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JUL 09 2013
SC Court of Appeals

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SC Court of Appeals

v.

Appellate Case No. 2012-212861

RECORD ON APPEAL

Clifford L. Welsh, Esquire
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North Myrtle Beach, SC 29578
(843) 249-1441
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Be Mi, Inc., d/b/a
St. Clements Bar and Grill

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Be Mi, Inc. d/b/a St. Clements Beach Bar & Grill,	)	Docket No: 11-ALJ-17-0546-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	FINAL ORDER AND DECISION
South Carolina Department of Revenue,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
St. Clements Homeowners Association,	)	
	)	
Intervenor.	)	
	)	

APPEARANCES: For the Petitioner: Kenneth E. Allen, Esquire
For the Respondent: Kathryn R. Brown, Esquire
For the Intervenor: James J. Corbett, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") for a final order and decision following a request for a contested case hearing submitted by Be-Mi, Inc., d/b/a St. Clements Beach Bar & Grill ("Petitioner") on October 27, 2011. On May 18, 2011, the Petitioner made application to the South Carolina Department of Revenue ("Respondent" or "Department") for renewal of its on-premises beer and wine permit and restaurant liquor by the drink license pursuant to S.C Code Ann. §§ 61-4-500 et seq. and 61-6-1600 et seq. for the location at 202 70th Avenue North, Myrtle Beach, South Carolina 29572.

FILED

June 5, 2012

SC ADMIN. LAW COURT

Following review of the application and a standard investigation of the location by the South Carolina Law Enforcement Division ("SLED"), the Department notified Petitioner by letter dated May 24, 2011 that the application was denied based on its receipt of a valid public protest and Petitioner's failure to be engaged primarily and substantially in the preparation and service of meals. Pursuant to a letter dated June 9, 2011, the Petitioner timely protested the Department's denial of the application, and on September 30, 2011, the Department issued a Department Determination confirming the application's denial for the reasons recited in its earlier correspondence. However, the Department gave Petitioner an opportunity to cure certain deficiencies noted in SLED's inspection report. On November 21, 2011, the Department received notice from SLED that it conducted a follow-up inspection of the location and determined that the location met the requirements for the restaurant liquor by the drink license.

Thereafter, the Department withdrew its decision denying Petitioner's application due to Petitioner's failure to be engaged primarily and substantially in the preparation of meals.¹ The Department however determined that the license and permit must still be denied based on the Department's receipt of a valid public protest from St. Clements Homeowners Association ("St. Clements HOA" or "HOA"). Specifically, on April 1, 2011, St. Clements HOA filed a written protest with the Department objecting to the renewal of the permit and license which were scheduled to expire on May 31, 2011. In accordance with S.C. Code Ann. §§ 61-4-525 and 61-6-1825 upon receipt of a timely and valid public protest, the Department must deny the application and refer the matter to the ALC. On May 24, 2011, the Department notified Petitioner that the application was denied and informed Petitioner of the right to protest the denial. By letter to the Department dated June 9, 2011, the Petitioner protested the application's denial, and on November 30, 2011, the Department issued an Amended Department Determination confirming the denial. Petitioner filed a request for Contested Case Hearing with this Court on October 27, 2011 to contest the Department's denial of its application. On

¹ The Department initially denied the Petitioner's application for renewal based on the valid public protest as well as the Petitioner's failure to be engaged primarily and substantially in the preparation and service of meals as required by S.C. Code Ann. §§ 61-6-1610 and 61-6-20. However, after giving the Petitioner an opportunity to cure the deficiencies, SLED performed a follow-up inspection and informed the Department on November 21, 2011 that the Petitioner had met all statutory requirements for licensure. Subsequently, in an Amended Department Determination filed December 1, 2011, the Department withdrew the part of its denial that was based on the Petitioner's failure to meet the requirements of S.C. Code Ann. §§ 61-6-1610 and 61-6-20.

December 12, 2011, St. Clements HOA filed a motion with the Court seeking intervenor status. The motion was granted on December 22, 2011.

After notice to the parties, a hearing in the matter was held on January 4, 2012 at the South Carolina Administrative Law Court in Columbia, South Carolina. The Court was informed at the outset that the parties were in agreement that St. Clements HOA was not protesting the renewal of Petitioner's on-premises beer and wine permit. Therefore, the sole issue before the Court is whether or not Petitioner meets the "restaurant requirements" for a liquor by the drink license as set forth in S.C. Code Ann. §§ 61-6-20(2) and 61-6-1610 (2009) and S.C. Code of Regs. § 7-401.3.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing, and taking into consideration the burden of proof and credibility of the witnesses, this Court makes the following findings of fact by a preponderance of the evidence:

Raymond Goude is the sole owner and officer of the Petitioner, Be Mi, Inc., d/b/a St. Clements Beach Bar & Grill, which is located in Horry County at 202 70th Avenue North, Myrtle Beach, South Carolina. The location has been licensed to sell beer, wine and liquor for more than twenty (20) years, and is a seasonal business that opens in March and closes in October. Mr. Goude operates the St. Clements Bar & Grill from a one (1) story commercial oceanfront condominium unit with an attached covered wooden deck. The unit is poolside and is located near an access point to the beach. Because it is part of the St. Clements Beach Condominiums/Hotel, the unit is governed by the Master Deed of the St. Clements HOA.

Mr. Goude testified that in the early years, the then developer/HOA gave him permission to open the bar and grill at the location. While other condominiums in the St. Clements complex have balconies the developer gave Petitioner permission to expand the bar and grill by adding a covered wooden deck to the unit. When SLED did their initial investigation in response to the renewal application, the agent's report indicated that the Petitioner did not meet restaurant requirements because there were not sufficient tables and chairs to provide seating for forty (40) customers, and there was also a question of whether the location had adequate food storage. However, during a subsequent inspection, SLED determined that there was adequate seating and food storage at the location to meet restaurant requirements. SLED's subsequent report indicated

that Petitioner had twenty-one (21) cubic feet of cold storage, as required for a liquor license, and seating for at least forty (40) patrons.

According to Mr. Goude, at least twenty (20) chairs are set around five (5) tables on the covered deck, and there are additional tables and eighteen (18) chairs on the rooftop. He also explained that there is bar stool space for four (4) to six (6) patrons at a wide rail on the edge of the deck structure. This area is not in the covered deck area but outside in the common area. However, Mr. Goude explained that the bar stools can easily be moved out of the common area by placing them on the other side of the wide rail.

Barbara Brown testified on behalf of the Intervenor. Ms. Brown is a long time unit owner, member of the St. Clements HOA, and was also a HOA Board Member. She testified that it is the position of the HOA that the seats under the covered deck built by Mr. Goude are actually common area seats, and are located on top of two (2) parking spaces owned by the HOA. According to Ms. Brown, one could not reasonably fit more than four (4) tables and sixteen (16) chairs in the covered deck area, and the bar stools Mr. Goude contend are additional seating are on other common area and are not at tables. Ms. Brown also contends that the rooftop could only accommodate sixteen (16) seats for normal and reasonable use.

According to both Petitioner and Intervenor, the Intervenor filed an action in Circuit Court seeking removal of the wooden deck. The Master-In-Equity ruled in Petitioner's favor and that ruling is being appealed. However, at present, the deck and seating arrangement described by Mr. Goude, and in the SLED report, remains in place. The Petitioner and Intervenor both introduced numerous photographs of the location.

LAW

Based upon the Findings of Fact, the Court concludes the following as a matter of law:

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to §§ 1-23-310 et seq., § 1-23-600(B), and § 61-2-260. "[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed[.]" Palmer v. S.C. Alcoholic Beverage Control Comm'n, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984); see also Wall v. S.C. Alcoholic Beverage Control Comm'n, 269 S.C. 13, 235 S.E.2d 806 (1977).

The weight and credibility assigned to evidence presented at the hearing of a matter is

within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

The standard of proof in these administrative proceedings is a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1988). Permits and licenses issued by this State for the sale of liquor, beer, and wine are privileges to be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. See Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943).

In order to hold a restaurant liquor by the drink license, an establishment must be "bona fide engaged primarily and substantially in the preparation and serving of meals." S.C. Code § 61-6-1610(A)(1). This requirement has been defined in S.C. Code § 61-6-20(2) to mean, in part, an establishment that "provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals..."

After careful review of the evidence, I find that the Petitioner has met its burden of proof in establishing that it meets all the statutory requirements for renewal of the liquor by the drink license for this location. The Court is cognizant of the concerns raised by the Intervenor, and is aware that should the Intervenor prevail on its appeal of the Circuit Court case, the Petitioner would have to remove the covered deck, and could lose the ability to comply with the seating requirements. However, the issue before this Court concerns the current condition of the location, and I find from the evidence presented that the Petitioner has sufficient space under his control to provide seating for "forty persons simultaneously at tables for the service of meals."

Furthermore, the SLED agent who conducted the compliance investigation reported that at the time of the inspection, the Petitioner's food inventory consisted of: "23 lbs. of chicken, 10 lbs. of flounder, 10 lbs. of onion rings, 15 lbs. of french fries, a combination of five packs of bread including hamburger and hot dog buns, 5 lbs. of cheese stixs, 10 lbs. of chicken wings, 25 corn dogs, 80 count hot dog wieners, and 40 count hamburger patties." The agent also reported that the location has twenty-one (21) cubic feet of cold storage. The Intervenor did not contest this portion of the SLED compliance investigation.

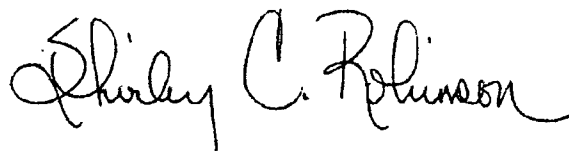
ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS THEREFORE ORDERED that the Petitioner's application for renewal of the restaurant liquor by the drink license is **APPROVED**.

IT IS FURTHER ORDERED that the Department shall continue to process Petitioner's renewal application and issue the license upon the satisfaction of all administrative requirements.

AND IT IS SO ORDERED.

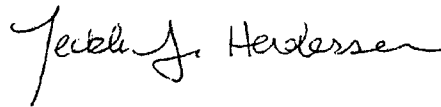
A handwritten signature in black ink, reading "Shirley C. Robinson". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

SHIRLEY C. ROBINSON
Administrative Law Judge

June 5, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Teckla S. Henderson, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Teckla S. Henderson
Judicial Law Clerk to
The Honorable Shirley C. Robinson

June 5, 2012
Columbia, South Carolina

FILED

June 5, 2012

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Be Mi, Inc. d/b/a St. Clements Beach Bar & Grill,)

Docket No: 11-ALJ-17-0546-CC

Petitioner,)

vs.)

South Carolina Department of Revenue,)

**ORDER DENYING INTERVENOR'S
MOTION FOR RECONSIDERATION**

Respondent,)

and)

St. Clements Homeowners Association,)

Intervenor.)

This matter came before the undersigned as a result of above-Petitioner's Request for Contested Case Hearing filed with the South Carolina Administrative Law Court ("Court" or "ALC") on October 27, 2011. The Petitioner requested a hearing before the ALC to contest the above-Respondent's denial of the Petitioner's application for renewal of its restaurant liquor by the drink license. Thereafter, St. Clements Homeowners Association ("Intervenor") filed a motion with the Court requesting intervenor status. The motion was granted on December 22, 2011. On January 4, 2011, this Court conducted a hearing in the matter, and the Final Order and Decision of the Court was issued on June 5, 2012. In the Order, the Court determined that Petitioner satisfied the statutory requirements for renewal of the license, and directed Respondent to process the application and issue the license.

On June 19, 2012, the Intervenor filed a motion requesting that the Court reconsider the Order issued on June 5, 2012. The Intervenor argues in the motion that the Petitioner failed to establish that there is sufficient space under Petitioner's exclusive control to provide seating for "40 persons simultaneously at tables for the service of meals" as required by S.C. Code Ann. § 61-6-1610 and defined by S.C. Code Ann. § 61-2-20(2). Petitioner filed a response opposing the Intervenor's motion on June 28, 2012.

FILED

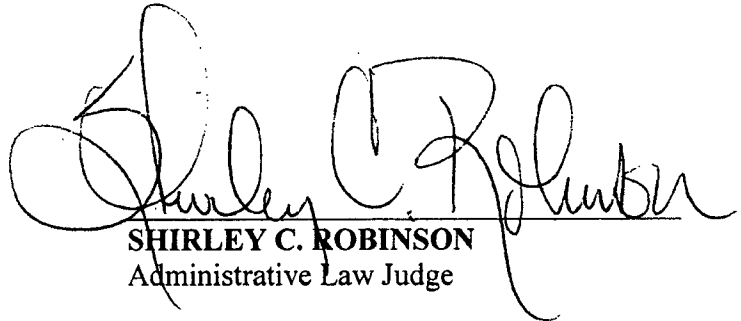
JUL 30 2012

SC ADMIN. LAW COURT

Following careful review of the arguments presented in the Intervenor's motion and the Petitioner's opposing argument, I find that the motion should be denied. Specifically, there is ongoing litigation involving the Petitioner's use of "common area", which Petitioner includes for purposes of satisfying the statutory seating requirement, and until the Intervenor prevails in that case, the Petitioner meets the minimum licensing requirements.

THEREFORE, IT IS HEREBY ORDERED that Intervenor's Motion for Reconsideration is denied.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

July 30, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 30 day of July 2012
By: Joseph Henderson
Judicial Law Clerk

Be Mi, Inc., d/b/a St. Clements Beach Bar
& Grill,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

AGENCY INFORMATION SHEET
and
NOTICE OF APPEARANCE
DOCKET NO. 11-ALJ-17-0546-CC

- Be Mi, Inc.**
d/b/a St. Clements Beach Bar & Grill
202 70th Ave. N.
Myrtle Beach, SC 29572
File No. 32014935-PBW and 32014935-PLB
S.C. Code Ann. §§61-4-520; 61-4-525; 61-6-1820; 61-6-1825

- See Final Determination dated September 30, 2011.

- For Respondent:
S.C. Department of Revenue
Kathryn R. Brown
Sean G. Ryan
Harry T. Cooper, Jr.
Milton G. Kimpson
P.O. Box 12265
Columbia, S.C. 29211
(803) 898-5764

- 010

James J. Corbett, Esq.
PO Box 11006
Columbia, SC 29211
(803) 765-2968

(on behalf of St. Clements Homeowners Assoc.)

Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned is authorized to and will be representing the above named agency in this matter. Further, by my signature below, I certify that a copy of this information sheet has been served on all parties, and/or protestants (without enclosures) by first class mail on the date shown below.

November 22, 2011



Kathryn R. Brown (Bar No. 78399)
Counsel for Litigation

Sean G. Ryan (Bar No. 76585)

Managing Counsel for Litigation

Harry T. Cooper, Jr. (Bar No. 1383)

Deputy Director

Milton G. Kimpson (Bar No. 7917)

General Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211

803-898-5764

Attorneys for S.C. Department of Revenue

Brownk@sctax.org

courtorders@sctax.org

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Be Mi, Inc., d/b/a St. Clements Beach Bar)
& Grill,)

Petitioner,)

vs.)

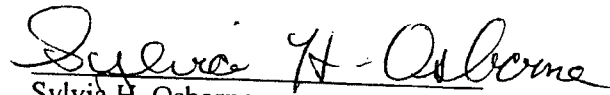
South Carolina Department of Revenue,)

Respondent,)
_____)

DOCKET NO. 11-ALJ-17-0546-CC

SOUTH CAROLINA DEPARTMENT
OF REVENUE
CERTIFICATION OF DOCUMENTS

I, Sylvia H. Osborne, an employee of the South Carolina Department of Revenue, do hereby certify that the attached documents, numbered 1 through 58 in the case, Be Mi, Inc., d/b/a St. Clements Beach Bar & Grill v. South Carolina Department of Revenue, Docket No. 11-ALJ-17-0546-CC, are hereby certified by this Certificate as true and correct copies of the original documents maintained by the South Carolina Department of Revenue in connection with its statutory responsibilities pertaining to the issuance of alcohol licenses and beer and wine permits. Certified this 22nd day of November, 2011.



Sylvia H. Osborne
Administrative Assistant
Office of General Counsel for Litigation
South Carolina Department of Revenue

DOR FILE

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1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 10/20/09)
4278

Renew and pay online. Go to www.scbos.sc.gov

Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907

Renewal Due Date: 30-APR-2011 ****Renewal Fee** 600.00

License Type 1622271-PBW

1. **Mailing Name and Address**

Any change of address should be noted to the right of the old address.

ACABL 1801071008



ST CLEMENTS BEACH BAR & GRILL
312 70TH AVE N
MYRTLE BEACH SC 29572-3610

For Office Use Only

▶ **File Number** 320149353

▶ **License Period Ending** 05/31/2013

▶ **DLN**

▶ **DLN**

▶ 1040039610002 400.00

▶ 3040039739000 200.00

2. A. **Owner/Corporate Name** BE MI INC

(If Liquor Producer Rep., indicate the company you represent)

Federal ID # *****

B. **Licensee**

(If Sole Proprietor)

Social Security #

C. **Retail Sales Tax License #** 026506442

3. **Trade Name (If Applicable)** ST CLEMENTS BEACH BAR & GRILL (REQUIRED)

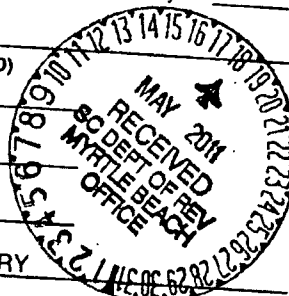
4. **Business Address** 202 70TH AVE N

MYRTLE BEACH, SC 295723608

Ownership Type DC

County HORRY

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____



6. **YOU MUST COMPLETE THE CONSENT AND WAIVER SECTION ON THE BACK OF THIS FORM, AND THE ATTACHED ABL-577, IF SOLE PROP.; IF OTHER THAN SOLE PROP., COMPLETE ATTACHED ABL-920 FOR ALL PRINCIPALS.**

7. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

8. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. **You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly.**
*Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

R. M. G. G. G.
(Signature of applicant)

Date

Telephone number from 8 am to 5 pm

**61-6-120B: An applicant for license renewal or for a new license at an existing location shall pay a five dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

42781021

RECEIVED

MAY 19 2011

SCDOR ABL SECTION
BEVERAGE LICENSING

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
ABL RENEWAL FORM

ABL-565
(Rev. 10/20/09)
4278

Renew and pay online. Go to www.scbos.sc.gov

Mail to: SCDOR, ABL Section, Columbia, SC 29214-0907

Renewal Due Date: 30-APR-2011 **Renewal Fee 1,705.00

License Type 1622271-PLB

1. Mailing Name and Address

Any change of address should be noted to the right of the old address.

ACABL 1801071008



ST CLEMENTS BEACH BAR & GRILL
312 70TH AVE N
MYRTLE BEACH SC 29572-3610

For Office Use Only

▶ File Number 320149353

▶ License Period Ending 05/31/2013

▶ DLN

▶ DLN

▶ 1040039510012 1,505.00

▶ 3040039739100 200.00

2. A. Owner/Corporate Name BE MI INC

(If Liquor Producer Rep., indicate the company you represent)

B. Licensee

(If Sole Proprietor)

C. Retail Sales Tax License # 026506442

Federal ID # *****

Social Security # _____

3. Trade Name (If Applicable) ST CLEMENTS BEACH BAR & GRILL (REQUIRED)

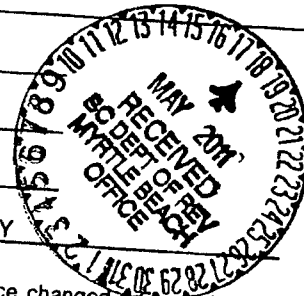
4. Business Address 202 70TH AVE N

MYRTLE BEACH, SC 295723608

Ownership Type DC

County HORRY

5. If there is a change in your location's address, check why: () U.S. Postal Service changed address () Moved location of business () Other - Explain: _____



6. YOU MUST COMPLETE THE CONSENT AND WAIVER SECTION ON THE BACK OF THIS FORM, AND THE ATTACHED ABL-577, IF SOLE PROP.; IF OTHER THAN SOLE PROP., COMPLETE ATTACHED ABL-920 FOR ALL PRINCIPALS.

7. Have you, any partner, any principal, or any employee with day-to-day management responsibilities ever been convicted of a crime? ☐ Yes ☒ No If "yes", give details: _____

8. Review and sign this application. Return it with the appropriate renewal fee. If this application with the appropriate fee is not received by the S.C. Department of Revenue prior to the expiration date shown above, you must pay a filing fee along with the license fee. If your renewal is late, you may be required to file an application for a new license, publish a newspaper notice of your application, and wait on a SLED investigation. You must cease all sales of beer, wine, or liquor upon the expiration of your license, and may not resume sales until you receive your new license. Therefore, file your renewal application promptly. *Note: For faster processing renew online. (See information sheet attached for instructions for online renewing www.SCBOS.SC.GOV).

By signing this application, I certify that all the information listed above is correct.

Raymond L. Goulet
(Signature of applicant)

Date

Telephone number from 8 am to 5 pm

**61-120B: An applicant for license renewal or for a new license at an existing location shall pay a five dollar certification fee to determine if the exemptions provided for in subsection (A) apply. Subsection A refers to the distance requirements for retail liquor stores, business liquor by the drink and nonprofit private club liquor by the drink licenses.

RECEIVED
MAY 19 2011
SCDOR ALCOHOLIC
BEVERAGE LICENSING
000002

42781021

CONSENT AND WAIVER
ABL-946 Rev. 11/19/09

BE MI INC

Name of Corporation, Partnership, LLC, etc.

FEI

File
Number: 32014935-3

S.C. Code Ann. Section 61-2-160 prohibits the issuance of any permit or license under Title 61 unless the Department determines that the applicant does not owe the State any delinquent taxes, penalties or interest. The signature(s) below authorizes the S.C. Department of Revenue, pursuant to the provisions of S.C. Code Ann. Section 12-54-240 and 30-2-10, et seq., to release to any party, person or entity, law enforcement request(s) for purposes of processing this application or responding to questions related thereto, including but not limited to an information related to problems with the application, reasons for denial, delinquent taxes, outstanding liabilities, failure to file returns, penalties and interest. The signature below also authorizes S.C. Law Enforcement Division (SLED) to check, examine and release to the Department of Revenue the criminal history record of the person(s) having signed below. If an application is made for a license or permit by a person other than an individual, all principals are deemed to be the applicant. S.C. Code Ann. Section 61-2-100(C). All principals of the applicant are therefore required to be disclosed to the Department of Revenue.

SOCIAL SECURITY DISCLOSURE

"In compliance with the Federal Privacy Act of 1974, the disclosure of an individual's social security number on this form is mandatory". SC regulation 117-201 provides that any person required to make a return, statement or document to the Department must include identifying numbers on such return, statement or document if the Department requests such information. Social security numbers are primarily used for the purposes of identifying taxpayers and monitoring tax compliance and/or fraud."

1 - 12 is a list of principal types. Each principal type must complete and sign a box below. If a required principal does not sign, this application will be denied.

Principal Types:

1. The owner (if sole proprietorship);
2. All officers of the business or entity which owns the business;
3. All partners (limited partners that cannot exercise management control need not sign);
4. All persons who own twenty-five percent (25%) or more of the value of the business or entity;
5. All persons who own twenty-five percent (25%) or more of the combined voting power of the business or entity;
6. Members and Managers of a limited liability company which is managed by managers;
7. Members of a limited liability company which is not managed by managers;
8. Any fiduciary who manages, controls title, or is otherwise in control of the business;
9. All employees who will have day-to-day operational management responsibility for the business or entity;
10. If a publicly traded corporation, the designated license holder (designated agent) (must be a resident of S.C.);
11. All other principals must be listed also. If not a publicly traded corporation, list all stockholders;
12. If a nonprofit organization, list all officers and directors of the organization.



Name Raymond P. Gough
Home Address 312 70th AVE. N.
City MYRTLE BEACH State SC Zip 29572
Yr/Mo/Date of SC Residency 5-18-1953 Sex MALE Race WHITE Date of Birth 5-18-1953
Social Security No. [REDACTED] Federal Employer Identification No. [REDACTED]
Principal/Type: (use above #1-12) 2 % of ownership 100% Signature Raymond P. Gough

971 Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors? ☐ Yes ☒ No If yes, attach explanation.
Have you been convicted of a crime in South Carolina or any other state? ☐ Yes ☒ No If yes, attach explanation.

Additional Space on Back.

44221018

RECEIVED

MAY 19 2011

SCDOR ALCOHOLIC
BEVERAGE PERMITS
0000003

St. Clements Beach, Bar & Grill

202 7th Ave N.

Myrtle Beach, S.C.

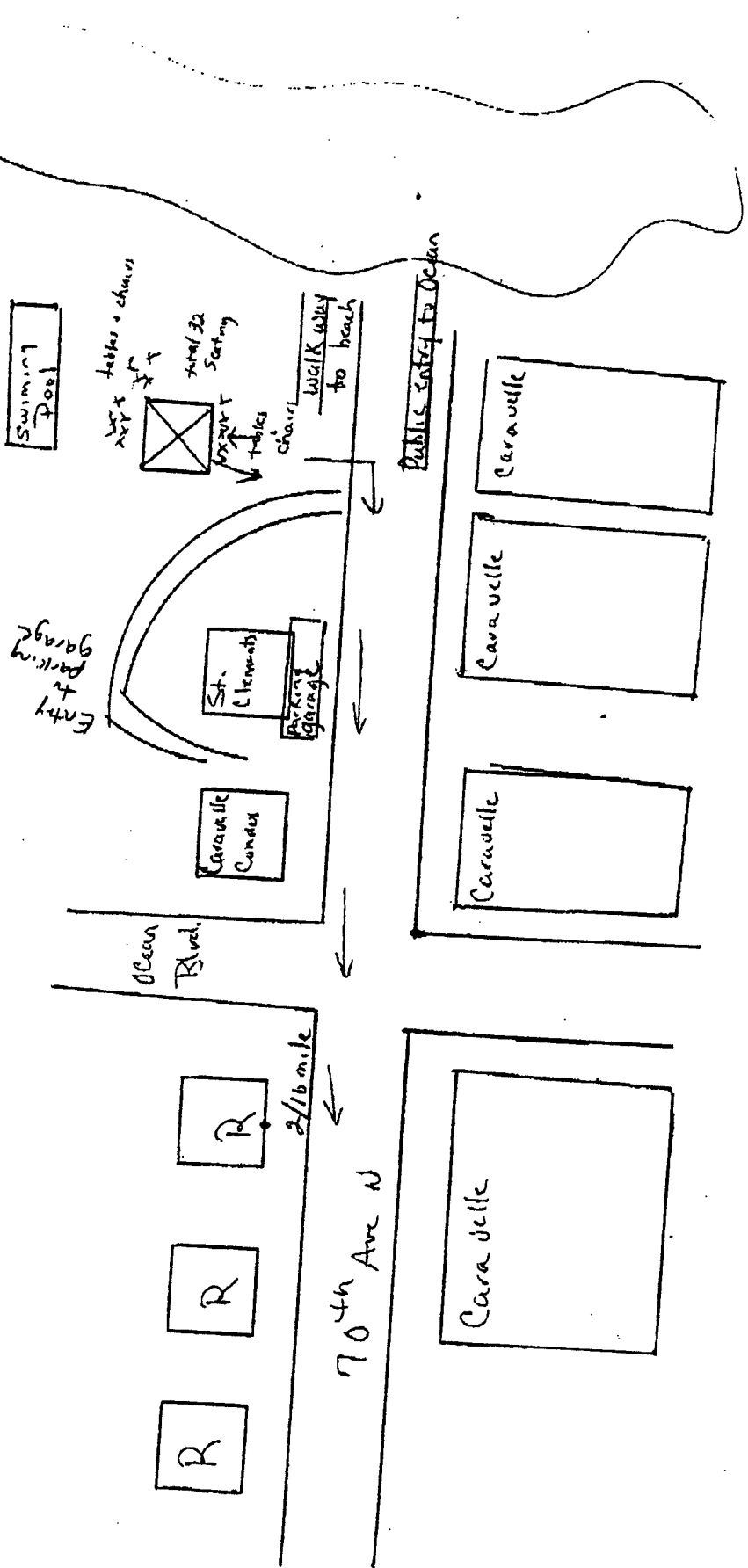
File # 32014935

Date of Map 08/11/11

SSA D.A. Rodgers

"Not drawn to scale"

001



MYRTLE222

07/20/2010 16:23 FAX 18436260168

000000

Sylvia Osborne

From: Rodgers, Debra <drodgers@sled.sc.gov> 609-3061
Sent: Monday, November 21, 2011 8:46 AM
To: Sylvia Osborne
Cc: Green, Delores
Subject: St. Clements 32014935 Final Inspection

This location's food inventory consists of 23 lbs of chicken, 10 lbs of flounder, 10 lbs of onion rings, 15 lbs of French fries, a combination of five packs of bread including hamburger and hot dog buns, 5 lbs of cheese stixs, 10 lbs of chicken wings, 25 corn dogs, 80 count hot dog wieners, and 40 count hamburger patties. Seating for this location include 20 chairs at tables and two bar stools not at the bar, in an area of location that can be covered with a pull down canvass instead of a wall. There are 6 bar stools at the serving windows, and 14 chairs at tables in a common area. TP said that the chairs in the common area was not purchased by him. They were purchased by the HOC (Home Owners Association) and he is a member of that association so he is using the chairs. Seating for the common area are not covered by the pull down canvass. On the roof of this location there is seating for 18 customers at tables. Bathroom for this location is 40 feet away from the location inside the hotel. A combination lock is on the door to get in. Customers will have to secure the combination from employee to get in or will have to know where the combination is written on the wall of location.

Debra A. Rodgers
Sled Alcohol Licensing Unit
Columbia, S.C. 29221

Life is not about waiting for the storm to pass,
it's about learning how to dance in the rain

Sylvia Osborne

From: Rodgers, Debra <drodgers@sled.sc.gov>
Sent: Tuesday, November 22, 2011 9:18 AM
To: Sylvia Osborne
Subject: St clements

This location has the 21 cubic ft cold storage as required for liquor license

Sylvia Osborne

From: Rodgers, Debra <drodgers@sled.sc.gov>
Sent: Tuesday, August 16, 2011 8:35 AM
To: ObornS@sctax.org
Subject: 32019925 St. Clements Beach Bar & Grill

This location is a kiosk operating on the pool deck of St. Clements Condos. It is very small inside. Three 4 cubic foot refrigerators, two sitting on top of each other and the other sitting on top of a shelf serves as cold storage. The kiosk is equipped with a grill. The location food menu is very extensive but little food is kept on the premises. TP Luke Loude says he lives right across the street from location and stores his food for the location at his house. He says he has a freezer where he stores the food there. He also says that he makes several trips there a day to get food. Inventory of food at location is 10 lbs of onion rings, 10 lbs. of French fries, 4 pre-packed pizzas, 10lbs. breaded chicken fingers, three bags of cheese stixs, several hotdog wieners in a plastic ziploc bowl. Five pre-packed corn dogs in a plastic ziploc bowl and 8 hamburgers in a ziploc bag. There are 36 plastic beach chairs sitting between the pool and location.

LAW OFFICES
HOLLER, DENNIS, CORBETT, ORMOND, PLANTE & GARNER

1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
• Steven D. Dennis
Everett Hope Garner
James J. Corbett
• J. Charles Ormond, Jr.
• Anthony R. Plante
• Certified Mediator S.C.

Of Counsel
Stanley G. Freeman

Reply To
Post Office Box 11006
Columbia, S.C. 29211

April 1, 2011

VIA HAND DELIVERY AND MAIL

South Carolina Department of Revenue
Division of Alcohol Beverage Control
301 Gervais St.
Columbia, SC 29201

RE: St. Clements Bar & Grill/BE-MI, Inc. (320149353)

Dear Sir/Madam:

I represent the St. Clements Homeowners Association which is protesting the license currently held by BE-MI, Inc., or St. Clements Beach Bar & Grill in Myrtle Beach, Horry County, South Carolina. St. Clements Homeowners Association Board can be reach through me and/or Board Member and Vice President Barbara Brown, 7602 Coatswood Drive, Myrtle Beach, SC 29572-4150. The permit holders name is BE-MI, Inc., through Raymond L. Goude whose address is listed on the original permit as 202 76th Avenue North, Myrtle Beach, South Carolina, with a mailing address of 406-0 74th Avenue North, Myrtle Beach, South Carolina 29577. A copy of the original application received May 1991 is enclosed for your convenience.

The specific reasons why the application should be denied are that the applicant does not have space to seat patrons at tables for meals, specifically does not have seating for 40 patrons. The further grounds are the applicant is not substantially engaged in the preparation and serving of meals. It is a pool bar with legal seating, upon information and belief, for 12 or less persons.

The St. Clements Homeowners Association, through counsel and Board Members, would like to attend any contested hearing before the Administrative Law Court.

Please accept this protest if received less than 60 days prior to the expiration of the license, which is May 31, 2011.

If you would be so kind as to inform myself and Ms. Brown of any hearing in this matter for participation it would be greatly appreciated. If you have any questions please do not

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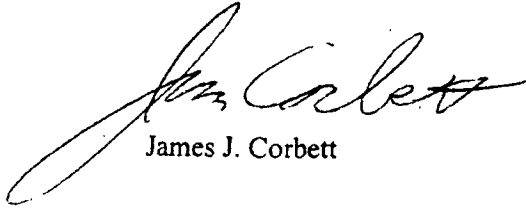
APR 04 2011

SCDOR ALCOHOLIC
BEVERAGE LICENSE 0000008

hesitate to contact me.

With warmest regards, I am

Sincerely yours,



James J. Corbett

JJC/lmk

Enclosure

CC: Ms. Barbara Brown

SC Dept. Revenue, P.O. Box 125, Columbia, SC 29214

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APR 04 2011

SCDOR ALCOHOLIC
BEVERAGE LICENSING

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LAW OFFICES
HOLLER, DENNIS, CORBETT, ORMOND, PLANTE & GARNER

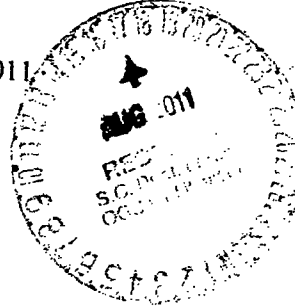
1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
• Steven D. Dennis
Everett Hope Garner
James J. Corbett
• J. Charles Ormond, Jr.
• Anthony R. Plante
• Certified Mediator S.C.

Of Counsel
Stanley G. Freeman

Reply To
Post Office Box 11006
Columbia, S.C. 29211

August 15, 2011



Ms. Sylvia Osborne, Adm. Assist.
SC Dept. of Revenue
Law and Compliance Division
P.O. Box 12265
Columbia, SC 29211

RE: Be Mi, Inc. d/b/a St. Clements Beach Bar & grill
202 70th Ave. N
Myrtle Beach, SC

Dear Ms. Osborne:

I received Mr. Allen's letter dated August 12, 2011 however I have not received the compliance inspection report. I was not contacted to describe the lack of compliance, nor do I believe my client's gave information. The SLED agent may have been confused by the licensee into believing that all the seats around the pool were dedicated to the bar and grill, when in fact they are all common area seats and cannot be reserved or held for patrons of this pool side bar. We filed the complaint because we believe the bar cannot possible have 40 seats on its own. It can not "borrow" seats from the common area outside, in effect have the right to kick out anyone else sitting in those seats to meet the licensing restrictions.

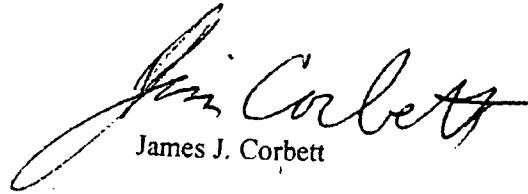
These facts must be taken into account for the administering, interpreting and enforcing of the ABL laws. An individual attorney representing a claimant cannot issue a dismissal based on his client's version of an inspection that may not have even addressed the issue raised in the protest. This protest must be heard and the license cannot be renewed "immediately." There is no evidence that the restaurant owns or controls the requisite number of seats, 40, required because it cannot, thus the protest of the license.

 If you would please provide us a copy of the report and notify us of the scheduling of the hearing it would be greatly appreciated. We may request the agent review the area concerning the license if the ownership of the seats was not explained to the agent. If you have any questions, please do not hesitate to contact me.

000010

With warmest regards, I am

Sincerely yours,



James J. Corbett

JJC/lmk

CC: Kenneth E. Allen, Esquire
Ms. Barbara Brown, St. Clements Homeowners Association

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LAW OFFICES
HOLLER, DENNIS, CORBETT, ORMOND, PLANTE & GARNER

1777 Bull Street at Laurel
Columbia, South Carolina 29201
(803) 765-2968 / Fax (803) 252-8290

J. Ed Holler
• Steven D. Dennis
Everett Hope Garner
James J. Corbett
• J. Charles Ormond, Jr.
• Anthony R. Plante
• Certified Mediator S.C.

Of Counsel
Stanley G. Freeman

Reply To
Post Office Box 11006
Columbia, S.C. 29211

November 9, 2011

Kathryn Brown, Esquire
South Carolina Department of Revenue
Law and Compliance Division
P.O. Box 12265
Columbia, SC 29211



RE: Be Mi, Inc. D/b/a St. Clements Beach Bar & Grill
File #3201-4935

Dear Ms. Brown

I received a copy of Mr. Allen's letter dated October 31, 2011, however I did not receive any copies of the attachments, such as the "report" from the retired SLED agent and the photos. Please forward a copy at your convenience.

A "reinspection" would not appear proper. It is obvious the Petitioner would set up the area different than actually used in an attempt to give the appearance of compliance for one day, when in reality that is not the way the property is or can be used. The reinspection would therefore be a sham, especially out of season with few people around this beach front building.

Enclosed please find for your convenience copies of photographs provided by my clients which supports the denial of the license, and copies of the Homeowners Association Master Deed which show that no "reinspection" can change the outcome. If a reinspection is scheduled, please make sure that I am informed so that my clients can attend and point out which seats "belong" to the licensee Be Mi, Inc., d/b/a St. Clements Beach Bar & Grill, which are common areas owned by the Homeowners Association, and the long held seating arrangements. Any seating must be reasonable and it appears unreasonable configurations that will never actually be used will be presented.

The site must comply with the statutes and regulations everyday, not just on a "reinspection" day when the licensee knows someone is coming and what must be shown. The premises must meet the guidelines everyday of operation. Based on an objective review of the

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SLED report, no "restocking" of the premises can result in compliance. Members of the Homeowners Association will be ready to present statements that they have never seen any deliveries of alcoholic beverages to the premises, in part because there is only 21 cubic feet of storage space - which is insufficient to house both the food items on the menu and any alcoholic beverages. It is their understanding that the licensee goes to his own nearby home, where he stores the alcoholic beverages, and then brings it to the premises when needed. "Restocking" 21 cubic feet of refrigeration space, well below the minimum, and unreasonably cramming seats and tables together cannot bring the premises in compliance. Likewise, substantial alteration of the premises would trigger a new application since this old application is faulty. The licensee has held out for years that the premises was in compliance, and that is not the case.

The Master Deed, copies of applicable pages which are enclosed, states in Article 3.1 the boundaries of a unit, and 3.2 states the open area decks are not part of a unit but are governed by other provisions of the By-Laws. Article 5.0(d) specifically states that the "...parking and drive areas, (with the exception of the assigned parking areas described herein, if any), bulkheads, swimming pool and pool deck, and all recreational community facilities" are general common areas. Thus they can not be owned or exclusively used by the proposed licensee. Article 6.2 declares that general common areas and facilities are ".....subject to a potential perpetual non-exclusive easement in favor of all the owners of units in the St. Clements, for their use.....for all proper normal purposes.... for which the same are reasonably intended...." Article 7.0 states that all laws, ordinances, and regulations shall be observed. Article 7.0(e) states "no business activity of any kind whatever shall be conducted at any building or on any portion of the property not designated as commercial area...."

The SCDOR's ABL general information located on the public website states "if you hold your liquor by the drink license as a food service establishment, your licensed premises does not include any portion of your premises designed or used as a parking area or deck to a swimming pool" and cites S.C. Code of Laws (1976 as Amended) Section 61-6-1610 (B). This licensee has open air seating on space designed as parking spaces, and those 16 seats cannot be counted toward 40 required "at tables in my restaurant" in the application, question 26. This location was built next to a swimming pool, it is on and located next to a swimming pool deck, and uses seating built where parking spaces were located, along with a few seats on top of the one-story premises.

The wooden side deck containing 16 seats sitting on the former parking spaces was not built with the permission of the Homeowners Association and it is in litigation. Even if the seats stay they are located in an area "designed or used as a parking area" and cannot count as seating area. The Homeowners Association owns the common areas and even the limited common areas where many of the seats used for this location are located. Shared seating is not designated seating.

Should you decide to reinspect, please contact me well in advance so that my clients' representatives can meet the agent to provide useful information. Please also send me a copy of retired SLED agent Steve Wright's report and photographs which were submitted to you by Mr. Allen for review by me and my client's representatives to make sure there is no confusion about

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any area discussed.

