Act.

I was engaged as an expert witness on behalf of Plaintiff by the Finkel Law Firm. The action has been dropped by Plaintiff

Lisa A. Viern, Plaintiff (US District Court 3:10-CV-1659-MJP)

Vs

Gramercy Capital Corporation d/b/a Gramercy Realty, EMCOR Facilities Services, Inc, TRW & Associates, Inc., Commercial Roof Solutions, LLC and Liquid Plastics, Inc. Defendants

Lawsuit relates to personal injury due to negligence of defendants.

I have been hired as an expert witness on behalf of EMCOR by Carlock, Copeland & Stair, LLP. The case is in discovery phase.

William Erickson and Randy McDaniel on behalf of themselves and all other similarly situated, Plaintiffs (2010-CP-18-2787)

Vs

Alison Dailey, in her capacity as Chairman and Director of the Highlands of Legend Oaks POA, Inc. Defendant

Lawsuit related to claim of negligence and breach of fiduciary duties by Developer who controlled Board of Directors.

I have been hired as an expert witness on behalf of Plaintiffs by Leath Bouch & Seckings, LLP. Lawsuit is in discovery phase.

Meridian Place HOA, Inc., Plaintiff (2010-CP-10-0506)

Vs

Ravenel Associates Regime and Association Management, Inc., Ravenel Associates, Property Management Services, Inc., Ravenel Associates, Inc.

Lawsuit is a breach of contract lawsuit

I have been hired as an expert witness on behalf of Plaintiff by the Martin Law Firm. Lawsuit is in discovery phase

Rivergate Homeowners Association, etal, Plaintiffs (2010-CP-26-03901)

Vs

WW & LB Development Co. LLC, Wayne Winderman Individually, etal, Defendants

Lawsuit is a claim of negligence and breach of fiduciary duties by developer controlled Board of Directors.

MRP Addendum-Lawsuits

I have been hired as an expert witness on behalf of Plaintiffs by The Stanley Law Firm. The lawsuit is in discovery phase.

Richard Fisher et al, Plaintiffs (2009-CP-22-01655)
Vs
Shipyard Village Council of Co-Owners, Inc., Defendants

Lawsuit is a claim of negligence and breach of fiduciary duties by past Boards of Directors.

I have been hired as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Lawsuit is in mediation phase.

Charles Clinton et al, Plaintiffs (2010-CP-22-00400)
Vs
Sandpiper Run Council of Co-Owners, Inc., Richard Allen, Roland David Roty, Thomas Dulin, Leland Cropper and Robert Jaeger, individually and as members of the Board of Directors of Sandpiper Run Council of Co-Owners, Inc.

Lawsuit is a claim of negligence and breach of fiduciary duties by Board of Directors. I have been hired as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Lawsuit is in discovery phase.

US Bankruptcy Court Case No. 09-08102-hb, Chapter 11

IN RE: South Capital Group Inc., Debtor

I have been hired as an expert witness on behalf of a group of homeowners located in Flora Springs Park HOA by the Finkel Law Firm. The HOA was developed by the Debtor, who transferred development rights to another firm that changed the overall development scheme of the community without approval of the membership to the detriment of original purchasers. Action has been settled with payment of damages by Debtor to the group of homeowners.

EXHIBIT 2

FIDUCIARY OBLIGATIONS

As discussed earlier, the governing documents provide for the operation, administration and maintenance of a community association. Generally, this is done through the election by the members of a Board of Directors, who are also members of the community. Service on the Board of Directors is as a rule VOLUNTARY.

While service on the Board of Directors is voluntary, as an elected member of the Board a director has fiduciary obligations to those owners they represent. These fiduciary obligations are

- The Duty of Care and
- The Duty of Loyalty

It is also important to remember that during the period of Developer control, the Developer generally retains the right to appoint the Board of Directors and is frequently, in fact, the Board of Directors. The Developer, wearing the hat of the Board, has the same fiduciary obligations. In addition, the Developer has a higher standard in that the Developer is the entity that wrote the governing documents, develops and markets the community and has the highest level of knowledge.

The Board of Directors for a community association has three main functions:

- The Board is a policy making body
- The Board is an approval body
- The Board is an oversight body

In fulfilling the role as a Director, the Director must meet his fiduciary obligations.

DUTY OF CARE

The duty of care requires a Director to act in a reasonable and informed manner when participating in the Board's decisions and its oversight of the day to day management of the community. It is important to remember that the community is

- A business with responsibility for the maintenance, enhancement and preservation of sometimes millions of dollars worth of property.
- A business responsible for billing and collecting thousands of dollars from its members in order to pay for goods and services needed to operate the community.
- A business responsible for paying fair dollar for the goods and services delivered to the community.
- A business responsible for complying with all local, state and federal applicable laws.
- A business that is run by a volunteer Board of Directors

By Michael R. Parades, PCAM
Sentry Management, Inc.

Fiduciary Obligations

Elements of The Duty of Care:

- Regular attendance at Board meetings. Directors must remember they act as a group and as such regular attendance at Board meetings is essential.
- If the Board delegate functions to committees and the Director is appointed to the committee, the Director must regularly attend the committee meeting.
- Exercise independent judgment. A Director must weigh all facts and information and form his/her own opinion.
- A director must act in the best interests of the corporation and its members.
- A director must have adequate information.
 - The Director must read and understand information provided by management
 - The Director must ask questions for clarification if information provided is not understood.
- A director has the right to rely on experts but must exercise business judgement.
- Delegation-while Directors may delegate authority to act, they can never delegate final responsibility for actions.
- Discharging the duty of care suggestions:
 - Regularly attend all meetings.
 - Have a standard form of agenda for meetings to ensure all routine business is addressed
 - Have a standard schedule of reports to be provided to the Board on a regular basis.
 - Distribute information prior to meetings to facilitate preparation.
 - Adopt procedures for the conduct of meetings.
 - Maintain a minute book of all meetings

In summary, while many owners have different reasons for volunteering to serve on a Board of Directors, they have an obligation to use reasonable care in making decisions that affect the community. In order to meet this obligation they must be informed, regularly attend meetings and exercise reasonable judgment in the decision making process.

Fiduciary Obligations

DUTY OF LOYALTY

The duty of loyalty requires the a Director exercise power in good faith and in the best interests of the community rather than the Director's own interest or the interest of another person or entity.

As Star Trek's Dr. Spock would say "For the good of the many, not the one."

Thus the duty of loyalty relates to:

- Conflicts of Interest
- Corporate Opportunity
- Confidentiality

Conflicts of Interest

- In fact and appearance should be avoided
- Must be disclosed, preferably in writing
- If a conflict or potential conflict exists, the Director should abstain from voting.
- Should a conflict exist and the Board's decision must be recorded in the minutes of the Board meeting.

Corporate Opportunity

- May arise where a Director's normal business occupation is to provide goods or services to community associations
- The Board should treat as an arms length transaction wherein it clearly defines a scope of services or specifications that all interested parties are quoting against.
- The Board member who is quoting must abstain from discussion and voting on the proposed goods or services.

Confidentiality

- A Director must treat information gained as a member of the Board with confidentiality

In summary, the duty of loyalty requires a Director to act in the best interests of the community.

EXHIBIT 3



ECS CAROLINAS, LLP
Geotechnical * Construction Materials * Environmental * Facilities

April 25, 2011

Mr. Howell Bellamy III
Bellamy, Rutenberg, Copeland, Epps, Gravely and Bowers, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina 29578

Re: Report of Findings and Professional Opinions
Richard Fisher et al vs. Shipyard Village Council of Co-Owners, Inc
Civil Action No. 2009-CP-22-01656
Shipyard Village Buildings A and B
Litchfield by The Sea
Pawley's Island, Georgetown County, South Carolina
ECS Project No 14-5831

Gentlemen:

ECS Carolinas, LLP (ECS) is pleased to have been asked to support your clients relative to their claim in connection with the Shipyard Village Buildings A and B (herein after referred to as the "project") The basis for the professional opinions expressed in this report include, but are not limited to information contained in the reviewed documents, reviewed electronic media, discussions with plaintiff's representatives, discussions with other persons pertinent to and familiar with the project, observations of the project construction and our past experience with similar projects and construction. This report presents pertinent project information and our professional opinions relative to the plaintiff's claim. The opinions expressed in this report are presented with a reasonable degree of engineering certainty and we

If you have any questions concerning this report, please do not hesitate to contact the undersigned.

Respectfully submitted,
ECS CAROLINAS, LLP represented by;

A handwritten signature in black ink, appearing to read 'S. Geiger', written over a horizontal line.

Stephen J. Geiger, P.E.
Vice President/ Chief Engineer

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ECS CAROLINAS LLP AND STEPHEN J. GEIGER BACKGROUND

ECS Firm Overview

ECS was founded in 1988 by two prominent Washington, DC area geotechnical engineers. There are six operating subsidiaries in ECS which staff approximately 42 subsidiary offices in North Carolina, South Carolina, Virginia, Maryland, Pennsylvania, Texas, Wisconsin, Illinois, Georgia, Florida and Tennessee. ECS' subsidiaries currently employ approximately 1,000 people, including registered professional engineers and geologists, certified laboratory technicians and certified construction testing technicians, special inspectors, field engineers, wetlands scientist, architects, archeologists, industrial hygienists, safety professionals, computer specialists and support staff. ECS is ranked as the 109th largest engineering firm in the United States by Engineering News Record with sales of nearly \$100 million.

ECS Carolinas, LLP is one of the six operating subsidiaries of the ECS group of companies. There are seven primary engineering offices (Greenville, SC; Asheville, Charlotte, Greensboro, Raleigh, Fayetteville and Wilmington, North Carolina) and four testing and inspection offices (Florence, Little River and Charleston, South Carolina; Hickory and Winterville, North Carolina) locations throughout North and South Carolina. Our seven primary engineering offices maintain outside accreditation of their laboratories by American Association State Highway and Transportation (AASHTO) Officials and/or the United States Army Corps of Engineers (USACE).

ECS provides professional consulting services, including but not limited to, the following disciplines:

- Geotechnical Engineering
- Construction Testing and Observation
- Construction Quality Control/Quality Assurance
- International Building Code Prescribed Special Inspections
- Geophysical Testing
- Forensics Consulting
- Facilities Consulting
- Industrial Hygiene
- Asset and Property Pre-Purchase Due Diligence
- Environmental Consulting
- Materials Laboratory Testing

Stephen J. Geiger, P.E. Experience Overview

Mr. Geiger is a 1988 graduate of North Carolina State University and holds a bachelor's degree in civil engineering. Mr. Geiger is licensed as a professional engineer in 14 states and holds an NCEES Council Record. Consistent with his professional licensure, he annually attends continuing education events related to his areas of practice. He has nearly 23 years of progressive engineering and management experience and is a corporate Vice President and Chief Engineer for ECS Carolinas, LLP. Approximately 13 of Mr. Geiger's almost 23 years of professional practice have been with ECS.

Mr. Geiger is responsible for the development and implementation of best practices and risk management for the engineering departments of ECS Carolinas, LLP. Mr. Geiger also supports

ECS corporate initiatives with regard to developing and improving our geotechnical engineering and property condition assessment practice areas. He has extensive experience as a geotechnical and construction materials engineer and has performed geotechnical evaluations of hundreds of sites including the use of shallow and deep foundation systems, seismic site response, ground improvement techniques, reinforced earth design, geotechnical instrumentation and value engineering studies. He has worked extensively in the Coastal Plain, Piedmont and Blue Ridge geological settings of the eastern United States, as well as in central Mexico.

Mr. Geiger has managed construction materials testing and special inspection for hundreds of projects. Mr. Geiger has extensive experience in forensic evaluations of the built environment with a strong emphasis on geotechnical and materials related distress. He has performed at least 50 property condition assessments (PCA), provides principal level review of PCA reports, and has assisted in the development and preparation of ECS' corporate PCA training materials. Mr. Geiger also provides expert witness services related to geotechnical engineering, construction materials and the built environment. A copy of Mr. Geiger's curriculum vitae is attached to this report.

PROJECT DESCRIPTION

Shipyard Village Buildings A and B are oceanfront condominium buildings located in Litchfield by The Sea (LBTS) in Pawley's Island, Georgetown County, South Carolina. Building A is the northernmost building of the four building Shipyard Village, while Building B is the southernmost building of Shipyard Village. Buildings C and D are located intermediate of Buildings A and B and set back westward toward South Dunes Drive. The approximate location of the project is shown on the Site Plan attached to this report. The Aerial Photograph obtained from Google Earth and attached to this report indicates the orientation of the project relative to nearby features.

Buildings A and B of Shipyard Village are five-story condominium buildings with grade level surface parking beneath the first floor. Documents produced by the Georgetown County Department of Planning and Development via a Freedom of Information Act (FOIA) request indicate that construction of the project started in summer of 1981 and finished in late spring and early summer 1982. Certificates of Occupancy were issued on May 10 and June 25, 1982 for Buildings A and B, respectively. The construction value of each building is reported as \$2,200,000 on the June 25, 1981 building permits.

According to the reviewed building permits and other documents provided by Georgetown County, the following entities were identified relative to development, construction and design of the project:

Building Permit Applicant: Lesley Construction Company
P.O. Box 461
Easley, SC

Architect: Mr. Joe Hiller
P.O. Box 5898B
Greenville, SC

Owner: Fairlane/Litchfield
c/o Lesley Construction
P.O. Box 627
Easley, SC

Attorney for Owner: Mr. Randall S Hiller
P.O. Drawer 100
Easley, SC

Fire Control: Jackson Associates Engineering Consultants
1312 Annapolis Drive
Raleigh, NC

Testing: Walker Laboratories
1707 East Pamlico Highway
Florence, SC

According to the information reviewed by ECS, Buildings A and B are supported by timber piles and associated poured in-place pile caps and grade beams. Structural framing consists of cast-in-place concrete beams, reinforced masonry (CMU) walls and reinforced CMU columns. The structural elements are spanned by pre-cast, pre-stressed, hollow core concrete slabs which create the Unit floors, balconies, walkways and roof. Non-load bearing framing includes CMU and wood stud walls. The elevator towers are framed by reinforced CMU walls. The grade level parking beneath the structures consists of cast-in-place concrete surfaces, while the parking surfaces surrounding the buildings are asphaltic concrete.

The building envelopes consist of stucco, pre-finished aluminum frame windows, pre-finished aluminum frame sliding glass doors and single-leaf wood entry doors. The pre-finished aluminum framed windows and sliding glass doors are attached to wood stud framing. The single-leaf entry doors also appear to be set in wood frames. The roof consists of a single-ply modified bitumen roof membrane installed directly over an older single-ply modified bitumen roof membrane. The older single-ply membrane is reportedly attached to a nailed base material placed over a lightweight cementitious topping. The roofing components are underlain by pre-cast hollow core slabs.

A total of 80 individual condominium Units are included in project. Both buildings include eight (8) "stacks" of five (5) condominiums each. Each condominium includes three bedrooms, a kitchen, two bathrooms, living area and dining area. The master bedroom and living areas typically overlook the ocean front areas of the site. Each Unit in Buildings A and B reportedly totals 1,387 square feet. An exterior balcony totaling approximately 120 square feet extends beyond the living area of each Unit. The balconies are typically covered with carpet or tile. Typical interior finishes include painted and wallpapered sheetrock walls, painted textured sheetrock ceilings, wood trim, carpet, ceramic tile, vinyl and laminate floor coverings. Residential grade fixtures are typical throughout the Units.