With warmest regards, I am

Sincerely yours,

James J. Corbett

JJC/lmk

CC: Ms. Barbara Brown, St. Clements Homeowners Association, w/enclosure
Kenneth E. Allen, Esquire, w/enclosure

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2206
HORRY COUNTY
87 DEC -0 PM 4:47
CLIFFE G. T. JENNISON
CLERK OF COURT

Deed Bk 1182
Pg 557

MASTER DEED
ST. CLEMENTS
Horizontal Property Regime
Myrtle Beach, South Carolina

December 8, 1987

HORRY COUNTY ASSESSOR
NEW PARCEL 174-03-04-333 thru 398
SPLIT FROM 174-03-04-026
Map Blk Parcel 12/1/87

EGGX 1182 PAGE 557

000015

Horizontal Property Regime, sometimes referred to hereinafter as "The St. Clements". The Declarant has caused to be constructed upon the real property described in Exhibit A, the multi-unit building containing Sixty-five (65) condominium units, as well as the common areas, limited common elements, and facilities of the buildings and the real property, all as defined and described herein and as shown upon the plat and the plans contained in Exhibits F and G, attached hereto and made a part hereof by reference. The units of the building, together with their privileges and appurtenances, may be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 27-31-0 et. seq., of the Code of Laws of the State of South Carolina, 1976, as amended, subject to the covenants, conditions, restrictions, and obligations stated in the Articles of this MASTER DEED, the Articles of Incorporation of the Association, its duly accepted By-Laws and its Rules and Regulations, provided however, that Declarant may retain ownership of one or more of the units of its choice.

2.2 The Declarant, by this MASTER DEED, submits only the real property described in Exhibit A, together with the improvements thereon, and hereafter this submission shall be referred to as The St. Clements Horizontal Property Regime

ARTICLE III UNIT DESIGNATION

3.0 The unit designation of each unit, and its location, are as shown on the maps or plat and plans of the Condominium Development attached hereto as Exhibits F and G and incorporated herein by reference. The approximate area and number of rooms in each unit is as shown on Exhibit G, attached hereto and incorporated herein by reference.

3.1 Each unit is bounded both as to horizontal and vertical boundaries by the interior unfinished surfaces of the unit's perimeter walls, ceilings, and floors (beneath the "sheet-rock", sub-floor, or other similar surface); of the interior surface of the perimeter walls, ceilings and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on the attached Exhibits, subject to the easements reserved herein for such encroachments as are contained in the building, whether the same exist or may be caused or created by existing construction, settlement or movement of the building, or by permissible repairs, construction or alteration. For units not within a building, its boundaries are as shown on the attached Plans.

3.2 Each unit is hereby defined so as not to include the open air deck(s). All open air decks are subject to restrictions on use and decoration as set out hereinafter and in the Association By-Laws. The decks are bounded horizontally by the interior finished surface of the floor and ceiling overhangs of the deck and are bounded vertically by the interior finished surface of the interior planes of either the deck railing or perimeter walls of the deck. Each such open air deck shall be a limited common element appurtenant to the unit to which it opens.

3.3 Each unit is hereby defined to include:

(a) All non-load bearing partition walls located entirely within the unit, & all kitchen & bathroom cabinets.

(b) All materials, including but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of said walls, floors, ceilings of the unit; and all win-

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... 1100 ... 520

flows, windowpanes, frames, exterior doors, and the sheetrock, carpet, or other similar wall or floor surface in each unit.

(c) All air handling and condensing units, ducts, and components, in all water, telephone, television, cable television, electricity, water and sewage lines located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as described herein.

3.4 Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for walls, floors, and ceilings of the unit. All such pipes, ducts, wires, conduits and other such facilities are defined as part of the unit at and from the point of entry into the unit.

3.5 The definition stated hereinabove for a unit is complete and all other aspects of the condominium not hereinabove defined as a part of the unit is defined hereby as a part of the common area and facilities of the condominium.

ARTICLE IV LIMITED COMMON ELEMENTS OR AREAS AND APPURTANANCES

4.0 Each unit shall have reserved for its exclusive use as a limited common element, the open-air deck(s) appurtenant to and designed for the exclusive use of each specific unit. However, all limited common elements are subject to restrictions on use and decorations as set out herein and in the Association By-Laws. Two enclosed parking spaces are designated as limited common elements appurtenant to the Penthouse unit.

ARTICLE V DESCRIPTION OF GENERAL COMMON AREAS

5.0 The general common areas of The St. Clements Horizontal Property Regime shall be as follows:

(a) All land as more particularly described in Exhibit A, attached hereto and incorporated herein by reference, including the land on which the units are located.

(b) All parts of the multi-unit buildings situated on the land described in Exhibit A, other than the individual units described in Article III above, including, without limitation, all foundations, columns, girders, beams, supports, load-bearing walls, including all exterior walls and all interior walls (except non-load-bearing partition walls wholly within a unit), roofs, ventilation fans and vents, of the building, except the sheetrock or other similar wall surface.

(c) All stairways, stairwells, and stairs and their components which give access to the units; and all halls or passageways, and their entrances; and all elevators, elevator shafts and associated equipment;

(d) All yard and garden areas, parking and drive areas, (with the exception of the assigned parking areas described herein, if any), bulkheads, swimming pool and pool deck, and all recreational or community facilities.

(e) All central or appurtenant installations for services such as, without limitation, power, light, telephone, gas, hot and cold water, heating, air conditioning, incinerating and all other mechanical equipment spaces (including all pipes, ducts, wires, cables, tanks, pumps, motors, fans, conduits and compressors in connection therewith), to include all installations and facilities, apparatus, conduits, and equipment for the provision of any of the herein named utility services supplied for the common use and convenience of the unit owners and which are not defined as part of the units hereinabove and not reserved by the provider of such utilities.

(f) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium units.

ARTICLE VI NATURE AND INCIDENTS OF UNIT OWNERSHIP

6.0 Each unit shall be conveyed and treated as a separate individual unit of real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of The St. Clements. The undivided interest in the common areas and facilities of The St. Clements, appurtenant to each of the units of The St. Clements, is set out in Exhibit B attached hereto and made a part hereof.

6.1 No unit may be divided or subdivided into a smaller unit or units other than as shown on Exhibit G hereto, nor shall any unit or portion thereof be added to or incorporated into any other unit. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities appurtenant to each unit shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest, or lien in, to or upon a unit, shall be null, void and of no effect insofar as the same purports to effect any interest in a unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any unit, which describes said unit by the letter/numerical designation assigned thereto in the Exhibits hereto without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

6.2 General Common Areas and facilities shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of units in The St. Clements, for their use and the use of their immediate families, guests or invitees, for all proper and normal purposes, and the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of units. Notwithstanding anything above provided in this Article, 000018

Association, as is more particularly described in Article IX hereinbelow, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any unit, his family, guests, and invitees, may be entitled to use the general and limited common areas and facilities, including the right to establish regulations concerning their use.

6.3 Recognizing that the proper use of a unit by an owner or owners is dependent upon the use and enjoyment of the common areas and facilities in common with the owners of all other units, and that it is in the interest of all owners that the ownership of common areas and facilities be retained in common by the owners, it is hereby declared that the proportional undivided interest in the common areas and facilities appurtenant to each unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division thereof.

ARTICLE VII USE AND RESTRICTIONS ON USE

7.0 RESTRICTIONS ON USE.

(a) Each unit is hereby restricted to single-family residential use by the owner thereof, his immediate family, guests, invitees, and lessees, subject to the Declarants rights under Paragraph 7.0 (e) below, and with the exception of those units specifically designated as "Commercial" units on the Exhibits attached hereto, which may be used for commercial purposes, at Declarant's option. Nothing contained herein shall be construed so as to prohibit the renting of units to the public, it being specifically agreed that owners are free to engage in such activity. Lessees or renters may use the common elements in the same manner as an owner.

No type of Interval Ownership or "Timesharing" arrangement shall be permitted in the project.

(b) No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas or limited common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas or limited common areas and facilities, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the right of other occupants of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

(c) The use of common areas, limited common areas and facilities, by the owner of a unit or units or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use or which may be hereafter prescribed and established by the Association, said Association being more particularly described in Article IX below.

(d) No owner of a unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modification or alterations would adversely effect or in any way endanger the condominium in part, or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decorative

000019

tion, or the installation of awnings, or the installation of electrical wiring, television or radio antenna or any other objects, machines or air conditioning units which may protrude through the walls or roof of the unit or condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Board of the Association being first had and obtained. No unit owner shall cause any object to be fixed to common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Board of the Association being first had and obtained.

(e) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, including but not limited to the individual units or common or limited common areas, nor shall the property or any part of it be used in a way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any residence thereof. No business activity of any kind whatever shall be conducted on any building or on any portion of the property not designated as commercial area, provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns, during the construction and sale period and thereafter for such periods of time as Declarant, its agents or assigns shall desire to maintain a sales or rental office. Nor shall this restriction apply to the operation of rental and management offices in the common areas.

The Declarant shall own in fee simple each unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant reserves the right to enter into leases or rental arrangements with any persons for the occupancy of any of the units owned by Declarant. Declarant reserves for itself and its employees, guests, and invitees, a non-exclusive easement of ingress and egress over the common elements and to the offices, models and units for rent and for sale and to and from all commercial units.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property. This prohibition shall not include common domesticated animals, each unit owner being permitted one dog or cat so long as all animals are leashed when outside the owner's unit, subject to the Rules and Regulations of the The St. Clements Homeowners Association governing such pets.

(g) The exterior of the units shall not be decorated by the individual unit owners in any manner without the prior written consent of the Board of Directors of the The St. Clements Homeowners Association. All linings on draperies or curtains and all blinds, shades and other window coverings shall be white and of uniform shade.

(h) No trailer, boat trailer, or recreational vehicle of any sort, tent, barn, storage camper, shed, garage or other similar out building or structure shall be placed on the property at any time, either temporarily or permanently.

(i) No structure of a temporary character shall be placed upon the property at any time, provided, however, that this provision shall not apply to shelters and sheds used by the contractor during the construction of the multi-unit buildings or common area improvements or other necessary construction, it being clearly understood that these latter temporary structures may not, at any time, be used as residences or permitted to remain on the building site after completion of construction.

(j) All garbage and refuse from the individual units shall be deposited with care in garbage containers or receptacles

THE ST. CLEMENTS
EXHIBIT B TO MASTER DEED

Schedule of percentage (%) of undivided interest in common elements appurtenant to dwellings in The St. Clements. Statutory value is for statutory purposes only and has no relationship to the actual value of each dwelling. "Proportionate interest in Common Elements" refers to those below.

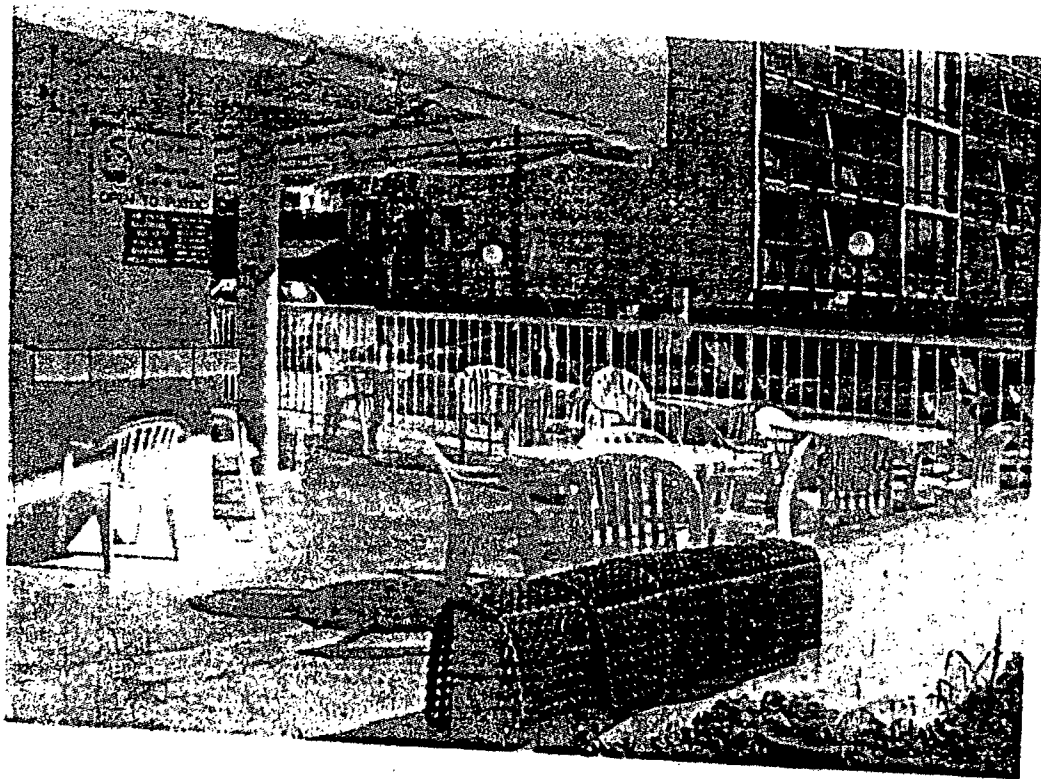
DWELLING NUMBER	STATUTORY VALUE	PERCENTAGE OF OWNERSHIP
101	\$128,000	1.5075%
102	128,000	1.5075%
103	128,000	1.5075%
104	128,000	1.5075%
105	128,000	1.5075%
106	128,000	1.5075%
107	128,000	1.5075%
108	128,000	1.5075%
109	128,000	1.5075%
201	128,000	1.5075%
202	128,000	1.5075%
203	128,000	1.5075%
204	128,000	1.5075%
205	128,000	1.5075%
206	128,000	1.5075%
207	128,000	1.5075%
208	128,000	1.5075%
209	128,000	1.5075%
301	128,000	1.5075%
302	128,000	1.5075%
303	128,000	1.5075%
304	128,000	1.5075%
305	128,000	1.5075%
306	128,000	1.5075%
307	128,000	1.5075%
308	128,000	1.5075%
309	128,000	1.5075%
401	128,000	1.5075%
402	128,000	1.5075%
403	128,000	1.5075%
404	128,000	1.5075%
405	128,000	1.5075%
406	128,000	1.5075%
407	128,000	1.5075%
408	128,000	1.5075%
409	128,000	1.5075%

Page 1182 of 588

000021

501	128,000	
502	128,000	1.5075%
503	128,000	1.5075%
504	128,000	1.5075%
505	128,000	1.5075%
506	128,000	1.5075%
507	128,000	1.5075%
508	128,000	1.5075%
509	128,000	1.5075%
601	128,000	1.5075%
602	128,000	1.5075%
603	128,000	1.5075%
604	128,000	1.5075%
605	128,000	1.5075%
606	128,000	1.5075%
607	128,000	1.5075%
608	128,000	1.5075%
609	128,000	1.5075%
701	128,000	1.5075%
702	128,000	1.5075%
703	128,000	1.5075%
704	128,000	1.5075%
705	128,000	1.5075%
706	128,000	1.5075%
707	128,000	1.5075%
708	128,000	1.5075%
709	128,000	1.5075%
PH-1 (may be used as a commercial or residential unit)	256,000	1.5075%
Pool-1 (commercial)	128,000	3.0150%
C-1		
	42,667.00	1.5075%
	87,490,667.00	✓5024
		100.0000*

* Rounded from 99.9974

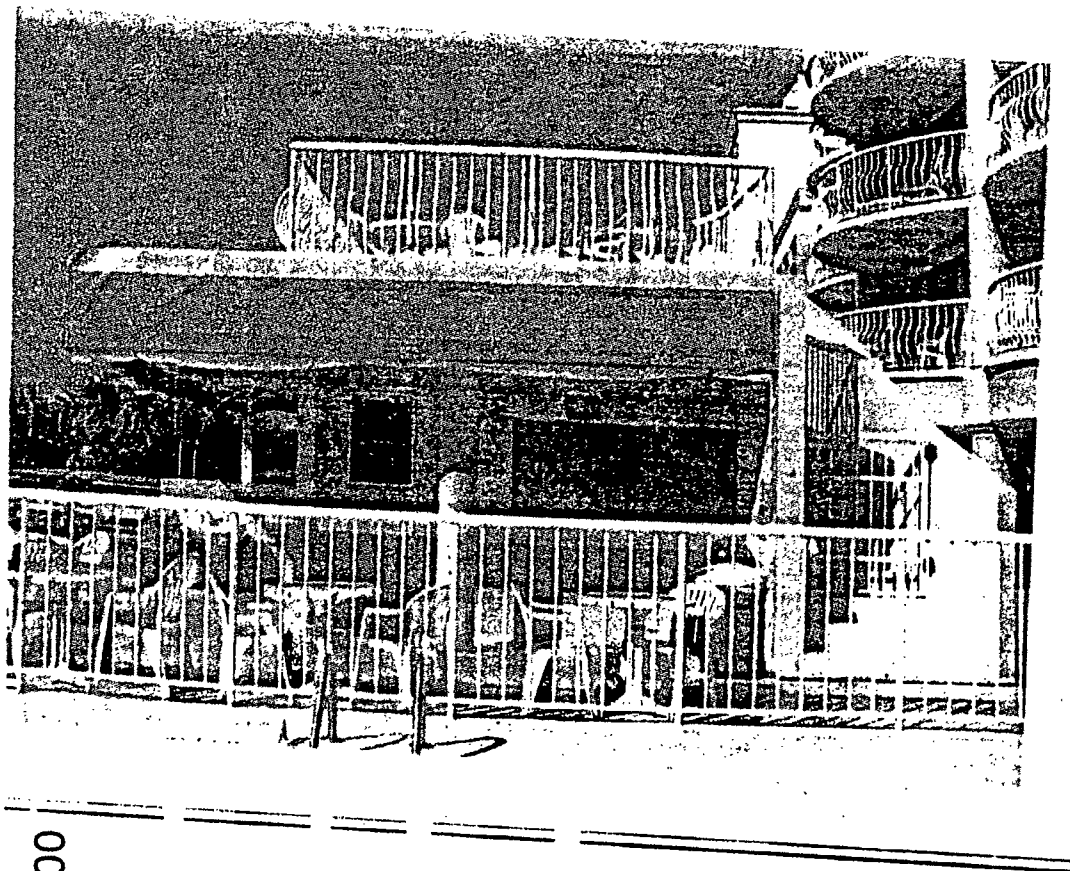


→ ATLANTIC OCEAN

000023

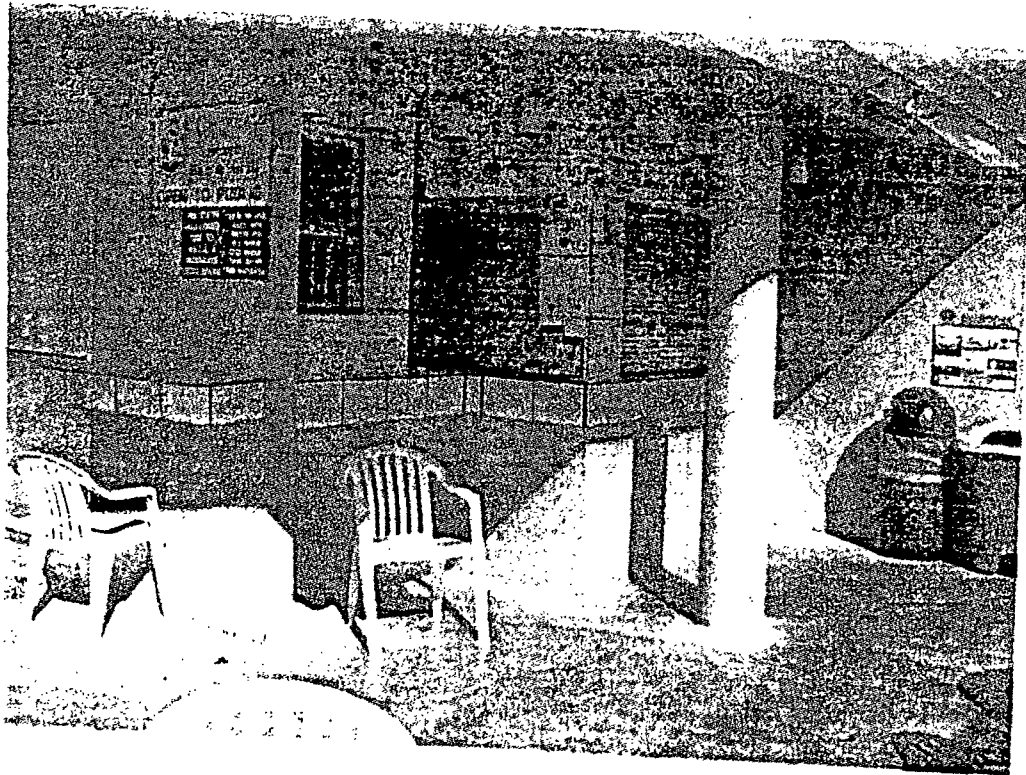
ST. CLEMENTS SWIM POOL DECK. NORTHWEST VIEW

01372 7/11 HOA 5 TABLES, 14 SEATS + 1 TABLE, 4 SEATS OUT OF VIEW
118 SEATS AT THE TOTAL



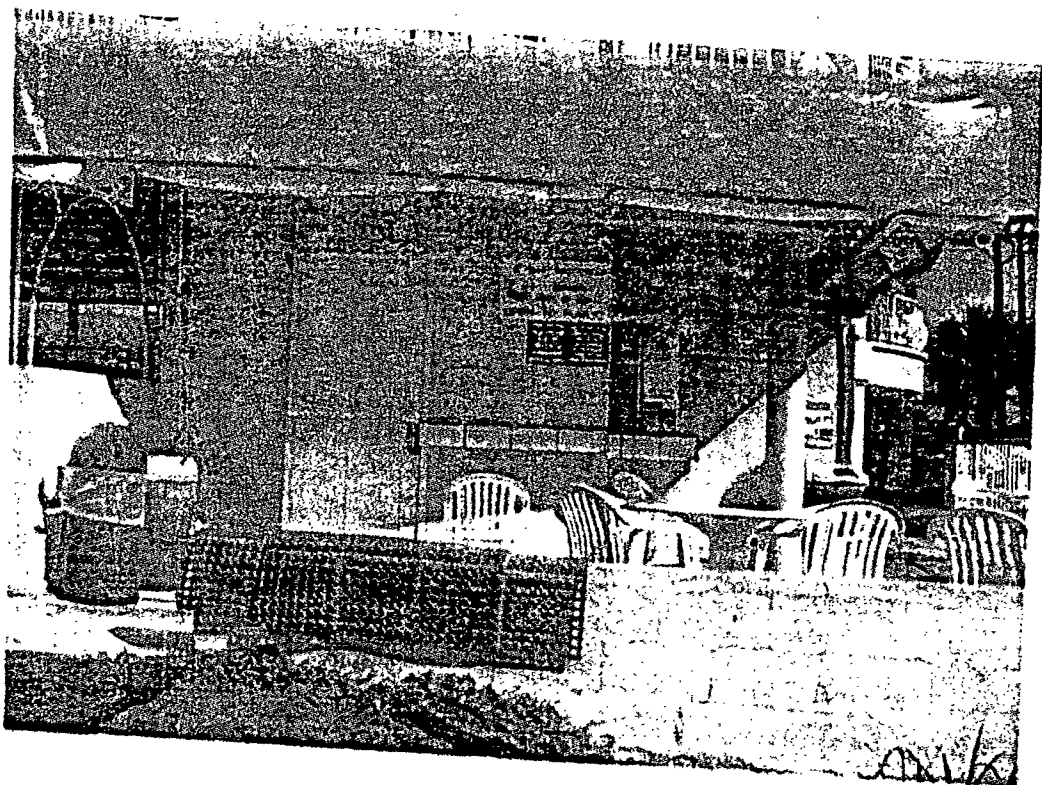
000024

5/372 ST. CLEMENTS POOL BAR. NORTH SIDE. BUILT ON SWIM POOL DECK
7/11 WINDOW FOR ORDER / SERVING CLOSED



000025

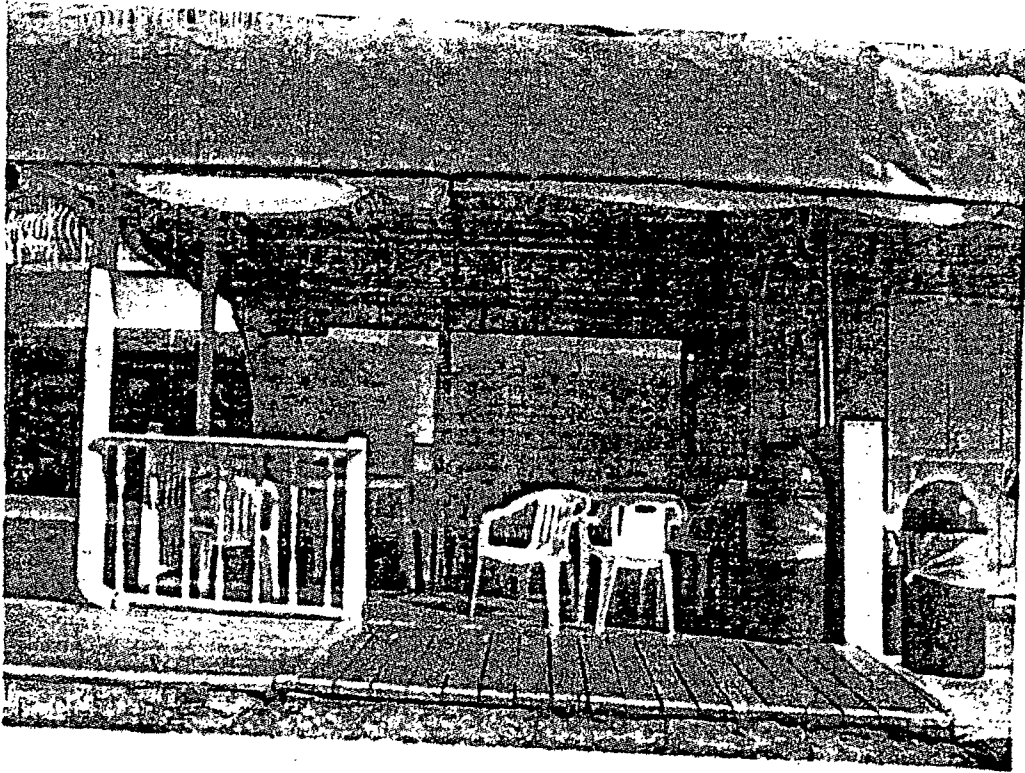
10/372 ST. CLEMENTS POOL BAR - NORTH EAST SIDE - ON SWIM POOL DECK
7/11



000026

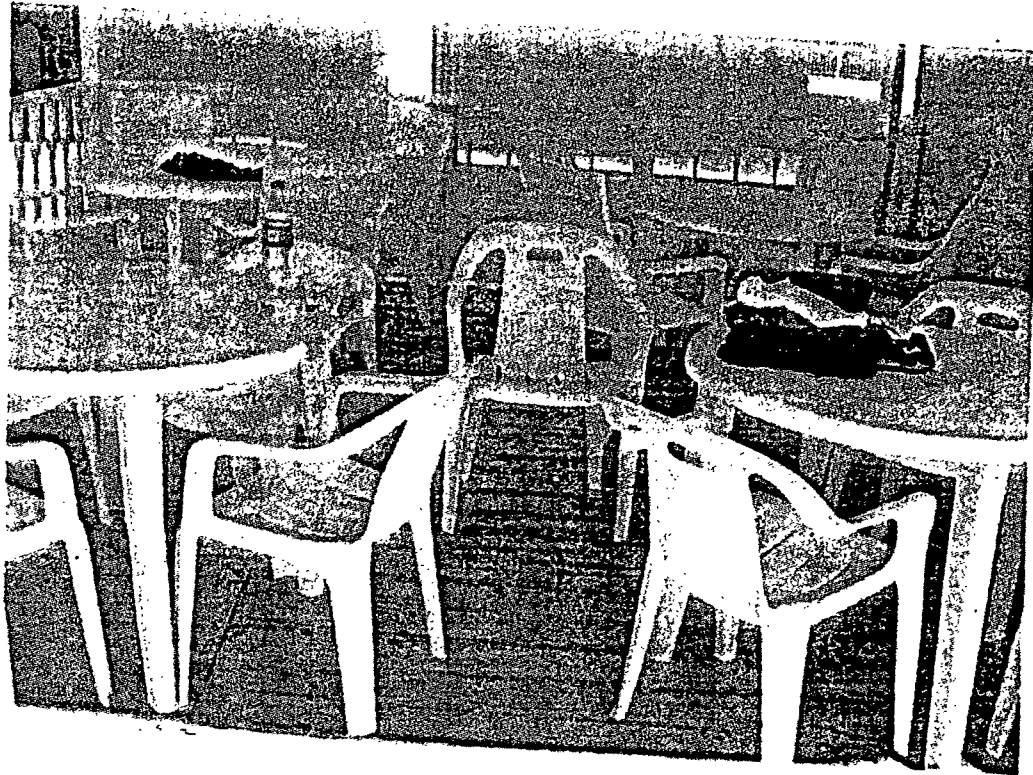
16/372

ST. CLEMENTS POOL BAR - EAST SIDE - ON SWIM POOL DECK
7/11



000027

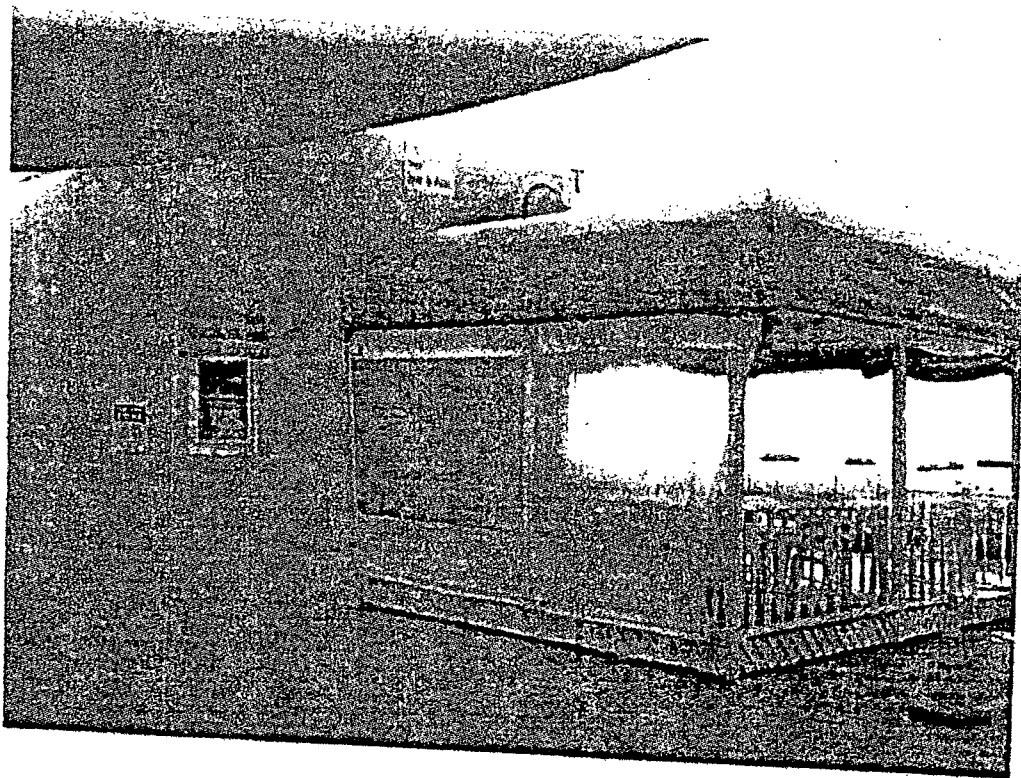
95/372 7/11 ST. CLEMENTS POOL BAR SIDE DECK - EAST SIDE - ON PARKING LOT



000028

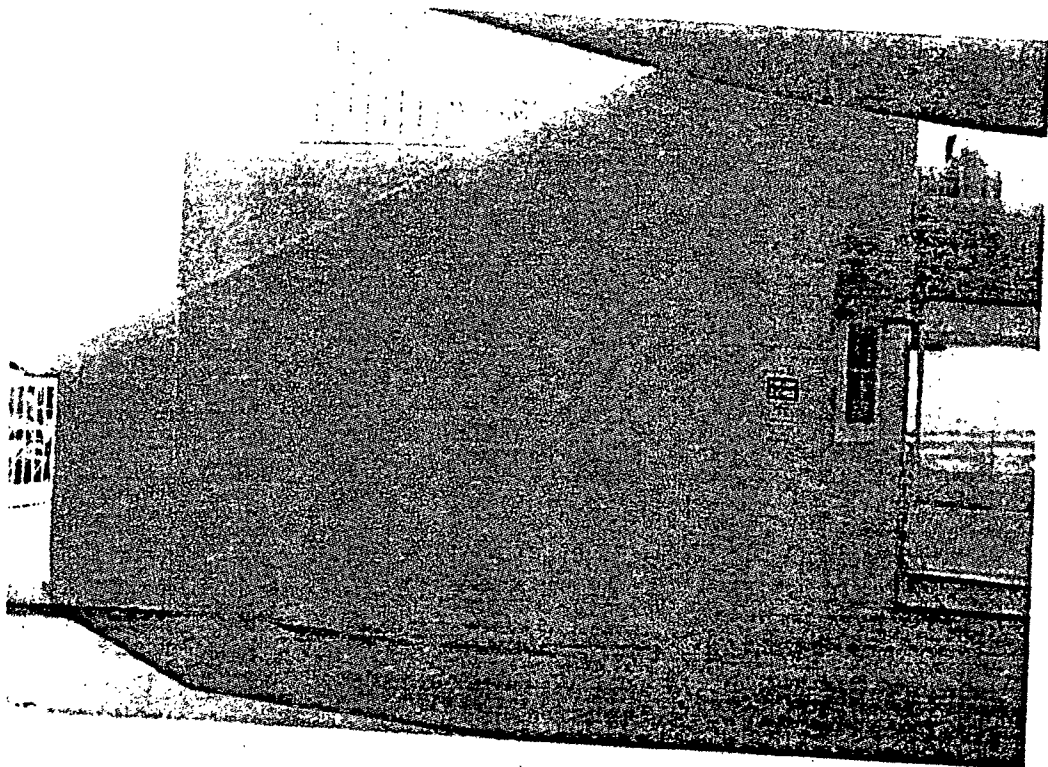
ST. CLEMENTS POOL BAR - WOOD SIDE DECK INTERIOR

16/372 4 TABLES - 16 SEATS - BUILT ON PARKING LOT - IN LITIGATION TO REMOVE
7111



000029

4/372 ST. CLEMENTS POOL BAR. SOUTHWEST SIDE
WITH WOOD SIDE DECK BUILT ON PARKING LOT 16'X13' ON 1/2 PARKING SPACES IN LAWSUIT



000030

02/372

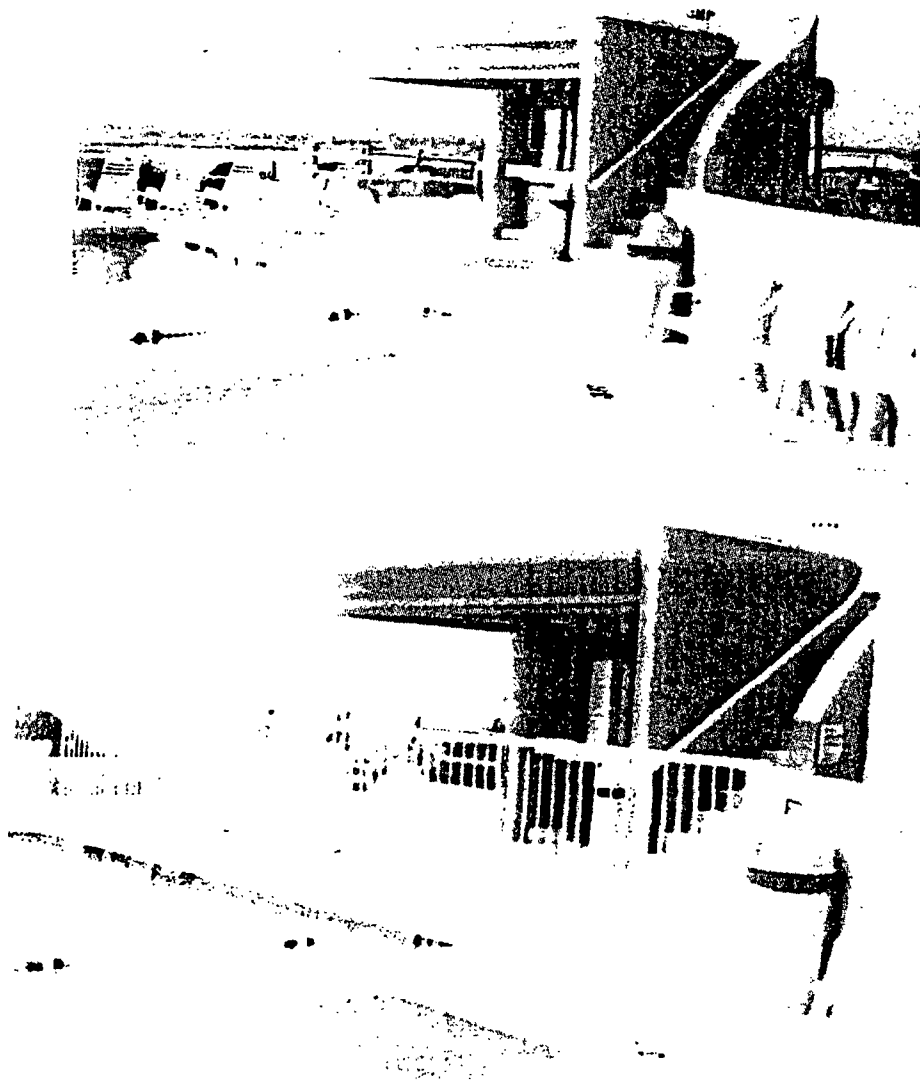
ST CLEMENTS POOL BAR - WEST SIDE
7/11 NEXT TO PARKING LOT



WOODEN SIDE DECK CONSTRUCTED BY LARGOLDE, POOL BAR 5/90

JANUARY PHOTO

VIEW FROM FRONT ENTRANCE OF ST. CLEMENTS CONDOMINIUM BUILDING-
MYRTLE BEACH, SC



itunes taken to go
 accommodation for a
 carrier (bus) between
 rail bar and swimming pool 7/10

000032

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street, P.O. Box 12265, Columbia, South Carolina 29211

May 24, 2011

Raymond Goude
312 70th Ave. North
Myrtle Beach, SC 29572

Re: Be Mi, Inc.
d/b/a St. Clements Beach Bar & Grill
202 70th Ave. North
Myrtle Beach, S.C.
File No. 32014935-PBW & 32014935-PLB

Dear Mr. Goude:

The renewal application referenced above is denied. S.C. Code Ann. § 61-4-525, mandates that the S.C. Department of Revenue deny any application if a valid protest is received to the application. I have enclosed what appears to be a valid protest.

You may protest this denial. If you want to protest this denial, you must send your written protest to my attention at the address shown above. I must receive this written protest within ninety (90) days of the date of this letter. Your protest must contain:

1. Your name, address, and telephone number;
2. The file number shown above;
3. A statement of facts supporting your position; and,
4. A statement outlining the reasons for the appeal, including law or other authority upon which you are relying.

If you fail to protest within ninety (90) days as stated above, this denial will be final, and you will have no further right of appeal.

Sincerely yours,

Sylvia Osborne
Office of General Counsel for Litigation
Administrative Assistance
Osborns@sctax.org
803-898-5008
803-898-5907(fax)

000033

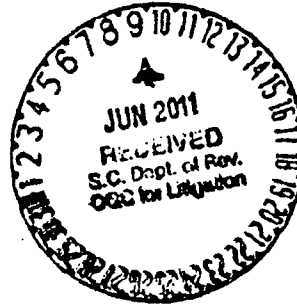
KENNETH E. ALLEN
ATTORNEY AT LAW
CAPITAL CENTER
COLUMBIA, SOUTH CAROLINA

MAILING ADDRESS:
SUITE 1988
1201 MAIN STREET
COLUMBIA, S C 29201

TELEPHONE:
1-803-748-1335
1-800-858-9237
FAX 1-803-748-1336

June 9, 2011

Ms. Sylvia Osborne, Adm. Assist.
SC Dept. of Revenue
Law and Compliance Division
Post Office Box 12265
Columbia, South Carolina 29211



Ref: Be Mi, Inc.
dba St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC

File # 3201-4935

Dear Ms. Osborne:

**PLEASE NOTE MY REPRESENTATION OF THE LICENSEE IN THE ABOVE
CAPTIONED MATTER.**

In response to your letter of May 13th, 2011, my clients are protesting the denial of their re-newal and will address the issue of the public protest when given the opportunity before the Administrative Law Judge.

Thank you for your assistance.

Sincerely,

Ken Allen

Kenneth E. Allen
cc: Be Mi, Inc.

000034

KENNETH E. ALLEN
ATTORNEY AT LAW
CAPITAL CENTER
COLUMBIA, SOUTH CAROLINA

MAILING ADDRESS:
SUITE 1980
1201 MAIN STREET
COLUMBIA, S C 29201

TELEPHONE:
1-803-748-1335
1-800-858-9237
FAX 1-803-748-1336

August 12, 2011

Ms. Sylvia Osborne, Adm. Assist.
SC Dept. of Revenue
Law and Compliance Division
Post Office Box 12265
Columbia, South Carolina 29211

Ref: Be Mi, Inc. File # 3201-4935
dba St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC

Dear Ms. Osborne:

**PLEASE NOTE MY REPRESENTATION OF THE LICENSEE IN THE ABOVE
CAPTIONED MATTER.**

I am advised by my client that the local SLED agent conducted a compliance inspection yesterday and advised him that he was in full compliance with all the restaurant requirements. I assume her report will reflect this.