ECS attempted to obtain original design and construction documents from Mr. Joe Hiller, the project architect, in the summer of 2010. Mr. Hiller agreed to let ECS visit his residence for the purpose searching his archived files. However, after an exhaustive search of Mr. Hiller's garage by an ECS staff professional, no design and construction documents for the project could be located. A review of meeting minutes maintained by the defendant suggests that the on-site

design and construction documents were destroyed during Hurricane Hugo in September 1989. The lack of original design and construction is further confirmed by consultants hired by the defendant and their agents

The original 1981/1982 construction has been substantially modified by on-going repairs. Building B repairs were substantially complete in late summer of 2010, while Building A is reportedly scheduled for completion in late April or early May 2011.

SUMMARY OF SHIPYARD VILLAGE COUNCIL OF CO-OWNERS, INC. ORGANIZATION

Board of Directors

We understand that the Shipyard Village Council of Co-Owners, Inc. (SYVCOC) was formed upon completion of the project. The Board of Directors (BOD) is ultimately responsible for the activities SYVCOC. Outside Managing Agents have provided various accounting, administrative, property supervision, maintenance, casualty, etc functions. From 1982 through the summer of 1989, the BOD was comprised exclusively of developer representatives, Waccamaw Neck Land Company and The Litchfield Company. From the late summer 1989 to current, the BOD has been exclusively comprised of Unit Owners. From late summer 1989 until Buildings C and D were added and occupied, the BOD contained four members, all residents of Buildings A and B. Since the addition and occupancy of Buildings C and D, the BOD was ultimately seven members. We understand the current BOD consists of four members being Owners in Buildings A and B and three members being Owners in Buildings C and D.

Managing Agents

The Managing Agents (herein after referred to as "Manager") for the SYVCOC include Quadrant, Inc. from SYVCOC inception through June 1986; Waccamaw Management Company (Waccamaw) from June 1986 through March 2002; and K.A. Diehl & Associates, Inc. (Diehl) from March 2002 to current. No contract for Quadrant, Inc. was provided for our review. Copies of contracts for Waccamaw Management Company and K.A. Diehl & Associates were reviewed. Contractual duties of the Managing Agents are defined in their entirety by their respective contracts.

While all duties of the Manager are important, one very important contractual duty of the Manager, relative to the plaintiff's claim, is to inspect common elements. Waccamaw's contract states that "The Manager shall make regular inspections of the common elements"; while Diehl's contract states that the "Manager shall make regular inspections of the common elements and provide written documentation of findings twice per month." No written documentation of bi-monthly inspections has been identified.

A second very important duty of the Manager, relative to the plaintiff's claim, is to prepare an annual budget. With regard to budget preparation, the Diehl contract states; "Manager shall prepare a proposed annual budget setting forth projected revenues and expenditures for the new accounting year based upon anticipated operations taking into account the general condition of condominium ...". The Waccamaw contract contains similar language as follows; "The Manager shall prepare an annual operating budget setting forth projected revenues and expenditures for the new accounting year based upon anticipated operations and taking into account the general conditions of the condominium ...".

Also important are clauses in both Waccamaw's and Diehl's contracts which state the Manager may retain the services of experts and professionals (attorneys, accountants, engineers, etc.) whose services are reasonably required to effectively perform its duties.

SUMMARY OF MASTER DEED AND AMENDMENTS

The Master Deed, subsequent Amendments to the Master Deed and Bylaws define pertinent features, duties, etc. of the Property, Owners, Association and Manager. The Master Deed and Bylaws for Phase I of Shipyard Village (Buildings A and B) was filed with Georgetown County Register of Deeds on July 7, 1982. Article II, Section 2.1 of the Master Deed defines the following pertinent items:

"Common Elements" shall mean and refer to both the General Common Elements and Limited Common Elements and include all portions of the Regime Property not included within the Units.

"Common Expenses" shall mean and refer to (a) all expenses incident to the administration, repair and replacement of General Common Elements and the Limited Common Elements, after excluding therefrom such expenses which are the responsibility of a Co-Owner as set forth herein, (b) expenses determined by the Council to be Common Expenses and which are lawfully assessed against Co-Owners, and (c) expenses incident to the General Common Elements and Limited Common Elements as defined in the Act or declared Common Expenses by this Master Deed.

"General Common Elements" shall mean and refer to all Regime Property exclusive of the Units and Limited Common Elements

"Limited Common Elements" shall mean and refer to those special Common Elements designated as appurtenant to and reserved for the exclusive use of a specific Unit.

"Units" shall mean and refer to the apartment (as defined by the Act) and described herein. For purposes other than describing the physical boundaries of a Unit and unless the context clearly indicates otherwise, the term "Unit" shall also mean and refer to a Time Sharing Unit.

Article III Section 3.6 of the Master Deed defines the "Boundaries of Unit in Phase I" and as subdivided into subparts (a), (b) and (c). The following statements are included in this Section of the Master Deed.

Each Unit is composed of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings and building materials enclosed within the following boundaries.

- a) The upper boundary of the Unit shall extend to the unfinished interior surfaces of the unfinished sheetrock ceiling. The lower boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the floor.
- b) The perimetrical boundaries of the Unit shall extend to the unfinished interior surfaces of the perimeter walls of the Unit, excluding load-bearing structural interior walls or components.

- c) Each Unit shall also encompass and include the following: (i) the doors (including screen doors) opening into the Unit and onto any balcony reserved to the use of a Unit, including the frames, casings, hinges, handles and other fixtures which are part of the doors; (ii) the window glasses, screens, frames and casings which are part of the window openings of the Unit; (iii) the plumbing, wiring, and mechanical vents which exclusively serve the Unit; (iv) the appliances, air conditioning and heating Units, hot water heaters, lavatories, bath tubs, toilets, carpeting, floor covering, trim finished surface of ceilings and walls, insulation and other fixtures and furnishings which are within or serve the Unit when delivered to the Initial Co-Owner; (v) all appurtenances which are integral and exclusive to the Unit, including but not limited to lamps attached to the exterior of the Unit, and water and sewer pipes within the Unit exclusively serving the Unit.

Section 3.7 of the Master Deed defines the "Common Elements" by the following statement:

The Common Elements include all of the Property submitted to the condominium Ownership which is not included within the Units. Exhibits A and B of this Master Deed graphically depict the areas encompassing the Common Elements in Phase I.

- a) General Common Elements. The General Common Elements shall include, without limitation, the following:

- (i) Except for such portion reserved as Limited Common Elements, all land within the boundaries of the Regime Property, together with all easements, rights and hereditaments appurtenant thereto.
- (ii) All Improvements, exclusive of the Units and Limited Common Elements, erected upon the Property, including without limitation: (a) the roof covering the Buildings including built-up asphalt roof of roofing felt and tar and gravel; (b) the exterior of stucco over reinforced concrete masonry, including those limited exterior areas having plywood over masonry; (c) the pipes, wires, conduits, pumps, motors, and other equipment installed to provide utility service to the Units or to portions of the Common Elements; (d) certain parking areas, street signs, storm draining, guttering, retaining walls, walkways, paths, trees, gardens, irrigation systems, outside electric lighting systems, and landscaping and (e) the foundations, piling and structural members, subflooring, girders, beams, supports, load bearing interior and exterior walls, enclosed pipe chases and utility installations serving more than one Unit; (f) pool easement area subject to all rights and reservations set forth in this Master Deed; and (g) all other elements rationally of common use.

- b) Limited Common Elements. The Limited Common Elements shall include those special elements designated in each Phase as for the exclusive use of a specific Unit. The Limited Common Elements are more specifically designated in Exhibits A and B and include ground floor storage, covered parking and decks.

Exhibits A and B of the Master Deed are referred to throughout the Master Deed and can be described in the following general manner. Exhibit A is maps and surveys of the Regime Property, while Exhibit B is floor plans indicating the Load Bearing (Structural) Walls, Unit

boundaries, Common Elements, and Limited Common Elements. Examples of Exhibits A and B are attached to this report.

Article IV of the Master Deed states specific requirements regarding Ownership and use of the Units. Section 4.3 of Article IV states:

"Maintenance and Repair. Every Co-Owner (except Co-Owners of Time Sharing Units), shall be responsible at his own expense for maintaining, repairing, all ceilings, wall and floors of his Unit"

Article V of the Master Deed states specific requirements for Ownership and use of Common Elements. Section 5.5 of Article V states:

"Ownership of each Unit shall entitle the Co-Owner thereof to the exclusive use of the Limited Common Elements reserved for such Unit and so designated in Exhibits A and B as Limited Common Elements." Section 5.6 of Article V states: "Except as specifically provided herein, the maintenance, repair, replacement, management, operations and use of the Common Elements and Limited Common Elements shall be the responsibility of the Board. The expenses for such purpose shall be assessed as Common Expenses except in the case of the negligence of a Co-Owner or his tenants or guests, and in the event of such negligence, such expenses or a portion thereof may be assessed as an individual assessment pursuant to the terms of Article XII hereof."

In addition to the individual Unit Owner's having responsibilities for the maintenance and repair of their Units, the Article VI of the Bylaws requires that the Manager or the BOD of Directors provide for the maintenance, repair and replacement of Common Elements. Section 6.3 of the Bylaws further states that Co-Owner may be individually assessed for repairs, maintenance and replacements due to his neglect and/or failure to maintain his Unit. Section 6.3 of Article VI states:

"In the event the Co-Owner fails to perform maintenance required of him by these Bylaws or by any lawful Regulation, and such a failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another co-Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall, after giving such Co-Owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such Co-Owner by and Individual Assessment."

The Master Deed further states that the BOD and Manager will collect adequate reserves "to provide sufficient reserves to create a general reserve to operate and maintain the Regime Property and to administer the affairs of the Council" and "to provide sufficient reserves to make such major repairs or replacements to the Common Elements as may be required from time to time." The Master Deed states that the reserves accounts shall be funded through Assessments as provided in the Bylaws. In concert with funding maintenance, repairs and replacements, Section 6.7 of Article VI states:

"The Board of Directors of the Council, or any managing agent which it employs, shall keep accurate and detailed records, in chronological order, of receipts, disbursements

connected with the operation, administration, maintenance, repair and replacement of the Regime's Property."

The First Amendment to the Master Deed was filed with Georgetown County on October 9, 1998 and amends the Master Deed to include Building C. The Second Amendment to the Master Deed was subsequently filed on October 16, 1998 to include Building D. The First and Second Amendments do not substantially alter the definitions of Unit Boundaries, Limited Common Elements and General Common Elements.

The basis for the Sixth Amendment to the Master Deed was apparently first presented in an informational meeting on February 18, 2006. The minutes of this meeting were published on March 1, 2006. These minutes clearly indicate that the Board had historically required the Unit Owners to bear the expense of replacing their windows and doors pursuant to the Master Deed. The President of the Board, Dr. Leon Jennings, stated that any Amendment to the Master Deed transferring the maintenance, repair and replacement of the windows and sliding glass doors (including glass, frames, casing, screens) to the Association would require a 2/3 affirmative vote of the Unit Owners. The proposed Amendment was presented in the BOD's letter to the Unit Owners dated April 3, 2006. An April 24, 2006(8) letter prepared by the Manager indicates that the proposed Sixth Amendment to the Master Deed did not pass and that the vote would be left "open" for 30 days. The letter cautions that the BOD's attorney believes it questionable to allow the vote to be "left open."

July 6 and 7, 2006 letters prepared by the Manager on behalf of the BOD indicate that the proposed Sixth Amendment had passed. It is clear from the minutes of the April 15, 2006 meeting that the proposed Amendment did not pass. These minutes indicate that 71.94% of the Owners voted, but only 63.59% of the Owners cast a proxy vote in favor of the Amendment. The Sixth Amendment to the Master Deed filed with Georgetown County incorrectly states that the vote held on April 15, 2006 was successful in obtaining the required 2/3 affirmative vote. To date, we have found no correspondence documenting a percentage of affirmative votes either in person to facilitate the proper adoption of the Sixth Amendment on April 15, 2006.

A May 23, 2006 email from Ms. Kelly Lawson of K.A. Diehl & Associates to the BOD indicates that a new vote was taken by proxy in which 75.4% of the Unit Owners responded with 72.45% percent voting in favor of the Sixth Amendment. Ms. Lawson announces passage of the Sixth Amendment in this email. We understand that the validity of the second vote, and therefore the validity of the Sixth Amendment, remains in question.

Regardless, the Sixth Amendment to the Master Deed as filed with Georgetown County essentially transfers the maintenance, repair and replacement of "the window, screens, frames and casings which are part of the window openings of the Unit" to the Association by making them Common and Limited Common Elements. No reference to the sliding glass doors is provided in the Sixth Amendment as filed with Georgetown County. The Sixth Amendment was recorded with Georgetown County on September 28, 2006.

Due to the validity of the previously recorded Sixth Amendment being in dispute, a subsequent proper vote at a special members meeting regarding making windows and sliding glass doors Common Elements was had in the spring of 2009. The Sixth Amendment did not pass during the proper 2009 re-vote.

SUMMARY OF HISTORIC RESERVES FUNDING

We have reviewed certain financial documents of the Association provided to us to help ascertain the BOD's behavior in assessing for and accruing adequate reserves for the maintenance, repair and replacement of Common Elements and Limited Common Element as required by the Master Deed. From the period of 1983 through 2010 (exclusive of 2002), the budgeted reserves funding ranged from \$20,153 to \$283,395. From 1983 through 2001 the reserves funding is separated by the Manager as being for "Capital Improvements" or "Painting and Waterproofing". No distinction in reserves funding has been identified for the period of 2003 to 2010. No reserves funding data was identified for 2002. A summary of the reserves funding data from 1983 through 2010, as made available, is attached to this report.

A review of financial statements provided for the period of 1992 through 2009 (exclusive of 2002) was made with the corresponding annual reserves funding noted. The balance sheets for the aforementioned years indicate year end reserves account balances ranging from \$46,458 to \$1,801,991. It is important to note the end of year reserve account balances in some years have been positively influenced by insurance and warranty claims, occasional special assessments, and legal settlements. Reported year end reserves account fund balances for the period of 1992 through 2010 are included on the attached reserves funding summary.

SUMMARY OF HISTORIC RESERVES ACCOUNT EXPENDITURES

The reviewed financial information sheds light on the BOD and Managers reserves funding and expenditures. Typical items for which reserve funding has been expended include:

- Pool and associated appurtenances
- Parking and drive surfaces
- Carpet
- Painting and waterproofing
- Decks and walkways
- Roofs
- Maintenance equipment
- Fire suppression system
- Storm repairs
- Beach crossovers
- Wood staining
- Elevator equipment
- Occasional structural repairs
- Occasional stucco repairs

The reviewed financial statements prior to 2008 indicate that the respective accountants determined the annual schedule of major repairs and replacements and that the BOD approved those budgets. A detailed reserves study by Miller-Dodson Associates in 2007 appears to be the basis for reserves funding since 2008.

The expenditure of funds for major repairs and replacement from 1983 through 2007 appears to have ultimately been made by the BOD and Manager. Significant to the plaintiff's claim, only occasional and apparently minor structural repairs have been performed prior to the extensive

repairs undertaken to restore Buildings A and B during the past two years. The first detailed accounting entry identified relating to "structural repairs" is in 1997.

The following table summarizes the expenditures for structural repairs for the years where such repairs are readily noted in the audited financial statements reviewed.

Year	Expenditure for Structural Repairs
1997	\$17,100
1998	\$13,865
1999	\$4,600
2000	\$1,800
2001	\$3,821
2003	\$12,774
2004	\$17,330

Another important aspect of the plaintiff's claim is the weather tightness of Buildings A and B. A review of the Shipyard Village Reserves Funding Summary attached to this report provides the budgeted allocations of reserves funding for painting and waterproofing. In summary, the portion of the reserves funding budgeted for painting and waterproofing during the period of 1983 through 2001 ranges from \$10,786 to \$46,433, while actual expenditures for painting and waterproofing, where identified, were variable. Waterproofing repairs were typically related to patchwork/isolated repairs to stucco and caulking. Somewhat more extensive exterior building envelope repairs have apparently been performed only once (in 1999) prior to the current structural and building envelope/ façade repairs.

The following table summarizes the expenditures for painting, waterproofing and stucco repairs for the years where such repairs were identified in reviewed audited financial statements.

Year	Expenditure for Painting, Waterproofing and Stucco Repairs
1992	\$0
1995	\$58,019
1996	\$42,415
1997	\$15,700
1998	\$5,200
1999	\$188,275
2000	\$65,500
2001	\$4,480
2003	\$0
2004	\$42,250
2005	\$0
2007	\$314
2008	\$0

Exclusive of the nominal expenditures for structural repairs, painting, waterproofing and fire suppression upgrades, the majority of the reserve funds were allocated to remaining categories which can be considered ancillary maintenance, repairs and replacements to less critical aspects of the property and buildings. The BOD acknowledges in various meeting minutes and

other correspondence identified at date that only haphazard patchwork repairs had historically been performed for Buildings A and B

REVIEW OF CORRESPONDENCE

A review of BOD and SYVCOC member meeting minutes, as well as other correspondence provided to us through document production has been performed for the purpose of identifying matters relevant to the plaintiff's claim. The following paragraphs briefly discuss examples of pertinent topics from the minutes and correspondence we have been provided.

1983

Minutes reviewed from 1983 indicate the presence of water leaks around windows from several Unit Owners. The documents indicate that the developer would absorb all damage expenses due to the leaks. The BOD authorized a study of the water intrusion problem by an architect. No subsequent documents regarding the architect's findings and recommendations have been provided.

1985

Minutes reviewed from 1985 continue to report window leaks. Of particular interest are the minutes from the October 1985 BOD meeting in which problems with the stucco are acknowledged as the result of moisture intrusion.

1986

Minutes reviewed from 1986 continue to report window and sliding door leaks. It is reported that the developer would continue to make repairs until all the leaks were remedied. In the May 1986 BOD minutes it is acknowledged that stucco is cracked and delaminating from the structures. These minutes also acknowledge spalled beams. It is noted in these minutes that the Managing Agent for the SYVCOC would change from Quadrant to Waccamaw, a subsidiary of the developer, effective June 1, 1986.

1987

The frequency of concerns over moisture intrusion into the buildings and the overall condition of the buildings increases in 1987. The February 1987 BOD meeting minutes acknowledge stucco cracks in the building envelope and balconies. The BOD acknowledges that water getting behind the stucco could cause serious damage. Apparent settlement related distress to the structures is discussed. Peeling wallpaper and falling ceiling materials resulting from leaks are discussed. Comments regarding the "terrible condition" of Building A were provided by a Unit Owner.

1988

An April 16, 1988 letter from Waccamaw Neck Land Company to a Mr. Jerry Whitley of Columbia, South Carolina acknowledges that the developer will assume full responsibility for any damages resulting from the leaking windows and associated moisture intrusions.

1989

Based upon minutes reviewed from 1989, select window and sliding glass door replacements for Buildings A and B due to Hurricane Hugo were on-going through at least December 1989. Similarly, the Building A and B roofs were undergoing replacement due to hurricane damage. The 1989 minutes indicate that BOD believes the new windows are of better quality than those used in the original 1981/1982 construction. Damaged interior finishes resulting from Hurricane Hugo were noted to be the Unit Owner's responsibility. The 1989 minutes also discuss "ceilings leaking" and deteriorated hinges on the storage room doors. Discussions concerning the BOD being under the control of the Unit Owners are initiated.

An October 1989 letter from Mr. Russ Campbell to Mr. Harry Stewart of Waccamaw expresses concern of a Mr. Edwin Jones (Owner of Unit B-51 and a retired construction professional) with regard to the "glass walls" replacement. Mr. Jones asked that he be allowed to review the replacement system and advise the BOD on its relative quality.

1990

The 1990 minutes continue with discussions of items related to Hurricane Hugo. Of particular interest is the decision of the Board to not repair or replace damaged wood underlying the stucco. Late in the year it was noted that there was a deficit in reserve funding. The BOD further noted as reporting that exterior painting had been performed on some surfaces in lieu of a more durable elastomeric coating due to cost considerations. The BOD also acknowledges that the buildings are not waterproof or sealed to prevent moisture intrusion and that only temporary repairs could be undertaken until the reserves were replenished. It is noted that just over \$800,000 was received from insurance proceeds related to Hurricane Hugo. However, actual repair costs exceeded the insurance proceeds.

A September 1990 letter to Mr. Foster McKissick from Mr. Henry Jobe, Jr. states that "needed repairs have been neglected for quite awhile, and I still don't understand why the Shipyard building has never been repainted."

1991

Additional indications of the structural distress in Buildings A and B is noted in the September 1991 minutes. "The next item of business was concrete repair. Mr. Stewart requested that the Board consider repairing the cracks in the concrete as the cracks have increased, and some are becoming quite large." The minutes of the October 1991 meeting indicate that 1,278 square feet of concrete required repair, but no details on if or how the repair was done are provided.

A January 1991 letter from Mr. Robert Dobson, III of Dobson & Dobson Attorneys At Law to Mr. Harry Stewart of Waccamaw indicates that the new windows installed in Unit A-55 still leak and that they have complained on many occasions regarding the leaks. Legal action is threatened unless the SYVCOG remedies the problems.

1992

The May 1992 minutes note that reserve repairs and replacements will begin to be identified distinctly versus broad categories. The Owner of Unit A-41 replaced five window panels.

according to the May 1992 minutes. The August 1992 minutes clearly state the window panels replaced in Unit A-41 were the Unit Owner's responsibility pursuant to the Master Deed.

1993

The March 1993 minutes discuss claims filed against the developer in bankruptcy court seeking \$8,000 for repairs/upgrades to Building B and \$15,000 for Building A. These minutes describe "rotting fascia boards on both buildings". The April 1993 minutes indicate no resolution to the fascia board issue but that a wind storm had displaced ballast on the building roofs and displaced shingles from the stair tower roofs. Corrosion was reported to have been observed in certain electrical circuit breaker boxes in Units. The Board stated that any replacements or repairs will be the Unit Owner's responsibility pursuant to the Master Deed.

A bulletin published by the SYVOC in December 1993 indicates that a warranty claim against the developer related to the fire suppression system will be initiated in attempt to replenish reserves funds used for fire suppression system repairs. The BOD did not increase the monthly assessment to the Unit Owners.

Waccamaw retained Procon Waterproofing, Inc. (Procon) to provide a preliminary inspection of the structural concrete slabs for Buildings A and B. Mr. Bob Gallagher of Procon states in a letter to Waccamaw dated April 8, 1993 "...we recommend that a structural engineer further evaluate the cracking and spalling which is occurring the pre-cast slabs and beams." Procon further indicates that they would not undertake any concrete repairs until the recommended investigation is complete.

1994

The March 1994 BOD meeting minutes discuss repair of rotting fascia boards. The BOD further notes that the stucco is fractured and coming off the walls and resulting in water intrusion problems. These minutes also discuss a February 1994 review of Buildings A and B by Procon. A Procon letter dated March 9, 1994 summarizes the observations of Mr. Bob Gallagher. Corrosion of window casings is noted. Moisture intrusion into the walls of buildings is identified as the result of the absence of caulking around corridor windows and doors, poor or deteriorated caulking at wall to slab junctures and extensive cracking of stucco accessible from the corridors. Cracking of structural beams supporting corridors is identified and the locations and frequencies of the cracks suggest to Mr. Gallagher that a structural problem may exist. Corrosion of the hand rails is identified. Mr. Gallagher again recommends that an engineering study of the deficient conditions be performed to determine if structural problems exist.

It is acknowledged at the April 1994 members meeting that the SYVOC reserves are substantially depleted due to the cost of the fire suppression system repairs. A special assessment in the amount of \$1,000 per Unit to replenish the reserves was discussed. The BOD acknowledges that they continue to review the building maintenance problems.

1995

The February 1995 BOD meeting minutes indicate that The Litchfield Company had initiated legal action against Lesley Construction in association with the warranty claim on the fire suppression system. It is also noted that the BOD had hired Wm. F. Hedgepath and Associates, Inc. (Hedgepath) to complete reserves study. The BOD understands that

Hedgepath would include "analyzing the existing facilities as to their current condition, the life expectancy of the property and the replacement values." The results of the reserves study were provided in Hedgepath's dated April 3, 1995 indicate that an appraisal and limited reserves analysis was performed. No recommendations for funding structural repairs are recommended in the Hedgepath study.

The October 1995 minutes discuss the SYVCO's warranty claims against the developer. It was reported that the developer had filed claims against the contractor and architects for defects in the resort's construction and design. The architect, Mr. Joe Hiller, requested a change in venue.

1996

The March 1996 minutes report that some stucco repairs had been made to the buildings. However, stucco has been observed to be peeling from the underside of walkways and stairs after completion of the repairs. The October BOD 1996 minutes indicate that a special assessment is needed to replenish the reserves account. One of the warranty claims against the developer was settled for \$46,000, while the second claim was unresolved. There were discussions of a large scale window replacement.

A memorandum from Mr. Frank Cody of Waccamaw to James Smith Realty identified a leak in Unit A-35 that "will be repaired at the expense of the association since it was caused by water intrusion through the wall."

1997

Meeting minutes from May 1997 indicate that pressure washing of sliding glass doors would not be done due to water penetration. Window casing rust is discussed on Building B and Mr. Bobby Warner is to "check all of B Buildings windows for rust problems." No subsequent report of Mr. Warner's window observation was identified. The October 1997 minutes indicate that \$189,196 was spent on repairs related to Hurricane Fran. A special assessment in the amount of \$73,555 is necessary to fully fund those repairs as the insurance proceeds were not sufficient. The second warranty claim against the developer was settled for \$46,748.05. It is noted that rust is appearing around several windows in Building B.

1998

The May 1998 minutes indicate that the ocean side of Building B was repainted, that a repair to overhead floor support grid and rebar was made at Building A, and a portion of Building B roof was replaced. Also discussed in May 1998 is the expansion of the BOD to seven members. The BOD's apparent dissatisfaction with Waccamaw is discussed as funds are apparently being spent without BOD approval. It is reported that Buildings C and D would be complete in August and November 1998, respectively. The BOD acknowledges that they must make decisions not Waccamaw. The October 1998 minutes stated that the Board acknowledged that reserves funding was too low and needed to be increased.

A March 13, 1998 memorandum to Mr. Mike Mahon of The Litchfield Company from Mr. Neil McCoy regarding stucco discusses the apparent effect of the pile driving for Buildings C and D as the cause of the stucco cracks in Buildings A and B. Mr. Bobby Warner of Waccamaw indicated that the cracks were pre-existing.

1999

In January 1999 it was reported that only "\$30,000 to \$35,000" was in the reserves account. A special assessment for painting and waterproofing Buildings A and B was proposed. The February minutes stated that the special assessment in the amount of \$300,000 for painting and waterproofing Buildings A and B did not pass. February 1999 minutes from a special meeting of the BOD state that a stucco expert will be contacted to review Buildings A and B. It is further reported that the so stated expert would be Mr. Bruce Henderson, a local contractor who prepared the repair estimate associated with the \$300,000 special assessment. March 1999 minutes of a special meeting of the BOD indicate that some stucco repairs were undertaken at an expense of \$24,800. The Board stated that the rust on the stucco was from wire mesh and that "rebar was not a factor after all in the repairs".

The April 1999 minutes state that reserves were under-funded. These minutes indicate inquiry and uncertainty as to how a proposed \$300,000 stucco repair could be considered unexpected. It is further stated that without a structural engineer being consulted, how can specifications for repairs be developed? The BOD entrusted Mr. Bobby Warner, SYVCOC's on-site maintenance person, to perform a stucco assessment who responded that an "engineer was not needed for a basic waterproofing job since the rebar problems were such a small part of the overall job." Blisters are reported on the walkways. A question was raised about responsibility for leaks between Units.

In the June 1999 minutes it is reported that the BOD had accepted a \$300,000 bid to paint Buildings A and B. An additional \$25,000 for stucco repairs is reportedly necessary prior to painting. These minutes state that the painting of window frames and thresholds would be a Unit Owner expense. In July 1999 it is reported that only \$28,000 is in the reserves account and that a special assessment in the amount of \$216,400 is requested.

The October 1999 minutes state that the BOD will determine the estimated life of certain items placed in the replacement/reserve fund analysis. The minutes from a November 1999 special meeting of the BOD acknowledges water penetrating concrete slabs. The BOD decreased the frequency of painting and waterproofing from 6 to 10 years at the November 1999 meeting. The logic for decreasing the frequency was the implementation of a BOD established maintenance program.

A February 5, 1999 letter from Mr. John Roncevic of Montrose Associates, LLC representing Unit C-55 inquires as to having a report generated by a registered architect/engineer before embarking on the proposed \$300,000 building envelope repairs. Mr. Roncevic is seeking "prudent, documented technical investigation and rationale" prior to spending such a large sum of money.

A February 7, 1999 letter to Mr. Frank Cody of Waccamaw from Mr. and Mrs. Merle Miller indicates that they are "shocked that the Shipyard Village board has not been responsible enough to have a reserve of money available to cover this expense" (referring to proposed \$300,000 repair). They are further "surprised that The Litchfield Company gave us no warning of the condition of the A and B buildings when we purchased our Units."

A letter/memorandum from 1998 from Mr. W. W. Fetzer, Owner of Unit A-41 to the BOD inquires as to why the depleted reserves account was not discussed at the May 23, 1998 annual members meeting. He also inquires as to why the regime fees on September 1 and November

1 when stucco repairs had reduced the reserves balance to \$35,000. Additional inquiry is made to whether a structural engineer had been retained to obtain professional advice on the corroded rebar. Lastly, he inquires as the BOD hiring a qualified inspector to audit the quality of rebar repairs.

A hand written note created by a Waccamaw employee in response to Mr. Fetzer's letter indicates that a "structural engineer has not been retained and is not necessary" and that the rust is "not from the rebar but from wire mesh around the light fixtures in the parking area."

2000

Moisture intrusion with respect to Buildings A and B is discussed throughout the year at the BOD and annual member meetings. The April 2000 minutes indicate on-going problems with the corridor and balcony ceilings in Buildings C and D. It was determined by consultants that the peeling finishes were the result of installation problems.