The re-newal protest letter of Attorney James Corbett, dated April 1st, bases their protest solely upon an allegation that the location does not meet the restaurant requirements.

The administering, interpreting and enforcing of the ABL laws under Title 61 lies clearly with the Department and SLED, not individual citizens. Therefore, it would be our position that the April 1st protest letter is not a valid protest and should be dismissed forthwith by the Department and my client's alcohol licenses be re-newed immediately.

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Page 2

Thank you for your assistance.

Sincerely,

Ken Allen

Kenneth E. Allen

cc: Be Mi, Inc.

James J. Corbett, Esq.

000036

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street, P.O. Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5130 Telecopier (803) 898-5147

September 30, 2011

Kenneth E. Allen, Esq.
1201 Main St., Ste. 1980
Columbia, SC 29201

Re: Department Determination
File No. 32014935-PBW & PLB

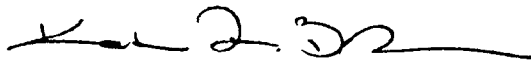
Dear Mr. Allen:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$150.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION



Kathryn Brown
Counsel for Litigation

KB:sho
Enclosures

000037

DEPARTMENT DETERMINATION

Applicant:

Be Mi, Inc.
d/b/a St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC 29572

File No:

32014935-PWB & PLB

Date of Application:

May 18, 2011

Matters in Dispute:

1. Should the on premises beer and wine permit and the restaurant liquor by the drink license be denied based on a public protest filed pursuant to S.C. Code Ann. §§ 61-4-525 and 61-6-1825 (2009)?
2. Should the restaurant liquor by the drink license be denied based on the Applicant's failure to be engaged primarily and substantially in the preparation and service of meals as required by S.C. Code Ann. § 61-6-1610 (2009)?

Determinations:

1. The on premises beer and wine permit and the restaurant liquor by the drink license is denied based on a public protest filed pursuant to §§ 61-4-525 and 61-6-1825.
2. The restaurant liquor by the drink license is also denied based on the Applicant's failure to be engaged primarily and substantially in the preparation and service of meals as required by § 61-6-1610.

Relevant Facts:

1. On or about May 18, 2011, the Department of Revenue (Department) received an application for renewal of an on premises beer and wine permit and a restaurant liquor by the drink license from Be Mi, Inc., d/b/a/ St. Clements Beach Bar & Grill, 202 70th Ave. N, Myrtle Beach, South Carolina.
2. As a result of the filing of the application, the South Carolina Law Enforcement

000038

Division (SLED) conducted a standard investigation of the location on or about August 16, 2011, to determine compliance with the statutory requirements for licensure.

3. During the course of the investigation, SLED Agent Debra Rodgers, states that the location is a small kiosk operating on the pool deck of the St. Clements Condos. She also states that there are thirty-six chairs sitting between the pool belonging to the St. Clements Condos and the location; there are three refrigerators with a capacity of four cubic feet each, for a total of twelve cubic feet of cold storage; the kiosk is equipped with a grill; the location food menu is very extensive but little food is kept on the premises; additional food storage is maintained at a residence across the street from the location and several trips are made per day to retrieve additional food.¹
4. The Department received a valid public protest to the location from James J. Corbett, attorney at law, representing the St. Clement Homeowner's Association and Board Members.
5. The Protestants indicate that the thirty-six chairs between the location and the pool are common area seating and are not dedicated specifically to the location.
6. The Department denied the issuance of the license and permit pursuant to a denial letter dated May 24, 2011.
7. The Applicant timely protested the denial of the license and permit pursuant to a letter dated June 9, 2011.

Analysis:

- I. **The on premises beer and wine permit and the restaurant liquor by the drink license is denied based on a public protest filed pursuant to §§ 61-4-525 and 61-6-1825.**

It is well established that the public is allowed to submit written protests to the Department against the issuance of a liquor by the drink license if the protestant complies with the requirements of the statute in rendering the protest. See § 61-6-1825 and 23 S.C. Code Ann. Regs. 7-201 (Supp. 2010). Further, the protestant must express the intent to attend a contested case hearing and must reside in the same county as the location or within five miles of the location.

¹At the time of the SLED inspection, the location had on hand food consisting of ten pounds of onion rings, ten pounds of french fries, four pre-packaged pizzas, ten pounds of breaded chicken fingers, three bags of cheese sticks, several hot dog wieners, five pre-packaged corn dogs, and eight hamburgers.

With regards to the liquor license:

(A) A person residing in the county in which a license pursuant to the provisions of subarticle 1 of this article is requested to be granted, or a person residing within five miles of the location for which a permit pursuant to the provisions of subarticle 1 of this article is requested, may protest the issuance or renewal of the license if he files a written protest providing:

(1) the name, address, and telephone number of the person filing the protest;

(2) the name of the applicant for the license and the address of the premises sought to be licensed, or the name and address of the license holder if the application is for renewal;

(3) the specific reasons why the application should be denied; and

(4) whether or not he wishes to attend a contested case hearing before the Administrative Law Court.

(B) Upon receipt of a timely filed protest, the department must determine the protestant's intent to attend a contested hearing before the Administrative Law Court. If the protestant intends to attend a contested hearing, the department must not issue the permanent license but must forward the file to the Administrative Law Court.

(C) If the protestant during the investigation expresses no desire to attend a contested hearing and offer testimony, the protest is deemed invalid, and the department shall continue to process the application and shall issue the license if all other statutory requirements are met.

(D) A person who files a protest and fails to appear at a hearing after affirming a desire to attend the hearing may be assessed a penalty to include court costs.

Section 61-6-1825. The beer and wine statute provides substantially the same language as cited above in allowing the public to submit protests against the renewal of a beer and wine permit at a location. See § 61-4-525.

The Department received a timely protest from the St. Clements Homeowner's Association through its counsel, James J. Corbett. Except for determining that the statutory requirements for protest have been met, the Department does not have the authority to issue the license and permit over the objection of a public protest; rather, this matter must be heard by the Administrative Law Court. Accordingly, based on the protest, the Department may not issue the license and permit pursuant to the mandates of §§ 61-6-1825 and 61-4-525.

II. The restaurant liquor by the drink license is denied based on the Applicant's failure to be engaged primarily and substantially in the preparation and service of meals as required by § 61-6-1610.

The Department has the sole and exclusive power to regulate the issuance of a beer and wine permit and a liquor by the drink license pursuant to the terms of Title 61 of the South Carolina Code. Chapter 6 of Title 61 is known as the "Alcohol Beverage Control Act" and establishes the requirements for licensure for various alcohol retailers, including restaurant liquor by the drink licenses. In order to hold a restaurant liquor by the drink license, an establishment must be "bona fide engaged primarily and substantially in the preparation and service of meals." Section 61-6-1610(A). To further clarify this requirement, bona fide engaged primarily and substantially in the preparation and serving of meals is defined as:

- ... a business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:
- (a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;
- (b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
- (c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

S.C. Code Ann. § 61-6-20(2) (2009).

The South Carolina Code further states that for purposes of § 61-6-1610:

- (1) "Kitchen" means a separate and distinct area of the business establishment that is used solely for the preparation, serving, and disposal of solid foods that make up meals. The area must be adequately equipped for the cooking, serving, and storage of solid foods and must include at least twenty-one cubic feet of refrigerated space for food and a stove.
- (2) "Meal" means an assortment of various prepared foods available to guests on the licensed premises during the normal mealtimes that occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages, and other snacks prepared off the licensed premises but sold there are not a meal.

(3) "Primarily" means that the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.

Section 61-6-1610(I)(1)-(3).

The Applicant has failed to meet his burden of demonstrating that he is engaged primarily and substantially in the service of meals. The SLED Agent reported that the location is a small kiosk operating on the pool deck of the St. Clements Condos. She also reported that there are thirty-six chairs sitting between the pool belonging to the St. Clements Condos and the location; there are three refrigerators with a capacity of four cubic feet each, for a total of twelve cubic feet of cold storage; the kiosk is equipped with a grill; the location food menu is very extensive but little food is kept on the premises; additional food storage is maintained at a residence across the street from the location and several trips are made per day to retrieve additional food.

In order to meet the burden of demonstrating that a location is engaged primarily and substantially in the service of meals, the Applicant must demonstrate, among other requirements, that the location is capable of seating not fewer than forty persons simultaneously at tables for the service of meals; that there is adequate food on the premises to serve not fewer than forty people a hot meal; and that the location is equipped with a kitchen that is a separate and distinct area of the business establishment that is used solely for the preparation, serving, and disposal of solid foods that make up meals. This area must be adequately equipped for the cooking, serving, and storage of solid foods and must include at least twenty-one cubic feet of refrigerated space for food and a stove.

Based on the SLED Agent's report, the location does not meet the seating or cold storage requirements. It is unclear whether the location has enough food on hand to serve forty people a hot meal. The Department reserves the right to address this at the hearing.

Due to the fact that the establishment does not meet the requirements for licensure pursuant to §§ 61-6-1610 and 61-6-20, the liquor by the drink license is properly denied.²

²The deficiencies noted by SLED may be cured by the Applicant. The satisfactory completion of these items would need to be confirmed, however, by a final SLED inspection.

Conclusion:

If you agree with these conclusions, please withdraw (in writing) your application(s) within thirty days of the date of this Determination. If you disagree, please appeal the Determination within such thirty day period as noted on the attached cover letter.

September 30, 2011

KENNETH E. ALLEN
ATTORNEY AT LAW
CAPITAL CENTER
COLUMBIA, SOUTH CAROLINA

MAILING ADDRESS:
SUITE 1980
1201 MAIN STREET
COLUMBIA, S C 29201

TELEPHONE:
1-803-748-1335
1-800-858-9237
FAX 1-803-748-1336

October 26, 2011

Ms. Jana Shealy, Clerk
SC Administrative Law Court
1205 Pendelton St. Suite 224
Columbia, SC 29201

Ref: Be Mi, Inc. File # 3201-4935
dba St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC

Dear Jana:

In response to the enclosed Final Determination Letter from the Department of Revenue dated September 30, 2011, we are requesting a contested case hearing in the above captioned matter. This office represents the applicant and will be requesting that the court issue the license applied for.

A check for the \$150 filing fee is enclosed.

Thank you for your attention to this matter.

Sincerely,

Ken Allen

Kenneth E. Allen
cc: Kathryn Brown, Esquire

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADMINISTRATIVE LAW COURT

Be Mi, Inc.
dba St. Clements Beach Bar & Grill)

Docket # 11-ALJ-17- -CC

Petitioner)

vs.)

CERTIFICATE OF SERVICE

South Carolina Dept. of Revenue)

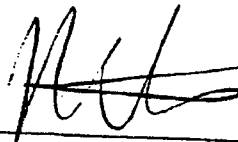
Respondent)

I, the undersigned Kenneth E. Allen, do hereby certify that I have served a copy of the foregoing Request for Contested Case Hearing in connection with the above-referenced case placing same in the U. S. Mail, postage paid to:

Kathryn Brown, Esquire
Counsel for Regulatory Litigation
Post Office Box 12265
Columbia, South Carolina 29211

Date: October 26, 2011

Columbia, SC



Kenneth E. Allen

000045

**KENNETH E. ALLEN
ATTORNEY AT LAW
CAPITAL CENTER
COLUMBIA, SOUTH CAROLINA**

MAILING ADDRESS:
SUITE 1980
1201 MAIN STREET
COLUMBIA, S C 29201

TELEPHONE:
1-803-748-1335
1-800-858-9237
FAX 1-803-748-1336

October 31, 2011

Kathryn Brown, Esquire
SC Dept. of Revenue
Law and Compliance Division
Post Office Box 12265
Columbia, South Carolina 29211

Ref: Be Mi, Inc. File # 3201-4935
dba St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC

Dear Ms. Brown:

**PLEASE NOTE MY REPRESENTATION OF THE LICENSEE IN THE ABOVE
CAPTIONED MATTER.**

In response to the local SLED agent's inspection we hired retired SLED
agent, Steve Wright, to do a more through inspection including photographs.

His report and photographs are attached to this e-mail also.

Based upon his report we are requesting an expedited re-inspection by the
local SLED agent. Like many restaurants at Myrtle Beach this one is only
open during the season. However, client is maintaining adequate food
inventory on the premises in anticipation of the re-inspection.

As the location is not open, it is important that the local SLED agent call Mr.
Goude to set up a time for the re-inspection. He can be reached at 843-449-
1787. If the agent has any problem reaching Mr. Goude she may also contact
Mr. Wright at 843-446-6029.

000046

Page 2

Thank you for your assistance.

Sincerely,

Ken Allen

Kenneth E. Allen

cc: Be Mi, Inc.

James J. Corbett, Esq.

Steve Wright (SLED Retired)

SLED Agent Debra Rogers

000047

October 27, 2011

Kenneth E. Allen, Esq.
1201 Main St., Ste. 1980
Columbia, SC 29201

Re: Luke Goude
Be Mi, Inc.
d/b/a: St. Clements Beach Bar & Grill
202 70th Ave. N.
Myrtle Beach, SC 29572

File Number: 32014935 PBW & PLB

Dear Mr. Allen,

I work as a consultant in the alcohol beverage industry providing support to the hospitality industry and other businesses impacted by the sale and use of alcoholic beverages. I conduct site evaluations, compliance checks, assist with licensing issues, alcohol training, public speaking and provide courtroom testimony.

I retired from SLED in 2009 with 28 years in law enforcement. I was a member of The South Carolina Law Enforcement Division assigned to the Alcohol Enforcement Unit since 1999. As a Senior Special Agent, I was responsible for planning, implementing, managing and coordinating various investigations related to alcohol, drugs, prostitution, gambling and video poker gaming machines. I conducted approximately a thousand alcohol compliance inspections a month and maintained the alcohol violations, warnings and arrest information as a result of the compliance checks.

In the area of alcohol enforcement concerning the restaurant requirement, my experience ranges close to 10 years. During this time frame, I worked close with the Department of Revenue Litigation Department and had a professional working relationship with several Licensing Agents. I wrote 35 warnings and issued 15 administrative violations, which resulted in 11 license revocations.

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On October 5, 2011, I was requested by Mr. Luke Goude to assist him concerning a South Carolina Department of Revenue Department Determination denial of Be Mi Inc., d/b/a St. Clements Beach Bar & Grill located at 202 70th Ave. N, Myrtle Beach, South Carolina.

I spoke with Mr. Goude in depth and determined he had been in business at St. Clements for approximately 24 years. He is considered a Homeowner and has all the rights and privileges of the St. Clements Condo Homeowners. Pursuant to his request, I conducted a preliminary inquiry and site inspection of the location.

Mr. Goude provided me with a South Carolina Department of Revenue Depart Determination letter that reflecting the following information. On Friday, September 30, 2011, Kenneth E. Allen, Esq. of 1201 Main St., Ste 1980, Columbia, South Carolina 29201, phone number 803-748-1335 received a Department Determination letter from Ms. Kathryn Brown, Counsel for Litigation with the South Carolina Department of Revenue.

The Department Determination letter states the following:

It was determined that the denial of the on premise beer and wine permit and the restaurant liquor by the drink license was based on the public protest filed from the St. Clements Homeowners Association through its counsel, James J. Corbett pursuant to S.C. Code of Law 61-4-525 and 61-6-1825.

In addition, the restaurant liquor by the drink license was denied based on the Applicant's failure to be engaged primarily and substantially in the preparation and service of meals pursuant to S.C. Code of Laws 61-6-1610 with regard to the requirements which must include at least twenty-one cubic feet of refrigerated space for food and a business providing facilities for seating not fewer than forty persons simultaneously at tables for service of meals.

On or about May 18, 2011, the Department of Revenue received an application for renewal of an on premise beer and wine permit and a restaurant liquor by the drink license from Be Mi Inc., d/b/a/ St. Clements Beach Bar & Grill, 202 70th Ave. N, Myrtle Beach, South Carolina.

As a result of the filing of the application, and pursuant to the request by the Department of Revenue, the South Carolina Law Enforcement Division (Alcohol Licenses) conducted an investigation of the location on or about August 16, 2011, to determine the compliance with the statutory requirements.

Ms. Brown writes during the course of the investigation, SLED Agent Debra Rodgers, states that the location is a small kiosk operating on the pool deck of the St. Clements Condos. Agent Rodgers also states that there are thirty-six chairs sitting between the pool belonging to the St. Clements Condos and the location; there are three refrigerators with a capacity of four cubic feet each, for a total of twelve cubic feet of cold storage; the kiosk is equipped with a grill; the location food menu is very extensive but little food is kept on the premises; additionally food storage is maintained at a residence across the street from the location.

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At the time of the SLED inspection, the location had on hand food consisting of ten pounds of onion rings, ten pounds of French fries, four pre-packaged pizzas, ten pounds of breaded chicken fingers, three bags of cheese sticks, several hotdog wieners, five pre-packaged corn dogs, and eight hamburgers.

In perspective to Agent Rodgers report, the St. Clements Beach Bar & Grill described as a small kiosk located in the pool area of the St. Clements Condos was determined to be approximately 144.5 square feet with eating area around the establishment (exhibit #1, #2, #3, #4, #5). The overview of the inside revealed the refrigerated space determined by Agent Rogers inspection reflecting three refrigerators with a capacity of 4.0 cubic feet each, for a total of 12 cubic feet. Further, it was determined that Agent Rogers did not count a 6.5 cubic foot Silver King and a 12 cubic foot Beverage All refrigeration freezer. The Silver King refrigerated unit would amend her total to 17.5 cubic feet of refrigerated space and the additional 12 cubic feet Beverage All unit.

Based on these findings, Mr. Goude, in addition to a 4.0 cubic foot Haier compact refrigerator (exhibit #6) and a 6.5 cubic foot Silver King (exhibit #7) present at the location replaced two 4 cubic foot refrigerators with a 14.1 cubic foot whirlpool refrigerator in the facility (exhibit #8). These 3 units totaling 24.6 cubic feet bring the location into compliance of the required 21 cubic feet. There is a 12 cubic foot Beverage All refrigeration freezer that has not been included in the total footage (exhibit #9, #10).

Pursuant to discussion with Mr. Goude, it was determined that he is bona fide engaged primarily and substantially in the preparation and service of meals and provides food service on a daily basis displaying two separate menu boards (exhibits #11, #12) and a display holder containing to go menus (exhibit #13). The location was determined to maintain adequate refrigerated food and perishables. Mr. Goude can provide food service receipts and tax documentation he has submitted to the South Carolina Department of Revenue where he has paid his taxes for food sales.

Agent Rogers reported that thirty-six chairs were sitting between the pool and the location. During my inspection, it was determined that the location has three distinct sitting areas. The first, a patio deck with four tables holding sixteen chairs; a shelf area off from the patio deck with two bar stools (exhibit #14, #15); an area between the St. Clements restaurant/bar and the pool with two tables holding eight chairs; three tables holding two chairs for six (exhibit #16) and another single table of four chairs (exhibit #17) in the pool area for a total of thirty-six chairs.

In addition, to the chairs she accounted for as described sitting between the pool and the location, it was determined the location has an upper deck area with an additional three tables with seating of twelve chairs (exhibit #18, #19) making the total chairs provided at tables forty-eight which meets the requirement of at least forty individuals seated simultaneously at tables for service of meals.

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In conclusion, it should be noted, during my time as an Agent, I conducted compliance checks at the St. Clements Beach Bar & Grill. Whether it was for a general inspection on the beer and wine permits, the restaurant liquor by the drink license or required signs and or for food service, in the last 10 years before my retirement. I conducted inspections in 2004, which I issued a warning for failure to maintain a DHEC class "a" rating. Other inspections were conducted in 2006, 2007 and 2008 with no violations, warnings or complaints about the location. In addition, I personally ordered and ate food at the location on several occasions, as did my family and during these times observed other people ordering and eating food.

Pursuant to my findings and based on my knowledge of the South Carolina Department of Revenue, I feel a request for a second site inspection is recommended based on the discrepancies determined during this review. All attempts to resolve this issue of compliance should be made without having to go before an Administrative Law Judge. This is all dependent upon the initial protest being retracted.

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Exhibit #7 - 6.5 cubic foot Silver King refrigerator

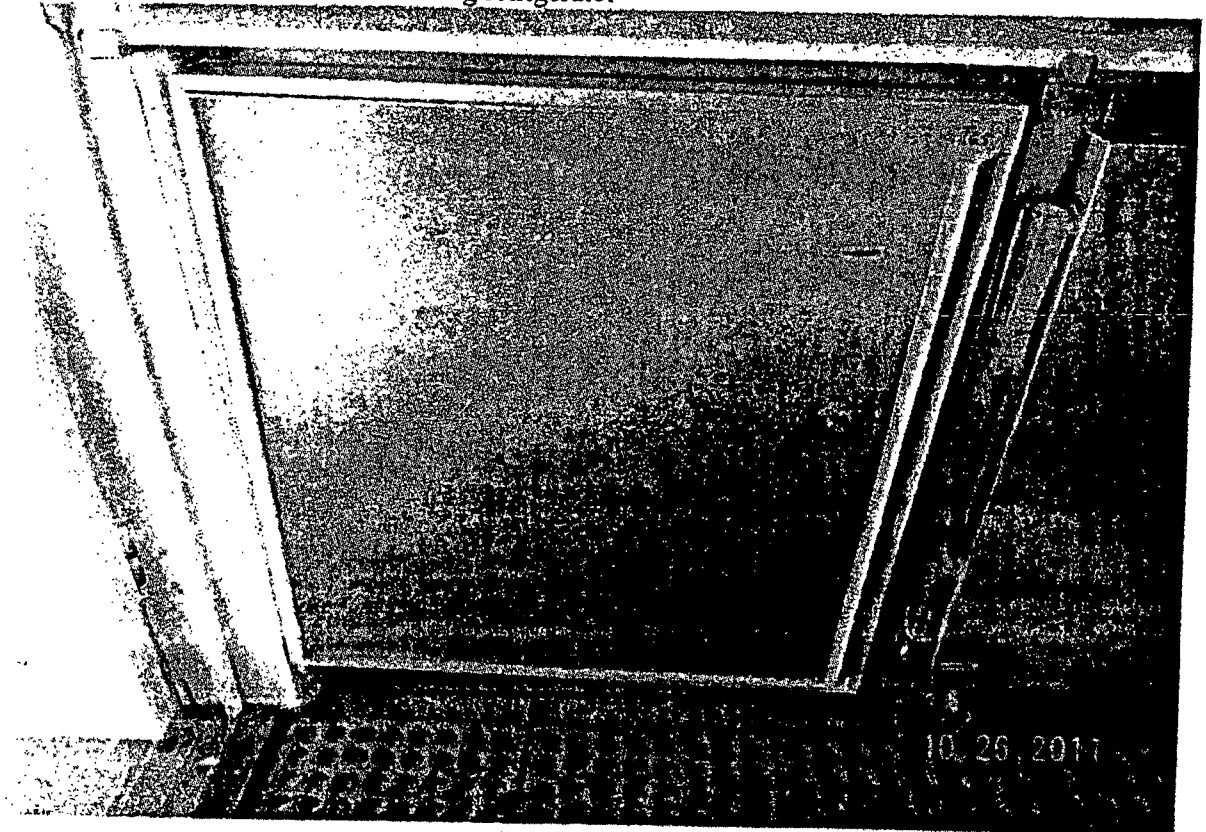
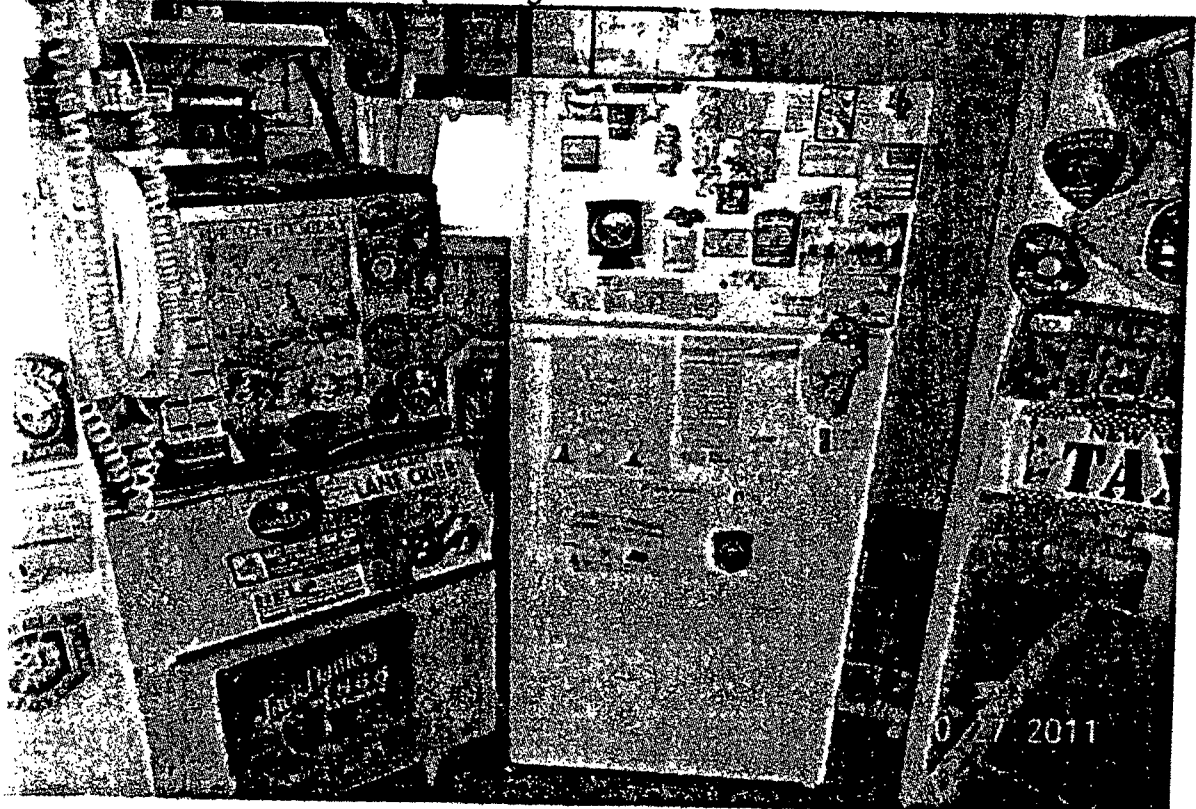


Exhibit #8 - 14.1 cubic foot Whirlpool refrigerator



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Exhibit #9 - approx. 6 cubic foot each side for 12 cubic foot Beverage All refrigeration freezer

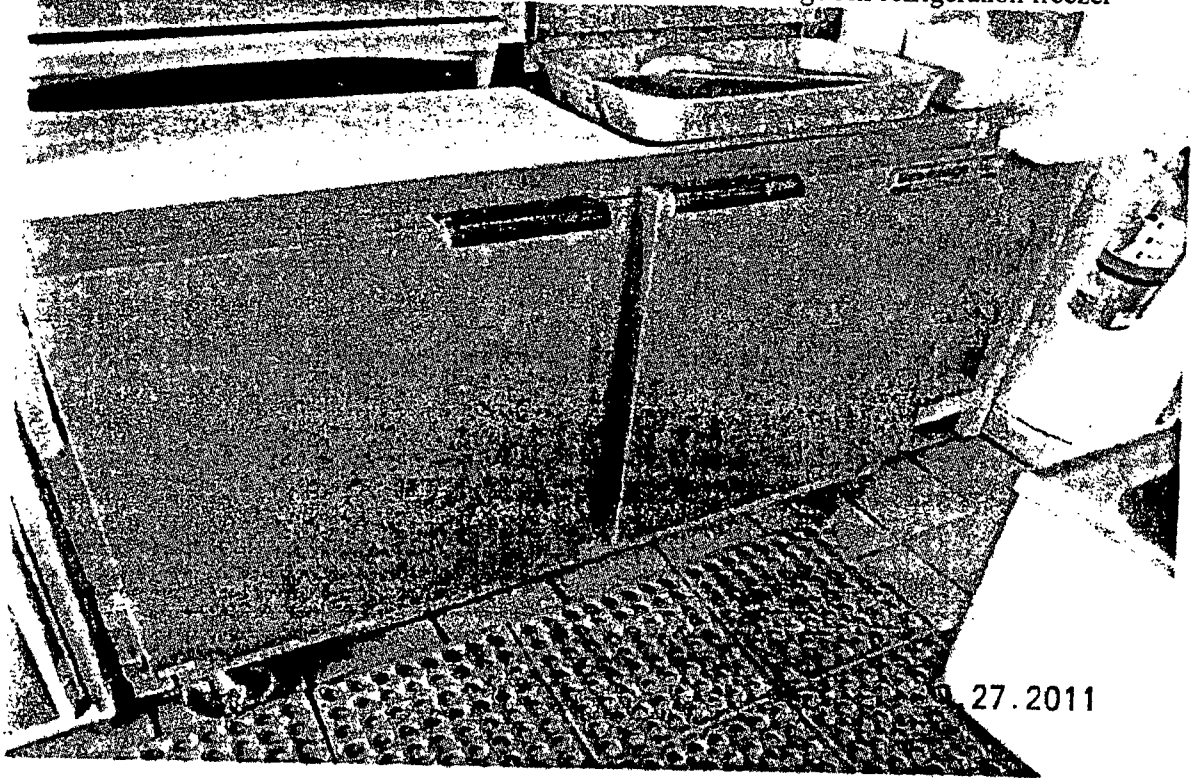
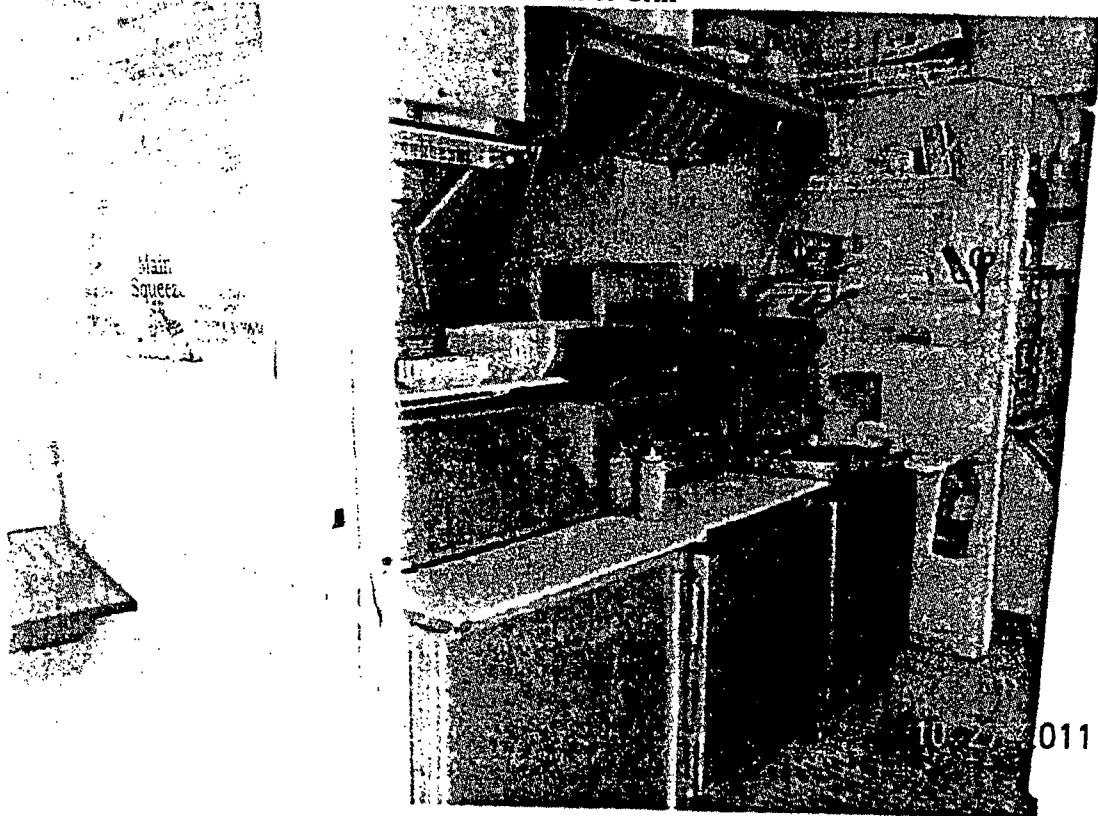


Exhibit #10 Grill area of St. Clements Beach Bar & Grill



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Exhibit #11 - St. Clements menu board in front of service counter

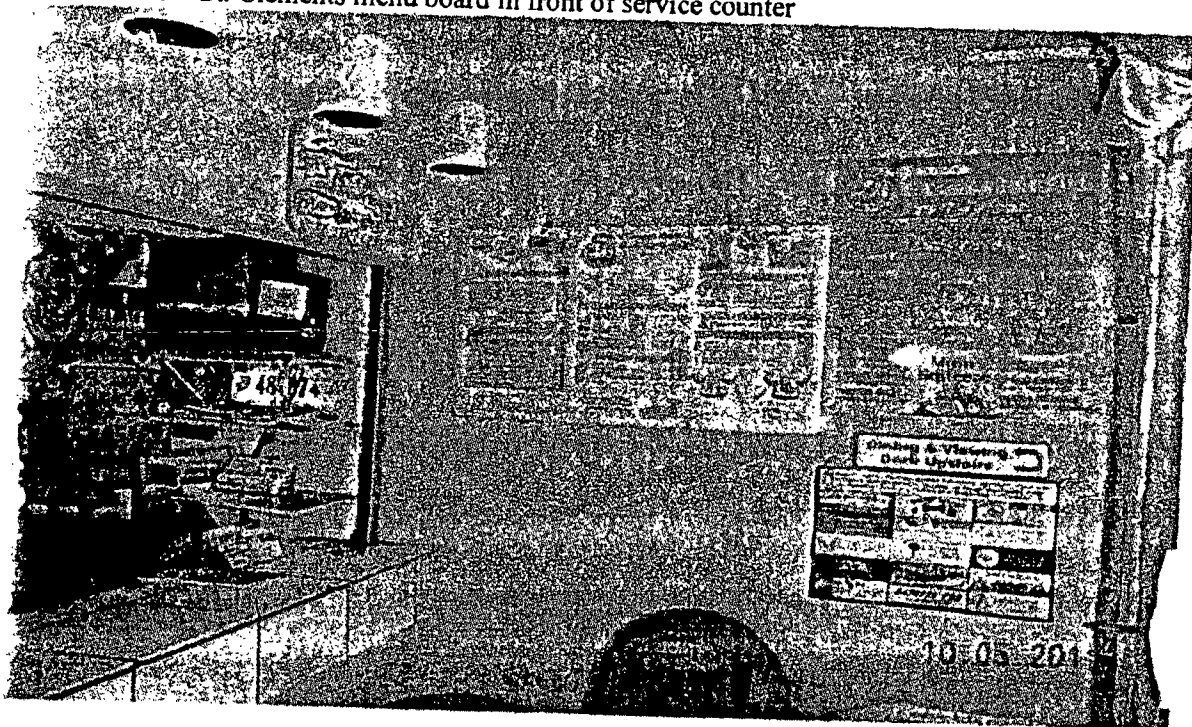
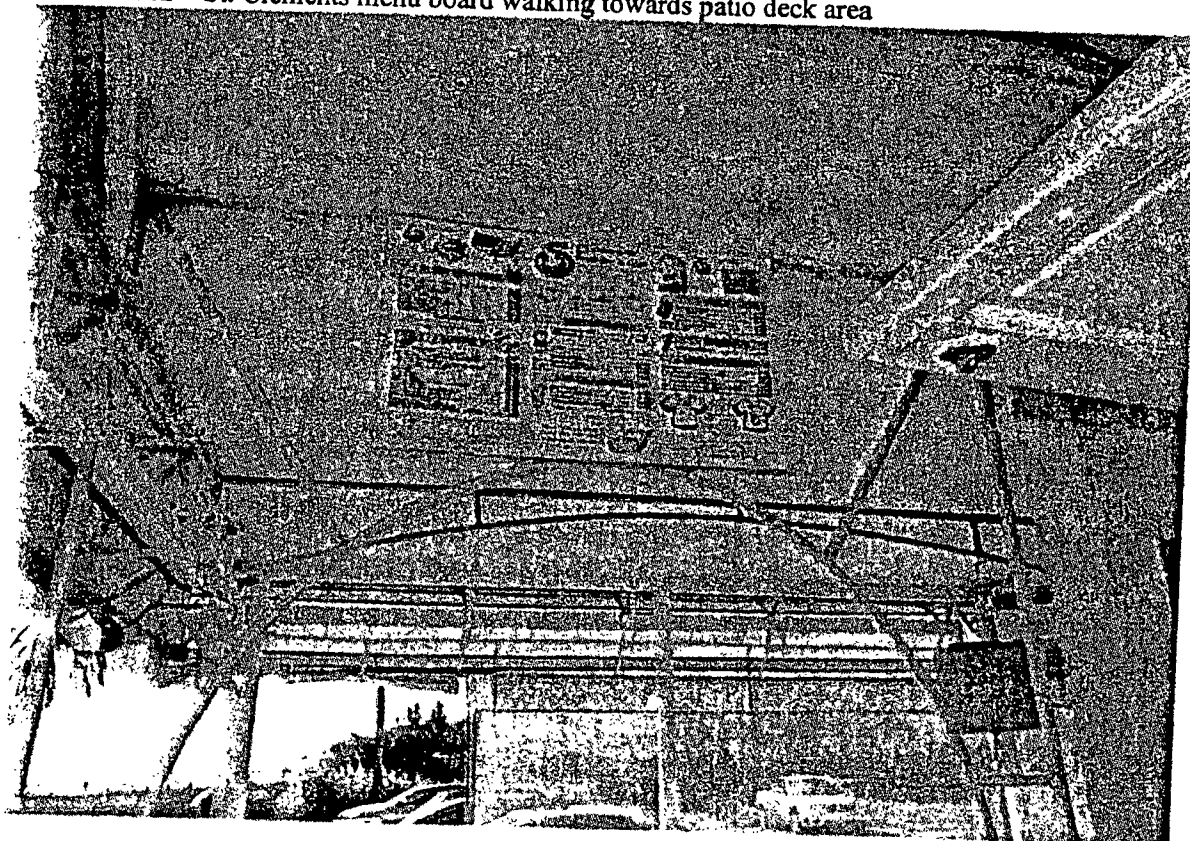


Exhibit #12 - St. Clements menu board walking towards patio deck area



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Exhibit #1 View of St. Clements Beach Bar & Grill looking north from 70th Ave. N.

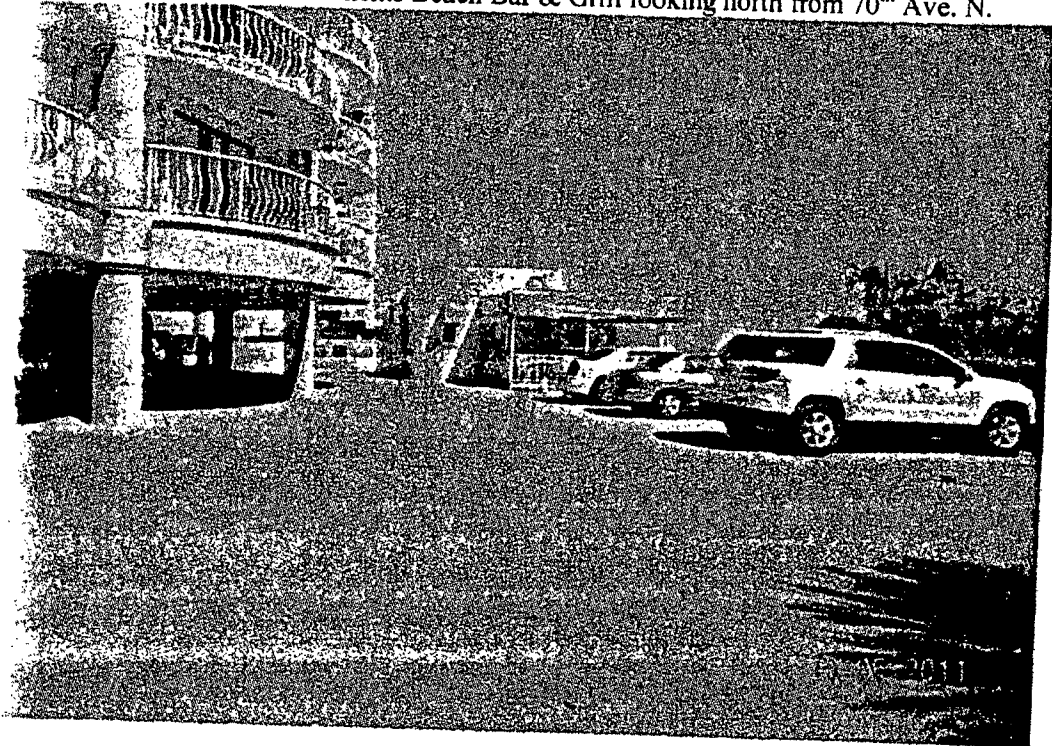


Exhibit #2 View of St. Clements Beach Bar & Grill looking west from oceanside

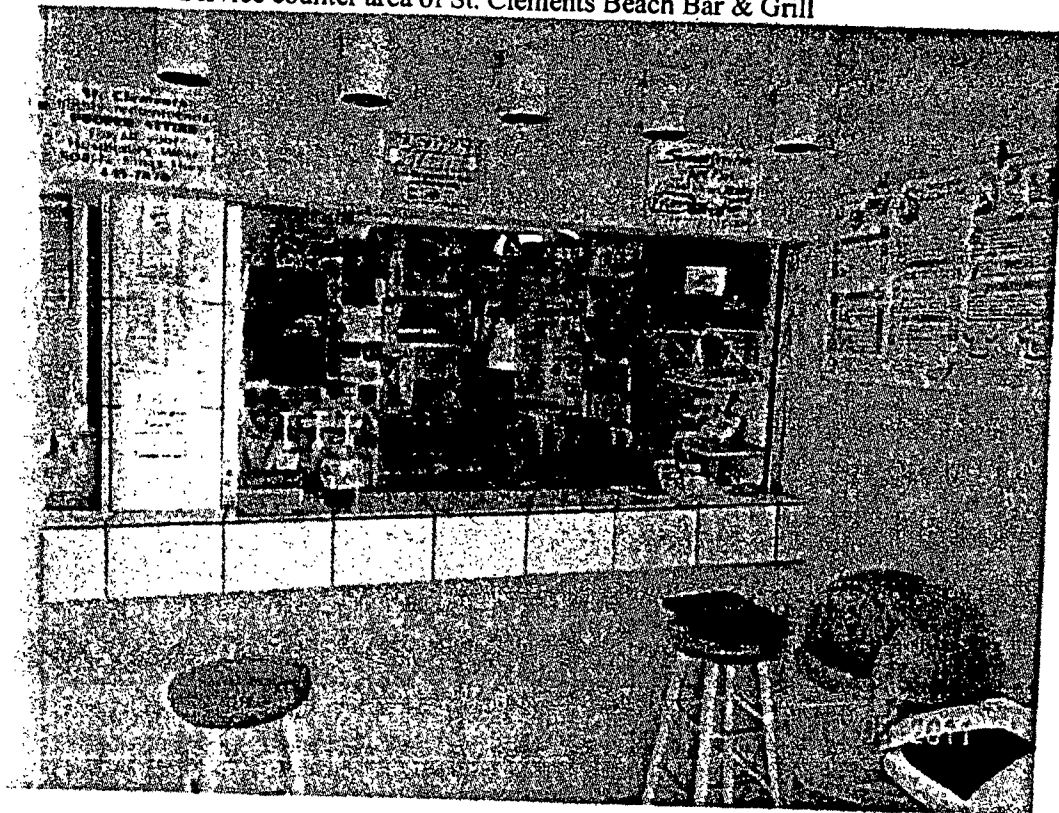


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Exhibit #3 – View of patio seating area between Bar & Grill and the pool looking at ocean



Exhibit #4 – Service counter area of St. Clements Beach Bar & Grill

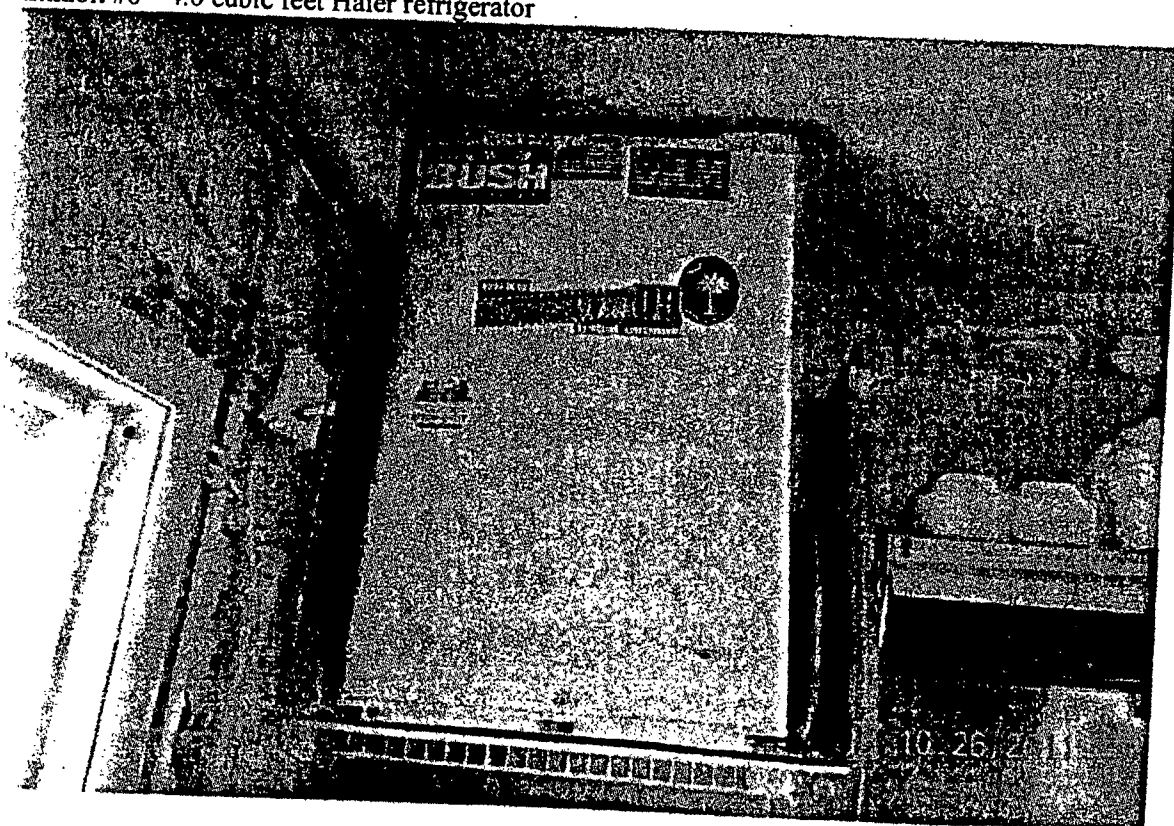


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Exhibit #5 – Inside view kitchen area of St. Clements Beach Bar & Grill



Exhibit #6 – 4.0 cubic feet Haier refrigerator



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Be Mi, Inc., d/b/a St. Clements Beach Bar)
& Grill,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Revenue,)
)
Respondent.)
)
)

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 11-ALJ-17-0546-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on October 27, 2011. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2010), the **Honorable Shirley C. Robinson**, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalec.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the seventh day of November, 2011.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

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SC ADM000058

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street, P.O. Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5130 Telecopier (803) 898-5147

November 30, 2011

The Honorable Shirley Robinson
Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

Re: Amended Department Determination
File No. 32014935-PBW & PLB

Dear Judge Robinson:

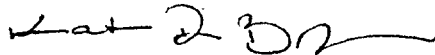
Pursuant to a request by the Applicant's attorney, enclosed please find the South Carolina Department of Revenue's Amended Department Determination in the above-referenced matter. The Applicant has already contested the original Department Determination and we are currently awaiting a hearing date before your court.

The Amended Department Determination was issued at the request of the Applicant due to the fact that the Department no longer contests the issuance of the Applicant's license/permit based on failure to meet the restaurant requirements. However, a hearing is still required since the Department has continued its denial of the application based on a valid public protest.

Please make the Amended Department Determination part of the Agency Information Sheet.

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION



Kathryn R. Brown
Counsel for Litigation

KRB:sho
Enclosures

c: Ken Allen (w/enclosures)
James Corbett (w/o enclosures)

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AMENDED DEPARTMENT DETERMINATION

Applicant:

Be Mi, Inc.
d/b/a St. Clements Beach Bar & Grill
202 70th Ave. N
Myrtle Beach, SC 29572

File No:

32014935-PWB & PLB

Date of Application:

May 18, 2011

Matter in Dispute:

Should the on premises beer and wine permit and the restaurant liquor by the drink license be denied based on a public protest filed pursuant to S.C. Code Ann. §§ 61-4-525 and 61-6-1825 (2009)?¹

Determination:

The on premises beer and wine permit and the restaurant liquor by the drink license is denied based on a public protest filed pursuant to §§ 61-4-525 and 61-6-1825.

Relevant Facts:

1. On or about May 18, 2011, the Department of Revenue (Department) received an application for renewal of an on premises beer and wine permit and a restaurant liquor by the drink license from Be Mi, Inc., d/b/a/ St. Clements Beach Bar & Grill, 202 70th Ave. N, Myrtle Beach, South Carolina.
2. As a result of the filing of the application, the South Carolina Law Enforcement Division (SLED) conducted a standard investigation of the location on or about August 16, 2011, to determine compliance with the statutory requirements for

¹The following is an Amended Department Determination. When this matter first arose, the Department found that the Applicant failed to be primarily and substantially engaged in the preparation and service of meals pursuant to the requirements of S.C. Code Ann. §§ 61-6-1610 and 61-6-20 (2009). A subsequent investigation by SLED established that the Applicant now satisfies these requirements. As such, this issue is no longer in dispute.

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licensure.

3. During the course of the investigation, SLED Agent Debra Rodgers, states that the location is a small kiosk operating on the pool deck of the St. Clements Condos. She also states that there are thirty-six chairs sitting between the pool belonging to the St. Clements Condos and the location; there are three refrigerators with a capacity of four cubic feet each, for a total of twelve cubic feet of cold storage.
4. The Department received a valid public protest to the location from James J. Corbett, attorney at law, representing the St. Clement Homeowner's Association and Board Members.
5. The Protestants indicate that the thirty-six chairs between the location and the pool are common area seating and are not dedicated specifically to the location.
6. The Department denied the issuance of the license and permit pursuant to a denial letter dated May 24, 2011, based on a valid public protest and failure to be engaged primarily and substantially in the preparation and service of meals.
7. The Applicant timely protested the denial of the license and permit pursuant to a letter dated June 9, 2011.
8. On September 30, 2011, the Department issued its Department Determination denying the application based on a valid public protest filed pursuant to §§ 61-4-525 and 61-6-1825 as well as the Applicant's failure to be engaged primarily and substantially in the preparation and service of meals as required by §§ 61-6-1610 and 61-6-20. However, the Department allowed the Applicant the opportunity to cure the deficiencies subject to re-inspection and approval by SLED.
9. On Monday, November 21, 2011, the Department received notice from SLED that a follow-up inspection of the location was completed. The SLED Agent reported that the location now possesses at least twenty one cubic feet of cold storage as required by the liquor by the drink license. Additionally, the Agent reported that there is seating provided as follows; twenty chairs at tables and two bar stools in one area of the location, six bar stools at the serving windows, fourteen chairs at tables in a common area, and eighteen chairs at tables on the roof of the location. This amount of seating is adequate to provide seating for not fewer than forty persons as required for the liquor by the drink license.
10. Based on the additional refrigeration and seating provided by the Applicant, the Department withdraws its denial of the Applicant's renewal of its permit and license for failure to meet the requirements of §§ 61-6-1610 and 61-6-20. However, the Department maintains its denial of the Applicant's renewal of its permit and license based on the valid public protest.

Analysis:

The on premises beer and wine permit and the restaurant liquor by the drink license is denied based on a public protest filed pursuant to §§ 61-4-525 and 61-6-1825.

It is well established that the public is allowed to submit written protests to the Department against the issuance of a liquor by the drink license if the protestant complies with the requirements of the statute in rendering the protest. See § 61-6-1825 and 23 S.C. Code Ann. Regs. 7-201 (Supp. 2010). Further, the protestant must express the intent to attend a contested case hearing and must reside in the same county as the location or within five miles of the location.

Section 61-6-1825 states:

(A) A person residing in the county in which a license pursuant to the provisions of subarticle 1 of this article is requested to be granted, or a person residing within five miles of the location for which a permit pursuant to the provisions of subarticle 1 of this article is requested, may protest the issuance or renewal of the license if he files a written protest providing:

(1) the name, address, and telephone number of the person filing the protest;

(2) the name of the applicant for the license and the address of the premises sought to be licensed, or the name and address of the license holder if the application is for renewal;

(3) the specific reasons why the application should be denied; and

(4) whether or not he wishes to attend a contested case hearing before the Administrative Law Court.

(B) Upon receipt of a timely filed protest, the department must determine the protestant's intent to attend a contested hearing before the Administrative Law Court. If the protestant intends to attend a contested hearing, the department must not issue the permanent license but must forward the file to the Administrative Law Court.

(C) If the protestant during the investigation expresses no desire to attend a contested hearing and offer testimony, the protest is deemed invalid, and the department shall continue to process the application and shall issue the license if all other statutory requirements are met.

(D) A person who files a protest and fails to appear at a hearing after affirming a desire to attend the hearing may be

assessed a penalty to include court costs.

The beer and wine statute provides substantially the same language as cited above in allowing the public to submit protests against the renewal of a beer and wine permit at a location. See § 61-4-525.

The Department received a timely protest from the St. Clements Homeowner's Association through its counsel, James J. Corbett. Except for determining that the statutory requirements for protest have been met, the Department does not have the authority to issue the license and permit over the objection of a public protest; rather, this matter must be heard by the Administrative Law Court. Accordingly, based on the protest, the Department may not issue the license and permit pursuant to the mandates of §§ 61-6-1825 and 61-4-525.

November 30, 2011

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,	)	Docket No:
	)	
Petitioner,	)	
	)	
vs.	)	MOTION BY ST. CLEMENTS
	)	HOMEOWNERS ASSOCIATION FOR
	)	LEAVE TO INTERVENE
Be Mi, Inc., d/b/a	)	
St. Clements Beach Bar & Grill	)	
	)	
Respondent.	)	

TO: KATHRYN BROWN, ESQUIRE, DEPARTMENT OF REVENUE

Pursuant to Rule 20 of the Rules of Procedure for the Administrative Law Court, St. Clements Homeowners Association, movants, moves to intervene as a party in the above-captioned proceeding. The grounds for this motion are:

1. The Association owns the common area where the seating is used by Applicant/Licensee to attempt to comply with the permit requirements. The Association and its members are directly affected by the licensee's distribution of alcohol on the premises and his use of the common areas instead of his own area. Movants therefore are vitally interest in and affected by the outcome of this proceeding.

2. The movants will be aggrieved or adversely affected by the actions of the licensee; the movants' interests will not be adequately represented by existing parties; and intervention will not unduly prolong the proceedings or prejudice the right of

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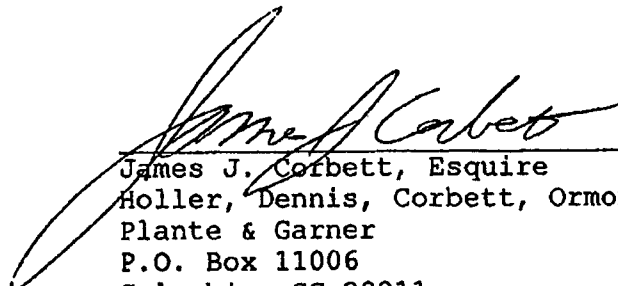
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SC ADMIN LAW COURT

existing parties.

3. In view of these allegations, any order issued by the Court in this proceeding would be binding on the movants, and its members, and their interest in these proceedings would not be adequately protected unless the Homeowners Association is permitted to intervene to present factual testimony and evidence concerning the license requirements.

WHEREFORE, movants respectfully moves that it be granted leave to intervene in this proceeding.


James J. Corbett, Esquire
Holler, Dennis, Corbett, Ormond,
Plante & Garner
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Movants

December 7, 2011

ORDER

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DEC 22 2011

☒ GRANTED.

☐ DENIED for the following reasons:

SC ADMIN. LAW COURT

AND IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This 22 day of December, 2011, I, Deborah A. Herderson, Administrative Law Judge, served this order in the above captioned cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 22 day of December, 2011

By: Deborah A. Herderson
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Be Mi, Inc. d/b/a	)	Docket No: 11-ALJ-17-0546-CC
St. Clements Beach Bar & Grill	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	MOTION FOR RECONSIDERATION
South Carolina Dept. of	)	
Revenue	)	
	)	
Respondent	)	
	)	
St. Clements Homeowners Assn.	)	
	)	
Intervenor.	)	
	)	

Intervenor, St. Clements Homeowners Association hereby moves this Honorable Court reconsider its Final Order and Decision and deny Petitioners' application for renewal of the restaurant liquor by the drink license.

The grounds for such Motion are:

1. That the Petitioner did not meet the statutory requirements and does not have "sufficient space under his control to provide seating for '40 persons simultaneously at tables for the service of meals.'" Petitioner must include common area seating that is not exclusively within his possession, use or control to reach 40 table seats. Based on the Master Deed and South Carolina Regulations he can not meet the seating requirements. The litigation concerning the wood deck is on

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SC ADMIN. LAW COURT

appeal and not final and Petitioner never showed any evidence of any written permission for use of common areas as required by Reg. 7-202.1 to build the wood deck, so it can not be counted as under "his control." Petitioner further admitted in his testimony that the seats on this wood deck were built upon parking spaces, and were common area seats open to all pursuant to the Master Deed. Article 6.2 of the Master Deed specifically states that all general common areas are open to all owners and there is no exclusive right owned by Petitioner, which Petitioner acknowledge under oath. His only "exclusive use" is only for the approximate 18 seats on the rooftop of his unit, his unit's balcony. Switching bar stools from the common area to inside the covered deck, even at the rail, would make it impossible to use so the seats at tables already crammed into the deck and the stools at the same time, as they would occupy the same space.

Section 61-6-20(2) requires seating be "at tables" and the bar stools can not fit at the already crowded tables. A "wide rail" is not a table. The SLED report does not take into account exclusive or non-exclusive use of the seating "arrangement" and relied solely on Petitioner's version of control at inspection, not the Master Deed restrictions on commercial use of a parking space, or the fact common area seating included yet not controlled by Petitioner to count for the simultaneous serving of meals to 40. Intervener also pointed out several complaints of Petitioner improperly preventing persons using self described

common area seating when possessing outside food or beverage. Exclusive use is required to count as seating under the statute.

2. The Master Deed, entered into evidence, states "no business activity of any kind whatever shall be conducted in any building or any portion of the property not designated as commercial area." Common areas, including the wood deck counted by the Court as seating, are not designated as commercial areas nor are the parking spaces the deck was built on. As a unit owner under the Master Deed Petitioner agrees that this deck space over parking spaces or as a common area can not be used for commercial purposes. The Administrative Law Court is without authority to modify the Master Deed so this resident may obtain an alcohol license, or to give Petitioner preference over similarly situated owners. The Order denies all other unit owners the equal right to use this common area seating on the wood deck, despite Petitioner's sworn testimony it is common area, thus it would be an error of law. The pictures and sworn testimony by both Ms. Brown and Petitioner show that the area under Petitioner's control can not include common area table seating for 40. Based on the substantial evidence presented at the hearing it would be arbitrary, capricious or clearly erroneous in view of the reliable, probative and substantial evidence in the whole record to find Petitioner had exclusive control of 40 seats at tables simultaneously.

3. The Court's Order would be in violation of S.C. Code of

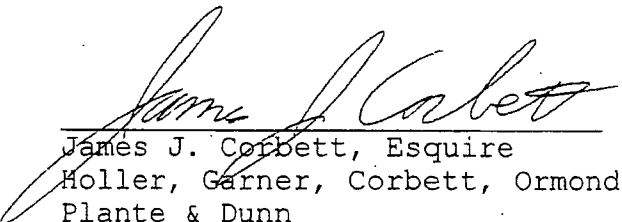
Regulations Chapter 7-202.1, General Requirements - All licenses, (B). This section requires that the "license holders direct control of buildings and grounds may be shown by any of the following: (a) a deed or lease conveying to the license holder an appropriate interest that includes the premises; (b) a writing from a local governmental jurisdiction giving the license holder the right to use and the duty to maintain an area owned or controlled by the local governmental jurisdiction; (c) an enforceable written contract granting the license holder a right to use the premises." (Emphasis Added)

The Petitioner did not show any of these as evidence of his right to control, just oral testimony. Therefore it would be an error of law for the Administrative Law Court to hold an oral agreement gave Petitioner use of the covered deck, which also violates the statute of frauds as the agreement can not be performed within 1 year.

There is no reliable, probative evidence in the record to support the finding that "the developer gave Petitioner permission to expand the bar and grill by adding a covered wooden deck to the unit" and that this some how supercedes the Master Deed. The Court explains this is a concession, because other units have balconies, when it is clear from all of the testimony and picture exhibits that Petitioner already has a balcony, on top of his unit. The covered deck would be an additional area not available to other members, who only have balconies. There

is no written evidence of the agreement as required by 7-202.1.

In light of the reliable, probative and substantial evidence in the whole record, it would be clearly erroneous for this Court to find that the severely limited space on top of Petitioner's small unit, and even reasonable seating on the wood deck, provides sufficient space under his exclusive control to provide seating for "40 persons simultaneously at tables for the service of meals" as required by Section 61-6-1610 and defined by Section 61-6-20 (2). The Court's finding would be a tortured and therefore erroneous reading of the statute requiring seating "simultaneously at tables," based upon the cramped conditions evident from the pictures and described in the testimony presented at the hearing.



James J. Corbett, Esquire
Holler, Garner, Corbett, Ormond,
Plante & Dunn
P.O. Box 11006
Columbia, SC 29211
(803) 765-2968
Attorney for Intervenors

Columbia, South Carolina
June 19, 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 11-ALJ-17-0546-CC

BeMi, Inc., d/b/a St. Clements)
Beach Bar & Grill,)

Petitioner,)

vs.)

South Carolina Department of)
Revenue and St. Clements)
Homeowner Association,)

Respondents.)
-----)

ADMINISTRATIVE HEARING

Wednesday, January 4 2012
10:06 a.m. - 1:01 p.m.

The hearing before the Honorable Shirley C. Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 4th day of January, 2012 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES:**Kenneth E. Allen, Esquire**

Attorney at Law
 1201 Main Street, Suite 1980
 Columbia, South Carolina 29201
 Attorney for the Petitioner

Kathryn S. Brown, Esquire

South Carolina Department of Revenue
 301 Gervais Street
 Columbia, South Carolina 29201
 Attorney for the Respondent

James J. Corbett, Esquire

Law Offices of Holler, Garner, Corbett Ormond, Plante
 & Dunn
 1777 Bull Street
 Columbia, South Carolina 29201
 Attorney for the Intervener

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(All exhibits were retained by Jude Robinson.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

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1 **THE COURT:** I'll go ahead and call the hearing to
2 order. This is the case of BeMi, Incorporated
3 doing business as St. Clements Beach Bar &
4 Grill is the Petitioner versus the South
5 Carolina Department of Revenue, Respondent. We
6 also have as Interveners the St. Clements
7 Homeowners Association. It's document number
8 11-ALJ-17-0546. We have Ken Allen as
9 representing the Petitioner.

10 **MR. ALLEN:** Your Honor, good morning.

11 **THE COURT:** Good morning. For the Department we have
12 -- is it Karen Brown?

13 **MS. BROWN:** Kathryn. E

14 **THE COURT:** Kathryn Brown. Sorry.

15 **MS. BROWN:** Yes, ma'am.

16 **THE COURT:** And we have James Corbett representing
17 the Intervener.

18 **MR. CORBETT:** Yes, Your Honor. Good morning.

19 **THE COURT:** Good morning. If we don't have any pre-
20 hearing matters that need to be addressed, we
21 can proceed to brief opening statements
22 beginning with the Petitioner.

23 **OPENING STATEMENT BY MR. ALLEN:**

24 **MR. ALLEN:** Your Honor, thank you. Judge, I will be
25 brief, but let me tell you this. As you know,

1 I've already filed a motion with the court, but
2 I suspect Your Honor will probably want to hear
3 some testimony on that. Judge, this is Mr.
4 Goude here and he will be our principal
5 witness. His company, BeMi, owns a commercial
6 unit at St. Clements, and the testimony will be
7 that that is a -- what's known as a condo
8 hotel. In other words, the rooms are
9 individually owned but then rented out to the
10 public. From the public standpoint it looks
11 like a typical hotel, but the rooms are
12 actually individually owned. Judge, the
13 Department of Revenue has already, in their
14 amended determination, taken the position that
15 he meets all of the requirements for the
16 renewal of his alcohol license, and obviously
17 we support that decision. The testimony will
18 be that he's been licensed here for over 20
19 years. But there will also be some testimony
20 about ongoing problems and litigation between
21 himself and the homeowners association. Part
22 of it has to do with the deck area immediately
23 adjacent to his building, and the testimony
24 will be that the Master in Equity in Horry
25 County ruled in his favor back in '09, and

1 there will be testimony that that case is on
2 appeal. And, Judge, I have come to the
3 conclusion, and I hope you will, that what's
4 going on here today is simply an extension of
5 the homeowners trying to put him out of
6 business because they were not successful in
7 circuit court. And that case, like I said,
8 remains on appeal. It obviously involves some
9 complicated real estate law questions, which,
10 with all due respect to this court, I think
11 those are in the purview of the Master in
12 Equity and the circuit court where the appeal
13 is. But with that brief introduction, Your
14 Honor, we are ready and prepared to put up
15 testimony.

16 **THE COURT:** Okay. Thank you. Ms. Brown.

17 **MS. BROWN:** Your Honor, if I may at this time, may I
18 enter the -- if there are no objections --

19 **MR. ALLEN:** No objections.

20 **MS. BROWN:** -- the case file.

21 **MR. CORBETT:** No objection, Your Honor.

22 **MS. BROWN:** The Department's case file into
23 evidence.

24 **THE COURT:** It's entered with no objection.

25 **(Respondent's Exhibit Number One was admitted into**

1 evidence.)

2 OPENING STATEMENT BY MS. BROWN:

3 MS. BROWN: Your Honor, just briefly I'd like to
4 give the court a history of what's going on in
5 this case, a background. In May of 2011 the
6 applicant applied for a renewal for his
7 restaurant liquor by the drink license and on
8 premises beer and wine permit. At that time a
9 SLED inspection showed that the location did
10 not meet the statutory requirements for
11 restaurant liquor by the drink license.
12 Specifically, the location did not possess the
13 21 cubic feet of refrigerated space required by
14 Section 61-6-1610, nor did it have seating for
15 40 people as required by Section 61-6-20.
16 Additionally at that time, the Department
17 received a timely valid public protest.
18 Consequently, the Department initially denied
19 the applicant's renewal based on both the
20 statutory deficiencies as well as the public
21 protest. However, in it's initial
22 determination the Department allowed the
23 applicant the opportunity to cure these
24 deficiencies subject to SLED reinspection. The
25 applicant made the necessary modifications and

1 in November of 2011 a SLED reinspection showed
2 that the applicant now satisfactorily meets the
3 statutory requirements for restaurant liquor by
4 the drink license and an on premises beer and
5 wine permit. As such, the Department issued an
6 amended department determination withdrawing
7 it's denial based on the applicant's failure to
8 meet the statutory restaurant requirements.
9 However, the Department maintained its denial
10 based on the valid public protest. The
11 Protestants have now been granted leave to
12 intervene by this court, and at this time the
13 Department has no objection to the issuance of
14 the applicant's license, and but for the
15 intervention of the public Protestants, the
16 Department would have issued the license.

17 **THE COURT:** Thank you. Mr. Corbett.

18 **OPENING STATEMENT BY MR. CORBETT:**

19 **MR. CORBETT:** Good morning, Your Honor. I am Jim
20 Corbett and I represent the St. Clements
21 Homeowners Association. Present here today is
22 Ms. Barbara Brown and her husband Mr. Brown.
23 Ms. Brown is representing the Homeowners
24 Association in this matter. The issue really
25 is one, and there could be 1A. Simply put, Mr.

1 Goude does not have the requisite 40 seats for
2 exclusive use of his premises as required by
3 the application. Now, he has had a license for
4 a while, but I don't know how he got past that
5 except that nobody bothered to find out what
6 that unit has. But the master deed only gives
7 you your premises, not the common area around
8 the pool, for exclusive use as required by the
9 application. I'm not sure if he was mistaken
10 or mislead, the investigator, or just assumed
11 it didn't matter, but he does not own -- no
12 homeowner there owns any of the common area
13 which is being counted for the 40 seats. You'll
14 see pictures that show he's got a rooftop above
15 his unit that he seats 12, and now he's tried
16 to cram apparently 18 seats there, but that's
17 not 40. And he's got more seating than anyone
18 else. Everyone else only owns their balconies
19 exclusive use. Everything else is common area
20 that would be shown today. It's common area.
21 It's for everybody. You can't claim it as your
22 exclusive use. If you don't have to have
23 exclusive use and it could be common area, then
24 parking lot could be seating, tailgating, put
25 up folding chairs. All sorts of things could

1 come up to play to get a license. As far as
2 the Master in Equity lawsuit, neither Mr. Allen
3 nor I were the attorneys in that case. But I
4 read part of the transcript and I've seen the
5 order, and that was about whether or not Mr.
6 Goude had ownership of a deck he built over two
7 parking spaces. The issue there was did he
8 have permission from the Homeowners
9 Association. There's nothing in writing. And
10 that was ruled that he basically owns that
11 structure he put over the parking spaces. That
12 doesn't give him any more seating for this
13 license, and that's what this issue is about.
14 And that's the only reason that this
15 intervention has been brought. And contrary to
16 what's been said, there's no feud here, but
17 there have been problems. The reason that the
18 Homeowners Association started this is because
19 there were complaints made to the board about
20 taking over portions of the common area and
21 excluding guests from there, unless they bought
22 food and drink from Mr. Goude's place, and
23 putting up signs that prohibited people from
24 bringing certain things there when there are no
25 such prohibitions. Even cites some insurance

1 regulations. It maybe pertinent to him. It's
2 not pertinent to the common areas. So with
3 some complaints, they eventually had to bring
4 up these issues and that's why we're here
5 today. Now, Mr. Goude is perfectly capable of
6 operating a snack bar there. He doesn't have
7 to worry about how many seats he has. He's got
8 plenty. And there's no issue for him running
9 his business. The only issue is serving
10 alcohol. And by his own admission in the
11 previous trial, he attracts patrons from all
12 over who will use the common area seating by
13 the pool at the St. Clements Homeowners
14 Association. That's, I think, the only --
15 there are two commercial units, one is a
16 penthouse and one is his, and he's the only
17 commercial activity there. So it's not a
18 complicated real estate issue. We don't have
19 to worry about a Master in Equity's ruling on
20 anything, because that is only, as I
21 understand, on ownership of that little deck
22 over two parking spaces when he only had rights
23 to one and a half. The only issue here is does
24 he have 40 seats, and he doesn't. He couldn't,
25 and he didn't, and he's living on borrowed

1 time. And the Homeowners Association has
2 complaints to it and they have to do something
3 so that the common area is not suddenly given
4 to one tenant, or one unit owner, over
5 everybody else to the exclusion of others. So
6 that's we're here. There's no vendetta. It's
7 just, you know, keeping those people away.
8 Maybe reduce it to just to be the snack bar for
9 the tenants there and anyone else who may be
10 wondering off the beach, take something and go.
11 And that would be the case. We'll have one
12 witness. We may have Mr. Brown as a witness,
13 if necessary. We'll have photos. Mr. Allen
14 and I had exchanged photos. I've got portions
15 of the master deed that Ms. Brown will tell you
16 about, and I'll be happy to hand them to you
17 now if you'd like to read them. But that's
18 what we will present. Thank you.

19 **THE COURT:** Thank you, Mr. Corbett. Mr. Allen.

20 **MR. ALLEN:** Your Honor, if I could, I want to
21 clarify for the record whether or not the
22 Protestants are protesting the renewal of the
23 beer and wine permit or just the liquor by the
24 drink license?

25 **MR. CORBETT:** One moment, Your Honor. Your Honor,

1 may I confer with Mr. Allen for just a minute?

2 **THE COURT:** Sure.

3 **MR. CORBETT:** Your Honor, based on your question, I
4 conferred with my client and I just conferred
5 with Mr. Allen, there may be a reason for us to
6 talk for about five minutes. Would that be
7 okay?

8 **THE COURT:** Sure.

9 (Off the record from 10:18 a.m. to 10:37 a.m.)

10 **MR. CORBETT:** We'll proceed at this time.

11 **THE COURT:** Okay. Thank you.

12 **MR. CORBETT:** Your Honor, as we understand it, the
13 beer and wine license does not have a seating
14 requirement, so that would not be in the
15 protest. It is the liquor license.

16 **THE COURT:** The liquor license. Okay. If we're
17 ready to begin with the understanding that the
18 beer and wine permit is not being contested.
19 It's just the liquor by the drink.

20 **MR. ALLEN:** Yes, ma'am. Thank you for your
21 patience, Your Honor. I call Mr. Ramon, also
22 known as Luke, Goude. Luke, if you will step
23 around over here, please, sir. A chair for
24 you, and be sworn in.

25 **THE COURT:** Face the court reporter. Raise your

1 right hand and she will swear you.

2 **RAMON "LUKE" GOUDE**, having been duly sworn, testifies
3 as follows:

4 **MR. GOUDE - DIRECT EXAMINATION BY MR. ALLEN:**

5 Q: May I call you Luke?

6 A: Yes, sir, please do.

7 Q: Luke, how old are you and where do you live?

8 A: I am 58-years-old, born and raised in
9 Georgetown County, South Carolina, obviously. I
10 live on 312 70th Avenue North in Myrtle Beach
11 at the present time.

12 Q: And do you own and operate a business at St.
13 Clements at Myrtle Beach?

14 A: I do.

15 Q: Let me put this up on the screen, if I can. Is
16 this a part of your brochure?

17 A: Yes, sir. That's part of the brochure to the
18 Caravelle. Can I go into a little bit of
19 history of it or --

20 Q: I just wanted to identify your location first
21 and then we'll go into the history. Is the
22 part that's been circled with a pen on here, is
23 that, in fact, your building?

24 A: Yes, sir.

25 Q: All right. Now, let's just take a few minutes,

1 kind of give the court a history of how you
2 first became involved in this property and come
3 forward from that point.

4 A: Judge, thank you, first of all, for letting me
5 get my side out, and the court's time. And
6 thank you, Mr. Adams, for representing me. I
7 was with the company that built the St.
8 Clements. We started there in 1986 with St.
9 Clements, LTD, which is a corporation in Myrtle
10 Beach owned by Dwight Cox, which is the
11 president of the corporation. I worked with
12 him in the real estate division with sales and
13 marketing. So we built the St. Clements in
14 1986. We opened in March of 1988. During that
15 time we had a pool bar on the plans that we
16 tried to at different times sell it or lease it
17 out, which we could not do. Nobody wanted to
18 have a snack bar at the beach at that time.
19 That was back in the mid '80s. So it was just
20 -- I sold the units. That's what I was
21 responsible for. After three years of going
22 back and forth, you know, from the building
23 from '86 I decided to go ahead and purchase the
24 St. Clements Beach Bar & Grill from Cox
25 Development Company, which is the developer of

1 the property that I work for. We opened the
2 hotel in March 1988, and I opened the St.
3 Clements Beach Bar & Grill in June 1988. With
4 the implied agreement that obviously if you
5 have a beach bar and grill, I assumed -- now,
6 I was a little younger than I am now. Quite a
7 bit. But I assumed, and the developer assumed,
8 that when you have a pool bar that you're going
9 to have alcohol served at a ocean front resort.
10 I mean, everybody else does it. So that was
11 just an assumption. Even in the brochure --
12 which I have a brochure if the court would like
13 to see it. Prior to the building even being
14 built, Judge, I have a brochure from 1987 that
15 tells about the complex, and also located on
16 the pool deck would be a snack and pool bar.
17 It's in the original brochure before the
18 building was even built. Everybody who bought
19 at the St. Clements knew there was going to be
20 a beach bar and grill there originally,
21 everybody. I showed it to them. It's on the
22 plans. We had a scale model of everything. So
23 everyone knew that the St. Clements Beach Bar
24 & Grill would be there from the beginning. So
25 that's how I came about owning and operating

1 the St. Clements Beach Bar & Grill, which is a
2 company name is BeMi, Inc. That's my parents,
3 Bethel and Miriam, and that's my corporation
4 and I'm doing business as the St. Clements
5 Beach Bar & Grill. That's the history so far
6 of the building. I opened up, then I had the
7 license originally from '88 to '90 and '91.
8 The developer of the company at the time was C.
9 Dwight Cox, and Guy Causey was the vice
10 president. We still had units available for
11 sale. We were still selling some of the units.
12 And so originally the alcohol beverage permit
13 was in the St. Clements HOA originally from
14 when we first opened up, because I didn't know
15 anything about obtaining an alcohol license at
16 the time. I was young. The first place I ever
17 had. And the president of the company, he said
18 we'll take care of it since he was the
19 president --

20 **MR. CORBETT:** Objection, Your Honor. Hearsay.

21 A: Okay. Well, president --

22 Q: Don't quote him. Let me stop you right there
23 and ask you a question. Did the development
24 condominium project apply for and obtain an
25 alcohol license as a hotel?

- 1 A: Yes, sir.
- 2 Q: Okay. And did they hire you to manage --
- 3 A: Yes, sir. They did.
- 4 Q: -- the beach bar and grill?
- 5 A: Right. Yes, sir.
- 6 Q: That was your first involvement in it as a
- 7 manager and they had the license?
- 8 A: Yes, sir.
- 9 Q: How long did they hold the license as a hotel
- 10 and then what happened?
- 11 A: About '88 to '91, I think -- '91. January '91.
- 12 Q: Okay.
- 13 A: Hugo came through and wiped us all out. And
- 14 prior to Hugo, I had been there two summers,
- 15 and the only way you could get to the beach was
- 16 around between the Beach Bar & Grill and the
- 17 pool area. It was the only way you could get
- 18 to the beach. Landscaping, brush, everything
- 19 was on the left side of the main building. So
- 20 the only way you could get to the beach for the
- 21 general public, or the hotel guests or owners,
- 22 was come around through the pool bar. We
- 23 started having complaints from homeowners and
- 24 guests and the general public of being a
- 25 traffic jam or bottleneck, because the deck is

1 real small. The pool deck is really small, and
2 it's only an eight foot opening. Walking off
3 the parking lot onto the pool deck it's only an
4 eight foot opening to start with. It's only
5 eight feet, because it's walls on both sides.
6 If you have a picture that can -- can you show
7 it to the Judge, if you don't mind, while I'm
8 explaining it to you?

9 Q: Let's stop where we are and go through these
10 pictures. We may want to refer to them.

11 A: Yeah. That would be very helpful.

12 Q: Luke, this has been marked Petitioner's Exhibit
13 Number Four. Do you recognize it?

14 A: Yes, sir. That's the front.

15 Q: We'll come back to these. But does the top
16 show your building on the right?

17 A: Yes, sir.

18 Q: And the bottom, what does that show?

19 A: That's actually the counter where you order
20 from. That's on the pool side.

21 Q: Okay. And number five, that is your building
22 in the center?

23 A: Yes, sir. From the parking lot. That's the
24 front of the parking -- driving up onto the
25 property.

1 Q: And the bottom photograph, is that kind of
2 taken from the --

3 A: That's the beach side facing -- going back.
4 That's on the south side of the beach bar and
5 grill on the south side facing west.

6 Q: Okay.

7 A: That's the south side facing the west. That's
8 the deck that I'm getting ready to explain and
9 how that came about. That's on the side of the
10 property. On the side of the building. The
11 main building.

12 Q: Okay. When you talk about deck, this area
13 you're talking about, correct?

14 A: Yes, sir. That's what we're going to add on.

15 Q: And when you talk about the seating up top,
16 does this show a photograph of it?

17 A: Yes, sir. That's the rooftop area, which is
18 owned as a limited common area by BeMi, Inc.
19 Exclusive rights by BeMi, Inc., may I
20 reemphasize. According to the master you have
21 exclusive use and right of the limited common
22 area.

23 Q: Okay. And what's been marked Petitioner's
24 Exhibit Number Six, a black and white
25 photograph. Again, does that show your walk up

1 window and seating on the deck?

2 A: Yes, sir. That's the kitchen window actually.
3 The way you get in and out, that's the entrance
4 door on the back.

5 Q: Okay. And the bottom show the corner of your
6 building and some of the other seating and a
7 piece of the top?

8 A: Yes, sir. If you go straight through, that's
9 the opening and closing if you go straight
10 through. I wish we had a better shot to show
11 the eight foot section where you can walk onto
12 the pool deck actually. That's where we're
13 going to get -- I'm getting to that now about
14 how the deck came about.

15 Q: Okay.

16 A: Anyway, Judge --

17 Q: Let me interrupt you one more time.

18 A: Yes, sir.

19 **MR. ALLEN:** Your Honor, while we're at it, I'll move
20 Exhibits One through Six into the record, if
21 there's no objection.

22 **MR. CORBETT:** No objection, Your Honor.

23 **THE COURT:** Okay. Ms. Brown, you have no objection?

24 **MS. BROWN:** No objection.

25 **MR. ALLEN:** Your Honor, he may want to refer to

1 these again. So if you don't mind, I'll hang
2 on to them.

3 **(Petitioner's Exhibits One through Six were admitted**
4 **into evidence.)**

5 Q: Now you may proceed, sir.

6 A: Thank you, Mr. Allen. Anyway, Judge, the area
7 is an on an eight foot open in that very
8 corner, walking off of the parking lot onto the
9 pool deck to go to the beach, or to the pool or
10 the -- the only access at that time was
11 stepping onto the pool deck off of the parking
12 to get to the beach. So we started having
13 complaints from owners and guests and the
14 general public from the traffic jam trying to
15 go to the beach with your kids, the beach
16 chairs, floats, coolers, whatever else you was
17 going to take to the beach that particular day.
18 Sometimes I'd have a line in front of the
19 counter wanting to order food or drinks. So I
20 was having some problems there with some
21 homeowners and renters crisscrossing.