A May 1, 2000 letter from Dr. Leon Jennings to Mr. Fetzer agrees that there is a potential conflict of interest since Waccamaw is a subsidiary of The Litchfield Company. Dr. Jennings further states that "we need to be diligent in seeing that Waccamaw Mgt. gives us full value for what we contract and pay."

2001

The 2001 minutes make repeated reference to the Unit Owner's responsibility for leaks resulting from their failure to maintain or replace their air conditioners and water heaters. A roof leak associated with Unit B-55 is reported. It was reported that a budgeted EIFS inspection had not been obtained by the Manager. Legal counsel was retained to review the EIFS issues with Buildings C and D. The attorneys recommended that a forensic study of the EIFS be performed. The Board is not aware of any previous EIFS inspections at the Shipyard Village property.

An August 4, 2001 email from Mr. Neal Prater to Dr. Jennings states "One of the concerns our attorney had ten years when we bought our Unit was seemed to him to be a rather small reserve fund."

Considerations for engaging a consultant were apparent as Exterior Forensics, Inc. (Exterior) provided Waccamaw a proposal for performing stucco or EIFS inspections for an inspection fee of \$8,000 to \$12,000 per building. No documents have been produced indicating that Exterior was retained to perform the inspections nor have any reports prepared by Exterior been identified.

2002

The 2002 minutes indicate that the management of the SYVCOC would be moved to K.A. Diehl & Associates, Inc. (Diehl) in part due to their experience managing coastal properties. A report from the forensic engineers Mr. George McGee and Mr. Frank Henry of McGee Consulting Associates, Inc. was presented which identified numerous concerns with Shipyard Buildings C and D. Mr. McGee stressed that "problems from water intrusion are time related and tend to compound." A Unit Owner is identified as having replaced his sliding glass door. Attorneys with Finkel & Allmann, LLC are being considered for the Shipyard Buildings C and D lawsuit.

A "Replacement Cost Analysis" for Shipyard Village was completed in May 2002 by Affiliated Appraisers, Inc. The results of their analysis are presented in their report dated May 27, 2002. The report states that the appraiser made an exterior inspection of the property, specifically structural improvements. No funding for structural repairs is recommended and the report is limited to replacement costs only. No reserves recommendations are made in the report.

A July 8, 2002 letter to Unit Owners in Shipyard Buildings A and B is sent by Ms. Kellie Diehl on behalf of SYVOC. Ms. Diehl acknowledges that her firm has received many calls regarding leaks and that the replacement and repair of windows are the Unit Owner's responsibility.

The August 2002 minutes provide extensive discussion on leaking window and associated consequences in Buildings A and B. Keystone Construction was retained to assess the windows in Buildings A and B. Keystone determined that the "only" fix that could actually work would be to remove and replace the windows in Buildings A and B. Keystone is reportedly owned by Ms. Kellie Diehl's husband, Mr. David Diehl.

Discussion of a class action lawsuit on behalf of the Building A and B Unit Owners was discussed and a draft of the proposed lawsuit was supposedly prepared. The BOD discussed procedures to fund the window replacement project via a special assessment. The BOD acknowledged that the Master Deed holds the Unit Owner responsible for the repair and maintenance of windows. Bids for the repair of the Building B roof are discussed.

The September 2002 minutes of a special BOD meeting indicate that the reserves account is underfunded. These minutes report that McGee Consulting investigated and performed testing on the windows in Buildings A and B. Mr. McGee indicates that the windows appear to be residential grade, not commercial grade windows. Mr. McGee also confirmed moisture intrusion by means of a hose spray test and further states that rotting wood is present.

September 2002 minutes from an executive session meeting of the BOD indicate that Finkel & Altmann have determined that there is a "viable entity to file suit against" with respect to the Building A and B windows. A discussion regarding leaking sliding glass doors from Unit A-51 and associated damage to underlying Unit A-41 is discussed. The Owner of Unit A-41 is seeking a letter from the BOD stating that they are not aware of any structural defects that would cause water intrusion from A-51.

In January 2002 Dr. Jennings writes to Mr. W. Press Courtney that the SYVOC is terminating its month to month agreement with Waccamaw. Dr. Jennings letter further requests Waccamaw's cooperation in transferring records maintained by them to K A Diehl & Associates.

An April 24, 2002 letter from Mr. David Mills acknowledges that indeed not all files were turned over to Diehl and that some additional documents had been discovered. Of interest are files of McGee Consulting Associates related to forensic matters that were discovered.

2003

The 2003 minutes continue discussions of issues related to the window problems in Buildings A and B. It is believed that the statute of repose has expired and therefore the BOD does not believe that pursuing litigation would be cost effective. Additionally, Finkel & Altmann is not interested in taking on another suit so that they may concentrate on the Building C and D.

lawsuit. Some Unit Owners have caulked their own windows in attempt to mitigate moisture intrusion. Of particular interest is the BOD's position that the cost of a "stigma" analysis (approximately \$40,000) be borne by Building A and B Unit Owners participating in the class action lawsuit and not the SYVCOC. The litigation related to Buildings C and D is on-going. A March 2003 letter from the SYVCOC informs the Owner of Unit A-28 that water is flowing under his sliding door threshold and that repair/replacement of the sliding glass doors are an Owner responsibility.

A January 18, 2003 email from Dr. Jennings to the BOD and Diehl indicates that he authorized an emergency stucco repair to Buildings A and B to prevent water intrusion into several Units. He further states that a failure to make such repairs would make the SYVCOC liable for water damage.

Dr. Jennings email dated March 27, 2003 to the BOD indicates that the statute of repose on the Hurricane Hugo window related issues has not expired but confirms that Finkel & Altmann and not interested in representing the SYVCOC in any litigation about this issue.

2004

The January 2004 minutes discuss proposed "structural and cosmetic repairs to the stucco" on Buildings A and B. Two proposals were received by the Board in the amounts of \$35,680 and \$49,850. The lower cost repair proposal was accepted. The cost of litigation related expenses for the Buildings C and D lawsuit is also discussed. The February 2004 minutes indicate that the BOD is requiring the Owner of Unit B-53 replace a broken window and state that if the Unit Owner does not replace the window the Board will do so and assess the Unit Owner the cost. The aforementioned stucco repairs were reported to be complete in the April 2004 minutes. The BOD was questioned on the low balance of the reserve fund.

The July 2004 minutes indicate that mediation in the Buildings C and D lawsuit is forthcoming and that the litigation fund has been depleted. Painting of Buildings A and B window frames is discussed and that the BOD will try to obtain bulk pricing and that Unit Owners can elect to have their own contractor perform the painting. A reference to mold testing is made. The August 2004 minutes damage to Buildings A and B as the result of Hurricane Charley. It is noted that an insurance claim was filed and that only 60 percent of the Building B roof replacement would be funded by the insurance proceeds. The Owner of Unit A-55 reported suspected hurricane damage to his front living room wall. An insurance adjuster determined that the cracks in the drywall and ceiling were not from wind damage and that other Units in Buildings A and B have the same conditions and that such conditions be remedied by the Unit Owner. The minutes state that Unit B-28 has an "ongoing water problem inside their Unit" from leaking windows and that the Unit Owner was "probably going to replace their windows." There is concern that the water may be coming through the wall as well.

In the October 2004 minutes additional discussion of the Unit B-28 window leaks is noted after a heavy rain. However, it is noted that the Unit Owner placed duct tape around the window openings to mitigate the moisture intrusion. The Manager inspected the Unit and found no apparent evidence of moisture penetration from the said rain and that further investigation would be at the Unit Owner's expense. Roof repairs resulting from Hurricane Charley are on-going and questions continue to be received regarding painting the window frames in Buildings A and B.

An email prepared by Mr. Henry Jobs dated January 4, 2004 indicating that a Unit Owner has observed a number of breaks in the exterior stucco on Building A and that rust is showing through meaning that water is getting in. Mr. Jobs indicates that he expects the situation on Building B to be the same.

2005

The March 2005 minutes indicate that the painting of Building A and B window frames would begin soon and the leaking windows in Unit B-28 were replaced by the Unit Owner. The Buildings A and B window painting is reported to be complete in the April 2005 minutes. A roof leak above Unit A-58 was reported. The newly installed windows in Unit B-28 are reported to be leaking. An architect/engineer, at the Unit Owner's expenses, determined that the stucco around the window was cracked. The BOD agreed to perform a test cut in the suspect area. No documents have been identified with the result of the test cut.

The Buildings C and D lawsuit is on-going but not settled according to the April 2005 minutes. A question was raised regarding Keystone Construction, who is owned by Ms. Kelly Diehl's husband regarding their ability to bid work at the property. It is noted in April 2005 that the reserve fund is depleted. Considerations for the replacement of the Building A roof are discussed.

The June 2005 minutes contain continued discussion of the Unit B-28 window leaks and Unit A-58 roof leaks. The October 2005 minutes indicate the Board was requesting a quote for application of a silicone based exterior coating for Buildings C and D. Drainage problems around Buildings A and B are discussed. Building A roof replacement was discussed. It is noted that a "thermo" image camera investigation of Buildings A and B will take place on October 18, 2005 to see if there is water penetration.

A September 30, 2005 memorandum from Dr. Jennings to the BOD acknowledges that the roof of Building A is in a "patchwork state after many attempts at repairs."

2006

The January 2006 minutes indicate that the Building A roof replacement was nearly complete and that "sheets of untreated lumber" needed to be replaced. The roofer has offered annual inspections of the roofs for a fee of \$660 per building. It was agreed by motion that the roofer would conduct the annual inspections as it was a "very good preventive maintenance step." No documents have been identified indicating the proposed roof inspections were performed. The Building C and D lawsuit is discussed and proposals to remove and replace the stucco from the buildings averaged about \$635,000.

The February 2006 minutes discuss at length the recommendation from the engineer (Mr. Donald Manning, P.E.) for Unit B-28 that all windows for Buildings A and B be replaced. Mr. Manning notes that Building B is "sick and about to become cancerous". He further states that the inside intrusion of moisture is "severe and that some Owners are in denial of this ever-increasing problem." Mr. Manning observed mold and flaky ceilings. Mr. Manning provides for a team approach to successfully remedying the moisture intrusion issues.

Minutes from a February 2006 "informational" meeting on the Buildings C and D lawsuit indicate that the mediation was successful and that the net proceeds to the SYVCOC were

\$2,292,437.16. It was noted that the lack of proper maintenance was at least partially the cause of the problems. However, the BOD and Manager claim it was never given instructions on how to maintain the stucco. The BOD indicates that it will obtain bids for a formal reserve study. With regard to the stucco and windows of Buildings A and B, the BOD reminded the Unit Owners that the windows are their responsibility to repair and replace. It is noted in these minutes that several Unit Owners have reported water penetration into their Units from Units above. An informal vote was apparently held where a "majority" of those in attendance would favor an amendment to the Master Deed making the windows a common expense.

The continued discussions regarding leaking windows and doors apparently prompted the proposed Sixth Amendment as noted in the minutes. The March 2006 minutes indicate that a proposal was accepted to inspect Buildings A and B annually by R J Kennerly at a cost of \$5,000 per building. No written documentation of inspections performed by Mr. Kennerly have been identified.

A proposal from Pro-Tec indicates that approximately \$1,200,000 per building would be required to replace the Building A and B windows. The March 2006 minutes state that BOD will put an amendment to the Master Deed up for vote and that it would essentially make the windows and sliding glass doors the responsibility of the Association. Further reference is made to balcony stucco "leaching" and cracking balcony "frontages".

The April 2006 minutes indicate that additional evaluations of the stucco and windows in Buildings A and B will be done. These minutes also state that the thermal camera investigation on the building exteriors was performed but the results of that testing were not discussed. The "Thermo-Photography Report" prepared by Clean Master indicates extensive moisture intrusion into wall cavities and structural slabs and beams. The April 2006 minutes indicate that the proposed Sixth Amendment did not pass.

The July 2006 minutes discuss the Building C and D repairs and the BOD's consideration of two engineering firms for the Buildings A and B window and stucco project. A motion is made to hire Schneider and Associates. In addition to window and stucco problems, the distressed balcony slab edges are discussed. Rebar is noted as showing through the surface of the slab edges.

The July 2006 minutes state the Sixth Amendment has now passed. It is stated that consideration for reimbursement of windows already replaced by Unit Owners may be given but that "stains and water damage" on the interior of the Unit would be a Unit Owner's responsibility. The October 2006 minutes discuss Schneider's early opinion and the BOD's frustration with the pace of his work. Authorization was made via motion to hire Miller-Dodson Associates to perform a reserve study.

An email message from Ms. Sheryl Ortmann to Mr. Jim Poeg indicates that corrosion of the 5th floor expansion joint is the cause of leaks into Unit B-43. Ms. Ortmann states that a professional opinion is needed in lieu of Mr. Richard Bennett's due to concerns over Mr. Bennett's approach to remedying this issue. She further states that she is concerned that the process associated with Unit A-58 and "how far the board and Richard let the damage grow before they took appropriate action."

2007

The January 2007 minutes start with a discussion of Schneider's findings and the sliding glass door replacement in Unit A-14. A joint noted as being present beneath the sliding glass door between adjoining hollow core slabs of the balcony and Unit. Additional discussion of reimbursement for Unit Owner window replacement is noted. The March 2007 minutes discuss the BOD's dissatisfaction with Schneider.

The April 2007 minutes discuss a balcony investigation by a structural engineer who determined that "some work is needed but not extensive." Mr. Richard Bennett, SYVCOC's on-site maintenance person had previously observed balconies in August 2006 and characterized distress using a 1 to 5 scale, with 5 being the worst condition. Consequently, there is disagreement with the structural engineer's assessment. Ms. Kellie Diehl states that many sliding doors have water penetration problems. Additional discussions of the exterior coating application to Buildings A and B is discussed but warranty issues exist unless all windows are replaced. It is reported that the reserve account had approximately \$1,381,000, the majority of that money being proceeds from the Buildings C and D settlement. It is further noted that many sliding glass doors have water penetration problems.

The July 2007 minutes state that Mr. Porcher, the structural engineer, indicated that the balcony problems at Unit A-14 are due to corrosion of metal components behind the stucco. Because of this condition, Mr. Porcher recommended that all balconies be inspected but the BOD did not authorize the inspections. The August 2007 minutes indicate that Mr. Eddie Stokes of MEC would be hired to represent the SYVCOC during the Building A and B window and stucco repairs.

A September 26, 2007 letter to the Unit Owners in Shipyard Village from the BOD states: "The Board wishes to remind you that even though the Association assumed responsibility of door and window replacement in July 2006 the problems in A and B buildings are currently experiencing didn't just happen last year--they have been developing over the time when the Owners were responsible for their doors and windows. Those buildings were built well over twenty years ago. Studies have shown that repairs made in the past years did not really address the water intrusion issue, but were more cosmetic in nature."

An email from Ms. Kellie Diehl to the BOD on September 18, 2007 regarding leaks etc states that "many, many of these Units were leaking previously...the Owners who most ended up doing nothing...". The email further states that "Bobby Warner only did cosmetic stucco repairs buildings for 20+ years and kept pushing back to the Owners - who clearly could not handle and needed help." She also states that she "tried to bring this up after I was here for a while and got my hand slapped by Bobby Warner and some board members because this was an Owner responsibility."

The Miller-Dodson "Replacement Reserve Report" dated October 24, 2007 was produced for SYVCOC. The Miller-Dodson replacement reserves analysis indicates that they have assumed the significant repairs/refurbishments to Buildings A and B will be made in 2008 or 2009. No funding for structural repairs has been made in their 30 year reserve period.

2008 and 2009

An email from Dr. Jack Eblin to the BOD, Ms. Vicki Gallagher and Mr. Eddie Stokes states: "Water intrusion began when A and B were built – the HOA took responsibility one and half years ago."

Dr. Jennings' email to the BOD on April 27, 2008 indicated that the BOD "was not aware of the need for stucco repair, painting and waterproofing of A and B until October 1998"

A June 6, 2008 letter from Ms. Sandra Mills to the BOD and Ms. Vicki Gallagher regarding water intrusion states: "This problem has been apparent for many years and we consider this neglect from the board of directors and K.A. Diehl & Associates"

Handwritten notes dated June 19, 2008 presumably taken by a member of the BOD or Diehl indicate that water intrusion is everywhere and that the building envelopes are rotting away. The notes speak of removing saturated concrete, sand blasting and replacing steel, cathodic protection, and re-coating the buildings. Mr. Chris Roth of HICAPS is listed in the handwritten notes.

A July 23, 2008 letter to the Unit Owners in Shipyard Village from Dr. Eblin summarizes historic issues related to the condition and repair of Buildings A and B. The letter acknowledges "cosmetic fixes by the management firm that was on board at that time" and that "When K.A. Diehl was hired as the management firm, the nature of the problems became better known"

The 2008 and 2009 minutes discuss at length the long-standing problems with Buildings A and B, evaluations of Buildings A and B by various consultants, the results of the assessments, the requested peer review of the original assessments and design team's work, the ultimate selection of SKA as the engineer of record for the design of the repairs, utilizing SKA to provide construction administration services during the repairs, the cost, phasing and execution of the repairs, securing a line credit or bank loan to fund the repairs, the special assessment needed for repaying the loan, the on-going litigation, etc

The March 2009 special members meeting documents the re-vote of the Sixth Amendment. The November 2009 special meeting of the BOD presents information regarding the operational budget of the SYVCOG being increased to over \$6,000,000 to fund portions of the repairs to Buildings A and B. The BOD's actions are presented in a November 2009 memorandum

EVALUATIONS OF BUILDINGS A AND B PRIOR TO 2006

Prior to 2006 few consultants had been engaged to evaluate, observe, inspect, etc. Buildings A and B. Documents made available to us indicate that Procon Waterproofing, Inc (Procon) in April 1993 performed a preliminary inspection of the structural concrete condition and recommended that a structural engineer be hired to evaluate the cracking and spalling in beams and slabs. Procon performed another preliminary inspection of Buildings A and B in February 1994 and again recommended that an engineering evaluation of the observed structural concrete distress be performed. A reference to a November 16, 1993 Procon letter regarding painting and waterproofing is contained in meeting minutes but no copy of this letter has been identified.

In 1999 Mr. Bruce Henderson of Henderson's Under Pressure observed the buildings and estimated that approximately \$300,000 would be his cost to make various repairs to the buildings. These repairs were itemized in his quote to the SYVCOOC care of Waccamaw dated October 28, 1998. In summary, his proposed repairs included painting, waterproofing, fixing damaged stucco, removing corrosion from handrails, sealing the handrails, and fixing balcony thresholds. No apparent structural repairs are proposed by Mr. Henderson.

Mr. George McGee reportedly performed inspections of Buildings A and B in the spring of 2002. No engineering reports have been identified detailing Mr. McGee's observations, opinions and recommendations. However, Mr. David Mills indicates in his 2002 letter to Finkel and Allmann letter that documents regarding Mr. McGee's inspections had been discovered at the Waccamaw offices.

A power point presentation from 2002 by Mr. David Diehl of Keystone Construction, Inc. indicates that Mr. Diehl made observations of the windows in Buildings A and B. His understanding of the window history, his observations, his suggested repairs and their effects, and cost information for window replacement were discussed and presented in the power point presentation.

In 2003 two contractors, Absolute Pressure Washing & Painting (Absolute) and Paladin Painting, made observations of Buildings A and B for the purpose of characterizing damage and developing a repair approach and cost estimate. Numerous structural and water intrusion related conditions were identified by Absolute and Paladin. Paladin even goes as far to state that there are far too many defects to list and multiple areas of structural damage.

In 2004 Don Watford Waterproofing observed Unit B-28 and noted conditions that warranted destructive testing to identify any potential and existing construction problems which may be contributing to the deterioration of the building.

In October 2005 an Infrared thermography study of Buildings A and B was made by Clean Master. Their findings were provided in their undated "Thermo-Photography Report". The infrared images in the report dated October 15, 2005 confirm that extensive moisture penetration of and into the buildings has occurred.

Mr. Donald Manning, P.E. provided an assessment of Building B in his February 2006 memorandum. Mr. Manning was hired directly by a Unit Owner. As previously discussed in this report, Mr. Manning indicated that Building B was "sick" and about to become "cancerous" due to moisture intrusion. Mold and distress to interior finishes is discussed, as well as the need for window repair/replacement and stucco repairs.

EVALUATIONS OF BUILDINGS A AND B SINCE 2006

In August 2006 balcony inspections were performed by Mr. Richard Bennett the on-site maintenance supervisor at that time. Mr. Bennett characterized the conditions as 1, 2, 3, 4 or 5 in order of least to highest severity. Of the 80 Units observed by Mr. Bennett, 40 were characterized as condition 4 or 5.

Extensive evaluations of Buildings A and B have been made since 2006 as the result of historic and persistent concerns raised by various Unit Owners, the BOD, the Managers and contractors. The documents reviewed through the date of this preliminary report indicate that

the following consultants have been engaged in evaluating and/or developing various repair plans for Buildings A and B since 2006.

- Schnelder and Associates, Inc.
- Stanlec Consulting Services, Inc.
- Frisch & Associates Construction Co., Inc.
- Gary Freeman Architect, Inc.
- McGee Consulting Associates, Inc.
- MEC Engineering Services, Inc.
- Kyzer & Timmerman Engineers, Inc.
- Tourney Consulting Group, LLC
- Spectrum Engineering Services, Inc.
- HiCAPS
- Procon & Associates, Inc.
- Sutton Kennerly & Associates, Inc.

It is not known if we have complete files from the above listed consultants at this time. Similarly, it is not known if consultants other than those listed above have actually been engaged in the assessment of Shipyard Village Buildings A and B. We expect that additional pertinent documents from these consultants may ultimately be produced beyond the date of this report.

A tabulation of consultant expenses maintained by Diehl dated October 2008 indicates that \$577,791 had been spent on "Building Issue Investigation Expenses" through that date. This tabulation indicates that only \$13,989.86 had been paid to Sutton Kennerly & Associates, Inc. (SKA) through October 2008. The SKA construction estimate that was the basis for the proposed 2009 special assessment indicates that \$628,726 has been spent on investigative services. Billings from SKA indicated on the aforementioned construction estimate for design services are indicated to be \$131,500. The resulting total for investigative and design fees for Buildings A and B since 2006 is at least \$760,226. A review of financial records for the SYVCOOC indicates that the majority of the investigative services were paid from the reserves account.

SUMMARY OF CONSULTANTS FINDINGS

Based upon the consultant documents and files reviewed, numerous conditions of building distress have been identified. For the purposes of general characterization, the conditions identified by the consultants can broadly be separated into structural, building envelope, interior and roofing conditions. A cumulative summary of the deficient conditions, by category, as identified by the above-listed consultants includes:

Structural

- Spalling exterior cast-in-place concrete
- Corrosion of reinforcing steel in cast-in-place concrete
- Cracking of cast-in-place concrete.
- Cracking of hollow core concrete slabs.
- Corrosion of reinforcing strands in hollow core concrete slabs.
- Corrosion of welded wire mesh.

- Collection of water in hollow core concrete slabs.
- Cracking of slab edges on balconies.
- Cracking of slab edges beneath windows
- Elevated chloride ion concentrations in cast-in-place and pre-cast hollow core concrete slabs that are conducive of corrosion.
- Evidence of haphazard previous cast-in-place concrete repairs.

Building Envelope

- Moisture penetration into exterior coatings.
- Delaminated exterior coatings
- Delaminating stucco
- Cracking in stucco.
- Corroded lath beneath stucco
- Corroded fasteners.
- Corroded corner and casing bead
- Evidence of haphazard previous stucco repairs.
- Moisture penetration/leaking ocean side facing windows
- Moisture penetration/leaking courtyard/interior facing windows
- Moisture penetration/leaking sliding glass doors
- Failed seals in windows and sliding glass doors.
- Excessive caulk/sealant placed around exterior perimeters of window and sliding glass doors.
- Moisture affected and rotted wood framing around windows and sliding glass doors
- Rotting fascia boards.

Interiors

- Moisture damaged interior sheetrock.
- Moisture damaged interior paint, wall paper and textured ceiling materials.
- Microbial growth in Unit interiors.
- Moisture affected floor coverings.
- Corrosion of electric breaker boxes

Roofing

- Poorly adhered end and side laps of modified bitumen membrane
- Numerous patches.
- Direct placement of modified bitumen membrane over existing modified bitumen membrane.
- Standing water on modified bitumen membrane surface.
- Distressed flashing
- Deterioration of stair tower shingle roofs

Based upon the documents reviewed to date, the various consultants agreed that the level of distress in Buildings A and B was severe. The consultant's repair recommendations and approaches for executing the repairs varied, but typically included:

- Repair, replacement or preservation of structural cast in-place concrete.
- Repair or replacement of slab edges.
- Repair, replacement or preservation of hollow core concrete slabs
- Remove and replace windows and sliding glass doors and contiguous damaged framing
- Repair or replace distressed exterior finishes.
- Remove and replace handrails
- Repair and replace interior finishes.

SUMMARY OF ECS OBSERVATIONS

At the permission of Mr. Richard Fisher and Mr. Howell Bellamy, III, ECS made cursory observations of the project in January 2010 during the early stages of repairs to Building B. Only cursory observations of the project were made during an approximately 45 minute site visit to help better understand the overall nature and condition of the Buildings A and B. Access to the immediate area of Building B was not made during the January 2010 cursory site visit due to construction activities and only observations from beyond perimeter chain link fencing and accessible common grounds were made. Immediate access to the common exterior areas of Building A was possible as construction had not begun. Photographs taken at the time of the January 2010 site visit are attached to this report. Observations made during the brief January 2010 site visit included:

Structural

- Spalling exterior cast-in-place concrete.
- Corrosion of reinforcing steel in cast-in-place concrete
- Cracking of cast-in-place concrete
- Cracking of hollow core concrete slabs.
- Corrosion of reinforcing strands in hollow core concrete slabs
- Cracking of slab edges on balconies
- Corrosion of steel column bearing plates.
- Distressed expansion joint materials.
- Temporary shoring of some balconies and walkways.
- Temporary structural members for support of balconies

Building Envelope

- Moisture penetration into exterior coatings
- Delaminated exterior coatings
- Delaminated stucco
- Cracking in stucco.
- Failed window seals.
- Corroded corner and casing bead
- Corroded hand rail components.

More thorough observations of Building A were made on October 18, 2010 with Mr. Howell Bellamy, III representing the plaintiffs and Mr. David Mills representing the defendants. The repairs to Building B were substantially complete at this time and access to the interiors of Building B has not been granted as of the date of this report. Photographs taken during the October 18, 2010 site visit are attached. Each photograph contains a description of the

conditions observed. A summary of the conditions observed during the October 18, 2010 site visit includes:

Structural

- Spalling exterior cast-in-place concrete.
- Corrosion of reinforcing steel in cast-in-place concrete
- Cracking of cast-in-place concrete.
- Cracking of hollow core concrete slabs.
- Corrosion of reinforcing strands in hollow core concrete slabs
- Evidence of water in hollow core concrete slabs.
- Cracking of slab edges below windows.
- Cracking of slab edges on balconies.
- Corrosion of steel bearing plates on garage columns.
- Distressed expansion joint materials.
- Temporary bracing between adjoining stacks.
- Temporary structural members for support of balconies.

Building Envelope

- Moisture penetration into exterior coatings.
- Delaminated exterior coatings
- Delaminated stucco
- Cracking in stucco
- Corroded lath beneath stucco.
- Corroded fasteners
- Corroded corner and casing bead.
- Moisture penetration/leaking ocean side facing windows.
- Moisture penetration/leaking courtyard/interior facing windows
- Moisture penetration/leaking sliding glass doors.
- Windows that did not fully close
- Corroded window and sliding glass door casing
- Corroded sliding glass door sills
- Corroded nailing flanges and fasteners.
- Failed seals in windows and sliding glass doors.
- Excessive caulk/sealant placed around perimeters of window and sliding glass doors.
- Moisture affected and rotted wood framing around windows and sliding glass doors.
- Excessive caulk/sealant at balcony and exterior wall interfaces

Interiors (Building A only)

- Moisture damaged sheetrock.
- Moisture damaged paint, wall paper and textured ceiling materials.
- Moisture damaged carpet padding and carpet.
- Moisture damaged and rotting carpet tack strips
- Corrosion of tack strip fasteners
- Moisture damaged laminate wood flooring.
- Efflorescence on underside of hollow core slabs above sheetrock ceilings

- Moisture affected furring strips and fasteners attaching ceiling sheetrock to hollow core slabs.
- Corrosion of furring strip fasteners.
- Condensation beneath polyethylene sheeting placed over carpets.
- Microbial growth in Unit interiors
- Moisture affected curtain/blind mounting hardware.
- Weathered entry doors.

Ancillary Items

- Loose hand rails
- Corrosion of hand rail components.
- Worn balcony and walkway carpet

Digital media provided during document production includes videos of pre-construction conditions of the Building A and B Unit interiors. We have viewed the majority of the videos and obvious evidence of moisture intrusion is apparent in all of the viewed videos. The videos typically indicate conditions similar to those described in the "Interiors" section above.

REPAIR ALTERNATIVES AND COSTS

The consultants engaged by the BOD agree that the level of distress of the structures was quite advanced and severe. However, differing approaches on how to remedy the deficient conditions were developed by the various consultants. An initial repair program for the windows and sliding glass doors was developed by Schneider and Associates Architects (Schneider) in the spring of 2007, but ultimately abandoned at the direction of the BOD after trial repairs to Units A-14 and A-55 had been completed. Schneider was terminated and his fees vigorously questioned by the BOD and Diehl.

A more comprehensive repair approach was subsequently developed and designed by the team of MEC Engineering Services, Inc. (MEC), Gary Freeman Architect, Inc. (Freeman), Kyzer and Timmerman Engineers, Inc. (Kyzer) and Tournay Consulting Group, LLC (Tournay) in the spring of 2008. Design and construction documents for the MEC team's repairs were issued and their repair project competitively bid. HICAPS was engaged to provide administrative services during construction of the repairs proposed by the MEC team. HICAPS estimated that the total fee for the original assessment, design, administration and construction of the repairs would be on the order of \$13,500,000.