22 Q: Congestion.

23 A: So the developer of the time was C. Dwight Cox,
24 the man who built the hotel in St. Clements.
25 The condominium project. He was still the

1 president of the board at that time. And one
2 of the board members was named Marshall Melton.
3 I just started to get kicked around, we need
4 more space. I started hearing that quite a bit
5 from my tenants and our rental guests, which,
6 after all, pays all the guests. The rental
7 people, they pay all the bills. The
8 homeowners, they purchase the unit from us, and
9 we sold it as an investment property. Nobody
10 lives there. Never has lived there. It's
11 strictly a rental property. The Caravelle is
12 our property management company. You buy it,
13 you rent it out through the Caravelle, and you
14 use it for your personal time two, three, four
15 weeks, however much you want to use it for.
16 That's what it was built and sold for. It's
17 only 500 square feet per unit. It's a two room
18 suite. So nobody's ever lived there. So
19 anyway, we started having complaints from
20 people that you have the traffic jam and we
21 need to do something about it. Dwight Cox,
22 which was the president of the association at
23 the time, and Marshal Melton, which was on the
24 board at the time, and several homeowners
25 suggested we go to the south side of the --

1 **MR. CORBETT:** Objection, Your Honor. Hearsay.

2 Q: Don't quote anybody.

3 A: Okay.

4 Q: You had discussions and as a result what
5 happened?

6 A: Okay. We decided to do a deck on the left
7 side, the south side of the building. I had
8 the authority to build it with my money, which
9 we had an agreement with the association at the
10 time. I had to build the building, or the
11 deck, and maintain it. It never cost the
12 Homeowners Association a dime. It's been that
13 way since day one.

14 **MR. CORBETT:** Your Honor, I object to the relevance.
15 If you want to hear it, that's certainly fine.
16 But I think it's just going into the other case
17 and taking up time with issues that are not
18 before the court. So he paid for it, who paid
19 for it, what -- I just don't see the relevance.

20 **THE WITNESS:** Well, that's an issue in another
21 court.

22 **THE COURT:** Mr. Allen.

23 **MR. ALLEN:** Your Honor, as I understand it, the
24 whole thrust of their protest is his right to
25 use the deck that he built, and I understand

1 that may be on appeal in the circuit court in
2 Horry County. And as I said earlier, I think
3 it's -- if they were going to not put up any
4 testimony about this deck, we could probably
5 stop right now. But I suspect that they do.
6 That's why I'm giving you the history on it,
7 Your Honor. Even though the case is on appeal
8 in Horry County.

9 **THE COURT:** Okay. I'm going to allow it.

10 **MR. CORBETT:** Thank you, Your Honor.

11 A: So at that time I built the deck on the left
12 side, which is the south side of the building,
13 which took up one and a half parking spaces.
14 The developer and the president of the board at
15 the time was Marshal Melton. They said we'll
16 take two parking spaces up. One half of a
17 parking space will be used as a walkway and an
18 access to and from the beach for the
19 homeowners, the renters, the guests and general
20 public. That will do two things. This deck
21 will do two things. It will give us more
22 seating, because we only had like 16 chairs,
23 and you got 63 units in a hotel building. And
24 if you do that math, that's just not enough
25 room for people to sit down and even -- and

1 only had 18 chaise lounges by the pool. So we
2 needed more space. Seating, bottom line. So
3 we decided to open up a half a parking space
4 for an entrance to and from the beach to ease
5 the traffic jam on the right side by the pool
6 area. There's be no more traffic jam and
7 bottle necks. If you want to go by the pool
8 bar, or the beach bar and grill, you can walk
9 around by the pool area, if you like. If you
10 want to go to the beach, you can go in the side
11 deck and go to the beach without going through
12 the pool/deck area, so to speak. So I said
13 that was fine. I'll build it -- I mean, I
14 didn't actually build it. I mean, I helped
15 build it. But, I mean, I spent all my money to
16 build it, but I had two guys actually do the
17 physical work. And then --

18 Q: Luke, let me stop you and ask you, again, about
19 what year was this?

20 A: That was 1990. It was 1990.

21 Q: Okay. That is the deck shown on this
22 photograph on the left side?

23 A: Yes, sir. Spring of 1990.

24 Q: You're testifying that you built it with the
25 knowledge and the consent of the then

1 developer?

2 A: Right. And the Homeowner Association president
3 which was Marshal Melton.

4 Q: At that time?

5 A: At that time. Yes, sir.

6 Q: Okay. Go ahead.

7 A: And that's how it got around.

8 Q: And is that about the same time that you
9 applied for your own alcohol license?

10 A: Well, after I had the deck built, then I had a
11 couple people tell me, so maybe you should now
12 think about it --

13 **MR. CORBETT:** Objection, Your Honor.

14 Q: Don't quote --

15 A: Anyway, I decided to go ahead and apply for a
16 alcohol license in my company's name, because
17 now we do have the 40 seats available to
18 require to have it in your name. Also, it
19 would take the liability away from the
20 Association. I then purchased a million dollar
21 liability insurance policy on my building and
22 my products strictly for BeMi, Inc.

23 Q: Okay. Let me stop you right there.

24 A: Yes, sir.

25 Q: With the seating up top and the seating on the

1 deck, how many people could you seat?

2 A: Then?

3 Q: Then. Yes sir.

4 A: Forty.

5 Q: Okay. And who paid for those tables and
6 chairs?

7 A: I did.

8 Q: You went out and bought them with your own
9 money?

10 A: I did. Over the years I replaced them. Over
11 the years, over the years, over the years I've
12 replaced the chairs, but it's always been 40
13 seats. And I've had my license since 1991. I
14 had an inspection done by a SLED agent. Ms.
15 Rogers originally done my inspection. As you
16 see, if you want to show the court the original
17 document which I brought with me today from
18 1991. We would have displayed it at the St.
19 Clements Beach Bar & Grill. I had the original
20 document, Judge. The yellow sign is right
21 there on that table there.

22 Q: That's fine. So you're telling the court '91,
23 '01, '11 -- for 20 years?

24 A: Twenty years. Yes, sir.

25 Q: Until very recently --

1 A: No problem.

2 Q: -- the chairs that you bought and paid for, you
3 have provided to your patrons?

4 A: Yes, sir. For anybody. Everybody.

5 Q: Anybody?

6 A: Anybody. I don't care who you are.

7 Q: Okay. And you're testifying that you paid to
8 have the deck built with their permission?

9 A: Yes, sir.

10 Q: And you paid for the chairs?

11 A: Yes, sir.

12 Q: All right. During the intervening 20 years
13 have you ever had any problems, alcohol
14 violations, trouble? Anybody ever protest your
15 renewal? Has the state ever write any alcohol
16 violations against you?

17 A: No, sir. Not one.

18 Q: So you've had a clean record for 20 years?

19 A: Yes, sir.

20 Q: Okay. Do you recognize the gentleman in the
21 front row here with the suit on?

22 A: Yes, sir.

23 Q: Who is he?

24 A: Steve Wright.

25 Q: And what was his former role?

1 A: He works with the Department of Revenue and he
2 was a SLED agent. He's an inspector and he
3 done everything with SLED.

4 Q: Did he do alcohol enforcement at your location?

5 A: Yes, sir.

6 Q: All right. So for 20 years you have operated
7 as you testified with seating for 40, the deck,
8 and that includes the seating up on top, is
9 that correct?

10 A: Yes, sir.

11 Q: All right. Now, let's come on up to recent
12 history. The last year or so. Tell the court
13 what's been going on as far as the dispute over
14 the use of the deck. Has that been litigated?
15 And I'm not trying to retry that case, but the
16 court needs to know what's going on. You tell
17 me.

18 A: In the last seven or eight years, Judge, we've
19 had us a change in ownership of homeowners.
20 Some of them's got older, which we all are
21 obviously. But they've also realize that a lot
22 us started to use their property a little more
23 than others. Some of them don't rent them as
24 much as others. Originally everybody rented
25 their units. I'm not saying everybody, but 99

1 percent of them. Within the last ten years
2 some of the homeowners is not renting their
3 units as much as they used to. They're using
4 them more for their personal use and their
5 family and their friends and whatnot. I think
6 that has changed a lot of the attitudes about
7 the St. Clements Beach Bar & Grill. They have
8 started doing different things to my business
9 to try to harm my business.

10 **MR. CORBETT:** Your Honor, I would object to that as
11 being irrelevant.

12 **MR. ALLEN:** Judge, I would submit it's going to show
13 a pattern. This protest is part of it.

14 **MR. CORBETT:** Okay. But, I mean, you can hear what
15 you want. But if it shows a pattern or not, it
16 shows a pattern in a violation for over the
17 years. So we can spend a whole lot of time on
18 issues like that, if you want, but I just don't
19 think it has any relevance to the issue of
20 whether or not he has the ability to qualify
21 for the permit. I think it contends to, say,
22 that Ms. Brown is a bad person. I think that's
23 what's being brought up. That the Homeowners
24 Association are a bunch of bad people that are
25 trying to hurt him, and that's not at issue

1 here, nor is it true, Your Honor.

2 **THE COURT:** Okay. Your objection is overruled.

3 **MR. CORBETT:** Thank you, Your Honor.

4 Q: And without getting personal, you've had some
5 differences with the current HOA, is that
6 correct?

7 A: Yes, sir.

8 Q: Okay. And to clarify your earlier testimony,
9 is -- and I'll get to it. Is it BeMi?

10 A: Yes, sir.

11 Q: BeMi. That's your corporation?

12 A: Yes, sir.

13 Q: All right. Is it the one and only commercial
14 unit owner in the master deed?

15 A: Yes, sir.

16 Q: And as such does it own an undivided interest
17 in the common property?

18 A: Yes, sir.

19 Q: And it's the only one, correct?

20 A: Yes, sir.

21 Q: Okay. You heard me mention the suit from the
22 Master in Equity about the deck, is that true?

23 A: Yes, sir.

24 Q: And did you prevail in front of the Master?

25 A: Yes, sir.

1 Q: And is that on appeal?

2 A: Yes, sir.

3 Q: Okay. And just to quickly reiterate what the
4 attorney for the revenue department has already
5 told the court, when the renewal protest came
6 in this late spring and summer did Ms. Rogers,
7 the local SLED agent, come out and do an
8 inspection?

9 A: Yes, sir.

10 Q: And she found some deficiencies?

11 A: Yes, sir.

12 Q: And then we requested a reinspection, is that
13 correct?

14 A: Yes, sir.

15 Q: And did she come back?

16 A: Yes, sir.

17 Q: Okay. And at that time did you pass the
18 inspection?

19 A: Yes, sir.

20 Q: As far as having storage and food and menus and
21 all that?

22 A: Yes, sir.

23 Q: Speaking of food, year end and year out
24 approximately what percentage of food do you
25 sell?

1 A: Forty percent over the last three years.

2 Q: Is that a lot of food?

3 A: That's pretty good.

4 Q: How much do you pay in sales taxes a year for
5 food?

6 A: Well, 40 percent, I don't know the exact dollar
7 of the sales tax, but the gross sales was 40
8 percent was non-alcohol. I mean, alcohol
9 versus food. Forty percent was my food sales
10 for the last three years. I was advised to get
11 my sales tax together for the last three years
12 and that's what I did. It was 40 percent.

13 Q: Okay.

14 A: It was higher one time. It varies, but it's
15 about -- you know, the three years estimate was
16 about 40 percent.

17 Q: Okay. So you sell quite a bit of food. Is
18 that a fair statement?

19 A: Quite a bit. From the time I open to the time
20 I'm closed everything on the menu is for sale.
21 I don't cut the grills and all that. I sell
22 food from 10:00 in the morning until I close at
23 midnight.

24 Q: And hot sandwiches, burgers and all that?

25 A: Yes, sir. Always have.

1 Q: Okay.

2 A: And got good food, by the way.

3 Q: Okay. And do you get complements from the
4 renters and other homeowners?

5 A: Lots of them.

6 Q: And I'm trying to wrap this up, and I don't
7 want to re-litigate the case from the Master's
8 court. Is there anything else now that you
9 think the judge needs to know as far as your
10 right to have your license renewed?

11 A: Well, I would like the court to know, and the
12 Judge to know that I've been there since the
13 place opened selling beer and wine and mixed
14 drinks, along with food. Never had no
15 problems. Never had no violations, no
16 protests, and I been there a long time. A lot
17 longer than the Homeowners Association's
18 current board has been there probably. There's
19 only ten original owners out at the property.
20 Out of 66 property owners only ten originals
21 are still there. So the ones that I think that
22 are really against the alcohol sales now are
23 not -- are not very many of them are very
24 current original homeowners. They're some
25 that's came in after the fact that maybe don't

1 like what they're living in now or used to
2 seeing. My point is why after all these years
3 when you drove up on the property you seen the
4 St. Clements Beach Bar & Grill, they're
5 operating, selling food, selling alcohol,
6 having some entertainment, people having fun,
7 why did you just -- if they had a problem -- I
8 want to ask these people, if you had a problem
9 why didn't you just back up and go down the
10 street and buy a place that there's no beach
11 bar and grill and buy a condominium complex
12 where you can have all the quiet and peace you
13 want in the world and all the parking you want.
14 Over the last ten years I've had more problems
15 with the St. Clements Homeowners Association --
16 and not all of them. It's only a few of them.
17 Maybe eight or nine or ten of them that really
18 for some reason now are distasteful to the
19 beach bar and grill. They want me to cater to
20 them. They want me to just sell food, open a
21 certain time, close at a certain time. They
22 are now enforcing my parking regulations, which
23 if you are not a registered guest they'll have
24 you towed now. They put a gate on my upper
25 deck years ago and tried to take claim to my

1 upper deck, which we proved in court then too
2 that the upper deck belongs to me. It's a
3 limited common area. After I came to work one
4 morning they had a gate installed there. The
5 Association did that to my roof deck. They
6 took me to court several times for different
7 reasons in the last ten years. And it's just
8 starting to show a pattern, to me, they don't
9 want me there and they're trying to run me out
10 of business because I won't just do just what
11 they want me to do. I don't work for them. I
12 work for myself. I pay my homeowners dues just
13 like they do.

14 **MR. CORBETT:** I object to the -- he's just going off
15 on tangents. The question was, you know, if
16 that's -- it's irrelevant to the issues before
17 the court today.

18 **THE COURT:** I tend to agree with you and I think
19 I've heard enough along that line.

20 A: Okay. So in a nutshell that's where it stands.
21 And then this year I went to get my license
22 renewed and I was told I was under a protest.
23 I was shocked. I asked the Department of
24 Revenue why and they told me. And then I filed
25 -- you know, tried to get a renewal. And they

1 sent Ms. Rogers back out again in August to do
2 the inspection, and she counted the chairs that
3 I think at 36 then, and said I only had 18
4 cubic feet, or something like that of space,
5 which I didn't know anything about, the
6 spacing. Because I've been getting my license
7 renewed for 20 years, so I wasn't aware of the
8 18 versus 21 cubic feet of refrigerated space.
9 She did not go up top. Ms. Rogers did not go
10 up top and count the 12 chairs up there at that
11 time. She called it a kiosk. And I was busy.
12 I was working. August was hot, and I was
13 working. And she just came in and done her
14 inspection. You know, I gave her something to
15 drink and we chitchatted a few minutes. And I
16 was busy, and she left. And when I got the
17 report back from the Department of Revenue they
18 said I had 36 chairs, I think it was, and 18
19 cubic feet of space and I needed 21 and 40.
20 And that's when I called back and said, well,
21 I got 40. I mean, I got -- if you didn't go up
22 top. What she did, she actually counted four
23 chairs on the inside of the pool that the
24 Homeowners Association had at the time inside
25 the pool. I've never even counted those. But

1 the bottom line is I said, no, I've got 40
2 chairs. You just didn't go up top. And it was
3 in violation of the refrigerated space because
4 I wasn't aware I didn't need 21 cubic feet at
5 the time. The Department of Revenue has
6 changed over the last 24 years when I first --

7 **THE COURT:** And I don't mean to interrupt your
8 testimony, but I believe that those issues have
9 been resolved and --

10 **THE WITNESS:** Yes, ma'am.

11 **THE COURT:** -- and they are not in dispute at this
12 time.

13 **THE WITNESS:** Right. Okay.

14 A: So the state said okay, you know, you got a
15 reinspection. I got everything fine. The
16 seating area and the cubic feet has been taken
17 care of. Ms. Rogers came back and done another
18 inspection and said everything's fine. No
19 problem. And so that's where we're at today.
20 I think it comes down to the seating area. In
21 the meantime I would like the court to know, in
22 the spring of 2011 I got a letter from the St.
23 Clements Homeowners Association. Judge, every
24 year, as you'll see in one of these pictures,
25 I take all the chairs and tables down when I

1 close, because I close at Halloween. Usually
2 every year I close at Halloween. And I take
3 all the chairs and tables down and put them on
4 the side deck and lock them up to keep things
5 from happening, because I've been there so
6 long. That's number one, and number two,
7 seagulls. And wind blowing around and messing
8 on the chairs and stuff. So I take them out
9 every year, put them underneath my awning on
10 the side deck and lock them up with a cable
11 when I close. This year I got a letter from
12 the Homeowners Association stating you don't
13 need to put your chairs and tables back out
14 around the pool area because we're going to put
15 new chairs and tables out there around the pool
16 front side. I said, how -- I mean, that's
17 nice. That's real good. I mean, that's what
18 I was thinking. This is going to be nice.
19 Everybody is starting to getting along a little
20 better. And then all of a sudden I go to get
21 my license renewed, that's when they said I
22 don't have enough seats. So now actually, as
23 far as I was concerned, they planned on
24 protesting. I went back and searched the
25 records. They actually protested in March. So

- 1 they knew right then by putting their chairs --
2 and when I say they, which is ours because I'm
3 a homeowner. I pay those chairs like anybody
4 else do. I own the same amount of that
5 property as anybody else who's a homeowner.
6 Now, I see the reason they put those 16 tables
7 and chairs out there around the pool area is to
8 take ownership of them. So what I did, I also
9 went back and I added another eight chairs of
10 my own on the side deck, on the left side, and
11 up top to make my seats that I actually owned
12 physically and financially 40 chairs and
13 tables. So there's 16. It's actually 56.
- 14 Q: Okay. So the 40 that you provide and theirs --
- 15 A: There's 16.
- 16 Q: It's how many? Fifty what?
- 17 A: Fifty-six plus four on the pool side, so they
18 actually got 60 out there now.
- 19 Q: Okay. But you've got at least the minimum
20 requirement?
- 21 A: I own 40. Yes, sir.
- 22 Q: All right. Very good.
- 23 **MR. ALLEN:** Please answer any questions counsel may
24 have or the court.
- 25 **THE COURT:** Ms. Brown, do you have any questions?

1 MS. BROWN: No questions from the Department, Your
2 Honor.

3 THE COURT: Okay. Thank you. Mr. Corbett.

4 MR. CORBETT: Thank you, Your Honor. May it please
5 the court. Your Honor, I have pictures. I
6 previously gave copies to Mr. Allen. I just
7 want to introduce those into evidence.

8 MR. ALLEN: No objection to them, Your Honor.

9 MS. BROWN: No objection.

10 MR. CORBETT: Here's a copy for the court also.

11 (Intervener's Exhibits Number One through Ten were
12 admitted into evidence.)

13 MR. GOUDE - CROSS EXAMINATION BY MR. CORBETT:

14 Q: Good morning, Mr. Goude.

15 A: Hello, Mr. Corbett. How you doing today?

16 Q: Good. I'm Jim Corbett. I represent the
17 Homeowners Association.

18 A: Nice to meet you, Mr. Corbett.

19 Q: You too. Do you see on the screen here
20 Intervener's Exhibit One. That's the top of
21 your unit?

22 A: Yes, sir.

23 Q: And it looks like four tables there?

24 A: Yes, sir.

25 Q: Twelve chairs?

1 A: Sir?

2 Q: Twelve chairs, four tables?

3 A: Well, there's four fours and 16 -- yeah, four
4 fours.

5 Q: Okay. So you typically have three or four
6 tables up there throughout the 20 year period
7 you've had this license?

8 A: Yes, sir.

9 Q: Okay. And the other seat you're talking -- and
10 this is on top of your unit, right?

11 A: Yes, sir.

12 Q: And this is yours for you to use exclusively,
13 right?

14 A: Yes, sir.

15 Q: Okay. The other units all have a deck, their
16 own little balcony in front of their unit
17 that's their exclusive use, right?

18 A: Yes, sir.

19 Q: Everything else is common area seating,
20 everybody has the same right to sit everywhere
21 else around the pool and on the deck?

22 A: Yes, sir.

23 Q: All right. And what you're doing is you're
24 claiming that the common area seating fulfills
25 the requirement of 40 seats?

- 1 A: Well, I'm saying that deck does.
- 2 Q: Right. So the common area -- the deck is owned
- 3 by the Homeowners Association?
- 4 A: No, sir. It's not.
- 5 Q: All right. Now, let's be specific about this.
- 6 A: Let's be specific, right.
- 7 Q: That deck sits on the common area, the parking
- 8 lot, right?
- 9 A: Yes, sir.
- 10 Q: And the court's ruling in the Master in Equity
- 11 case didn't deed to you that area?
- 12 A: No, sir.
- 13 Q: Okay. So the land it sits on is still the
- 14 Homeowners Association?
- 15 A: No, sir. It's not.
- 16 Q: Who owns the land that the --
- 17 A: Each homeowner -- in the master deed -- that's
- 18 where we have our problem. The master deed
- 19 states each homeowner has an undivided share in
- 20 the common area. The Homeowners Association
- 21 does not own anything. Repeat. The Homeowners
- 22 Association does not own anything. It's a
- 23 management company. It don't own nothing.
- 24 Okay.
- 25 Q: So everybody owns that property?

1 A: Yes, sir. Undivided interest. Yes, sir.
2 Q: And you're counting for your seating?
3 A: Yes, sir.
4 Q: So everybody else can sit there?
5 A: Sure.
6 Q: So it's not dedicated seating that --
7 A: No, sir.
8 Q: -- you can make sure --
9 A: I want them to sit there.
10 Q: But it's not dedicated seating?
11 A: Right.
12 Q: You only have 16 seats total that you can --
13 A: Well, it looks like there's 18 up there to me.
14 Q: All right. If there's 18 up top, that area
15 there on top of your unit is the only area that
16 is your seating and you can control who sits
17 there?
18 A: I guess you can say that. I mean, I don't care
19 who sits up there. I mean, I want everybody to
20 sit there. I want them full, obviously.
21 Q: All right. But you're saying that the common
22 area of seating counts toward your 40?
23 A: Yes, sir.
24 Q: Okay. Now, you said there are no complaints,
25 right?

1 A: Right. Wait a minute. Complaints about what?

2 Q: Well, you said no complaints in the 20 years
3 you've been there.

4 A: Oh, I thought you said violations.

5 Q: Okay.

6 A: Yeah.

7 Q: But there have been complaints about the way
8 you use --

9 A: Oh, yeah, sure. I get complaints often.

10 Q: Well, let me show you Exhibit Number Three. Is
11 there a sign there that you put up?

12 A: Yes, I did.

13 Q: Okay. And who gave you permission to put up
14 that sign?

15 A: I put it up 20 years ago from the developer.
16 Back in '90 -- I've had it there ever since I
17 can remember.

18 Q: Okay. So you on your own have said that you
19 can tell homeowners that they can't bring
20 their own alcohol, coolers or glass to the
21 common area?

22 A: I'm saying the same thing the sign says inside
23 the pool which is no glass allowed on the
24 property. I had a -- if you would let me go
25 into this. I had an eight-year-old boy cut his

1 toe completely off by a glass by the pool --

2 Q: That's not answering the question about the
3 sign --

4 A: Okay. Well, let's see. I don't have glasses.
5 Okay. Glass and concrete don't mix, Mr.
6 Corbett.

7 Q: Okay. Well, tell me about -- but you're also
8 prohibiting by putting up these signs that
9 anyone else can bring their own alcohol or
10 coolers.

11 A: Right. According to the State Department of
12 Revenue, you're not allowed to have public
13 alcohol or personal alcohol in a public place.

14 Q: In a public place.

15 A: That's what I've been told.

16 Q: But this place is owned by the St. Clements
17 Homeowners --

18 A: It's owned by the --

19 Q: By the owners. The owners of St. Clements?

20 A: Right. All of us. All of us.

21 Q: Right. Okay.

22 A: Okay, sir. You're right.

23 Q: So you are prohibiting people from having
24 alcohol at a place that they have a right to
25 have alcohol?

- 1 A: Well, according to the State Department of
2 Revenue you can't have --
- 3 Q: You're not the State Department of Revenue.
- 4 A: No. But I have a license by the State
5 Department of Revenue.
- 6 Q: So you have to use this common area, and you
7 have to prohibit the use of other people who
8 also own the common area --
- 9 A: Right.
- 10 Q: -- in order to have your license?
- 11 A: I guess you can say -- if that's the way you
12 want to put it. But the glass also is the same
13 thing. I don't want glass on the pool deck
14 either, because I'm responsible. I get sued by
15 it. If somebody hurts themselves, I would be
16 the one to be responsible for it, you know,
17 obviously.
- 18 Q: On the glass.
- 19 A: I mean, wouldn't you agree with that?
- 20 Q: Fair enough. Now, Exhibit Number Ten also
21 shows the same sign --
- 22 A: Same sign.
- 23 Q: And this is a deck we're talking about that's
24 --
- 25 A: Yes, sir. Yes, sir.

1 Q: All right. These complaints that you have
2 talked about came, under your own testimony,
3 when more family use was made of the common
4 area because different people started owning
5 the units, right?

6 A: Some new homeowners, right.

7 Q: And the alcohol is causing a problem?

8 A: I wouldn't say the alcohol is causing a
9 problem.

10 Q: All right. Then the complaints about the
11 family atmosphere. I mean, they're about you
12 telling people they can't sit in these sits,
13 right, that they own or that are --

14 A: It don't say that on that sign.

15 Q: Okay. Well, you have gone out there and said
16 you can't sit in this deck area unless you buy
17 my food and drink?

18 A: No, I have not. Not to tell them that. If you
19 bring your own food, I would say I would like
20 for you to purchase our food, yeah, or either
21 clean up behind yourself. That's what I would
22 say.

23 Q: So you put restrictions on the people who own
24 this area on their own use of it?

25 A: No. What I am saying to these people, if you

1 bring Kentucky Fried Chicken there and it's
2 sitting on my pool deck, and the deck that I
3 have that I'm taking -- I got to clean up
4 behind you all, I would like for you to say
5 hey, you know, I understand. And 99 percent of
6 them say, yeah, you know, you got a point. I
7 didn't realize that because nobody told me that
8 from the hotel or the balconies. So I have no
9 -- that's a minute problem at all. At best
10 it's a minute problem. If you want to bring
11 your own food -- I always ask them. I say,
12 would you mind doing me a favor. If you're
13 going to bring food to the pool area, please
14 put it on that side deck or inside the pool,
15 and they have no problem with that. You might
16 have one or two that's going to try to blow it
17 out of proportion, but that's not a problem.
18 I mean, most people is going to have couth to
19 realize if you're going down, you're going to
20 listen to the music or some entertainment,
21 you're going to sit down and watch TV, somebody
22 is -- you know, that you're going to at least
23 buy a sandwich or have a drink. I mean, that's
24 just couth and commonsense mostly. And then
25 you do have one or two that obviously wants to

1 bring a cooler and everything else down there,
2 and obviously I'm going to be responsible for
3 it. So, yes, I say would you mind doing me a
4 favor and don't bring your cooler on the pool
5 deck, because it might have glass in it, or
6 might have alcohol in it, and according to the
7 Department of Revenue you're not supposed to
8 have personal alcohol in a public place.
9 That's what I've been told.

10 Q: So you're preventing people who have the right
11 to be there from being there if they bring
12 their own food or their own alcohol?

13 A: Say that again, sir?

14 Q: You're prohibiting people who have the right to
15 be there on this deck that sits on the common
16 area that everybody owns, who's a member of the
17 Homeowners Association, or their guests, from
18 using it, by saying you can't bring your own
19 alcohol here, you can't bring your own food
20 there?

21 A: Now, Mr. Corbett --

22 Q: Now, did you or did you not prohibit people
23 from -- or tell people don't bring your own
24 food?

25 A: I have asked them not to. Yes, sir. Can I --

1 Judge, can I explain my answer to that, please?

2 **THE COURT:** Sure. If you completed your answer to
3 him you can elaborate.

4 A: Okay. Now, Mr. Corbett, I appreciate you
5 trying to find out. And, yes, I have probably
6 said I would like for you to understand that
7 I'm trying to make a living here. And would
8 you do me a favor, if you're going to have your
9 own food, please clean it up. I have had many
10 homeowners, many, many, many guests that I have
11 allowed to use that any way they want to use it
12 for. Now, sometime I might have had some
13 people come up there and I just said, would you
14 mind doing me a favor. Come on, man, give me a
15 break, you know. At least clean your mess up.
16 Something like that. But I don't have a sign
17 that says you are not allowed in this decking
18 area unless you buy my food or my drink. It
19 says no alcohol, coolers or glass can be
20 brought onto this deck due to insurance and the
21 ABL. The ABL, Alcohol, Beverage and License
22 Department. That's what it says. If I'm going
23 to be sued by somebody, I would like for them
24 to at least be purchasing my food and my
25 alcohol. And according to me, the Department

1 of Revenue says you're not supposed to have
2 personal alcohol in a public place. It's
3 against the law. That's what I've been told
4 now.

5 Q: Now, these seats here in this deck, you can't
6 control who sits there?

7 A: No, sir.

8 Q: So these seats can't be counted as your 40
9 because they could be used by other people and
10 not double for the 40?

11 A: Sir.

12 Q: These seats here on this deck can be used by
13 other people, as is their right, and therefore
14 you can't count that toward your 40?

15 **MR. ALLEN:** Objection. He's asking for a legal
16 conclusion that the witness is not prepared to
17 make.

18 **MR. CORBETT:** Your Honor, this is the issue we're
19 here for. If he claims it, then, you know,
20 that's a legal conclusion. So, you know, I'll
21 ask him if he claims it. If he doesn't claim
22 it then he can't be here. He doesn't qualify.
23 So it's really not a legal conclusion.

24 **MR. ALLEN:** And, Judge, the statute simple says he
25 has to provide the seating. He doesn't say you

1 have to own it exclusively or any of that.
2 It's not in the statute, Your Honor.

3 **THE COURT:** Okay. And that, to me, is the issue.

4 **MR. CORBETT:** And that wasn't even the question I
5 asked him. I just asked -- go ahead. I'm
6 sorry.

7 **THE COURT:** No. Go ahead and tell me. What was the
8 question you were asking?

9 Q: The question I asked him was, you can't stop,
10 Mr. Goude, other people from sitting in those
11 seats all the time you're in operation, right?
12 These seats on the deck that you claim --

13 A: Mr. Corbett.

14 Q: Can you or can you not?

15 A: Repeat the question.

16 Q: You can't stop other people from sitting on the
17 seats on the deck that you count towards your
18 40 for your license, right?

19 A: Can I stop them?

20 Q: You cannot stop other people --

21 A: Yes, I can. If I wish to I could, yeah.

22 Q: And the authority for that is?

23 A: My authority to say, hey, you know, please do
24 me a favor. Don't use this seat if you're
25 going to bring your own food here. Now,

1 commonsense says I don't do that. But if you're
2 asking me a direct question yes or no, I could
3 say something, because it's my table and my
4 chair. I could say please don't use these
5 chairs for your personal use. Yes, I could.
6 But I'm in the entertainment business. The
7 hospitality business. I've been in it for a
8 long time. And I love renters. I love
9 tourists. That's how I make a living. And I
10 would be just as obliging. And anybody will
11 tell you that I serve good food, good service,
12 and I want to make your vacation good.

13 Q: Okay.

14 A: That's what I'm there for, Mr. Corbett.

15 Q: Mr. Goude, every other person who owns a unit
16 there could do the same thing and say you can't
17 have any of your people there.

18 A: No. That's my chairs and my tables. I
19 purchased them.

20 Q: It doesn't matter if it's your table or chairs.
21 They can't be there, under your theory, because
22 they're also owners under the Homeowner
23 Association and they can exclusively use that
24 whenever they want?

25 A: I own the chairs and the tables on the deck,

1 Mr. Corbett. The property is the tenants and
2 the common. The deck is owned by me. I built
3 the deck, and I bought the chairs and the
4 table. So there is a difference, Mr. Corbett.

5 Q: All right. If your chairs and table were taken
6 away by people who also own this area and put
7 in another place, they could be exclusively
8 used by anyone else in the Homeowners
9 Association at all times that your operation is
10 open?

11 MR. ALLEN: Your Honor, again, he's calling for
12 legal conclusions on a matter that's pending
13 before the circuit court in Horry County.

14 MR. CORBETT: It has nothing to do with the circuit
15 court in Horry County, and it's not even a
16 legal conclusion.

17 A: Mr. Corbett, all I can say is in August 2009 we
18 went to court in Horry County in front of Judge
19 Cindy Howe and she wrote in the favor of me
20 that the deck could remain there as it's been
21 for the last 20 years. That's all I can tell
22 you. It's under appeal now. That's all I can
23 tell you, sir. I'm not trying to be smart.
24 I'm just trying to be honest.

25 Q: Absolutely, sir. Deck remains. You can't tell

1 people they can't go there. That's your own
2 testimony, right?

3 A: Well, once again, I will say I don't never try
4 to tell them, because I want all the business
5 I can get, yes. But I'm not going to tell a
6 homeowner he can't sit there. I'm not going to
7 do that. I can if I wanted to, but I'm not
8 going to do that. It's like you've got to use
9 some commonsense here. It's a resort. It's an
10 oceanfront beach bar and grill for everybody to
11 use and have a good time. Not to bicker about
12 where you can sit and where you can't sit. I'm
13 just trying to make a living. A businessman
14 just trying to make a living and provide a
15 service for the owners, the guests, and the
16 people that come there. And I'm sorry it's
17 gotten to this point. I really am. Because I
18 spent a lot of my own money defending these
19 kind of, as far as I'm concerned, frivolous
20 lawsuits. And there's only a few people that
21 complained about it, and most people love and
22 enjoy the service I provide. And to get down
23 to it over seats, or a table, and who can or
24 can't sit, I think, to me, that's a waste of
25 everybody's time involved in this case. And

1 I'm just being honest with you. And I
2 understand you're doing a job, but I'm just
3 giving you an answer.

4 Q: And you can operate your snack bar without the
5 liquor license and make a profit and do well?

6 A: No, I cannot. Well, I can, but I won't. Yeah,
7 I won't.

8 Q: So you can operate a very nice business without
9 the liquor license?

10 A: I could, yeah. But not obviously as good as --
11 because most of the renters and tenants that
12 stay in a beach bar resort area pool bar like
13 the Caravelle has and the Ocean Reef, they want
14 to be able get alcohol because of several
15 reasons. One's convenience. They don't have
16 to get in their car to drive and look for it,
17 especially with the laws we have now in this
18 state with DUI. So it's a service. And most
19 people that go on vacation, not all, and even
20 families, even mothers and fathers, and a lot
21 of people do purchase alcohol. So that's a
22 service, Mr. Corbett. I mean, if you're
23 against it, I mean, I'm -- I mean, it's not
24 what we're against. It's a matter of a
25 service. And that's why most places in Myrtle

1 Beach, South Carolina in the oceanfront resorts
2 they have alcohol, and that's what I do. I'm
3 just trying to provide a service, and make a
4 living, too, by the way. Yes, sir. I do.

5 Q: And this deck is what, 16 by 13 feet?

6 A: Yes, sir. It's one and a half parking spaces.
7 Yes, sir.

8 Q: And that's about 200 square feet?

9 A: Yes, sir.

10 Q: And you can't fit more than 16 seats in that
11 200 square feet, can you?

12 A: Yes, sir. I can.

13 Q: I mean, realistically.

14 A: Yes, sir. I can.

15 Q: How many tables can you fit in 200 square feet?

16 A: Twenty, 25, if I wanted to. If I can take that
17 railing I could put another four or six in
18 there. The railing on the right side. You
19 know, you got to have to understand, too, Mr.
20 Corbett, we're at the beach and it's not going
21 to a fine dining restaurant. We're sitting
22 there with shorts on and bikinis on and kicking
23 back. It's a little different than going to a
24 five star restaurant.

25 Q: But you never had more than 16 seats on that

1 side of the deck at any one time?

2 A: Sir?

3 Q: You never had more than 16 seats on that side
4 deck at any one time?

5 A: No, sir. I don't need them. I have up top and
6 the ones I have up front.

7 Q: The ones in the front belong to the Homeowners
8 Association?

9 A: Now, yes, sir. Now.

10 Q: Well, not just the seats but the area of the
11 seats?

12 A: Yes, sir. Well, all of us. Yes, sir. All of
13 us. We all own it. Yes, sir. You're right.

14 Q: Just quickly. That gate issue you talked
15 about. That was resolved? Somebody made a
16 mistake and they fixed it?

17 A: Yeah, they made a mistake.

18 Q: They fixed it?

19 A: Yeah, we fixed it. My attorney fixed it.

20 Q: Okay. They fixed it.

21 A: Yeah, we fixed it. Let's clarify that again.

22 **MR. CORBETT:** All right. I beg the court's
23 indulgence for a second.

24 Q: And you're claiming the 40 seats are a part of
25 your establishment, right?

- 1 A: The seats themselves, sir?
- 2 Q: Your restaurant.
- 3 A: Yes, sir.
- 4 Q: You're claiming the 40 seats and you've
- 5 described they are a part of your restaurant?
- 6 A: Yes, sir.
- 7 Q: All right. Ms. Brown is a nice lady, isn't
- 8 she?
- 9 A: Yes, sir. I have no problem with Ms. Brown.
- 10 Q: Thank you. You testified earlier that you
- 11 weren't aware, despite having the license for
- 12 20 years, that you needed 21 cubic feet of
- 13 refrigerated space?
- 14 A: No, sir. I did not.
- 15 Q: You did not.
- 16 A: I just kept renewing my license every year,
- 17 sir.
- 18 Q: And apparently you don't work from, what,
- 19 Halloween till about March?
- 20 A: Yes, sir. We have a clothing business, you
- 21 know, Proper Attire. I do restaurant uniforms.
- 22 I've been doing that for quite a while, too.
- 23 Q: And the seating you have talked about is
- 24 limited to Exhibit One --
- 25 A: Sir?

1 Q: The seating we've talked about that you say
2 counts is limited to Exhibit One, the top of
3 your unit plus the deck area which is Exhibit
4 Ten?

5 A: Yes, sir.

6 Q: Within that four walls of this wooden fence
7 here?

8 A: Well, it's a concrete building. The St.
9 Clements Beach Bar & Grill is concrete with a
10 wood deck. And that's a rail on the south side
11 facing west and on the south side facing west
12 -- I mean, the two sides on the southern side.
13 One west and one south south. And then you've
14 got the small one on the east side of that deck
15 facing north. So you've actually got three
16 railings and a solid concrete wall on the
17 north. On the north side of the deck. And
18 that's attached to the St. Clements Beach Bar
19 & Grill building which is concrete steel.

20 Q: Exhibit Ten, you never had more than 16 seats
21 out there?

22 A: Sir?

23 Q: You never had more than 16 seats out there?

24 A: I don't have them?

25 Q: Yeah. You never put more than 16 seats --

1 A: Oh, I got 20 out there now. I got 20. I've got
2 four five tops -- I mean, five four tops.

3 Q: On top?

4 A: No, sir. I got five four tops on the side here,
5 which is 18. And then I got the two stools
6 that they -- Ms. Rogers counted on that shelf
7 was 22, and then I had the 18 up top. I got
8 four four tops and a two top up top. One, two,
9 three, four. In the dead center is a two top
10 facing the ocean.

11 Q: And you're talking about some two other seats
12 is even outside of this area?

13 A: No, sir.

14 Q: They have to sit outside of --

15 A: No, sir.

16 Q: -- the actual fence?

17 A: No, sir.

18 Q: They're sitting inside the fence?

19 A: Yes, sir. We have the pictures there. That's
20 what I was getting ready to tell you. Now,
21 that's after I closed. You got a picture after
22 I was closed.

23 Q: Do you have a picture showing how many seats
24 are in there now?

25 A: Yes, sir.

1 Q: Where's it at?

2 MR. ALLEN: On the bench.

3 MR. CORBETT: Your Honor, may I please --

4 THE COURT: Yes.

5 MR. CORBETT: -- approach them bench?

6 A: Yes, sir. I'm closed in, Mr. Corbett. You
7 want me to show them to you?

8 Q: Petitioner's Exhibit Number Two, is that what
9 you're talking about?

10 A: Yes, sir. There's five four tops and the two.
11 That's the shelf there.

12 Q: And these two seats are on the outside of the
13 fence?

14 A: Of this rail. Yes, sir.

15 Q: Outside the rail.

16 A: On the deck I built. All this was built -- the
17 same with the deck, all that's built by me.

18 Q: But the deck you're claiming is under the
19 covered portion?

20 A: Well, I built the whole thing.

21 Q: But the two seats are outside the covered
22 portion that you --

23 A: Well, they're on that photo. I can put them
24 either side I want to, but it's on that side,
25 yeah. Where the picture is taken, yeah.

1 Q: And these chairs here in Exhibit Two were
2 outside of the deck to be comfortable?

3 A: Well, no. There's a wall over here.

4 Q: Well, if there's nobody sitting in these --

5 A: Obviously there ain't nobody sitting there. I
6 was closed.

7 Q: I'll do it this way. Look up here. There's
8 nobody seated in these seats, right?

9 A: No. I was closed at the time of those
10 pictures.

11 Q: So if people are actually sitting there and
12 they move out it's going to be pretty hard to
13 squeeze all those people in there.

14 A: That's according how big you are, I guess.

15 Q: Pardon me?

16 A: That's according to how big you are, I guess.

17 Q: People are getting bigger all the time, aren't
18 they?

19 A: Yeah.

20 Q: And you said before, the complaints that came
21 up about the family atmosphere and people
22 wanting more than that, the only solution is
23 for the Homeowner Association people to sell
24 and go move somewhere else?

25 A: Nope, I didn't say that.

1 Q: You didn't?

2 A: I did not. I said when you first bought there
3 you knew the place was -- you should have
4 bought somewhere else. I didn't say after you
5 was there. I said when you first drove up on
6 the parking lot and seen the beach bar and
7 grill there on the property, operating at full
8 blast, then maybe you should have backed out
9 and went down the street and bought something
10 before you bought there. That's what I said.
11 I didn't say after you bought it. I said
12 before you bought it.

13 Q: But now that they're there and they found out
14 that all this stuff is going on and people are
15 being told don't bring the food and drink here
16 and you can't sit there, their only remedy is
17 they got to move?

18 A: No. I didn't say that either. I didn't say --
19 try to put some words in my mouth and that
20 ain't going to work, Mr. Corbett. People are
21 allowed to sit there and eat and drink and have
22 a good time. I mean, you got a few that don't
23 like it, that's life.

24 Q: A lot of those people are not members of the
25 St. Clements Homeowners Association?

1 A: General public.

2 Q: That's who you basically deal with?

3 A: No. The renters out of the hotel is who I
4 basically deal with. And the Caravelle
5 property which is next door. We have 631 rooms
6 in nine buildings, so I get a lot of business
7 from the Caravelle Resort Hotel, which manages
8 our building by the way.

9 Q: And none of those people from that hotel are
10 members of the St. Clements Homeowners
11 Association or their guests?

12 A: No, sir. They are not. You're right.

13 MR. CORBETT: That's all the questions that I have.

14 THE WITNESS: Thank you, Mr. Corbett.

15 MR. CORBETT: Thank you, sir.

16 THE COURT: Anything further?

17 MR. GOUDE - RE-DIRECT EXAMINATION BY MR. ALLEN:

18 Q: Luke, again, just to summarize. Do you now --
19 and I realize you're closed for the season.
20 But when you open and the day you close, this
21 fall, did you provide seating for 40 people
22 simultaneously at tables for the service of
23 meals?

24 A: Yes, sir. I did.

25 MR. ALLEN: All right, sir. Thank you. Please

1 answer any questions.

2 **MR. GOUDE - RE-CROSS EXAMINATION BY MR. CORBETT:**

3 Q: Just one follow up.

4 A: Yes, sir.

5 Q: Those 40 seats included the areas owned by
6 other members of the Homeowners Association
7 where the deck is located?

8 A: The deck itself or the -- the wood deck is
9 owned by me. No. And the chairs are owned by
10 me.

11 Q: But the deck is on the Homeowners Association
12 property owned -- not the Homeowners
13 Association --

14 A: Yes.

15 Q: -- but on the property owned by each member of
16 the Homeowners Association?

17 A: Yes, sir.

18 Q: And that's what you used to count for your 40?

19 A: Yes, sir. As far as the dirt. Yes, sir. Or
20 the concrete. Yes, sir.

21 **MR. CORBETT:** That's all I have, Your Honor. Thank
22 you.

23 **MR. GOUDE - RE-DIRECT EXAMINATION BY MR. ALLEN:**

24 Q: Just a final question.

25 A: Sir?

1 Q: The suit that's on appeal in Horry County, does
2 that have to do with your right to use that
3 wooden deck that you built?

4 A: Yes, sir. I got an exclusive right --

5 **MR. CORBETT:** Objection, Your Honor.

6 A: -- by the court.

7 **MR. CORBETT:** Objection, Your Honor. They've talked
8 about it. Now, they're trying to introduce it
9 into evidence as a legal conclusion without an
10 order, without anything else. I haven't
11 objected to them talking about that because of
12 the background, but I think now he's trying to
13 say that this court is bound by some other
14 decision that hasn't been provided to it.

15 **MR. ALLEN:** We're not saying that, Your Honor.

16 **THE COURT:** Right now the only question that I heard
17 that's been posed is the subject matter of that
18 suit.

19 **MR. ALLEN:** Ma'am?

20 **MR. COURT:** The subject matter of that suit. The
21 pending.

22 **MR. ALLEN:** Yes. His right to use that deck is on
23 appeal. I just wanted to confirm that for the
24 record, Your Honor.

25 **THE COURT:** Okay. That's fine.

1 Q: Is that correct, Luke? Is that on appeal?

2 A: Yes, sir.

3 **MR. ALLEN:** All right, sir. Thank you. Thank you,
4 Judge.

5 **THE COURT:** Thank you. I don't have any questions
6 for you right now. Thank you.

7 **THE WITNESS:** Can I saw something, Ms. Robinson?
8 You don't mind, Judge Robinson? Can I say
9 something?

10 **THE COURT:** Okay.

11 **THE WITNESS:** I'd just like the court to know
12 especially, Judge, that I've been there for a
13 long time and I'd like to continue running my
14 business as I have been. I don't have no
15 problem with anybody there. I do have a
16 problem sometimes when people bring these
17 lawsuits and charges against me, which after 24
18 years why they would do this, I do not know. I
19 want to continue being able to operate my
20 business, employing people, and try to make a
21 living obviously. And with your help, I'd
22 appreciate it.

23 **THE COURT:** Thank you.

24 **THE WITNESS:** Thank you.

25 **MR. ALLEN:** Come on down, Luke. Your Honor, that

1 will be our witnesses for now. We may have
2 some rebuttal later.

3 **THE COURT:** Okay. Ms. Brown, do you have any
4 witnesses?

5 **MS. BROWN:** The Department has no witnesses.

6 **THE COURT:** Okay. Mr. Corbett, are you ready to
7 proceed or do you need a break before we --

8 **MR. CORBETT:** Give me just a minute break. That
9 would be fine. Thank you, Your Honor.

10 **THE COURT:** I'll give a five minute break.

11 **MR. CORBETT:** Thank you, Your Honor.

12 **(Off the record from 11:34 a.m. to 11:58 a.m.)**

13 **THE COURT:** Ms. Brown, before you take your seat, if
14 you'll face the court reporter she will swear
15 you in. Raise your right hand.

16 **BARBARA BROWN,** having been duly sworn, testifies as
17 follows:

18 **MR. CORBETT:** May it please the court.

19 **MS. BROWN - DIRECT EXAMINATION BY MR. CORBETT:**

20 Q: Would you please state your full name and where
21 you live.

22 A: Barbara Brown. I live at 7602 Coachwood Drive,
23 Myrtle Beach, South Carolina.

24 Q: And is that at the St. Clements?

25 A: No.

1 Q: Okay. Do you own a property at St. Clements?

2 A: I do.

3 Q: Okay. And you're a member of the Homeowners
4 Association?

5 A: Yes.

6 Q: And you're one of the people we talked about
7 here before that has ownership of common area
8 along with all the other owners?

9 A: Yes.

10 Q: Okay. Have you ever served on the board?

11 A: Yes.

12 Q: And when and what positions?

13 A: From 2005 till November of 2011, and that was
14 six years. And I was president for three years
15 and vice president for two.

16 Q: All right. You've heard the testimony of Mr.
17 Goude and you saw the pictures. Let me just
18 run through those, and also ask you about what
19 these portions of the Homeowners Association --
20 or the master deed.

21 **MR. CORBETT:** We move to get portions of the master
22 deed moved into evidence.

23 **MR. ALLEN:** Your Honor, I don't object to it being
24 moved into evidence. But, again, whether
25 interpreting deeds falls within the purview of

1 this court, I leave to the court.

2 **THE COURT:** Thank you, Mr. Allen. Ms. Brown?

3 **MS. BROWN:** No objection.

4 **THE COURT:** Okay. It's admitted with no objection.

5 **MR. CORBETT:** Thank you, Your Honor.

6 **(Intervener's Exhibit Number Eleven was admitted into**
7 **evidence.)**

8 Q: I'm going to give you a copy, Ms. Brown. As a
9 result of being a member of the Homeowners
10 Association, owning a unit there and serving on
11 the board of directors as president, have you
12 reviewed the master deed?

13 A: Yes, I have.

14 Q: And you've heard the testimony of Mr. Goude?
15 You've heard the testimony of Mr. Goude here
16 today?

17 A: Yes.

18 Q: Who has exclusive use and possession of what
19 area for seating when they own a unit at St.
20 Clements? Aside from Mr. Goude, what people
21 have?

22 A: Every unit owner has a balcony, an open air
23 balcony, that they have exclusive use of, but
24 they do not own.

25 Q: Okay. And his balcony is -- as you see on

1 Exhibit One here --

2 A: Yes.

3 Q: -- is just bigger than a regular balcony for
4 everyone else?

5 A: Correct.

6 Q: Okay. Are all other areas, including what's
7 shown here on Exhibit Ten, and even Exhibit
8 Three, common areas owned by everybody who's
9 got a unit there?

10 A: Yes.

11 Q: And Mr. Goude has agreed with that regarding
12 the deck area. Is the pool area a common area?

13 A: Yes.

14 Q: Can anyone who is an owner of a unit there,
15 including Mr. Goude or yourself, tell other
16 people they can or cannot sit in the pool area?

17 A: No.

18 Q: Can anyone tell anyone else they an or cannot
19 sit on that deck area that sits on the common
20 area?

21 A: No.

22 Q: Okay. And that deck area would be Exhibit Ten.
23 Can anyone reserve it and say no one else can
24 sit here but us?

25 A: No.

1 Q: Okay. Looking at Exhibit One, have you seen
2 this before? This picture?

3 A: Yes.

4 Q: And have you looked at it from a unit? Looking
5 downward at it?

6 A: Yes.

7 Q: Okay. And how many tables and chairs have you
8 seen there at one time on the top of his unit,
9 Exhibit Number One?

10 A: Well, right now there's 18. But up until
11 November 5th, when I was aware of it, there
12 have only been seating for 12.

13 Q: How long have you owned a unit there?

14 A: Since 1994.

15 Q: Have you ever seen, from 1994 until November,
16 more than 12 seats up there?

17 A: No, I have not.

18 Q: Have you ever seen any people sit up there?

19 A: Sometimes, yes.

20 Q: All right. Looking at the configuration now,
21 and knowing from your experience, would it be
22 difficult for people to comfortably sit there?
23 More than 12 people sit there?

24 A: It looks like you can't even pull the chairs
25 out.

1 Q: Let's look at the deck area, which is Exhibit
2 Number Ten. Have you ever seen people sitting
3 there?

4 A: Yes.

5 Q: I believe this is Exhibit Number Four.
6 Intervener's Exhibit Number Four. Is that the
7 deck area that we've talked about here today?

8 A: Yes. And that's the typical number of seats,
9 and 16 seats and four tables that have always
10 been on that.

11 Q: Okay. If there were more tables and chairs in
12 there could people sit there?

13 A: Well, I calculated at 20 people at 200 square
14 feet. That's less than three square feet per
15 person.

16 Q: So is it reasonable to have 20 people there?

17 A: I don't think so.

18 Q: I point your attention to the master deed
19 article 7.0E.

20 A: Okay.

21 Q: And does that refer to advertising signs and
22 billboards?

23 A: Yes. That's not allowed.

24 Q: Pardon me?

25 A: It's not allowed.

1 Q: All right. So this sign on Intervener's
2 Exhibit Ten, and the sign on Intervener's
3 Exhibit Number Three, are those allowed?

4 A: No.

5 Q: Are any of the restrictions on these signs
6 allowed, that no one can bring alcohol, coolers
7 or glass to the premises?

8 A: No. We looked into that and we found nothing
9 to back those up. The board looked into that.

10 Q: And even if you did not want to have glass
11 there, would you have to have a separate
12 Homeowners Association resolution passed by the
13 majority to say no glass by the pool?

14 A: Well, that's already covered in the pool rules.
15 There's a big pool rules sign and it says no
16 glass. That's already covered on the pool deck
17 of no glass.

18 Q: All right. But this area here that is Mr.
19 Goude's deck, Intervener's Exhibit Number Ten,
20 is that covered by the same rules?

21 A: The pool rules?

22 Q: Yes, ma'am.

23 A: No.

24 Q: Okay. Does anyone have the authority to post
25 such signs as you see here on Exhibit Ten?

1 A: No.

2 Q: Intervener's Exhibit Ten. And were those signs
3 posted, as depicted in these pictures?

4 A: Yes.

5 Q: And for how long were they up there?

6 A: I don't know how long. They've been there
7 since I'd been an owner, so sometime prior to
8 that. And we did take one down. The board voted
9 to take one down. And after a few months Mr.
10 Luke put one back up, without permission and
11 without consulting the board.

12 Q: Okay. Just speak up and speak into the
13 microphone.

14 A: Okay.

15 Q: Okay. What part about this situation where the
16 Homeowners Association is protesting the
17 license?

18 A: Well, people complained that when they were
19 sitting on the side deck eating, Luke asked
20 them to get up and leave if they were eating
21 their own food. We had complaints like that.
22 And then on the pool deck, when people are in
23 the swimming pool area, owners complained that
24 they were asked, and they didn't think they
25 should be asked or didn't like being asked,

1 when he asked them what's in their coolers.
2 That's their pool, and they did not want to be
3 asked. That's not for him to do.

4 Q: Did those things interfere with their use and
5 enjoyment of the common area that they owned?

6 A: Yes.

7 Q: As a result of those complaints did you look
8 into the situation?

9 A: Yes.

10 Q: And did the Homeowners Association decide to
11 contest this license?

12 A: Yes. It seemed to be like patrolling the area
13 and making it like these was the premise -- the
14 whole area was the premise of his business.

15 Q: Okay. Let's describe just briefly for the
16 Judge this complex. Mr. Goude has described it
17 as no one lives there full-time, but you live
18 down the street?

19 A: Yes.

20 Q: So is there anyone who is policing and making
21 sure that the people who rent there have a good
22 time and they don't have any infringement on
23 their rights?

24 A: No. I mean, other than him. I mean, there's no
25 person in authority to do that. I mean, that's

- 1 not the way this is operating. But I want to
2 back up a second. We have had people live
3 there for a year. That rent for a year. We
4 have winter guests that are six months. There
5 are people that spend more than just a little
6 vacation on there. And owners can live there
7 if they want, or stay as long as they want, and
8 come as often as they want. Those are units
9 that are determined how they want them used.
- 10 Q: So that is an important part of the reason for
11 buying it?
- 12 A: Yes.
- 13 Q: All right. If there's no person there to
14 enforce or protect the rights of the Homeowners
15 Association, do you think you've found out
16 about all the possible complaints?
- 17 A: Oh, no. I'm sure we didn't.
- 18 Q: Okay. Is the Homeowners Association board
19 created to help enforce rules for the good of
20 all the owners?
- 21 A: That's what the purpose is, yes. To manage and
22 enforce.
- 23 Q: Okay. Is it the Homeowners Associations
24 purpose -- part of the purpose to make sure
25 that no one homeowner takes away any rights of

1 anyone else?

2 A: Yes.

3 Q: Is that why you're here today?

4 A: Yes.

5 Q: Nothing personal against Mr. Goude?

6 A: Nothing personal. This is a board effort.

7 Q: Okay. Is liquor a particular problem?

8 A: Yes.

9 Q: And how so?

10 A: Well, it's a small property. So sometimes when
11 people have too much to drink and they leave
12 they'll hit cars in the parking lot or they'll
13 hit parts of the building. There's been loud
14 and boisterous and excessive noise. The pool
15 bar is only 13 feet from the building where the
16 balconies and the living, sleeping units are.
17 So it's very close to the main building. So
18 that's an issue. Noise has been an issue. And
19 since this is owned by all the owners,
20 sometimes drawing people from the outside takes
21 up seating and parking. And, like I say, it's
22 a small property and sometimes owners feel they
23 cannot get seating around the pool and things
24 like that.

25 Q: Well, how many seats does it have around the

1 pool?

2 A: Well, it has 12 laying chairs, and one table
3 and four chairs, and then we've got two four
4 tops and three sixes. And the Homeowners
5 Association, as our understanding, has always
6 bought the chairs for the common areas. And
7 when he mentioned we bought some this last
8 year, we did because we wanted to keep them out
9 year around. He was putting them away. Because
10 of the winter guests we wanted to buy new
11 tables for the area and we wanted to keep them
12 out all year. We notified the owners that
13 that's the way it was going to be done. They
14 would be left out all year for their use.

15 Q: How many units are there in the complex?

16 A: There are 66.

17 Q: How many people does each unit sleep?

18 A: How many what?

19 Q: People does it sleep? Is there two beds in
20 each, one bed, four?

21 A: It's a two unit suite, or two units, and you
22 can sleep six people. And then there's the
23 penthouse which would sleep more. It's got
24 several bedrooms.

25 Q: So if it's fully occupied, there's more than

1 360 people who could be there, who could want
2 to use the pool?

3 A: Yeah.

4 Q: Okay. And there are less than how many chairs
5 around the pool?

6 A: Well, there's the 12 lounge chairs and then
7 there's -- actually would be the three four
8 tops and the three two tops, so that's 16
9 seats. Sixteen seats at tables and the 12
10 lounge chairs.

11 Q: So would you say that it's already a small area
12 for the residents to use without anyone else
13 coming from the outside?

14 A: Yes. In fact, this is considered an accessory
15 use, the pool bar to the property. It's not
16 meant to draw outsiders because of limited
17 seating and limited parking.

18 Q: If there was no liquor license do you believe
19 that would cut down the number of outsiders who
20 came?

21 A: Yes.

22 Q: Is there any objection to a snack bar being
23 there?

24 A: No.

25 Q: And as today raised, is there any objection to

1 even a beer and wine license?

2 A: No, there is not.

3 Q: And is this a decision the Homeowners
4 Association board has discussed?

5 A: Yes.

6 Q: Without saying what everyone said.

7 A: Yes.

8 Q: Would it be better for the use and enjoyment of
9 all the homeowners if there was no liquor
10 license granted to Mr. Goude?

11 A: Yes. We believe so.

12 Q: And do you believe that the number of seats
13 that is claimed to be used by Mr. Goude present
14 a problem for the other owners of units in the
15 Homeowners Association?

16 A: Yes.

17 Q: Is there anything else you want to tell the
18 Judge?

19 A: Well, this side deck was built without a
20 permit, because in order to get a building
21 permit zoning has to approve it, and zoning
22 would not approve it because you cannot take
23 away required parking spaces. There's one
24 parking space for every unit owner. So already
25 the encroachment infringes on the rights of the

1 owners to park in available spaces since
2 there's only one per owner. And what was your
3 question again?

4 Q: Is there anything else you want to tell the
5 Judge? So does it pose a problem for somebody
6 who wants to have the ability to park in a
7 space whenever they come there?

8 A: It can in the full season and all. Yes.

9 Q: Just to be clear for the Judge. We haven't
10 shown any pictures. But inside of his unit
11 there's no room for seating?

12 A: There's no room for seating or more seating?

13 Q: There's no room for any seating?

14 A: Well, inside is actually -- no. That's a very
15 small -- I've been inside it. It's very small.
16 Just for cooking and food preparation.

17 Q: Okay.

18 **MR. CORBETT:** Beg the court's indulgence.

19 A: We also replaced the lounge chairs, too. We
20 replaced the lounge chairs, too. Not just the
21 tables and chairs.

22 Q: And are you asking the Administrative Law Court
23 to deny the license because Mr. Goude and BeMi,
24 Inc. does not have the requisite 40 seats
25 dedicated to his establishment?

1 A: Yes. That's what we found out.

2 Q: And you're asking the court to deny the license
3 based on that?

4 A: Yes.

5 Q: And you believe these other problems you've
6 described would not occur for the homeowners?

7 A: I think it would help alleviate them.

8 Q: Do the problems affect the property value?

9 A: Yes. The appearance of the side deck and
10 there's excessive trash because of the pool bar
11 and things like that.

12 Q: And when there's liquor being served and loud
13 music, does it create a family atmosphere or a
14 non-family atmosphere?

15 A: No. In fact, owners have not wanted to cross
16 through the pool bar area to get to the beach,
17 and have said it's not an atmosphere they want
18 their ten-year-old child to be in. We've had an
19 owner sell because his adult daughters did not
20 like the atmosphere there.

21 Q: Who was that?

22 A: That was Mr. Brothers.

23 **MR. ALLEN:** She's got to be going into hearsay.

24 **THE COURT:** Sustained.

25 **MR. CORBETT:** Thank you, Your Honor.

1 A: One owner reported that when they passed
2 through the --

3 Q: Let me just ask you to pause right there and
4 not quote anybody.

5 A: Okay.

6 Q: Well, let me ask you this. As a member of the
7 board of directors, did you receive complaints
8 about the issue we talked about?

9 A: Yes.

10 Q: Okay. Did anybody who complained to you -- not
11 saying whether or not their complaints were
12 true or not. Did anyone who complained to you
13 eventually sell?

14 A: Yes.

15 Q: Okay. Who was that?

16 A: That was Mr. Brothers, and also Jennifer Powers
17 did sell her unit that had a complaint.

18 MR. CORBETT: Okay. Your Honor, I think that's all
19 the questions I have -- I'm sorry.

20 Q: When were those sales?

21 A: About '06 and about '08, I think.

22 MR. CORBETT: Thank you, Your Honor. That's all I
23 have.

24 THE COURT: Okay.

25 MS. BROWN - CROSS EXAMINATION BY MR. ALLEN:

1 Q: Ms. Brown, I'm Ken Allen. A couple of
2 questions, because I know we're cutting into
3 the lunch hour here. You testified that you'd
4 seen or at least had some information that
5 there had been some bump ups in the parking lot
6 involving liquor, is that correct?

7 A: Yes.

8 Q: Do you know of your own knowledge whether the
9 liquor involved the purchase from this place or
10 could it have been liquor that the renters or
11 owners brought on their own to the property?

12 A: Well, if they brought it on their own to the
13 property, you mean on the common areas?

14 Q: When the owner comes they can bring their own
15 liquor to their own unit, can't they?

16 A: Yes.

17 Q: And renters can bring liquor to the unit when
18 they rent it, can't they?

19 A: Yes.

20 Q: And any of that liquor can end up in the
21 parking lot in the sense that whoever's
22 drinking it could be driving in the parking lot
23 whether it's their liquor or something they
24 bought from this gentleman.

25 A: That would be true.

1 Q: Is that true?

2 A: Uh-huh (affirmative response.)

3 Q: And as far as local permitting for his deck,
4 you don't know of any local order or action to
5 stop him from using this deck, do you? That
6 the city's instituted or the county? Are you
7 folks in the city or in the county?

8 A: In the city. No, I don't.

9 Q: Okay. And how close do you actually live to
10 the location?

11 A: Within a mile.

12 Q: Okay. Within a half mile, or a mile?

13 A: A mile.

14 Q: Okay. About a mile. And other than Mr. Goude,
15 during the season is there anybody else that
16 actually owns property to kind of look after
17 things?

18 A: What do you mean?

19 Q: If the guests have questions or need something
20 or whatever, is there like a property manager
21 on site?

22 A: Well, what we have -- I disagree with Mr.
23 Goude. We have a management company that is
24 not the Caravelle Hotel. It's Allied
25 Management. They're a property management

1 company. They manage the property. The
2 individual owners, if they want to rent through
3 the Caravelle or have their own rental agent,
4 that's where the Caravelle comes in. We just
5 started contract services for maintenance with
6 the Caravelle. Prior to that we had our own
7 maintenance person. So that's how the property
8 is cared for. So if someone had a problem they
9 could go to our management company, or our
10 onsite maintenance person, or if they rented
11 through the hotel or to another agent they
12 would address it that way.

13 Q: Okay. So they could maybe use their own rental
14 company or go through the common one?

15 A: Yes.

16 **MR. ALLEN:** And, Judge, if I could look at the
17 photograph just a second. Thank you, ma'am.

18 Q: Ms. Brown, I'm going to show you what's been
19 marked Petitioner's Exhibit Number Three. Do
20 you recognize that as the roof space at this
21 location?

22 A: Yes.

23 Q: Okay. Are you aware of any law or regulation
24 that would prohibit Mr. Goude, if he saw fit,
25 of actually reducing the size of these tables?

1 A: No.

2 Q: Do you know what a cocktail table is?

3 A: Yes.

4 Q: Have you been in lunch places in Myrtle Beach
5 that actually -- you want to eat or have a
6 drink you sit at a cocktail table?

7 A: Yes. I'm familiar with what one is.

8 Q: All right. And they're smaller than these,
9 aren't they?

10 A: Right.

11 Q: So at the risk of asking you the obvious, if
12 you put smaller tables up here you're able to
13 seat more people at tables. Is that a fair
14 statement?

15 A: Well, I think this is already a smaller one
16 here from the other picture I've seen. This
17 one that has two seats at it, that's already a
18 cocktail table.

19 Q: Okay. And my question to you is, state law
20 really doesn't say what size the tables have to
21 be, does it?

22 A: No. But the seats --

23 Q: Just the 40 minimum. All right.

24 **MR. ALLEN:** Thank you, ma'am. That's all my
25 questions.

1 THE COURT: Ms. Brown?

2 MS. BROWN: No questions for this witness.

3 THE COURT: Okay. Mr. Corbett.

4 MR. CORBETT: Just one, Your Honor.

5 MS. BROWN - RE-DIRECT EXAMINATION BY MR. CORBETT:

6 Q: Without the license for liquor, to sell liquor,
7 to BeMi, would that reduce the chance of liquor
8 related incidents as you described?

9 A: You're asking me?

10 Q: Yes, ma'am. Without the liquor license to
11 BeMi, the chance to sell liquor, would that
12 reduce the possibility of the chance of liquor
13 related incidents on the property?

14 A: Yes, I think so. I did want to address
15 something on the seating though, if we could --

16 Q: Yes, ma'am.

17 A: -- look at one of the pictures. That little
18 counter was just added by Luke this summer, and
19 that's a walkway around the side deck that
20 those bar stools are sitting on. And that was
21 put in so people could walk around, and the
22 Homeowners Association paid for that section.
23 And two years ago when he put bar stools on
24 that area, on the counter, he added on the
25 other side where we had a handrail. He was

1 asked to remove that counter he added there to
2 the common area and the bar stools and he
3 removed them at that time. So these are new
4 this year. And that section was paid for and
5 constructed by the Homeowners Association.

6 Q: This is what we're talking about, the two bar
7 stools --

8 A: Yeah. So these are outside of that side deck.
9 That is.

10 Q: Okay. In Intervener's Exhibit Number Eight a
11 better picture of that area?

12 A: Yes. This is a step up and walk through. And
13 then there was a shower here. Well, that was
14 taken down, and now you walk through to the
15 pool deck.

16 Q: And who owns this area here where the people
17 would sit?

18 A: That's common area. That's a walkway through.

19 Q: Anything else on the seating?

20 A: Oh, the testimony earlier about adding more
21 seats on the pool deck area, that's still
22 common area. Even if he adds more seats on the
23 other side where the pool deck is, that's still
24 common area. And he mentioned that more seats
25 were added there too this summer. I want to

1 make the point he -- like you said, he has got
2 five tables now for 20. But when his original
3 license was granted there were only three.
4 Like I said, there has only been three tables
5 seating 12 on the roof deck. There's no way
6 you can get seven tables in there to make 28
7 people here be a part of the 40 with the 12 on
8 the roof deck. And we do have a photograph of
9 1991 when that license was granted.

10 Q: And that would be the -- unfortunately the one
11 that doesn't come out real well, Exhibit Number
12 Two? Is that the one?

13 A: No. It's the one that that Paragon Company
14 took pictures of from the roof and it showed
15 the configuration of the pool rooftop balcony.
16 It's that gray one that has two pictures on it
17 dated June of 1991.

18 **MR. ALLEN:** Judge, I don't want to be argumentative,
19 but the application from 20 years ago is not
20 before the court. We're here on the facts
21 today, which I think are undisputed. We
22 provided the 40 seats required --

23 **THE COURT:** I agree.

24 A: I'm just saying that it's always been not as it
25 appears today. It's never been as it appears

1 today.

2 Q: And you're talking about the rooftop had 12
3 seats before this suit came up?

4 A: Yes.

5 Q: And this area here that you cited has how many
6 seats?

7 A: Sixteen.

8 Q: So from 1994 --

9 A: '91.

10 Q: No. When you bought your unit.

11 A: Okay.

12 Q: In 1994, until sometime in November of 2010,
13 was it a different seating configuration as
14 shown right here?

15 A: Yes.

16 Q: On Petitioner's Exhibit Number Two?

17 A: Uh-huh (affirmative response.)

18 Q: Okay. And the seating configuration for the
19 top of the unit --

20 A: Like I said, these two bar stools were never
21 there either, or that counter.

22 Q: Okay. And that's on Petitioner's Exhibit
23 Number Two. And on Intervener's Number One,
24 the seating arrangements on the top of the
25 unit, from 1994 until November 2010, was what?

1 A: It had three tables with 12 seats.

2 Q: So the actual use that you saw was not the use
3 that's been presented here today?

4 A: That's correct.

5 Q: At any time?

6 A: At any time.

7 Q: Pardon me?

8 A: At any time.

9 MR. CORBETT: Thank you, Your Honor.

10 **MS. BROWN - RE-CROSS EXAMINATION BY MR. ALLEN:**

11 Q: Ms. Brown, since you acquired your unit, do you
12 know whether the alcohol laws have changed as
13 far as seating requirements?

14 A: Well, when I've looked into the information it
15 seems that those laws go back to, I think, '76.
16 They are longstanding. And that's what we
17 understand, it's always been 40.

18 Q: And did you call SLED at any time since you
19 acquired the place and complained about the
20 number of seats?

21 A: No, I did not. I did call once we -- the board
22 called once we looked into this and spoke to
23 the Department of Revenue, but no one called
24 SLED.

25 Q: Okay. And you've heard Mr. Goude -- I don't

1 want to argue with you about the use of the
2 deck. But you've heard him testify today that
3 as of today he is providing seating for 40 when
4 you add the tables and chairs on the deck area
5 and the roof area?

6 A: But it's still common area for everyone.

7 Q: I understand. I'm not arguing that. I'm just
8 trying to see if we can at least agree on the
9 number of seats.

10 A: Well, you've got two that are outside of the
11 side deck that he's counting, so they're not in
12 the side deck to get that -- that gives him 38
13 seats, not 40.

14 Q: But he's providing those seats, correct?

15 A: But not on what he would -- well, on common
16 area, yes. On common area.

17 Q: Okay. If we can at least agree on a number.

18 A: Okay.

19 Q: All right. And just very quickly. This is
20 Number Two. Again, that shows the deck area
21 and the two stools you have just mentioned. Go
22 back to my earlier comment. If necessary, he
23 could reduce the size of those tables and
24 chairs and squeeze more in there, couldn't he?

25 A: I don't think he could get smaller chairs.

1 Those are already about the smallest I've seen.
2 And if you went to a smaller table, you
3 probably couldn't get four chairs around them.

4 Q: Well, it's really speculation, because again,
5 the law doesn't say what size the tables or the
6 chairs had to be, right?

7 A: True.

8 Q: Okay.

9 A: But you've still got the so much, like I said,
10 about three square feet per person, even with
11 this configuration of trying to put 20 in
12 there.

13 **MR. ALLEN:** Okay. Well, thank you, Judge, that's all
14 my questions. I'll give you the exhibits back.

15 **MR. CORBETT:** Your Honor, I just have one more.

16 **MS. BROWN - RE-DIRECT EXAMINATION BY MR. CORBETT:**

17 Q: Ms. Brown, using the logic that have been
18 presented today of the common area seating, as
19 far fetched as it may sound, could then someone
20 put seats in the pool and say that they're used
21 for seating?

22 A: In the pool?

23 **MR. ALLEN:** It calls for speculation and a legal
24 conclusion.

25 **MR. CORBETT:** Well, Your Honor, he's asked the same

1 thing about the size of the tables and chairs
2 and what, you know, Mr. Goude could do, and I'm
3 just trying to make a point about the providing
4 that Mr. Allen just asked her. Let me rephrase
5 the question.

6 **THE COURT:** Okay. I'll allow you to rephrase.

7 Q: Based on what has just been presented to you,
8 could seats anywhere on the whole property be
9 considered, under the theory presented, as
10 seating for that liquor license?

11 A: No. Anything on common area could not be
12 considered.

13 Q: Okay. There is 40 seats all over the whole St.
14 Clements Association complex, right? I mean,
15 everybody's got some seating on their own
16 balcony, right?

17 A: Yeah.

18 Q: So to take that theory further, wouldn't that
19 allow someone to use all the seating
20 everywhere, if you use some of the common area
21 seating somewhere?

22 A: I guess I don't understand the question.

23 Q: Okay. Would it be an infringement on the
24 rights of the homeowners if their seats in
25 front of their unit were considered dedicated

1 seating to use of the pool bar?

2 A: That's something I just don't understand.

3 MR. CORBETT: I think I made my point. Thank you.
4 Thank you, Your Honor.

5 THE COURT: I've got a question for you, Ms. Brown.
6 When we're looking at the seating that the
7 Petitioner has presented to satisfy the 40
8 seating requirement. Now, the homeowners, your
9 objection is it to all of these seats or is it
10 just to certain ones of the seats that he's
11 designated? Is it to the two bars that appear
12 on this exhibit or is it to the chairs that
13 appear on the deck?

14 THE WITNESS: Okay. That's a walkway. So that
15 would be the objection there. That's
16 interfering in the walkway. In there he holds
17 out that everyone can use those, but yet he
18 acts like he controls them. So two things are
19 happening, you know. It's confusing. And he
20 is like patrolling the pool deck area with
21 signs and telling people they can't do this and
22 that, and it's like he considers all that his
23 premises. Not just the seating but -- you
24 know, just the whole area, even people that are
25 using the pool. And, you know, that's where

1 people had their coolers by the pool, and it's
2 like he considers that his premise. That's
3 part of the problem.

4 **THE COURT:** Okay. I have no other questions for Ms.
5 Brown.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** Do any of the attorneys have --

8 **MR. ALLEN:** Just to follow up.

9 **MS. BROWN - RE-CROSS EXAMINATION BY MR. ALLEN:**

10 Q: That's your understanding of his position, but
11 not necessarily his position. Is that a fair
12 statement?

13 A: Yes.

14 **MR. ALLEN:** Okay. All right. Thank you.

15 **MS. BROWN - RE-DIRECT EXAMINATION BY MR. CORBETT:**

16 Q: And, Ms. Brown, you object to the seating on
17 the deck, which is the bottom portion where the
18 Judge was pointing to, and the two little bar
19 stools just outside the deck?

20 A: Yes.

21 Q: That's yes?

22 A: Yes.

23 Q: Okay. He owns the roof of his unit -- or
24 doesn't own. He can use the roof of his unit
25 --

1 A: Yes.

2 Q: -- but nothing on the ground floor because it's
3 common area?

4 A: Right. And that's what every owner has the
5 right is the use of their balcony like he does.
6 Every owner owns the inside of their unit plus
7 the use of the their balcony.

8 **THE COURT:** I understand.

9 **MR. CORBETT:** Thank you, Your Honor.

10 **THE COURT:** And your big objection is that by
11 posting the signs and whatnot that he is, in
12 essence, controlling -- exclusive control of
13 what is common area?

14 **THE WITNESS:** Yes. And the signs are saying things
15 that aren't true.

16 **THE COURT:** Okay. Thank you. I got you. Thank
17 you, Ms. Brown. Mr. Corbett, do you have any
18 other witnesses?

19 **MR. CORBETT:** No, we do not, Your Honor. Thank you.

20 **THE COURT:** We're at 12:30 but I don't think we'll
21 be much longer, so I'm just going to proceed
22 on.

23 **MR. CORBETT:** Thank you, Your Honor.

24 **THE COURT:** Mr. Allen, do you have anything in
25 rebuttal?

1 **MR. ALLEN:** Very briefly put Mr. Goude up and have a
2 quick summary and we'll be done, Your Honor.

3 **THE COURT:** Very good. Mr. Goude, you are still
4 under oath, so you don't have to be sworn
5 again.

6 **MR. GOUDE:** Thank you very much.

7 **MR. GOUDE - DIRECT EXAMINATION BY MR. ALLEN:**

8 Q: Luke, clarify, if you would. She's taking the
9 position you told the court that you are
10 excluding owners and their guests, the renters,
11 from using some of your tables and chairs. Is
12 that true? Do you do that?

13 A: No, I do not. The point I'd like to make on
14 clarification on these tables, I have 40 chairs
15 that I purchased this year to make up for the
16 difference between the 16 that the Homeowners
17 Association, which I'm a member of, purchased.
18 So we actually have -- I think Ms. Brown is
19 confusing the number of chairs and tables here.
20 I had at one time 40 chairs because I had the
21 ones out around the pool area inside of the
22 fence. And this spring, when the Homeowners
23 Association sent me a letter and said do not
24 put your chairs and tables back out around the
25 pool deck area, we're going to put our own pool

1 tables and chairs out, we don't need yours no
2 more, that's when I went and purchased another
3 12 chairs and put the ones up top and put the
4 ones on the side to make it a total of 40
5 chairs that I actually own. If you count the
6 16 that the association put out around the pool
7 in the spring, that gives us a total of 56
8 chairs on the pool deck. They also have one
9 four top on the inside of the pool area. Mr.
10 Allen, if you had a brochure -- you know, a
11 picture, I could show it a lot clearer. So we
12 actually have like 60 seats on the pool deck
13 now. Forty that I own and 20 that the
14 Homeowners Association purchased. That's the
15 first thing I would like to clarify, because
16 we're getting confused about these chairs and
17 tables here.

18 Q: Does that help you?

19 A: Yeah. But the one up top, and then the one on
20 the side, you can't see it that good there
21 anyway because these are all -- these are the
22 Association, which I'm a member, purchased it
23 in the spring. At one time I owned those
24 chairs and tables, that I bought and purchased
25 for the last 20 years, replaced then when they

1 broke or whatever. This spring, that's the
2 chairs that was in question right there.

3 **THE COURT:** The top picture or the bottom?

4 **THE WITNESS:** The one on the bottom.

5 **THE COURT:** Okay.

6 A: Those are the ones that the Association bought
7 this spring. I had mine up there for the last
8 20 years, and gave me a total of 40 chairs and
9 tables. In the spring, like I testified --
10 that's why I want to get it clarified. In the
11 spring I got a letter from the Association
12 saying do not put your chairs and tables back
13 out on the pool deck. We're going to put new
14 ones out there and we're going to leave them
15 out there all year. So I said okay. Then when
16 I realized that they had done that -- what I
17 consider premeditated in advance, because I
18 found they protested my license in March, that
19 I got the letter from the Association in
20 February, so they had already planned on the 40
21 seats that it takes me to have a valid alcohol
22 license in the state to have 40 chairs and
23 tables. They realized by me not putting my 16
24 back out there, I would fall short of the 40
25 chairs and tables. So therefore, that's why

1 they replaced them. But they're owned -- which
2 I'm a member, so I actually own part of the
3 chairs anyway. So I wanted to cover my trail,
4 so to speak, to make sure I had 40 of my own
5 where they couldn't say, well, Luke, you don't
6 own 40 chairs and tables. That's why they put
7 their 16 out there. So now, I went back and I
8 added another four top and a two top on the
9 rooftop, which like Ms. Brown said, for the
10 last 20 years I didn't need put 12 chairs up
11 top. I didn't need but 16 on the side deck,
12 because I had 16 around the pool area that I
13 owned. But after they put their own and told
14 me not to put mine back out there, I then added
15 them on the side deck and the upper deck to
16 make sure I had a total of 40 seats that I
17 owned myself. Number two, the side deck where
18 that self is at -- we need to clarify that.
19 That is not a walkway. That's a walkway by my
20 choosing. For the last 23 years there used to
21 be a shower there and an area where people
22 showered up until the spring of this past year
23 when they removed that area and made a new
24 walkway. So where those two stools are at,
25 that used to be all closed off. And there's a

1 shower right to the -- to the north of that
2 stool there was a shower. Enclosure for
3 showering. Okay? So I had a walkway between
4 -- on the other side of those stools was a
5 walkway, and on this side of the stools was a
6 walkway. We had two walkways. Now, in the
7 spring of 2011 the Association built a brand
8 new deck, which is south of those stools, and
9 therefore took the shower deck down. And in
10 1990 when I built that deck -- all that deck
11 was built by me from the -- from the north of
12 that stool, I built that. Not the Association.
13 We need to get that straight. Where those two
14 stools are sitting right now, the Association
15 built that in 1994. I built the deck area
16 about a foot from that stool back. I purchased
17 and built that myself, along with the shower.
18 This past year they took that down and moved
19 the shower on the new walkway. Therefore, I
20 had two options. I had two walkways. One on
21 the other side of the deck, on this side of the
22 deck. And the reason I left that railing there
23 was because there was no support. I started to
24 take the railing down. That's my choice.
25 That's the deck I purchased. That's the

1 permission I got from the court in August of
2 2009 to leave the deck as is. I have permission
3 to keep it there. So as far as I'm concerned,
4 I do own that deck. Not the property it sits
5 on maybe, but as a tenants in the common, I do
6 own an undivided interest in the property, too,
7 but that deck is built and paid for by me.
8 That is my choice. As far as that wood and the
9 railings go, that is my choice, according to
10 the court in August of 2009. I decide to
11 reinforce that railing, because it made it look
12 a little better, and I reinforced it. I had a
13 contractor that come in and said the only way
14 you can reinforce this shelving is put a shelf
15 on the top and make it stronger. So,
16 therefore, I can put those two stools on either
17 side of that shelf. If they say that's a
18 walkway on the left side, well, I'll just put
19 them on the other side. I wanted to clarify
20 that for the court. Because they're saying
21 there's two stools on common area decking when
22 all I got to do is put it on the other side.
23 It don't matter to me which side they're on.
24 It just happened to be there that particular
25 day. But I can use that shelf for two counter

1 stools.