During the June and July 2008 SYVCOC member and BOD meetings, the BOD discussed and subsequently authorized the review of the original design team's assessments, drawings and specifications by Sutton Kennerly & Associates, Inc. (SKA) and Spectrum Engineering Services, Inc. (Spectrum). SKA's opinion of the repairs considered in 2008 was presented in their letter to BOD dated October 1, 2008. Spectrum's report dated November 7, 2008 presented their review comments and opinions. After receiving review comments from both firms, the BOD decided to abandon the repair scheme proposed by the MEC team.

SKA was ultimately authorized to supplement the findings of the previous consultants with additional field exploration and design the repairs. SKA issued final design and construction documents in August 2009. The SKA estimate to complete the repairs (including design and construction administration) was \$10,944,468 as presented in a July 8, 2009 letter from the

BOD and K.A. Diehl & Associates, Inc. to the Individual Unit Owners. The project was competitively bid in July 2009 and bids tabulated on July 28, 2009 spreadsheet prepared by SKA. The SKA spreadsheet indicates that seven contractors submitted bids for the Building A and B repairs. The construction currently occurring for the project is based upon the SKA design documents.

A supplemental letter from SKA dated March 27, 2009 addresses "Safety Concerns at Building A and Building B". The content of this SKA letter states that "A number of structural prestressed concrete hollow core slab components and reinforced concrete beams at walkways and balconies are exhibiting significant deterioration from corrosion of embedded steel." This letter identifies the conditions supporting their opinion (e.g. cracking, spalling, apparent reduction in cross-sectional area of embedded steel, etc.). This letter later states "Delaminated stucco and concrete from corrosion of the reinforcing steel presents a safety hazard due to the potential for falling objects." Specific building components cited as hazards included "but are not necessarily limited to cantilever beams, hollow core panels, light post bases and balcony edge beams." This letter lastly states the SKA "did observe several balconies from within the Unit and noted that some railing connections were deficient as a result of deficient grout pockets."

Two contracts for "Structural and Façade Repairs for Shipyard Village" were executed with Structural Preservation Systems, LLC (SPS). The original contract value for Building B (Phase I) was \$2,815,307. The contract for Building B provided for a start date of September 14, 2009 and completion date not later than May 28, 2010. The original contract value for Building A (Phase II) was \$4,026,480. The Building A contract provided for a start date of September 13, 2010 and completion date not later than May 27, 2011. The contracts are AIA Standard Form Agreement Between Owner and Contractor (AIA Document A101-2007).

Contract administration for the repair projects is being provided by Fort Hill Associates, LLC. Mr. Bill Stuckey is serving as the owner's representative for the repair projects. Copies of their respective contracts were identified in the produced documents.

Phase I – Building B

We have reviewed certain files associated with the construction expenditures for Building B. Ten (10) Applications and Certificates for Payment (Pay Applications) have been submitted by SPS for the Building B repairs. We have been provided with Pay Applications 1 through 9; however, the provided copies of Pay Application 9 have not been certified by SKA. We understand that the approval of Pay Application 10 is pending due to unresolved issues for completed work and liquidated damages.

SKA indicates that twenty-five (25) Change Order requests have been submitted for the Building B repairs. We have been provided with Change Orders 1 through 21 which we understand have been accepted according to an August 23, 2010 Change Order Log maintained by SKA. We understand that Change Orders 22 through 25 are pending in association with Pay Application 10. Through the date of Pay Application No. 9 (the period ending May 28, 2010), change orders totaling \$1,624,814.09 had been approved. The corresponding revised contract sum according to Pay Application 9 is \$4,440,121.57.

The revised contract sum reported on Pay Application 9 represents a 57.71 percent increase above the original contract sum of \$2,815,307.48. In an email from Mr. Stephan Robinson of SKA to Ms. Vicki Gallagher in March 2010, Mr. Robinson suggests that the overages not be discussed at the upcoming members meeting.

The values of pending Change Orders 22 through 25 are -\$126,000 (liquidated damages), \$69,000 (additional time for past change orders), \$15,000 (additional time for extreme weather) and -\$15,000 (landscaping). If accepted as submitted, the net value of Change Orders 22 through 25 would be -\$71,000.

Phase 2 – Building A

We have reviewed certain files associated with the construction expenditures for Building A. Seven (7) Pay Applications have been submitted by SPS for the Building A repairs. We have been provided with Pay Applications 1 through 5. An April 14, 2010 email from Ms. Leigh Boan of McNair (the defendant's attorney) is reportedly checking the availability of Pay Applications 6 and 7.

SKA indicates twenty-one (21) Change Order requests have been submitted for the Building B repairs. We have been provided with Change Orders 1 through 11 which we understand have been accepted according to an April 7, 2011 Change Order Log maintained by SKA. Although not provided a copy of Change Order 12, the April 7, 2011 Change Order Log suggests that Change Order 12 has been accepted. We understand that Change Orders 13 through 21 are pending. A Change Order request with no apparent dollar value for additional time due to plaster and beam expansion was rejected.

Change Orders 1 through 12 total \$370,157.22. The corresponding revised contract sum would therefore be \$4,396,637.22. The revised contract sum represents a 9.19 percent increase above the original contract sum of \$4,026,480.

The values of pending Change Orders 13 through 21 are \$230,962.12. If accepted as submitted and no other Change Order requests are submitted by SPS and approved by SKA, the revised contract sum will be \$4,627,599.34, a 14.93 percent increase above the original contract sum of \$4,026,480.

PROPOSED ASSESSMENT OF CONSTRUCTION AND DESIGN FEES

Two July 8, 2009 letters to the Unit Owners presented the general approach to the repairs to Buildings A and B, the proposed method of funding the repairs via special assessment, an itemization of the special assessment for each Unit in Buildings A, B, C and D, a discussion of obtaining a line of credit to finance the project and information regarding voting on the proposed special assessment.

In summary, the proposed special assessment requires payment of \$88,398 from each Unit Owner in Buildings A and B, \$64,868 from each three bedroom Unit Owner in Buildings C and D and \$68,471 from each four bedroom Unit Owner in Buildings C and D. The allocations are based upon the respective Unit's interest in the project as follows: all Units in Buildings A and B – 0.6751%, three bedroom Units in Buildings C and D – 0.75940% and four bedroom Units in Buildings C and D – 0.80168%. The special assessment funding is proposed as follows:

Unit Designation	Unit Assessment	Number of Units	Extended Unit Total
Building A	\$88,398	40	\$3,535,920
Building B	\$88,398	40	\$3,535,920
Buildings C and D 3 bedroom	\$64,868	50	\$3,243,400
Buildings C and D 4 bedroom	\$68,471	10	\$684,710
Totals		140	\$10,999,950

The July 8, 2009 letters isolate only the cost of the windows and doors (\$2,459,000) for the purpose of becoming the sole expense of the Unit Owners in Buildings A and B. Payment options proposed by the BOD include a single lump sum payment due September 1, 2009, two equal payments due September 1, 2009 and July 2010 or 24 consecutive monthly payments beginning September 1, 2009. A copy of July 8, 2009 letter from K A Diehl & Associates, Inc detailing the payment schedule for the special assessment is attached to this report. Although the special assessment did not pass, the costs of repairing Buildings A and B have been incorporated into the operating budget of the SYVCO.

PROFESSIONAL OPINIONS

Based upon our understanding of the project, the documents and electronic media reviewed, the site conditions observed, and the summary of the aforementioned information as presented herein, ECS offers the following professional opinions which are based upon a reasonable degree of engineering certainty

1. The BOD has long ignored the state of disrepair to Buildings A and B. Their disregard to the timely remedy of deficient and defective conditions discovered throughout the years is a clear breach of their fiduciary duty to properly maintain, repair and replace Common Elements and Limited Common Elements.
2. The BOD has long ignored the state of disrepair to Buildings A and B. Their disregard to the timely remedy of deficient and defective conditions discovered throughout the years indicates that the BOD has ignored its obligation to properly maintain, repair and replace Common Elements and Limited Common Elements.
3. Deficient and defective conditions have been noted in Buildings A and B for at least 27 years and certainly before 2006 when extensive evaluations of the buildings were undertaken. In having actual and/or constructive knowledge of such deficient and defective conditions, the BOD's failure to properly maintain, repair and replace Common Elements and Limited Common Elements is a breach of its fiduciary duty.
4. The meeting minutes and other correspondence reviewed indicates the seriousness of the defects and deficiencies of Common Elements and Limited Common Elements of Buildings A and B were downplayed.
5. The meeting minutes, digital media and other correspondence reviewed indicate that many Building A and B Units had leaking windows and sliding glass doors since 1983. Only occasional acknowledgement of actual Unit Owners maintaining, replacing and repairing these aspects of their Units is mentioned.
6. The BOD was negligent in not enforcing the provisions of the Master Deed requiring the Unit Owners in Buildings A and B to maintain, repair and replace certain aspects of their Units.

- 7 The consultant reports reviewed clearly identify deficient and defective conditions in Buildings A and B as presented in the "Summary of Consultant Findings" section of this report that are the direct result of the BOD not properly or failing to maintain, repair or replace the Common Elements and Limited Common Elements as required by the Master Deed.
- 8 The consultant's reports reviewed clearly identify deficient and defective conditions in Buildings A and B that are the direct result of the Building A and B Unit Owners not properly or failing to maintain, repair or replace certain aspects of their Units as required by the Master Deed.
9. The failure of the BOD to maintain, repair and replace Common Elements and Limited Common Elements of Building A and B in a timely manner, as well as Unit Owners in Buildings A and B failure to maintain, repair and replace certain aspects of their Units has resulted in an extraordinarily high special assessment (nearly \$11,000,000) to fund repairs of Buildings A and B
10. The failure of the BOD to maintain, repair and replace Common Elements and Limited Common Elements of Building A and B in a timely manner, as well as Unit Owners in Buildings A and B failure to maintain, repair and replace certain aspects of their Units and associated Limited Common Elements has directly contributed to the severe deterioration of structural and non-structural elements of Buildings A and B and the extraordinarily high cost to remedy such conditions.
11. The Master Deed, and the BOD's exclusive allocation of all window and sliding glass door replacement to the Unit Owners in Buildings A and B, correspondingly shall assign damages to the Units, Common Elements and Limited Common Elements, resulting from moisture penetration around and through these Unit aspects to the individual Building A and B Unit Owners.
- 12 Based upon observations of at least 15 Units in Building A and our interpretations of Unit conditions in pre-construction walkthrough videos, moisture penetration through and around windows and sliding glass doors has been a long standing and persistent condition. The meeting minutes and other reviewed correspondence confirm that the Unit Owners in Buildings A and B had actual and/or constructive knowledge of the moisture penetration into their Units.
13. The BOD has had long-standing actual and/or constructive knowledge of various defects and deficiencies to the Units in Buildings A and B and the BOD's failure to require the Unit Owners to maintain, repair and replace certain aspects of their Units and associated improvements to Limited Common Elements clearly reflects its negligence
14. The BOD did not engage qualified professionals to assess/evaluate the long known suspect deficient conditions in a timely manner. The BOD's failure to engage qualified professionals in a timely manner permitted the distress to Buildings A and B to reach a severe condition.
15. The BOD's failure to engage qualified professionals to assess/evaluate the long known suspect deficient conditions in a timely manner. The BOD's failure to engage qualified professionals in a timely manner prohibited the design and implementation of a repair program which would have lessened the severity of the distress.
- 16 The BOD's failure to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to properly maintain, repair and replace Common Elements and Limited Common Elements in a timely manner has contributed

- to extraordinarily high cost of repairs to Buildings A and B which have increased substantially over time.
17. The BOD's failure to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to require the Unit Owners to maintain, repair and replace certain aspects of their Unit and associated Limited Common Elements has contributed to the extraordinarily high cost of the repairs to Buildings A and B which have increased substantially over time.
 18. The governing documents of the Shipyard Village Horizontal Property Regime impose an affirmative duty on the BOD to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings A and B.
 19. The BOD failed to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements as evidenced by regular reference to the lack of funding in the reserves account as reported in the meeting minutes and correspondence reviewed.
 20. Substantial evidence exists that the Unit Owners in Buildings A and B have had longstanding actual and/or constructive knowledge of water intrusion and associated damage to their Units and contiguous Units. The evidence includes the conditions described by the various consultants who have assessed/evaluated Buildings A and B, conditions obvious in the pre-construction walkthrough videos, and personal observations.
 21. Substantial evidence exists that the Unit Owners in Buildings A and B have had longstanding actual and/or constructive knowledge of damage to the balconies of their Units. The evidence includes the conditions described by the various consultants who have assessed/evaluated Buildings A and B, personal observations and documents reviewed.
 22. The BOD have had actual and/or constructive knowledge that structural and non-structural aspects Buildings A and B were in serious disrepair and their failure to maintain, repair and replace such aspects properly and in a timely manner has allowed the defects and damages to substantially worsen.
 23. The BOD have not acted with due care and in good faith in their affirmative duties, pursuant to the governing documents of the Shipyard Village Horizontal Property Regime, to maintain and repair and thereby prevent progressive damages to the Common Elements and Limited Common Elements of Buildings A and B. This is evidenced in the documents and electronic media reviewed and my observations.
 24. The BOD's assessment of nearly \$11,000,000 for the repair of Buildings A and B is a direct result of the BOD breaching its duty of due care and acting in good faith in the performance of its duties to maintain, repair and prevent future damages and distress to the Common Elements and Limited Common Elements of Buildings A and B.
 25. The Sixth Amendment to the Master Deed was not properly passed/adopted by a 2/3 vote of the Association members as required by Section 1.2, 1.3, 1.4 and 1.5 of the By-Laws which describe the requirements for voting. The provision in Section 1.5 which states: "Any action which may be taken by a vote of the Co-Owners may also be taken by written consent to such action signed by all Co-Owners entitled to vote, or in the case of Units owned by two or more Co-Owners, by the designated voting member." No evidence exists that the written consent of all Co-Owners was obtained nor that a

meeting actually occurred where such a vote could have been taken. By incorrectly assuming that the provisions of the Sixth Amendment to the Master Deed were properly adopted, the BOD is unfairly assessing the Plaintiffs for costs that are the responsibility of the Unit Owners in Buildings A and B.

26. The BOD has failed and is currently failing to properly assess the Unit Owners in Buildings A and B for costs that are their responsibility pursuant to the Master Deed and its Amendments. Although the plaintiffs acknowledge that some costs for the repairs should be shared, they are unjustly being over-assessed for work to correct damage and distress to the Units and contributory damages to Common and Limited Common Elements that are the responsibility of the Unit Owners in Buildings A and B pursuant to the Master Deed and its Amendments. Furthermore, the Plaintiffs are being over-assessed for the BOD's failure to maintain and repair the Common Elements and Limited Common Elements of Buildings A and B.
27. The magnitude of the Change Orders approved through April 7, 2001 totals \$1,994,971.31. With approval of the pending Change Orders, the total Change Order amount will likely exceed \$2,000,000. The Change Order totals clearly demonstrate that the degree of deterioration and distress of Buildings A and B is more severe than SKA could reasonably account for during design, and more than SPS could account for during preparation of their bids.
28. The 15 percent contingency established by SKA is deficient through at least the April 7, 2011 as the previously stated contract values have been greatly exceeded, particularly in the case of Building B. The absence of adequate contingencies in the original SKA construction estimate will result in increases beyond the expected project costs. The increased costs would be expected to result in increased assessments to the Unit Owners.
29. Opinions 1 through 28 stated above clearly justify that the assessment allocations to the plaintiffs shall be substantially reduced.

RE-ALLOCATION OF ASSESSMENTS

The assessment imposed by the BOD is described previously in this report and is based upon the respective percentage ownership each Unit has in the regime. Correspondence reviewed indicates that the BOD believes the assessments are reasonable and consistent with the provisions of the Master Deed. However, the assessments are disproportionately high for the plaintiffs based upon the aforementioned professional opinions related to acts of the individual Unit Owners and the BOD. The following considerations are provided to reduce the plaintiffs' assessment contributions.

Although the assessment allocates the estimated cost of \$2,459,000 prescribed by SKA for windows and doors, it does not allocate a pro-rata percentage of window and door costs to "soft" costs such as general conditions, overhead and profit, engineering, construction administration, construction administration and previous investigations. The \$2,459,000 for windows and doors represents 29.4797 percent of the total construction estimate of \$8,341,322. The pro-rata share of the soft costs equal to 29.4797 percent of the respective soft cost totals shall be re-allocated exclusively to Unit Owners in Buildings A and B.

Certain physical aspects of the repair project construction shall also be borne by the Building A and B Unit Owners as portions of some work are the direct result of the Unit Owner's failure to maintain, repair and replace their windows and doors. The pro-rata share of actual work related to the moisture intrusion resulting from the Unit Owner's negligence shall also be allocated exclusively to the Unit Owners in Buildings A and B. Aspects of the work resulting from Unit Owner negligence include portions of the wall systems, stucco and finishes, waterproofing and coatings, other concrete repairs, interior finishes (exclusive of the demising walls) and the contingency.

Portions of the investigative services for which assessment funding is prescribed shall also be re-allocated exclusively to the Unit Owners in Buildings A and B. As the Schneider and Frisch work is related solely to the windows and doors, at least the \$216,662 paid to them shall be the sole expense of the Unit Owners in Buildings A and B.

In re-allocating aspects of the work related to Common and Limited Common Elements that are the responsibility of the BOD, a reasonable determination of a reduction in the assessments to the plaintiffs has been made. Although moisture intrusion and symptoms consistent with distress of the building envelope and structural elements were reported to the BOD and Managers as early as 1983, we have liberally assumed that actual and constructive knowledge of the building distress was made aware to the BOD by Procon in their April 9, 1993 letter.

Understanding that Buildings A and B are approximately 28 years old and the assumption that actual and constructive knowledge of the building distress by BOD was first acknowledged in 1993, approximately 13 years lapsed prior to the initiation of appropriate repairs. Using these dates, Buildings A and B have suffered from the BOD and Unit Owners failure to maintain and repair them for approximately 57 percent of their service lives (16 years divided by 28 years equals +/- 57 percent). Consequently, the pro-rata share of work for repairs to Common and Limited Common elements shall be reduced for the plaintiffs by approximately 57 percent. The SKA estimate provides for costs for work to Common and Limited Common Elements including wall systems, stucco and finishes, waterproofing and coatings, new handrails, other concrete repairs, miscellaneous repairs, contingencies and shoring. An approximately 57 percent reduction in "soft" costs including general conditions, overhead and profit, project management by Diehl, construction administration by SKA, design by SKA and previous investigations shall also be made to plaintiffs.

As stated in the preceding five paragraphs of this report, the plaintiffs shall receive substantial reductions in their assessments. In summary, allocating the window and door costs, as well as pro-rata percentage of "soft" costs and work resulting from moisture intrusion associated with windows and doors shall be made exclusively to the Unit Owners in Buildings A and B. Similarly, allocating at least the cost of the Schneider and Frisch window and door investigation shall be made exclusively to the Unit Owners in Buildings A and B. Lastly, a pro-rata percentage of "soft" costs and work directly related to the Common and Limited Common Elements shall further reduce the assessment to the plaintiffs. Ultimately, fair and reasonable assessments to the Unit Owners of 3-bedroom condominiums shall be \$17,132, while fair and reasonable assessment to the Unit Owners of 4-bedroom condominiums shall be \$18,083. A tabular summary of the re-allocations and corresponding fair and reasonable assessments is attached to this report.

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Upon production of all accounting records for the repair projects, the above described assessment re-allocation shall be reviewed and adjustments made, if necessary. Any adjustments to the plaintiff's aforementioned fair and reasonable assessment totals will be based upon the actual schedule of values for the completed work indicated on the final Pay Applications for each building. Although the actual schedule of values is expected to result in some minor adjustments to the aforementioned plaintiff's fair and reasonable assessment totals, we expect such modifications to be relatively small.

CLOSING

The opinions expressed in this report are based solely on the information made available to us through the date of the report and are presented with a reasonable degree of engineering certainty. Requests for document production are on-going; therefore, we expect that additional pertinent documents supporting our final opinions will ultimately be produced. Consequently, we reserve the right to amend this report pending distribution of the remaining project documents to us. We appreciate the opportunity to have provided services in support of the plaintiff's claim and we look forward to the successful resolution of this matter through the court ordered mediation in August 2011.

ATTACHMENTS

Curriculum Vitae of Stephen J. Geiger, P.E.

Aerial Photograph

Site Plan

January 2010 Shipyard Village Photographs

October 18, 2010 Shipyard Village Building A Exterior Photographs

October 18, 2020 Shipyard Village A Interior Photographs

Examples Exhibits A and B of the Master Deed of Shipyard Village Horizontal Property Regime

Reserves Funding Summary

April 24, 2008(6) Letter Including April 15, 2006 Meeting Minutes

July 8, 2009 Letters Prepared by K.A. Diehl & Associates, Inc

Assessment Allocation Summary

Curriculum Vitae of Stephen J. Geiger, P.E.



STEPHEN J. GEIGER, P.E.
Chief Engineer/ Director of Engineering
Vice President

EDUCATION

B.S.C.E., North Carolina State University, Civil Engineering, 1988

REGISTRATION

Professional Engineer: Alabama, Arizona, Arkansas, Delaware, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, NCEES

PROFESSIONAL AFFILIATIONS

American Concrete Institute (ACI)
American Society of Civil Engineers (ASCE)
Association of State Dam Safety Officials (ASDSO)

EXPERIENCE

Mr. Geiger has approximately 23 years of progressive engineering and materials testing experience and is a corporate Vice President, Chief Engineer and Director of Engineering for ECS. He is responsible for the development and implementation of best practices for the engineering departments. He has extensive experience as a geotechnical and construction materials engineer and has performed geotechnical evaluations of hundreds of sites including the use of shallow and deep foundation systems, seismic site response, ground improvement techniques, reinforced earth design, and value engineering studies. He has worked extensively in the Coastal Plain, Piedmont and Blue Ridge geological settings of the eastern United States, as well as in central Mexico. Mr. Geiger has also managed hundreds of construction materials testing projects, as well as implementing geotechnical and structural instrumentation monitoring. He has performed hundreds of property condition assessments and has assisted in the preparation of our corporate PCA training materials. Mr. Geiger also serves as an expert witness for private and government entities.

REPRESENTATIVE EXPERIENCE:

- **GEOTECHNICAL ENGINEERING** - Mr. Geiger has performed hundreds of geotechnical explorations. He has determined field exploration requirements, directed drill crews, evaluated subsurface test data and prepared geotechnical recommendations. He has extensive experience with standard penetration testing, electronic cone penetration testing, pressuremeter testing, and geophysical methods of site exploration. Mr. Geiger has provided recommendations for shallow, deep and pile foundations, site improvement, ground modification alternatives, seismic site response, reinforced earth and value engineering.
- **MATERIALS TESTING** - Mr. Geiger has performed construction phase testing and observations and managed hundreds of construction and testing projects involving earthwork, foundations, structural masonry and concrete, pre-cast concrete, asphalt paving materials and structural steel. He has consulted with clients, architects and engineers in developing testing programs for all types of construction projects. He has managed testing programs for a variety of project types including IBC Special Inspections. He has reviewed construction testing reports, resolved problems related to construction materials and construction problems.

Stephen J. Geiger, P.E.
Page 2

- **FORENSIC ENGINEERING** - Mr. Geiger has managed thousands of materials engineering projects. He has developed testing programs to identify cause and design solutions for materials compatibility problems. He has resolved problems with moisture penetration through structures, concrete and asphalt failures, soils related distress, and masonry distress. Mr. Geiger has direct experience using non-invasive methods to evaluate poured in-place concrete, masonry and pre-cast concrete elements, including structural load testing.
- **PROPERTY CONDITION SURVEYS** - Mr. Geiger has performed over 100 property condition surveys for industrial, commercial, multi-family, resort, waterfront facilities, and institutional buildings. These surveys include evaluation of site improvements, building components, roofing, pavements, electrical systems, mechanical systems, HVAC systems, and ADA compliance.
- **PAVEMENT SYSTEMS** - Mr. Geiger has direct experience in the design of new pavements and rehabilitation of distressed pavements. These pavement systems include secondary public roadways, highways and airfield applications. Mr. Geiger has also performed numerous pavement condition surveys through destructive and non-destructive methods, providing recommendations for repair and upgrade of the pavement and managing the implementation of repairs.
- **EXPERT WITNESS** - Mr. Geiger has provided expert witness consultation and testimony for geotechnical and building materials distress claims. His clients range from private entities to attorneys to the Federal government.

BOB GALLAGHER'S AFFIDAVIT

EXHIBIT 6.1 1



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NC & SC
(919) 392-3935

EXHIBIT 4

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(407) 236-9134

April 9, 1993

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P.O. Box 2308
Pawleys Island, SC 29585
Attn: Rory Shellenburger

RE: Sandpiper B
Shipyard A&B

Mr. Shellenburger,

After our preliminary inspection of the concrete structural slabs at the properties Sandpiper B and Shipyard A&B, we recommend that a structural engineer further evaluate the cracking and spalling which is occurring in the pre-cast slabs and beams. After their investigation is complete, our company would then submit contracts for any repairs required and include pricing to apply a waterproof membrane to these areas to avoid future concrete problems.

If we can be of any assistance in this matter or review the project with the engineers, please contact us at your earliest convenience.

Sincerely,

Bob Gallagher
PROCON Waterproofing, Inc.

BG/sjl

EXHIBIT B

PROCON

WATERPROOFING, INC.

Corporate Office:
P.O. Box 4518
Wilmington, N.C. 28406
NC & SC
(919) 392-3935

EXHIBIT 5

Branch Office:
1133 Louisiana Avenue
Suite 100
Winter Park, Fla. 32789
(407) 236-9134

Waccamaw Management Co.
P.O. Box 2308
Pawleys Island, SC 29585
Attn: Mr. Thomas Crocker

March 9, 1994

RE: Litchfield By The Sea
Buildings A & B

Mr. Crocker,

After our discussion and my review of the Shipyard buildings, A&B on February 28th and March the 1st, the following information has been completed with regards to the exterior building repair, waterproofing and maintenance needs which are associated with these two buildings. The purpose of this information is to inform all parties involved the actual conditions found and to help establish an ongoing maintenance program.

Inspection of these buildings were to complete a preliminary on-site evaluation of each building to identify any existing or potential problems in the construction of the buildings which may be contributing to the deterioration of the buildings since they were waterproofed in 1990.

-REVIEW OF THE BUILDINGS-

As outlined in our letter dated November 15, 1993, these two buildings were waterproofed in 1990 by our company and are currently in the fourth year of the warranty period. The repair and waterproofing work completed during that time excluded all corridors.

During this evaluation of the building, we noted that all work which was completed in 1990 is performing as intended with no problems at this time. Observations of the ocean front windows did find that the metal end stop bead associated with the stucco system which was installed during the original construction over each floor band are beginning to deteriorate and rust. This bead can be seen along the top and bottom of each window and appears to be directly in contact with the aluminum window frame thus creating the deterioration through electrolysis.

-continued-

LARRY ELKINS 0497

When we inspected the same window locations on the north and south sides of the building, it appears that vinyl casing beads were used in this application, therefore these areas should not deteriorate like the ocean front. (See photo #1).

Our next inspection area was to evaluate the corridor walls, window units, concrete walk-ways and beams. Observations of the corridor lath and plaster stucco walls found that there are numerous areas where water and moisture can penetrate the wall system. Items such as no caulking around the perimeter of doors and windows, poor or deteriorated caulking at the wall to slab juncture and extensive cracks throughout the stucco system are all contributing to moisture entry. Effects of this moisture entry can be seen in the general deterioration and breakdown of the stucco materials and its components such as the rusted lath. More important however is the wood framing which the wall system is attached to. Wood rot and decay of the framing system can easily take place inside the cavity of these walls because once the moisture is inside, it often never dries out. Should this occur, extensive work would be required to correct such a problem. (See photos 2 through 9).

The next inspection area includes the structural concrete walk-ways and supporting beams. Observations of these areas found that the overall condition of the concrete itself is in generally good condition with a few isolated problems at or near the beams which should be evaluated by a structural engineer.

Actual concrete spalling is minor at this time. What is visually spalling off many of the beams is the stucco materials which were applied over the structural concrete. However, this does indicate that there is a stress problem at this juncture between the beam and slab above. Additionally, we observed that what appears to be a structural crack has formed in the beam as well as in the slab above. The location and repeated occurrence of these structural cracks may indicate that there is a structural problem where the corridors intersect.

Additional problems observed in the walk-ways include the total deterioration of the steel plates which are intended to bridge the juncture again where the corridors intersect. (See photos 10 through 18).

Also noted were the concrete rail stanchion holes where the rail system is anchored into the walk-way. Many of these stanchion holes were never completely filled and sealed. Water which now stands in the stanchion hole is lending to the corrosion of the rail and possibly the concrete re-enforcing rebar. (See photo #19).

Additional preventive maintenance measures to help protect the concrete from future deterioration should include the application of a protective waterproof deck coating material such as the

-continued-

LARRY ELKINS 0498

system recently applied at Sandpiper A. Balconies and corridors should be considered.

-SUMMARY-

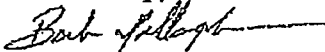
We recommend that all corridor stucco walls be repaired and waterproofed as soon as possible to prevent further deterioration of the construction materials related to these areas. The cost to complete all corridor walls on each building is approximately \$19,676.00 per building.

To address repairs and waterproofing needs associated with the structural concrete, walk-ways and beams should start with the engineering evaluation to ensure that if potential structural problems exist, they can be corrected properly. Once this evaluation is completed, our company can provide cost estimates for all related work.

Cost related to removing and replacing the rusted casing beads on the ocean front can be determined after a thorough inspection has been completed to insure that the window flashing has not been effected by the deteriorating beads.

Thank you for allowing PROCON Waterproofing, Inc. to assist you with this building inspections and evaluation. If possible, we would like the opportunity to meet with you and discuss this information in further detail and perhaps negotiate completing some of these repairs along with removing the existing T1-11 siding and replacing it with a new stucco wall system. In this manner, we could offer additional discounts on all contacts and allow you to save some moneys on these projects. If there are any questions, please call at your earliest convenience.