2 Q: So what you're saying is when the SLED agent
3 came and did her final inspection, the seating
4 shown in Petitioner's Exhibit Number Two was
5 stools where there are, plus the roof seating
6 shown in Petitioner's Exhibit Three, met the
7 minimum 40 seat requirement?

8 A: Yes, sir. Exactly. I just want to clarify
9 that with the court to know we actually have 60
10 seats now. Forty of mine that I purchased and
11 20 that the Association has purchased, which
12 I'm a member of the Homeowners Association. I
13 pay my dues just like everybody else. So I
14 actually own part of those chairs as well.

15 MR. ALLEN: All right, sir. Thank you. Please
16 answer any questions counsel may have.

17 THE WITNESS: Yes, sir, Mr. Corbett.

18 MR. CORBETT: Thank you.

19 **MR. GOUDE - CROSS EXAMINATION BY MR. CORBETT:**

20 Q: So those 60 seats, all you have to do is buy
21 them and you can put them anywhere you want and
22 they count toward the seating, right?

23 A: Well, if you want to sit in the parking lot, I
24 guess you could, but I don't want to sit in the
25 parking lot.

1 Q: So you're saying if you have seats, you put
2 them in the parking lot 150 yards away, that's
3 for your restaurant?

4 A: No. I didn't say that.

5 Q: Well --

6 A: You said that. Not me, now. I showed you
7 where mines at. Mine's on the pictures.
8 Mine's under the deck and on the rooftop.
9 That's my 40 seats. Not in the parking lot.
10 Under the awning and the deck. It's been
11 approved by the county court in Horry County
12 that I have permission to keep. That's all I
13 can go by.

14 Q: Now, that's like three different things in
15 there, so I'm going to have to ask you to break
16 it down.

17 A: Okay.

18 Q: The first thing I'm going to do is say, you're
19 talking about you own seats. You put them out.
20 So, therefore, that's what you say is providing
21 them, right?

22 A: Yeah. I purchased them. Yeah.

23 Q: Right. So they can go anywhere. As long as
24 you own 40 seats you put somewhere in the
25 common area?

1 A: I did not say that. I said they're on the
2 rooftop and on the side deck. That's where I
3 said my 40 seats are at. And if you're going
4 to talk to me --

5 Q: So what's this about 60 seats --

6 A: Mr. Corbett, if you're going to talk to me, do
7 you mind coming over here?

8 **THE COURT:** One second, both of you. Mr. Corbett,
9 complete your question. And Mr. Goude, please
10 wait until he completes his question before
11 answering.

12 **THE WITNESS:** Yes, ma'am.

13 **THE COURT:** Both of you cannot talk at the same
14 time.

15 **THE WITNESS:** Yes, ma'am.

16 **MR. CORBETT:** Thank you, Your Honor. Usually when
17 someone goes over here they're going to stay
18 longer.

19 **THE WITNESS:** Well, that's fine with me. I just
20 like looking at you rather looking to the side.

21 Q: So the 60 seats you're not claiming are on any
22 area that you're allowed to have 60 seats?

23 A: Oh, yeah. They own 60 seats on the property,
24 right.

25 Q: Okay. So you buy a seat and you can put it

1 anywhere on the property and it counts for your
2 seating?

3 A: You mean me personally?

4 Q: Yes, sir.

5 A: No, sir. Not me personally, no.

6 Q: Well, where can you put it to count for the
7 seating?

8 A: The 40 seats I purchased are on the side deck
9 that I have permission from the court to keep,
10 number one, and the 18 I got up top on the
11 rooftop is my exclusive right as a limited
12 common area use. I have 18 up top and 22 on
13 the side. That gives me a total of 40. I was
14 just trying to clarify to the point that we
15 have more than 40 chairs. And the reason I
16 have 40 now --

17 Q: Who has more than 40 chairs?

18 A: The whole property complex. I have 40, they
19 have 20, if you want to separate it. But we
20 have 60 seats now. If you stay in the St.
21 Clements condominiums, or you're a homeowner,
22 or you're a renter, you're not going to come
23 and say, Luke, do you own 40 chairs or 20.

24 Q: That's not responsive. I asked --

25 A: No, no. Let me clarify my answer, please.

1 Q: Which answer?

2 A: The one I'm just giving you about the seats.
3 Nobody cares who owns them. They just want to
4 be able to have a place to sit down. The
5 reason I put the other chairs there in the
6 spring is because of the fact that the
7 Association took my chairs and tables away and
8 put their own there. And then I realized my
9 license was being protested because of the
10 seating, I said, oh, now I know why they put
11 their chairs and tables and took mine away,
12 because they can claim ownership for those
13 chairs and tables. Therefore, I replaced my
14 shortage with chairs and tables I purchased,
15 Mr. Corbett. That's why I own 40 seats and
16 tables on two areas. The rooftop deck has 18
17 and the downstairs has 22. That's what I was
18 clarifying.

19 Q: So you put seats and chairs anywhere you want
20 --

21 A: No. Just on those two areas.

22 Q: Why only those two areas?

23 A: Because that's the ones I have control over.

24 Q: Well, where's the court order saying you have
25 control over it?

1 A: Well, we have a copy of it right here if you
2 want to --Mr. Allen's got it.
3 Q: But that only says the Homeowners Association
4 can't tear down what you built, right?
5 A: That's what they say. That's what the court
6 says.
7 Q: Can't tear it down. It doesn't say you own --
8 A: No. But I got a court order I can keep it
9 there.
10 Q: Let me finish my question, sir.
11 A: Yes, sir.
12 Q: It doesn't say that you own, to the exclusion
13 of all the other common owners, the land --
14 A: No, sir. I never said I did.
15 Q: Okay, good. Thank you, sir.
16 A: I said the deck.
17 Q: All right. And you had no permission from the
18 court -- and that's what you said just a minute
19 ago. I don't know if you realized that. You had
20 no permission from the court prior to building
21 it to build it, right?
22 A: From the court prior to building it?
23 Q: Yes, sir.
24 A: Just from the Association and developer at that
25 time. The Homeowners Association.

1 Q: You did not have any permission from the
2 Association. Nothing in writing?

3 A: Yes, I did. It was approved in court. We have
4 a letter from Marshal Belton.

5 Q: And that was not introduced into evidence, was
6 it?

7 A: I don't know. I don't remember that part of
8 it.

9 Q: You're under oath, sir.

10 **MR. ALLEN:** Object --

11 A: I really don't know whether -- I swear it
12 don't.

13 **MR. CORBETT:** See, he's using that to buttress his
14 case and saying he got permission. He snuck
15 that in. So I'm trying to show the court that
16 he did not have permission.

17 A: Well, Mr. Corbett, all I can say is the judge
18 ruled in my favor. So if you have a problem
19 with the court, you need to talk to Ms. Cindy
20 Howe which is the Master in Equity. Don't
21 question me. I don't question the judge. You
22 might be questioning her, but I'm not going to
23 question her.

24 **THE COURT:** Wait a second. We're getting into --

25 **THE WITNESS:** Who said, she said.

1 **THE COURT:** -- arguments between the parties.

2 **MR. CORBETT:** Let me just ask this question.

3 **THE COURT:** My only concern here is the 40 seating.
4 That is the issue. And let's stick to that.

5 **MR. CORBETT:** Well, that's what I'm trying to stick
6 to. But he's talking about having the
7 permission from the court. I don't want this
8 court to be mislead that he had permission to
9 build that deck and say that's why he should
10 have the license.

11 Q: The second thing I want to ask you is you
12 didn't even have a building permit to build
13 that deck.

14 A: The Atlantic Awning Company did. They're the
15 one that put the awning up, and when they put
16 the awning on top of the deck they had the
17 permit. Atlantic Awning Company.

18 Q: And the Homeowners Association didn't hire the
19 Atlantic Awning?

20 A: No, sir. I did. But they had a permit from
21 the city.

22 Q: Just one final question. As a business person,
23 you're actually not going to use the seating
24 that you have shown the court here with these
25 seats here so close together to make it cramped

1 for these people?

2 A: Yes, I will. Yes, I will. I'd love to have
3 more. I'll make them stand up if enough people
4 come. I don't care where they sit or stand as
5 long as they're coming. Yeah, I'd like to have
6 them full all the time. Yes, sir. I really
7 would. When you're at the beach people -- you
8 know, like I said earlier, it's not a five star
9 restaurant. People like to eat, you know, have
10 a hotdog or hamburger and get it and go. But
11 I just want to clarify, I have the 40 seats and
12 I do have it in those two areas, the rooftop
13 deck and the side deck. That's what I wanted
14 to clarify.

15 Q: And those are 40 seats that you bought?

16 A: Sir?

17 Q: That's what you mean by it. You have 40 seats
18 that you bought?

19 A: Yes, sir. And the 16 that the Association
20 bought which I'm a member of.

21 **MR. CORBETT:** Thank you, Your Honor. That's all I
22 have.

23 **MR. COURT:** Okay. Now, Mr. Goude.

24 **THE WITNESS:** Yes, ma'am.

25 **THE COURT:** I think you have conceded that you have

1 the 40 seats that you have on the upstairs as
2 well as the bottom deck?

3 **THE WITNESS:** Yes, ma'am.

4 **THE COURT:** That those comprise the 40 seats to
5 satisfy the statute?

6 **THE WITNESS:** Yes, ma'am.

7 **THE COURT:** Okay. Now, other than the seating
8 that's on the upper decking, which you have
9 exclusive control over that.

10 **THE WITNESS:** Yes, ma'am.

11 **THE COURT:** The seating that's on the bottom
12 decking, although you built the deck, it is on
13 property that's a part of the common area?

14 **THE WITNESS:** Yes, ma'am. It's owned by each one of
15 us.

16 **THE COURT:** That's owned by each and every one of
17 you?

18 **THE WITNESS:** Yes, ma'am.

19 **THE COURT:** Okay. Now, is it your contention that
20 you have exclusive control over this that if
21 someone comes in, another property owner or a
22 renter comes in with their own food or drinks,
23 that you can ask them to leave that area?

24 **THE WITNESS:** I think I could. Yes, ma'am. I mean,
25 contrary to what the opinion is, I don't,

1 unless it's really a -- I mean, if it's just
2 really a homeowner I won't ask. But if I have
3 a renter or someone from the general public off
4 the beach come, which they have done before,
5 then I will say, you know, I'm trying to make
6 a living here, you know. This is for our
7 guests, obviously, and I'd like for you to --
8 at least, if you're going to eat, don't bring
9 it back the next time. I ain't going to run
10 you off while you're there with your food. But
11 I would ask you how about don't come back again
12 like this. If you do, please clean up your
13 mess. Because most time when they do do that
14 they leave behind -- I have to clean their mess
15 up. So obviously it becomes a question once in
16 a while, but not very often. If I know who
17 people are, obviously I don't ask a homeowner
18 if I know them. But as far as the glass is
19 concerned and the coolers, I do not police the
20 pool area like Ms. Brown said a few minutes ago
21 under testimony. I only police the area out in
22 front of the pool bar and grill and the side
23 deck. Years ago the homeowners used to like me
24 to police the area because we didn't have
25 nobody else. The maintenance man leaves at

1 2:00 in the afternoon. Most people don't even
2 come to the beach or get off the beach until
3 2:00, 3:00, 4:00, 5:00, 6:00, 7:00, 8:00 at
4 night. And he's gone at 2:00. I'm the only
5 one on the property site. And, yes, I do
6 police that as much as I can because I know
7 it's going to be -- if someone was to hurt
8 themself with glass or get cut, I'm going to be
9 in a lawsuit because I'm not a -- I have an
10 individual liability policy. But also being a
11 homeowner, I'm going to be liable anyway you
12 look at it if anybody gets hurt on the
13 property. And I wanted to say that earlier,
14 but it got out of hand, but we did have a kid
15 cut himself. About cut his toe off. I took
16 him to Grand Strand emergency, because we had
17 a beer bottle inside the pool area that was a
18 broken bottle. I took him to the hospital
19 room. That was back in '96 or '97. The guy
20 was from Virginia. So he about cut his toe off
21 on a beer bottle. So, yes, I do have a sign on
22 the outside that says no glass coolers, because
23 that's how you hide -- use the beer bottles is
24 inside of a cooler. So yes, I do ask people if
25 they're on this side of the fence or on the

1 side deck, what do you have in your cooler,
2 because I don't want somebody to have a glass
3 beer bottle and knock it off the table, and
4 then bust on the concrete or the deck, and they
5 go back to the beach or go back to their room
6 and it's just left laying. Because when they
7 go to the pool deck area, they're usually
8 barefooted, obviously. So if they cut
9 themselves, they're going to come after me and
10 going to sue me either personally, or through
11 my company, or either the Homeowners
12 Association. Yes, so I do police that area.
13 As far as the pool itself, we have a fence
14 there that's been constructed. It was all open
15 up until probably about '93 or '94. That whole
16 area was open. We put a fence up there because
17 the insurance required us to put a privacy
18 fence inside the pool. So now I don't mess with
19 people inside the pool there. If you want to
20 go in there and, I mean, do whatever you want
21 to do, that's fine. So I don't police that
22 area like Ms. Brown said I did. I don't. I
23 police on the outside, which is on the pool bar
24 and grill side. Yes, I do police that area,
25 because, like I said, I don't want to be sued

1 if somebody has glass containers in their
2 cooler. And according to SLED agent Wright,
3 which is here today, you're not allowed by law
4 to bring personal alcohol in a public place.
5 That's statewide. And you can ask Mr. Wright
6 himself. So that's why I had the sign about
7 the alcohol. If you want to take it on the
8 beach, or in your balcony, or in the parking
9 lot, I don't care. But I have a valid South
10 Carolina Department of Revenue alcohol and
11 beverage license, so according to SLED Agent
12 Wright, you're not allowed to have personal
13 alcohol in a public place. That's why I had
14 the sign. Because a lot of tourists --
15 especially tourists, they don't realize that.
16 Every law is different when it comes to
17 alcohol. So I have a sign there because I got
18 tired of having to go to the table and say,
19 man, you can't have your own glass with Jack
20 Daniels in it. You can't have it. It got old
21 from all the renters and tourists that come to
22 the hotel. So I put a sign up, where that way
23 if I did get in any kind of trouble, like I
24 said, at least I have a sign. And my attorney
25 in Myrtle Beach, he advised me to have a sign.

1 That way if I ever got in any trouble I could
2 say, well, I have a sign posted. Do not bring
3 alcohol or glass on the pool deck. In case we
4 didn't have it, then they could say, well, why
5 didn't you have a sign posted. So that's why
6 I posted it.

7 **THE COURT:** Okay. Thank you, Mr. Goude.

8 **MR. ALLEN:** No further questions, Your Honor.

9 **MR. CORBETT:** No questions, Your Honor.

10 **MS. BROWN:** No questions.

11 **THE COURT:** Thank you.

12 **THE WITNESS:** Thank you, sir. Thank you, Judge.

13 **MR. ALLEN:** Brief summation when you're ready, Your
14 Honor.

15 **THE COURT:** Okay. Let's let Mr. Goude get back to
16 his seat and we will begin with you, Mr. Allen.

17 **CLOSING STATEMENTS BY MR ALLEN:**

18 **MR. ALLEN:** Thank you. Your Honor, thank you for
19 your patience. It's been a long morning. I
20 think Your Honor is correct. The whole matter
21 before the court comes down to the last
22 portion. And I'll pass this up, Judge. Put it
23 on the screen. 61.6.20 of the ABC Act says,
24 "Licensee provides -- in addition, provides
25 facilities for seating not less than 40 persons

1 simultaneously at chairs for the service of
2 meals." Your Honor, as I put in my motion to
3 dismiss, the Revenue Department asked the local
4 alcohol agent to go out and make a follow up
5 inspection to see whether the location met this
6 requirement or not. According to that agent's
7 report, which is confirmed in the amended
8 Department determination, the location meets
9 the requirements in this section. And based on
10 that, and that alone, Your Honor, we'd ask you
11 to renew the liquor license. All this other
12 stuff about pending lawsuits and interpretation
13 of deeds and covenants and whatever, with all
14 do respect, belongs in the circuit court, Your
15 Honor. We're here about the alcohol law. And,
16 like I said, SLED and Revenue Department have
17 found that he meets the qualifications and we
18 ask that you look in favor on the renewal.
19 Your Honor, I'd pass this up.

20 **THE COURT:** Thank you, Mr. Allen. Ms. Brown.

21 **CLOSING STATEMENT BY MS. BROWN:**

22 **MS. BROWN:** Your Honor, briefly. Based on
23 satisfactory SLED inspection, the Department
24 feels that the applicant meets all the
25 statutory requirements for both the beer and

1 wine permit and the retail -- not retail,
2 excuse me, and the restaurant liquor by the
3 drink license. And but for the public
4 Protestants' intervention, we would have
5 granted the license.

6 **THE COURT:** Okay. So the testimony that you've heard
7 today does not alter that opinion?

8 **MS. BROWN:** No, ma'am.

9 **THE COURT:** Okay. Thank you. Mr. Corbett.

10 **CLOSING STATEMENT BY MR. CORBETT:**

11 **MR. CORBETT:** Thank you. And if it please the court
12 briefly. A couple of points. Alcohol is
13 allowed on private property. Mr. Goude didn't
14 present any evidence of his prohibition that he
15 can enforce on other people, because what, in
16 fact, he sells the alcohol to somebody and they
17 carry it around to the pool, or anywhere else.
18 That's either private property violation he's
19 allowing or there is no such violation. There
20 is no such rule. Which kind of is the circular
21 reasoning which we've had here today. It
22 appears that Mr. Allen says since SLED
23 inspected and they say they seat 40 seats,
24 well, it complies. But he has to have use,
25 ownership and exclusive ownership of those.

1 Otherwise, the statute doesn't make sense.
2 Otherwise, I could get a permit in my
3 establishment and use somebody else's seating
4 as long as it's around. SLED doesn't go out
5 and go through the master deed and it doesn't
6 come and rule like a judge will, because that's
7 not SLED's job. They see what's there. And it
8 takes an Intervener to come and show, no, Mr.
9 BeMi does not own that property. It's shared
10 with others. You can't use it for his seating
11 and his seating alone. And if it's not for his
12 seating alone, it doesn't meet the requirement
13 that he provided, because if it's only there
14 sometimes, it's less than 40. He's only got
15 what's on top. He has nothing below that's his
16 and his alone, or his company's and his
17 company's alone. If his company doesn't have
18 exclusive use of it, he's not providing it.
19 It's a question of law. Also I've got a
20 question of fact. If you decide, well, maybe
21 that's okay. You know, there are complaints
22 about him taking away the ownership rights of
23 somebody else as a result of this license so
24 that he can meet this requirement of 40 seats.
25 And the facts are that there were complaints,

1 they had to look into it, and it made these
2 homeowners realize that they don't have to put
3 up with the problems that are caused by the
4 liquor because he does not meet the liquor seat
5 requirements. And Mr. Goude is going to have
6 his business. He can sell his alcohol, his
7 wine and his beer, which are not as problematic
8 as liquor, and run his snack bar, and hopefully
9 there's no problems with him saying only people
10 who come eat at my snack bar can sit there when
11 there's no Homeowners Association resident to
12 look at it. The liquor license makes it worse.
13 So these compelling factors that they started
14 off with in their testimony about how he's such
15 a good guy -- and he may be a good guy. He's
16 been there 20 years and oh, look at me. Mr.
17 Allen's final argument was that he's got 40
18 seats. So all that other stuff doesn't really
19 matter, because they bring to question these
20 complaints, these problems, which are
21 complaints against the license, which may not
22 have been brought before, but they're here now.
23 How he got the license was nobody bothered to
24 protest. Nobody knew he was doing it, or the
25 people who knew he was doing it didn't care.

1 But since there are problems, they have to
2 care. They want a family atmosphere, they've
3 got the problems, it doesn't comply with
4 seating. We ask the court to deny the liquor
5 permit. He's going to still operate the
6 business. He's still going to have his beer
7 and wine. And this will, however, I think give
8 him the impetus to solve these other problems.
9 These questions of fact which were brought up
10 here. If the court rules that the seats he
11 owns put on someone else's property satisfies
12 the statute, I submit it opens a Pandora's box.
13 Because you don't have to own the area where
14 the seats are. You can co-own it with somebody
15 else. As long as there are seats in the general
16 area then you satisfy the statute, which to me
17 I submit to the court would be gutting the
18 statute and saying, you know, the seat
19 requirement really is null and void because
20 there could be seats out here in someone else's
21 property. If I had the land that ended here,
22 or at the end of this table, and I said, well,
23 there's seats over there for me, what is to
24 stop res judicata from a decision here that
25 says on common area that he's one of the

1 owners, he can do it. He can have the seating
2 in the common area and exclude everyone else
3 from it, or not exclude everyone else, which
4 means he doesn't have the seating. So, as you
5 see, it's a Pandora's box it opens up. And we
6 submit he doesn't comply with the statute. He
7 doesn't have 40 seats that are a part of his
8 establishment. He has the seats on top and he's
9 got the common area seats below which don't
10 count. We appreciate the court's attention and
11 ask you deny the license. Thank you.

12 **CLOSING STATEMENT BY MR. ALLEN:**

13 **MR. ALLEN:** Thirty seconds, Judge. Thirty seconds
14 and I'm going to quit. Again, Judge, his right
15 to use that deck area on the ground level for
16 seating, as has been testified and unopposed,
17 was ruled in his favor by the Master, and that
18 is on appeal. Judge, I think a very important
19 thing as happened here at the end of this
20 hearing, and that is after hearing all the
21 testimony, the Department of Revenue has told
22 the court that everything considered, they
23 would renew this license. And, Judge, I would
24 respectfully submit there are plenty of supreme
25 court cases in South Carolina that say if

1 there's any dispute, factual or legal, that
2 you, the trial judge, are supposed to give
3 deference to the position of the agency that's
4 charged with regulating this industry on a day
5 to day basis. And I'd be happy to submit a
6 brief with those cases in it. But my point is
7 there's lots of law out there requiring a trial
8 judge -- unless it's point blank in violation
9 of the black letter law. In other words, if
10 there's any question about it, the supreme
11 court says the trial judge is supposed to give
12 deference to the agency's position. But whether
13 you do or not, Judge, I think we've prevailed
14 on the merits. There's no question that he
15 provides 40 seats. But that doesn't have to
16 get off into the weeds. The legal weeds in a
17 complicated real estate question about whether
18 that means they have to own underlying fee
19 simple. There are a lot of ways, including
20 what the Master found, that you have the right
21 to use a piece of property without actually
22 owning it. And, again, the statute simply says
23 he needs to provide the seating, and there's no
24 question, Judge, that he does provide it.
25 Therefore, we ask you to renew the liquor

1 license.

2 **THE COURT:** Okay.

3 **CLOSING STATEMENT BY MR. CORBETT:**

4 **MR. CORBETT:** I believe I forgot to mention, the
5 alcohol permit does not extend to the parking
6 lot under the master deed. The deck is on the
7 parking lot. So it was built on top of the
8 parking lot. Therefore, you shouldn't be able
9 to count that as a matter of law. And deference
10 in the DOR in a factual inspection is different
11 from a ruling on a matter of law. This is why
12 the ALC has this procedure and why Interveners
13 are allowed, because SLED doesn't have the time
14 to try to figure out who owns common land or
15 who owns the land the seats are on, therefore,
16 this process is required. And the DOR is not
17 going to make the decision for the court. The
18 court makes the decision on what complies with
19 the statute. DOR says on its face it does,
20 prima facia. But now that we have the hearing
21 you've seen that it does not meet the statute.
22 So if you were to follow that argument, then
23 any kind of legal question would never been
24 decided by the ALC and wouldn't even allow
25 Interveners to present additional evidence that

1 the DOR doesn't have, such as the master deed,
2 who owns, who controls, whose allowed to use
3 certain areas to comply with the statute.

4 Thank you.

5 **MR. ALLEN:** Fifteen seconds, Judge.

6 **THE COURT:** Your last 15 seconds.

7 **CLOSING STATEMENT BY MR. ALLEN:**

8 **MR. ALLEN:** And, again, Judge, with all due respect,
9 the interpretation of master deeds and
10 enforcement, I would respectfully submit is a
11 circuit court issue. And his argument about
12 deference might have made sense at the
13 beginning of this hearing, but at the end,
14 Judge, after hearing everything on both sides
15 to some point to withstand an ad nauseam, the
16 Department is still of the position that they
17 would renew the license. And with that I will
18 hush and thank you for your time. Thank you.

19 **THE COURT:** At this time, I am not going to make a
20 ruling on this case today. I am going to take
21 this one under advisement. And I'd like to do
22 a little research and reading of the law
23 myself. And if I've still got any questions,
24 Mr. Allen, I may ask you, Mr. Corbett, to brief
25 the issues for me from your varying

1 perspective. I would not make that request of
2 the Department, since the Department has made
3 it clear that their opinion is that he meets
4 the statutory requirements and they're just
5 looking for guidance from the court. I would
6 not make that a Department requirement. But
7 let me review the case before I even make that
8 a requirement for you, Mr. Allen, or you, Mr.
9 Corbett. And I will be in contact with you
10 within, I would say, the next couple of days or
11 so.

12 **MR. ALLEN:** And, Judge, if I may, Mr. Corbett and I
13 talked, and if you'll be so kind as to just put
14 everything on hold a week to give us time to
15 talk and see if we can resolve this matter.

16 **MR. CORBETT:** Well, just don't issue your ruling for
17 a week. If you want to obviously review the
18 case and ask us to brief it in the meantime, if
19 you'd hold off ruling for a week, we are going
20 to -- we didn't have a chance to really talk
21 about issues until we got here today for
22 various reasons, so we will talk. So if we
23 wait for your ruling for a week, then we may be
24 able to do something. But I do not suggest you
25 wait a week to start it, because you'll forget

1 like I would.

2 **MR. ALLEN:** I didn't mean that, Judge. In the event
3 we cannot come to terms, I'll copy everybody on
4 a email.

5 **THE COURT:** Okay. Very good. Thank you.

6 **MR. CORBETT:** Thank you, Your Honor.

7 **MR. ALLEN:** Thank you.

8 **THE COURT:** Okay. The hearing is adjourned.

9 **(There being nothing further, the hearing concluded**
10 **at 1:01 p.m.)**

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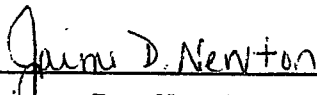
25

CERTIFICATE

This is to certify that the administrative hearing, consisting of One Hundred Thirty-Four (134) pages, is a true and correct transcript of the testimony given; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 11, 2012.



Jaime D. Newton
Court Reporter

Notary Public for South Carolina
My Commission Expires: 5/14/2017

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

INVOICE

To: James J. Corbett, Esquire
P.O. Box 11006
Columbia, SC 29201
Attn: Angie
803-765-2968

Date: October 31, 2012

From: Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
P. O. Box 11667
Columbia, South Carolina 29211-1667

Quantity	Description	Unit Price	Total Price
91	Copies of Exhibits from Be-Mi, Inc., d/b/a St. Clements Beach Bar and Grill v. SC DOR (11-ALJ-17-0546-CC)	.50	45.50
Make check payable to: ADMINISTRATIVE LAW COURT (PAYABLE WITHIN 10 DAYS UPON RECEIPT)			

White Copy - Payor

Yellow Copy - File Copy

PENGAD 800-631-6989
PETITIONER'S
EXHIBIT

1-4-2012

The Caravelle Resort

Harborside

St. Clements

Caravelle Towers

Drydock

Undeniable Relaxation.

St. Clements

Come and enjoy the panoramic views of an oceanfront balcony at the beautiful St. Clements. These **one-bedroom suites with a separate living room** are the perfect escape from the hustle of the daily grind. From the uniquely designed exterior to the carefully decorated interior, St. Clements is set to impress. It's time for you to unwind with **comfortable living areas, two cable TVs, full-kitchens** and more.



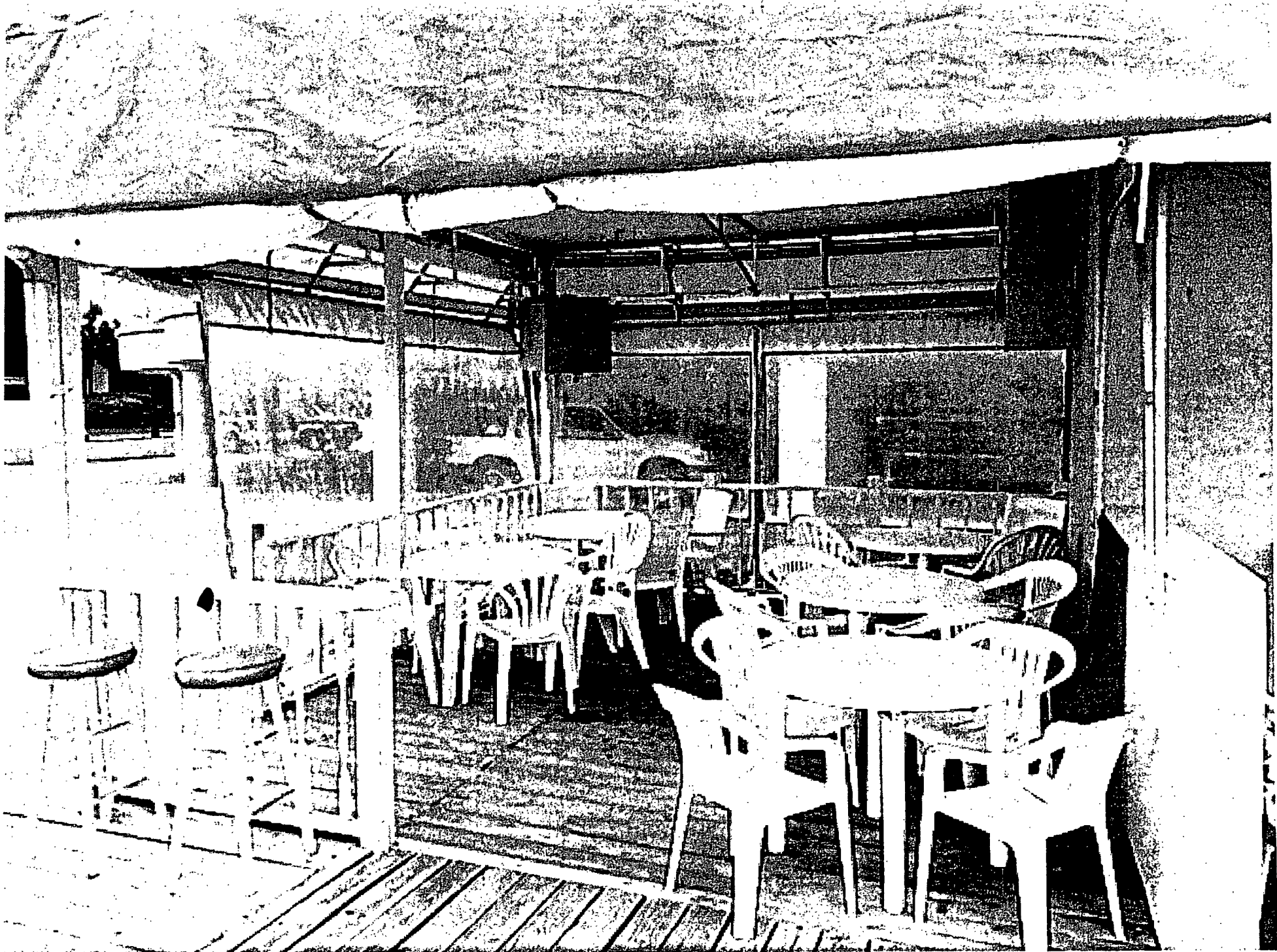




Exhibit #3 – View of patio seating area between Bar & Grill and the pool looking at ocean



Exhibit #4 – Service counter area of St. Clements Beach Bar & Grill

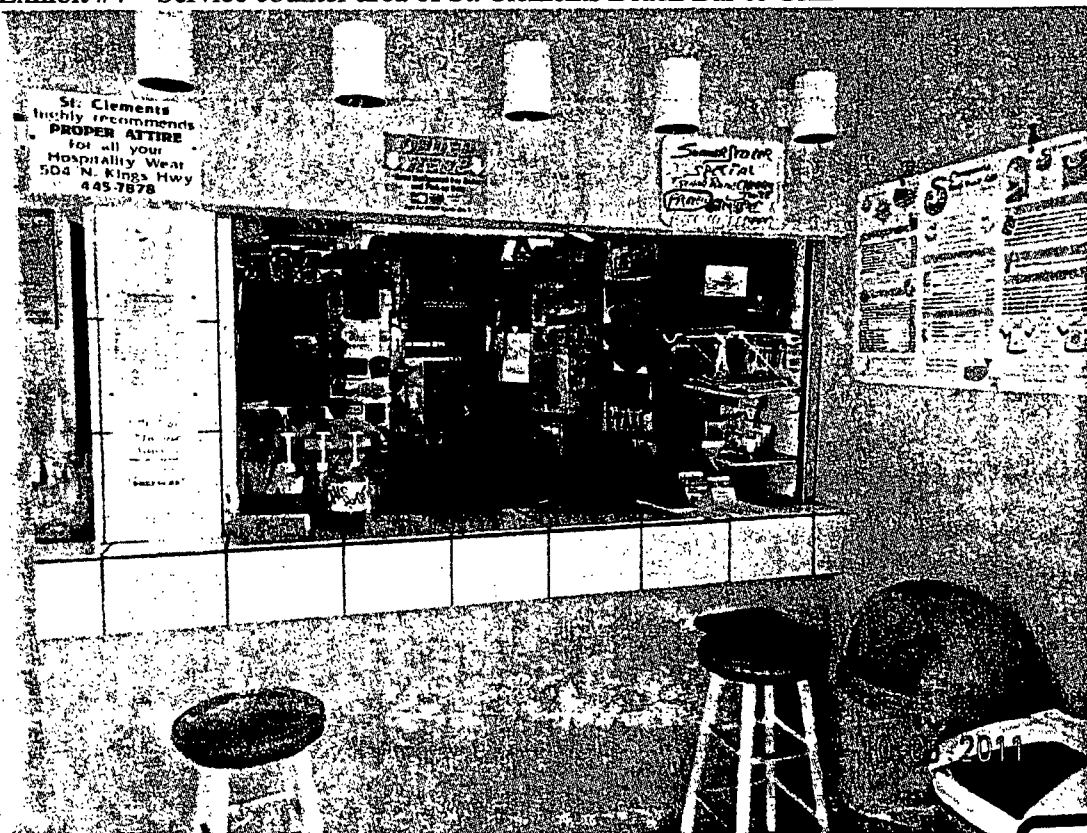


Exhibit #1 View of St. Clements Beach Bar & Grill looking north from 70th Ave. N.



Exhibit #2 View of St. Clements Beach Bar & Grill looking west from oceanside



Exhibit #15 – patio deck shelf area (2 bar stools)

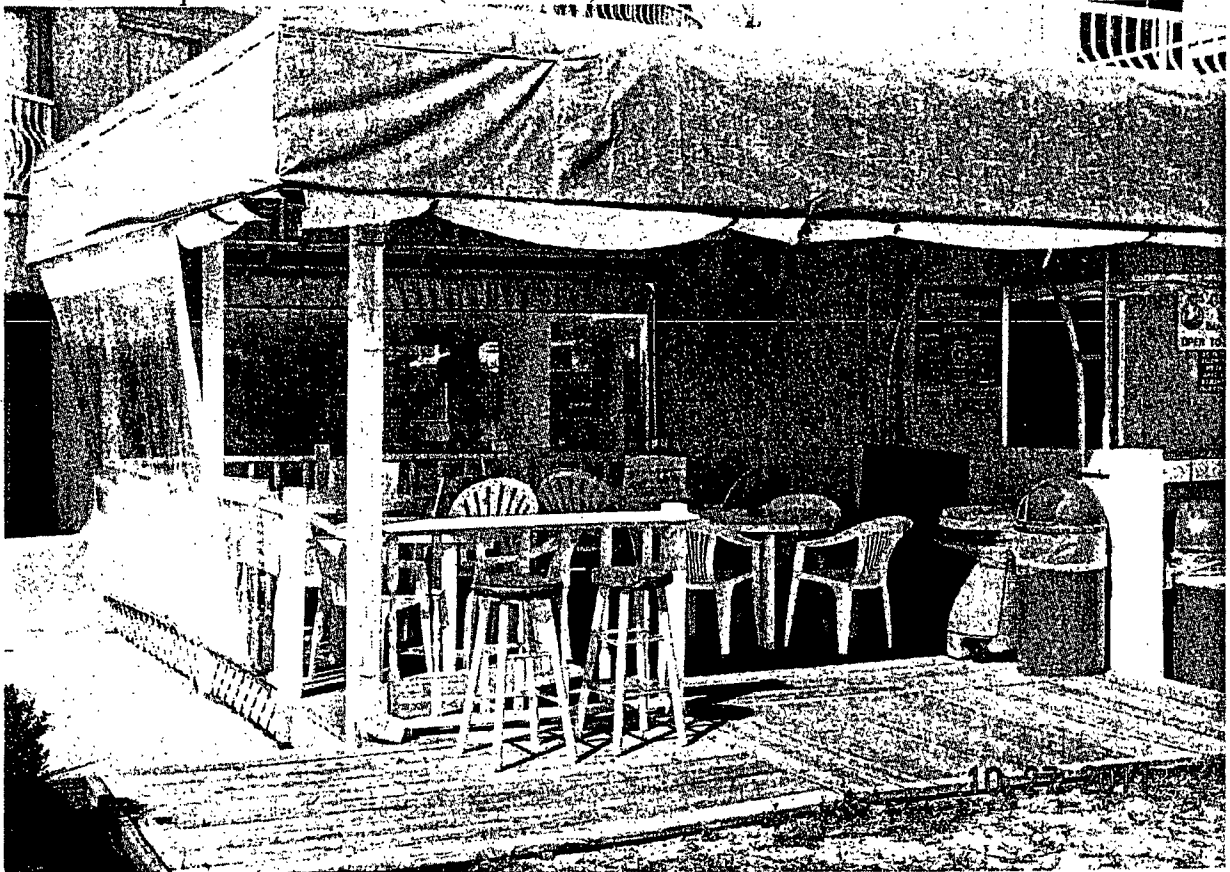
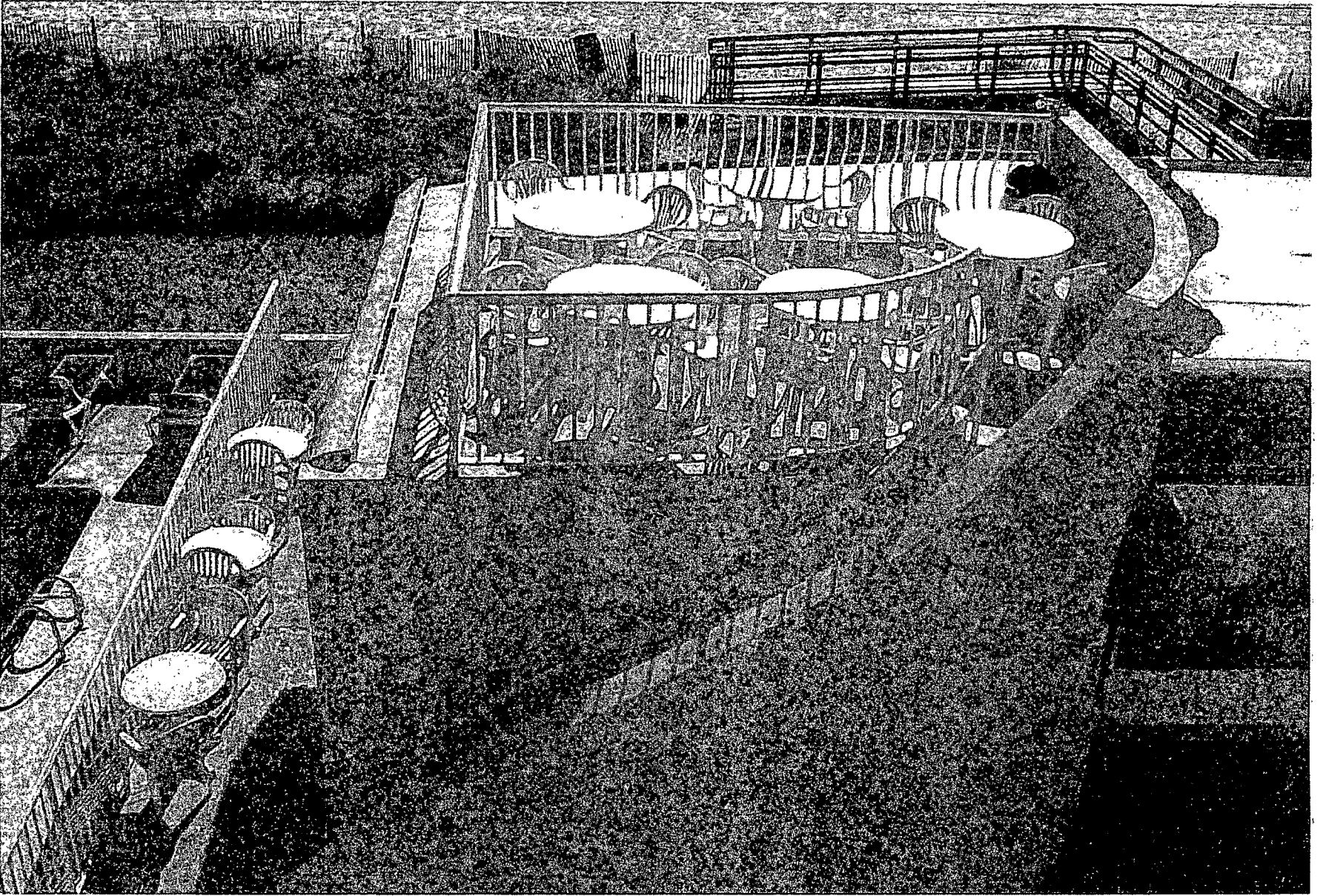