Sincerely,


Bob Gallagher
General Manager

BG/sjl

LARRY ELKINS 0499

Parades Preliminary Report
January 4, 2012

Procon was asked to inspect its waterproofing work in 1993. Procon submitted a report on its inspection dated April 17, 1993, see exhibit 4. In that letter, Procon advised the BOD of conditions noted in areas that had not been waterproofed and recommended a structural engineer be retained to conduct further investigations. The recommendation was never reported at any subsequent BOD meeting nor was the members advised at the 1993 Annual meeting.

In 1994, Procon was again asked to inspect its work done in 1990. Procon's report letter dated March 9, 1994, see Exhibit 5, again advised the BOD of observations of exposed rebar and spalling concrete recommending a structural engineer be engaged to investigate the cause. The letter was acknowledged being received at the March 11, 1994 BOD meeting and action was tabled, NEVER to appear on the agenda again. At the 1994 Annual meeting, once again there was no mention of the report from Procon.

Over the ensuing years, there were numerous reports of water intrusion to the BOD. For whatever reason, the BOD typically understated or downplayed the water intrusion when reporting at an Annual meeting or avoided taking appropriate action by advising owners that water intrusion was from windows and doors, which were an owner responsibility. While some water intrusion may have been around windows, the BOD knew or should have known there were many other sources of water intrusion.

Finally, in 2006 the BOD decided to confront the numerous reports of water intrusion and owner cries for help with window replacement problems by proposing an amendment to the Master Deed to make windows and doors, which were part of the building envelope, the maintenance responsibility of SVCOC. As discussed above, the proposed amendment was NOT approved by the membership. At approximately the same time, the BOD finally engaged a design professional to investigate the reported water intrusion problems with windows and doors to develop a solution and program to make these components of the building envelope water tight.

At the Annual meeting in April 2006, members were given a report on the reason for the proposed amendment. As was typical, no mention of the damage occurring due to water intrusion was provided to the members. The vote on the proposed amendment did NOT pass. Subsequently the BOD again tried to have the amendment passed by mail referendum (Consent). As the record clearly shows, the BOD knew or should have known that the effort to gain approval by unanimous consent, as required by Section 1.5 of the Bylaws, was NOT achieved. Despite its knowledge, the BOD reported to the membership that the amendment had passed. Further, as the record clearly shows the amendment as recorded was flawed in that it only included windows. This resulted in a corrective amendment being recorded to add doors without any vote by the membership.

The record shows that for the remainder of 2006, 2007 and early 2008, the BOD consulted with at least three different design professionals in further investigation of the extent of the damage to the property and Common Elements due to water intrusion from various sources since original construction in 1982. At the annual meeting on April 19, 2008, the members received the FIRST comprehensive report detailing the extent of the damage and an estimated repair cost of \$12-13 million.

Owners in Buildings C&D, upon learning of the extent of the damage and the BOD's intended course of action questioned the plan of action and validity of the window/door amendments. Several of these owners engaged legal counsel to review the documents supporting the alleged passage of the amendment. After extensive communication between the C&D owner's legal counsel and the BOD's legal counsel, there was no resolution to the question of whether the proposed amendment had been passed in accordance with the Master Deed and Bylaws. As such, legal action was initiated by the C&D owners against SVCOC in January 2009. In June 2009, the BOD presented a proposed funding plan involving special assessments to all owners for approval of the membership. The proposed special assessment was NOT approved. As a point of interest, the needed funding was included in the operating assessments for 2010 and 2011 and the cost of windows and doors for buildings A & B was billed directly to the A&B owners with a reservation of right by the BOD to re-bill a portion of the cost of windows and doors to the Buildings C & D owners depending on the outcome of the lawsuit by C&D owners against the BOD.

Shipyard Village COC
Maintenance Reserve Schedule

EXHIBIT 6

Repair/Replacement Cost over 30 years

Description	Est Useful Life	One Time Repl. Cost	Bldgs A & B	Bldgs C & D	Total
CONCRETE COMPONENTS:					
Sidewalks	60	\$59,500	\$17,850	\$17,850	\$35,700
Curbs & Gutters	60	\$91,180	\$28,254	\$28,254	\$56,508
Total		\$153,680	\$46,104	\$46,104	\$92,208
SITE IMPROVEMENTS:					
Seal coat asphalt	5	\$14,992	\$44,976	\$44,976	\$89,952
Asphalt mill & overlay	20	\$126,496	\$63,248	\$63,248	\$126,496
Beach access-bridge #1	15	\$19,950	\$19,950	\$19,950	\$39,900
Beach access-bridge #2	15	\$18,240	\$18,240	\$18,240	\$36,480
Bridge foundations	30	\$19,800	\$9,900	\$9,900	\$19,800
Exterior Wood Stairs	6	\$6,110	\$15,275	\$15,275	\$30,550
Total		\$205,588	\$171,589	\$171,589	\$343,178
SITE UTILITIES:					
Water Mains	10	\$13,300	\$19,950	\$19,950	\$39,900
Sewer Mains	10	\$4,800	\$7,200	\$7,200	\$14,400
Stormwater-structure & pipe	10	\$7,600	\$11,400	\$11,400	\$22,800
Dredge Retention Pond	20	\$10,500	\$5,250	\$5,250	\$10,500
Total		\$36,200	\$43,800	\$43,800	\$87,600
MISC SITE IMPROVEMENTS:					
Entrance Signs	10	\$2,000	\$3,000	\$3,000	\$6,000
Fountains	10	\$10,000	\$15,000	\$15,000	\$30,000
Mailboxes	35	\$22,400	\$11,200	\$11,200	\$22,400
Total		\$34,400	\$29,200	\$29,200	\$58,400
BUILDING EXTERIORS:					
Roofing Bldgs A & B	20	\$293,200	\$293,200		\$293,200
Roofing Bldgs C & D	20	\$360,000		\$360,000	\$360,000
Recoat with Allgard-Bldgs A & B	10	\$700,000	\$2,100,000		\$2,100,000
Recoat with Allgard-Bldgs C & D	10	\$400,000		\$1,200,000	\$1,200,000
Coat ceilings	5	\$80,000		\$480,000	\$480,000
Caulking	20	\$20,000		\$20,000	\$20,000
Total		\$1,853,200	\$2,393,200	\$2,060,000	\$4,453,200
WINDOWS/SLIDERS & CARPET:					
Windows & Sliders-Bldgs A & B	35	\$922,880	\$922,880		\$922,880
Windows & Sliders-Bldgs C & D	35	\$735,000		\$735,000	\$735,000
Corridor carpeting	9	\$74,000	\$111,000	\$111,000	\$222,000
Total		\$1,731,880	\$1,033,880	\$846,000	\$1,879,880
BUILDING SYSTEMS:					
Vent pipe-Bldgs A & B	10	\$64,000	\$192,000		\$192,000
Common area HVAC	6	\$3,000	\$7,500	\$7,500	\$15,000
Garage Sprinkler heads	25	\$10,000	\$5,000	\$5,000	\$10,000
Pumps & Compressors	5	\$1,000	\$3,000	\$3,000	\$6,000
Total		\$78,000	\$207,500	\$15,500	\$223,000

Shipyard Village COC
Maintenance Reserve Schedule

Description	Est. Useful Life	One Time Repl. Cost	Repair/Replacement Cost over 30 years		
			Bldgs A & B	Bldgs C & D	Total
ELEVATORS (one each building)	20	\$308,600	\$154,800	\$154,800	\$308,600
SWIMMING POOLS:					
Pool shell structure	60	\$318,500	\$0	\$0	\$0
Whitewash (plaster)	10	\$49,000	\$73,500	\$73,500	\$147,000
Spa whitewash	10	\$3,000	\$7,500	\$7,500	\$15,000
Pool Decks-woodcrete	10	\$14,000	\$21,000	\$21,000	\$42,000
Concrete decks	20	\$115,500	\$57,750	\$57,750	\$115,500
Pool pumps	5	\$5,400	\$2,700	\$2,700	\$5,400
Computer feeder	10	\$10,000	\$15,000	\$15,000	\$30,000
Pool Filters	10	\$5,400	\$8,100	\$8,100	\$16,200
Spa Heater	10	\$7,000	\$10,500	\$10,500	\$21,000
Pool Furniture	15	\$18,250	\$18,250	\$18,250	\$36,500
Pool house roof	50	\$30,000	\$0	\$0	\$0
Pool house refurbish	20	\$20,000	\$10,000	\$10,000	\$20,000
Perimeter fencing	60	\$28,600	\$0	\$0	\$0
Total		\$626,650	\$224,300	\$224,300	\$448,600
GRAND TOTALS		\$5,028,198	\$4,304,373	\$3,591,293	\$7,895,666

NOTES:

- The above information is taken from the Replacement Reserve Inventory in the Miller+Dodson Reserve Study
- Total cash needed for repairs/replacements over a 30 year period is allocated between Bldgs A & B (which are both the same) and Bldgs C & D (which are different from A & B)
- For identified assets whose estimated life is longer than 30 years, no funding was allocated.
- Based on the above, annual reserve funding should be:

Bldgs A & B	\$4,304,373	Divide by 30	\$143,479
Bldgs C & D	\$3,591,293	Divide by 30	\$119,710

Total Straight line Total \$263,189

Shipyard Village Co/C
Historical Reserve Fund Activity
EXHIBIT 7

FYE	Reg. Bal	Reg. Funding	Sp. Assmnts	Other Funding	Total Funding	Expenditures	End Bal
FYE 12/31/83	\$0	\$20,153			\$20,153	\$0	\$20,153
FYE 12/31/84	\$20,153	\$20,153			\$20,153	\$0	\$40,306
FYE 12/31/85	\$40,306	\$20,153			\$20,153	\$0	\$60,459
FYE 12/31/86	\$60,459	\$22,128			\$22,128	\$0	\$82,587
FYE 12/31/87	\$82,587	\$23,647			\$23,647	\$0	\$106,234
FYE 12/31/88	\$106,234	\$31,006			\$31,006	\$0	\$137,240
FYE 12/31/89	\$137,240	\$32,043		\$786,334	\$818,377	\$634,421	\$321,196
FYE 12/31/90	\$321,196	\$34,896			\$34,896	\$0	\$356,092
FYE 12/31/91	\$356,092	\$44,314			\$44,314	\$339,420	\$60,986
FYE 12/31/92	\$60,986	\$52,467			\$52,467	\$14,338	\$99,115
FYE 12/31/93	\$99,115	\$52,467			\$52,467	\$68,215	\$83,367
FYE 12/31/94	\$83,367	\$59,629	\$80,000		\$139,629	\$98,932	\$124,064
FYE 12/31/95	\$124,064	\$59,629			\$59,629	\$62,222	\$121,471
FYE 12/31/96	\$121,471	\$60,983		\$162,888	\$223,871	\$334,602	\$10,740
FYE 12/31/97	\$10,740	\$60,983	\$73,600		\$134,583	\$77,903	\$67,420
FYE 12/31/98	\$67,420	\$65,217		\$1,304	\$66,521	\$130,497	\$3,444

Shipyard Village Co/C
Historical Reserve Fund Activity

FYE	Reg. Bal.	Reg. Funding	Sp. Assmnts	Other Funding	Total Funding	Expenditures	End. Bal
FYE 12/31/99	\$3,444	\$107,423	\$216,430	\$33,739	\$357,592	\$231,402	\$125,634
FYE 12/31/00	\$125,634	\$105,893		\$12,969	\$119,862	\$205,190	\$40,306
FYE 12/31/01	\$40,306	\$132,774	\$252,998	\$15,220	\$401,092	\$228,241	\$212,157
FYE 12/31/02	\$212,157	Missing financial reports for FYE 2002, ending balance is from FYE 12/31/03 Audit					\$299,552
FYE 12/31/03	\$299,552	\$132,264			\$132,264	\$80,376	\$351,440
FYE 12/31/04	\$331,440	\$120,612		\$4,109	\$124,721	\$212,826	\$263,335
FYE 12/31/05	\$263,335	\$250,008		\$239,659	\$489,667	\$418,655	\$334,347
FYE 12/31/06	\$334,347	\$283,395	\$32,392	\$2,387,393	\$2,703,180	\$1,318,033	\$1,719,494
FYE 12/31/07	\$1,719,494	\$274,087		\$91,825	\$365,912	\$385,330	\$1,700,076
FYE 12/31/08	\$1,700,076	\$274,087		\$100,710	\$374,797	\$306,525	\$1,768,348
FYE 12/31/09	\$1,768,348	\$274,087		\$58,740	\$312,827	\$291,743	\$1,789,432
FYE 12/31/10	\$1,789,432						

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2009-CP-22-01655

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider, William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis R Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trustee of the Mary M. Nisbet Trust Agreement dated November 16, 1998; Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H Sanders and Rebecca H Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serra, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan J. Mann and Angela M. Mann; Michael Cameron Foster, Sr. and Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Ernest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A.

McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanic S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood, and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame, ... Respondents,

v.

Shipyard Village Council of Co-Owners, Inc., ... Appellant.

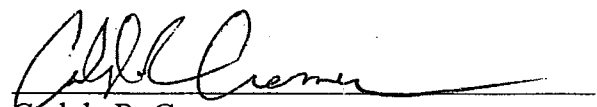
Shipyard Village Council of Co-Owners, Inc., ... Third-Party Plaintiff,

v.

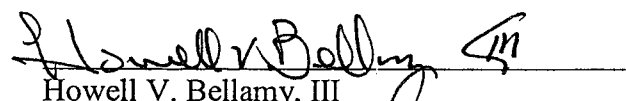
Cincinnati Insurance Company, Travelers Insurance Company, Companion Property & Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American Guarantee and Liability Ins. Co., St. Paul Fire and Marine Insurance Company, and Illinois National Insurance Company, ... Third-Party Defendants.

RULE 212(b), SCACR, CERTIFICATION

The undersigned, attorney for Appellant Shipyard Village Council of Co-Owners, Inc., and attorney for Respondents, Richard A. Fisher, Platte B. Moring, Jr., et al., certifies, pursuant to Rule 212(b), SCACR, that both parties consent to supplement the Record on Appeal in accordance with the appendix for the supplemental materials.


Carlyle R. Cromer

Attorney for Appellant


Howell V. Bellamy, III

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2009-CP-22-01655

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider, William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis R Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trustee of the Mary M. Nisbet Trust Agreement dated November 16, 1998; Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H Sanders and Rebecca H Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serra, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan J. Mann and Angela M. Mann; Michael Cameron Foster, Sr. and Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Ernest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A.

McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood, and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame, ... Respondents,

v.

Shipyard Village Council of Co-Owners, Inc., ... Appellant.

Shipyard Village Council of Co-Owners, Inc., ... Third-Party Plaintiff,

v.

Cincinnati Insurance Company, Travelers Insurance Company, Companion Property & Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American Guarantee and Liability Ins. Co., St. Paul Fire and Marine Insurance Company, and Illinois National Insurance Company, ... Third-Party Defendants.

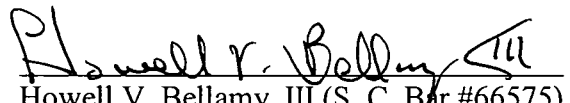
PROOF OF SERVICE OF SUPPLEMENTAL RECORD ON APPEAL

The undersigned hereby certifies that he has this day served the Supplemental Record on Appeal on the Appellant's counsel of record by Hand Delivery a copy of same addressed to their attorneys of record at the addresses listed below:

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EPPS, GRAVELY & BOWERS, P.A.


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August 1, 2013