Exhibit #16 – area between restaurant and pool (2 tables with 8 chairs & 3 tables with 6 chairs)

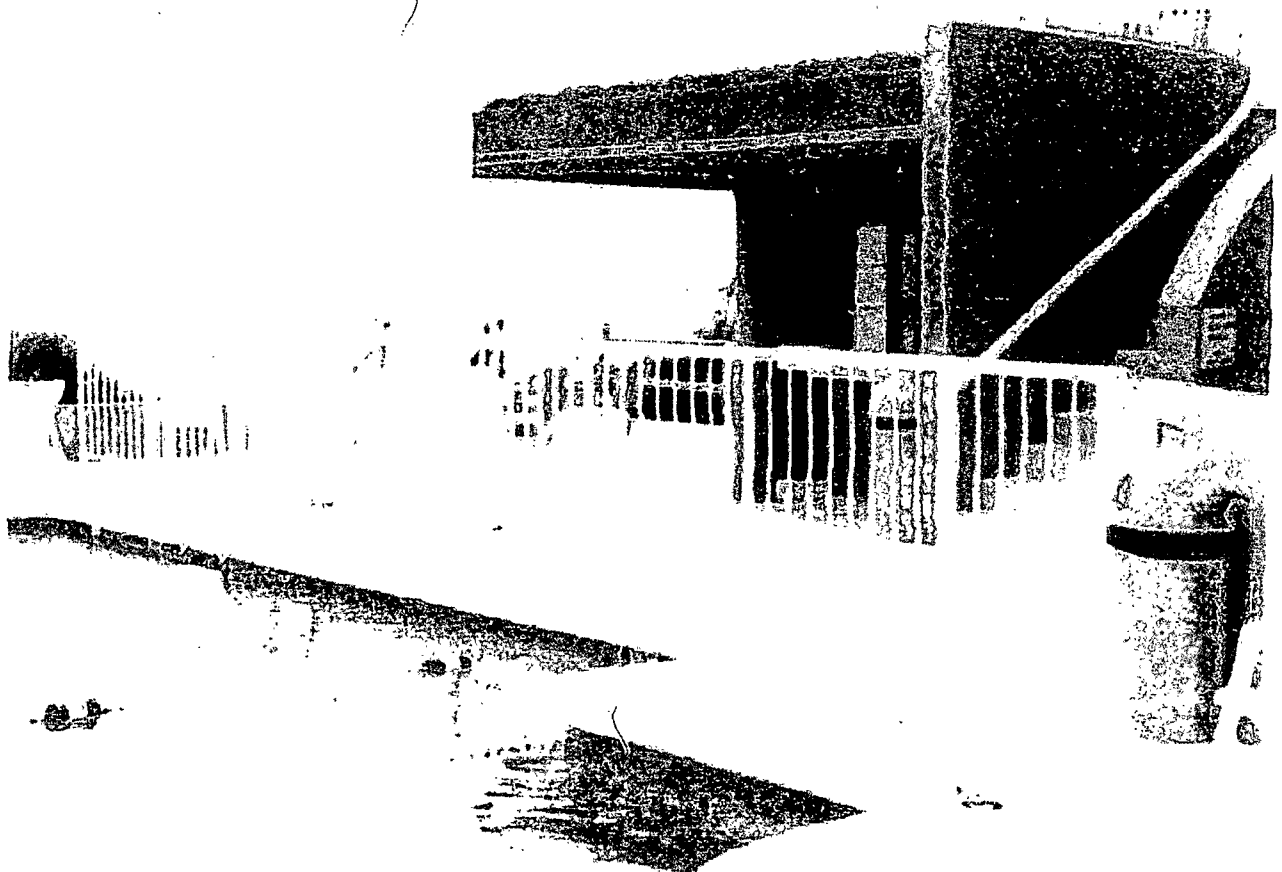
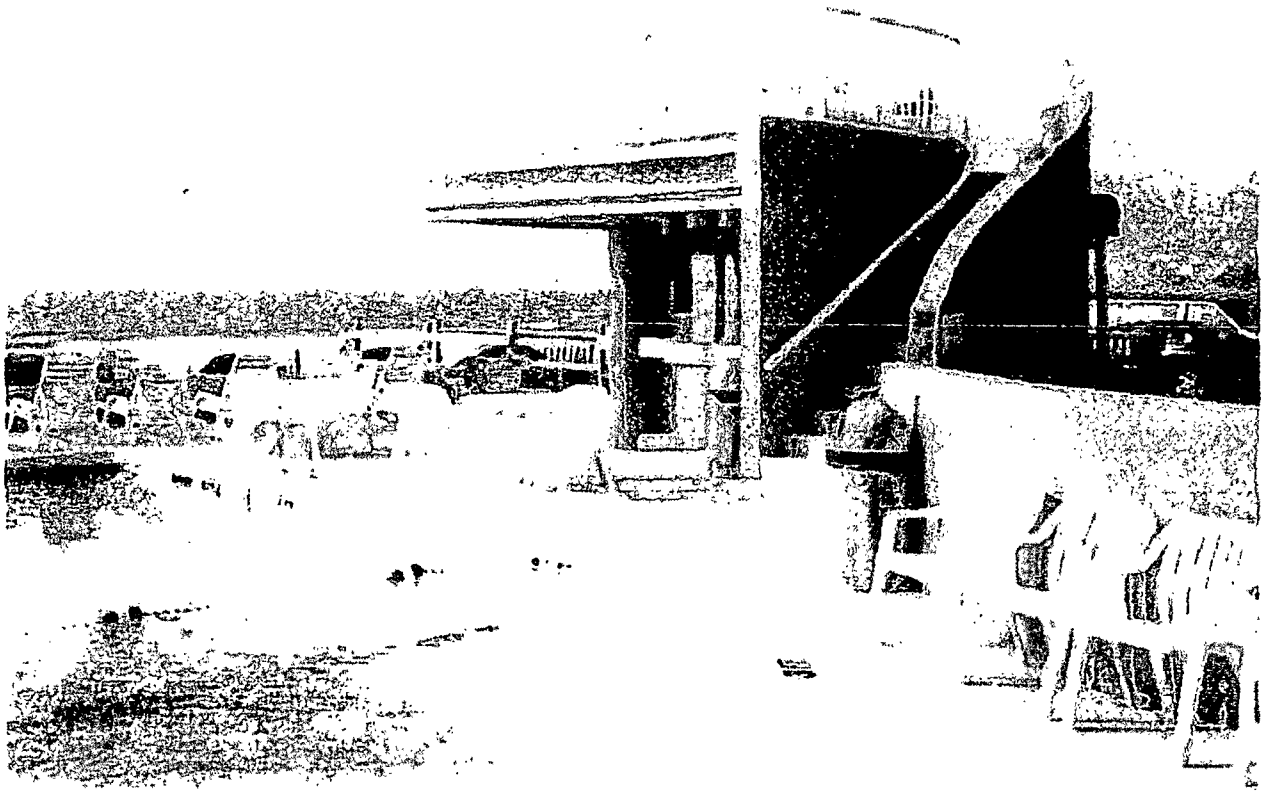


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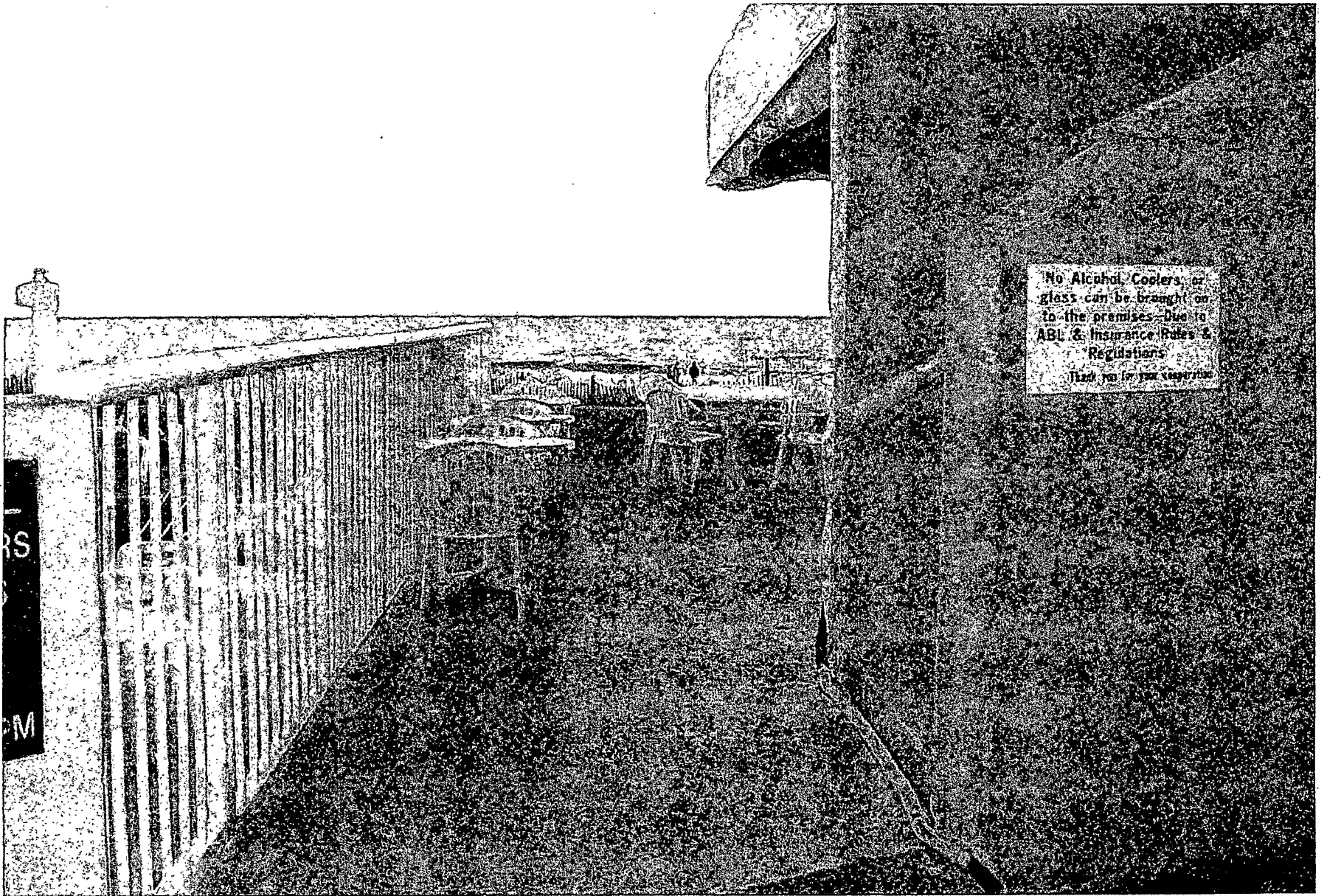
800-531-5989 PETITIONER'S
EXHIBIT
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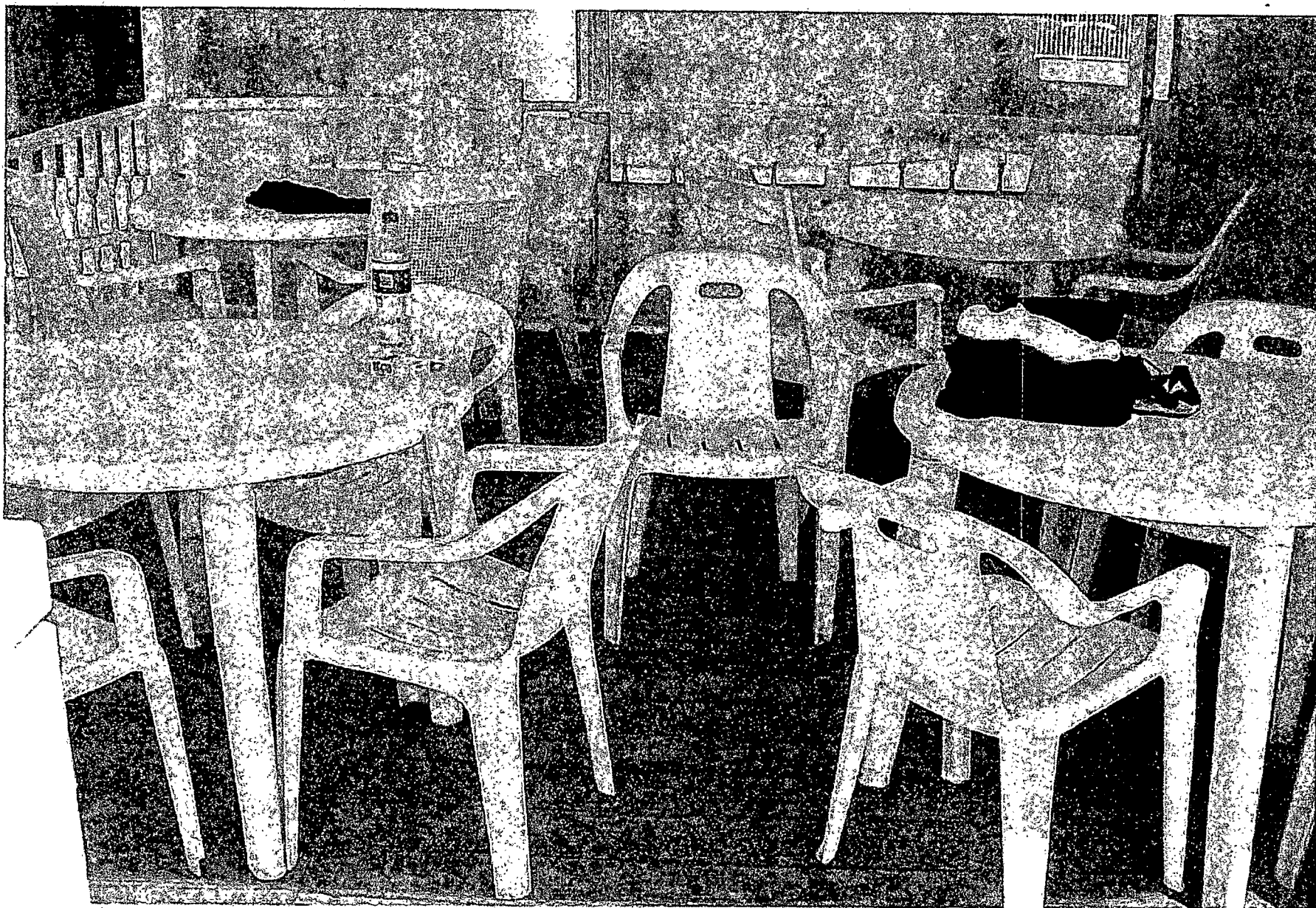
EXH 1



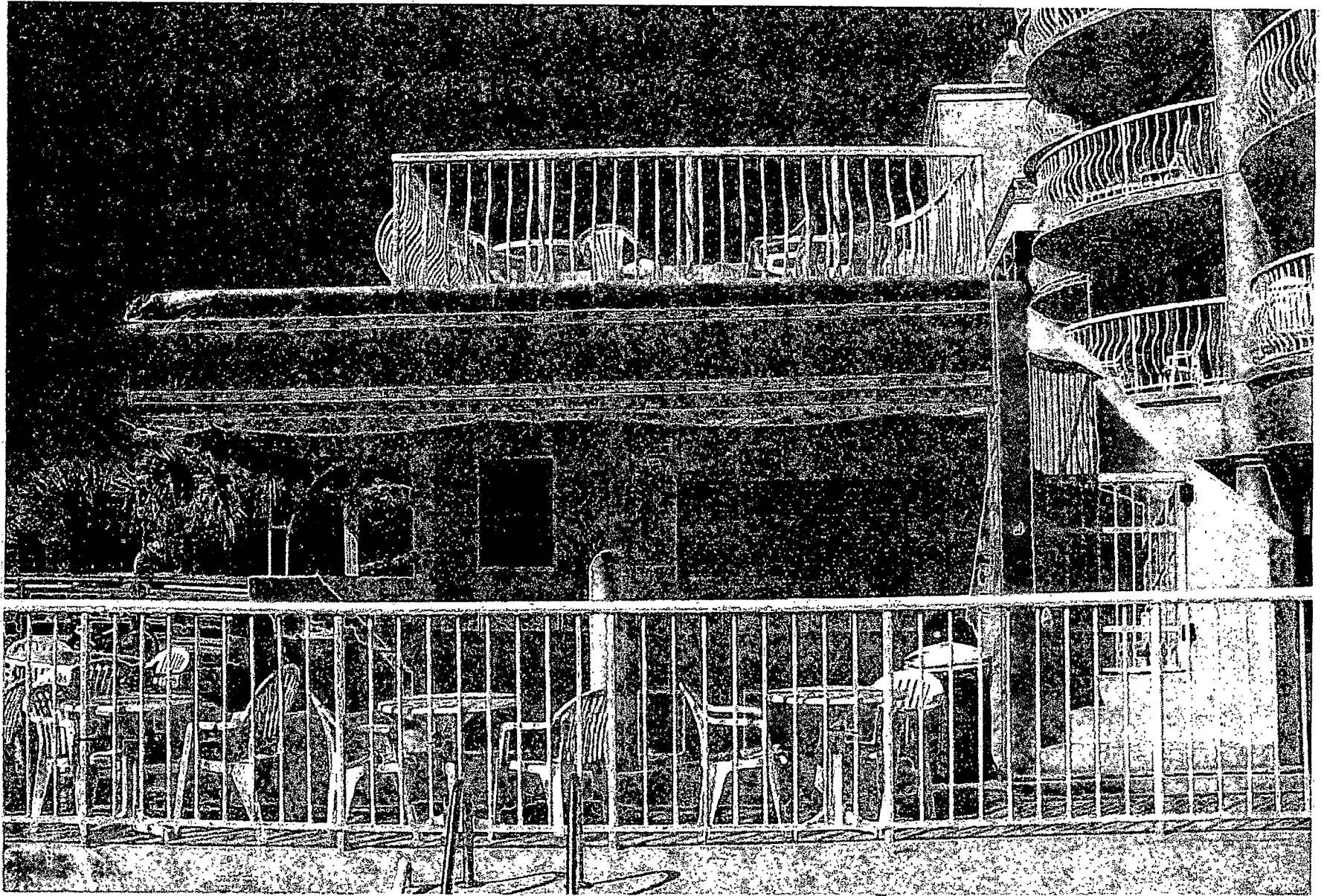
EXH2



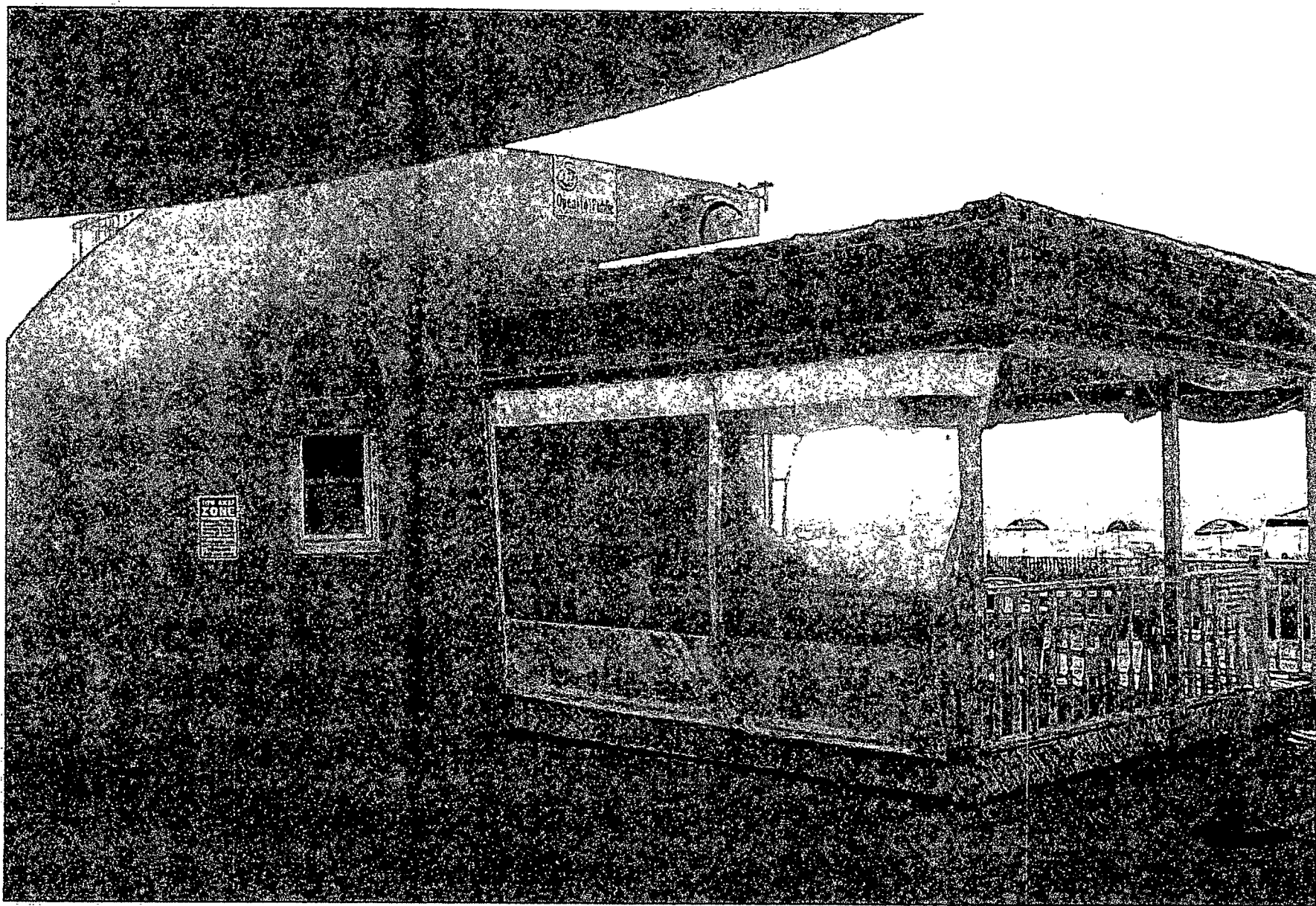
EXH 3



EXH 4



EXH5



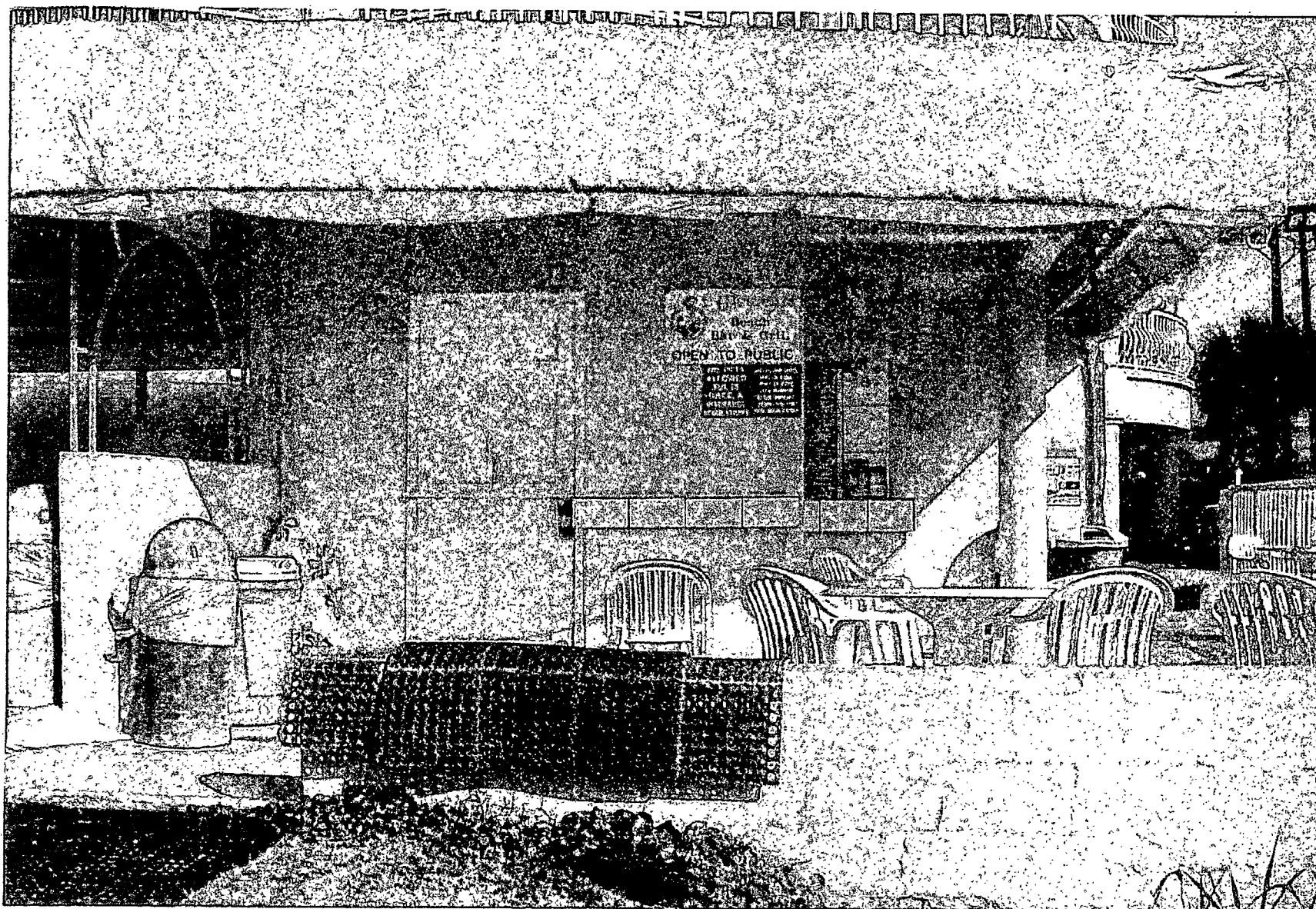
EXH 6



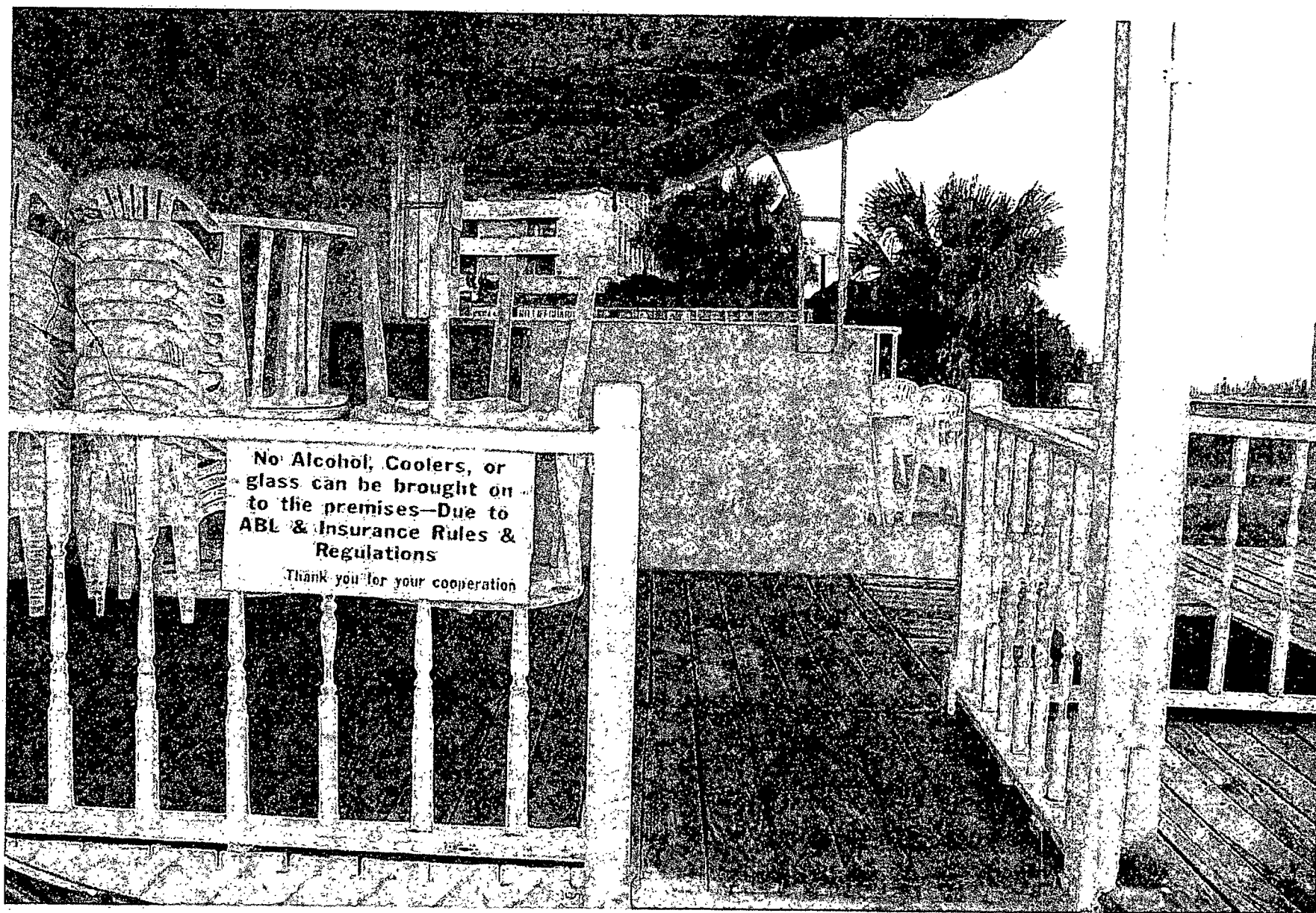
EXH 7



EXH 8



EXH 9



EXH10

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HORRY COUNTY
87 DEC -8 PM 4:47
BILLIE G. THOMPSON
CLERK OF COURT

Deed Bk 1182
Pg 557

MASTER DEED

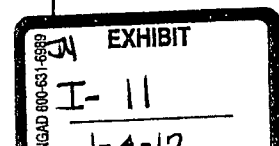
ST. CLEMENTS

Horizontal Property Regime
Myrtle Beach, South Carolina

December 8, 1987

HORRY COUNTY ASSESSOR
NEW PARCEL 174-03-04-333 thru 398
SPLIT FROM 174-03-04-026
Map Blk Parcel 12/9/87

EGOV 1182 PAGE 557



Horizontal Property Regime, sometimes referred to hereinafter as "The St. Clements". The Declarant has caused to be constructed upon the real property described in Exhibit A, the multi-unit building containing Sixty-five (65) condominium units, as well as the common areas, limited common elements, and facilities of the buildings and the real property, all as defined and described herein and as shown upon the plat and the plans contained in Exhibits F and G, attached hereto and made a part hereof by reference. The units of the building, together with their privileges and appurtenances, may be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 27-31-10 et. seq., of the Code of Laws of the State of South Carolina, 1976, as amended, subject to the covenants, conditions, restrictions, and obligations stated in the Articles of this MASTER DEED, the Articles of Incorporation of the Association, its duly adopted By-Laws and its Rules and Regulations, provided however, that Declarant may retain ownership of one or more of the units of its choice.

2.2 The Declarant, by this MASTER DEED, submits only the real property described in Exhibit A, together with the improvements thereon, and hereafter this submission shall be referred to as The St. Clements Horizontal Property Regime

ARTICLE III UNIT DESIGNATION

3.0 The unit designation of each unit, and its location, are as shown on the maps or plat and plans of the Condominium Development attached hereto as Exhibits F and G and incorporated herein by reference. The approximate area and number of rooms in each unit is as shown on Exhibit G, attached hereto and incorporated herein by reference.

3.1 Each unit is bounded both as to horizontal and vertical boundaries by the interior unfinished surfaces of the unit's perimeter walls, ceilings, and floors (beneath the "sheet-rock", sub-floor, or other similar surface); of the interior surface of the perimeter walls, ceilings and floors of the additional areas conveyed as part of each unit as defined hereinbelow, all of which are shown on the attached Exhibits, subject to the easements reserved herein for such encroachments as are contained in the building, whether the same exist or may be caused or created by existing construction, settlement or movement of the building, or by permissible repairs, construction or alteration. For units not within a building, its boundaries are as shown on the attached Plans.

3.2 Each unit is hereby defined so as not to include the open air deck(s). All open air decks are subject to restrictions on use and decoration as set out hereinafter and in the Association By-Laws. The decks are bounded horizontally by the interior finished surface of the floor and ceiling overhangs of the deck and are bounded vertically by the interior finished surface of the interior planes of either the deck railing or perimeter walls of the decks. Each such open air deck shall be a limited common element appurtenant to the unit to which it opens.

3.3 Each unit is hereby defined to include:

(a) All non-load bearing partition walls located entirely within the unit, & all kitchen & bathroom cabinets.

(b) All materials, including but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of said walls, floors, ceilings of the unit; and all win-

dows, windowpanes, frames, exterior doors, and the sheetrock, carpet, or other similar wall or floor surface in each unit.

(c) All air handling and condensing units, ducts, and components, in all water, telephone, television, cable television, electricity, water and sewage lines located within the unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be common areas and facilities as described herein.

3.4 Each unit is hereby defined to exclude all pipes, ducts, wires, conduits and other facilities for the furnishing of utility services and other services up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the interior finished surface material for walls, floors, and ceilings of the unit. All such pipes, ducts, wires, conduits and other such facilities are defined as part of the unit at and from the point of entry into the unit.

3.5 The definition stated hereinabove for a unit is complete and all other aspects of the condominium not hereinabove defined as a part of the unit is defined hereby as a part of the common area and facilities of the condominium.

ARTICLE IV LIMITED COMMON ELEMENTS OR AREAS AND APPURTANANCES

4.0 Each unit shall have reserved for its exclusive use as a limited common element, the open-air deck(s) appurtenant to and designed for the exclusive use of each specific unit. However, all limited common elements are subject to restrictions on use and decorations as set out herein and in the Association By-Laws. Two enclosed parking spaces are designated as limited common elements appurtenant to the Penthouse unit.

ARTICLE V DESCRIPTION OF GENERAL COMMON AREAS

5.0 The general common areas of The St. Clements Horizontal Property Regime shall be as follows:

(a) All land as more particularly described in Exhibit A, attached hereto and incorporated herein by reference, including the land on which the units are located.

(b) All parts of the multi-unit buildings situated on the land described in Exhibit A, other than the individual units described in Article III above, including, without limitation, all foundations, columns, girders, beams, supports, load-bearing walls, including all exterior walls and all interior walls (except non-load-bearing partition walls wholly within a unit), roofs, ventilation fans and vents, of the building, except the sheetrock or other similar wall surface.

(c) All stairways, stairwells, and stairs and their components which give access to the units; and all halls or passageways, and their entrances; and all elevators, elevator shafts and associated equipment;

(d) All yard and garden areas, parking and drive areas, (with the exception of the assigned parking areas described herein, if any), bulkheads, swimming pool and pool deck, and all recreational or community facilities.

(e) All central or appurtenant installations for services such as, without limitation, power, light, telephone, gas, hot and cold water, heating, air conditioning, incinerating and all other mechanical equipment spaces (including all pipes, ducts, wires, cables, tanks, pumps, motors, fans, conduits and compressors in connection therewith), to include all installations and facilities, apparatus, conduits, and equipment for the provision of any of the herein named utility services supplied for the common use and convenience of the unit owners and which are not defined as part of the units hereinabove and not reserved by the provider of such utilities.

(f) All other portions of the real property and the improvements thereon which are not specifically part of the units themselves, as hereinabove defined, or owned by unit owners as personal property, shall be common areas and facilities intended for the common and necessary or convenient use and enjoyment, existence, maintenance or safety of the condominium units.

ARTICLE VI NATURE AND INCIDENTS OF UNIT OWNERSHIP

6.0 Each unit shall be conveyed and treated as a separate individual unit of real property capable of independent use and fee simple ownership, and the owner of each unit shall also own, as an appurtenance to the ownership of each said unit, an undivided interest in the common areas and facilities of The St. Clements. The undivided interest in the common areas and facilities of The St. Clements, appurtenant to each of the units of The St. Clements, is set out in Exhibit B attached hereto and made a part hereof.

6.1 No unit may be divided or subdivided into a smaller unit or units other than as shown on Exhibit G hereto, nor shall any unit or portion thereof be added to or incorporated into any other unit. The undivided interest in the common areas and facilities declared to be an appurtenance to each unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said unit, and the undivided interest in common areas and facilities appurtenant to each unit shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest, or lien in, to or upon a unit, shall be null, void and of no effect insofar as the same purports to effect any interest in a unit and its appurtenant undivided interest in common areas and facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire unit. Any instrument conveying, devising, encumbering, or otherwise dealing with any unit, which describes said unit by the letter/numerical designation assigned thereto in the Exhibits hereto without limitation or exception, shall be deemed and construed to affect the entire unit and its appurtenant undivided interest in the common areas and facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any unit and its appurtenant undivided interest in the common areas and facilities by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

6.2 General Common Areas and facilities shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of units in The St. Clements, for their use and the use of their immediate families, guests or invitees, for all proper and normal purposes, and the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of units. Notwithstanding anything above provided in this Article, the

Association, as is more particularly described in Article IX hereinbelow, shall have the exclusive right to establish the rules and regulations pursuant to which the owner of any unit, his family, guests, and invitees, may be entitled to use the general and limited common areas and facilities, including the right to establish regulations concerning their use.

6.3 Recognizing that the proper use of a unit by an owner or owners is dependent upon the use and enjoyment of the common areas and facilities in common with the owners of all other units, and that it is in the interest of all owners that the ownership of common areas and facilities be retained in common by the owners, it is hereby declared that the proportional undivided interest in the common areas and facilities appurtenant to each unit shall remain undivided and no unit owner shall bring or have any right to bring any action for partition or division thereof.

ARTICLE VII USE AND RESTRICTIONS ON USE

7.0 RESTRICTIONS ON USE.

(a) Each unit is hereby restricted to single-family residential use by the owner thereof, his immediate family, guests, invitees, and lessees, subject to the Declarants rights under Paragraph 7.0 (e) below, and with the exception of those units specifically designated as "Commercial" units on the Exhibits attached hereto, which may be used for commercial purposes, at Declarant's option. Nothing contained herein shall be construed so as to prohibit the renting of units to the public, it being specifically agreed that owners are free to engage in such activity. Lessees or renters may use the common elements in the same manner as an owner.

No type of Interval Ownership or "Timesharing" arrangement shall be permitted in the project.

(b) No immoral, improper, offensive or unlawful use shall be made of any unit or of the common areas or limited common areas and facilities, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the unit shall be observed. No owner of any unit shall permit or suffer anything to be done or kept in his unit, or on the common areas or limited common areas and facilities, which will increase the rate of insurance on the unit, or which will obstruct or interfere with the right of other occupants of the other units or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a unit or which interferes with the peaceful possession and proper use of any other unit or the common areas and facilities.

(c) The use of common areas, limited common areas and facilities, by the owner of a unit or units or owners of all units, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use or which may be hereafter prescribed and established by the Association, said Association being more particularly described in Article IX below.

(d) No owner of a unit shall permit any structural modification or alteration to be made to such unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modification or alterations would adversely effect or in any way endanger the condominium in part, or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the condominium (including painting or other decora-

tion, or the installation of awnings, or the installation of electrical wiring, television or radio antenna or any other objects, machines or air conditioning units which may protrude through the walls or roof of the unit or condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Board of the Association being first had and obtained. No unit owner shall cause any object to be fixed to common areas and facilities (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the common areas and facilities or limited common areas and facilities without the written consent of the Board of the Association being first had and obtained.

(e) No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, including but not limited to the individual units or common or limited common areas, nor shall the property or any part of it be used in a way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any residence thereof. No business activity of any kind whatever shall be conducted at any building or on any portion of the property not designated as commercial area, provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns, during the construction and sale period and thereafter for such periods of time as Declarant, its agents or assigns shall desire to maintain a sales or rental office. Nor shall this restriction apply to the operation of rental and management offices in the common areas.

The Declarant shall own in fee simple each unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant reserves the right to enter into leases or rental arrangements with any persons for the occupancy of any of the units owned by Declarant. Declarant reserves for itself and its employees, guests, and invitees, a non-exclusive easement of ingress and egress over the common elements and to the offices, models and units for rent and for sale and to and from all commercial units.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property. This prohibition shall not include common domesticated animals, each unit owner being permitted one dog or cat so long as all animals are leashed when outside the owner's unit, subject to the Rules and Regulations of the The St. Clements Homeowners Association governing such pets.

(g) The exterior of the units shall not be decorated by the individual unit owners in any manner without the prior written consent of the Board of Directors of the The St. Clements Homeowners Association. All linings on draperies or curtains and all blinds, shades and other window coverings shall be white and of uniform shade.

(h) No trailer, boat trailer, or recreational vehicle of any sort, tent, barn, storage camper, shed, garage or other similar out building or structure shall be placed on the property at any time, either temporarily or permanently.

(i) No structure of a temporary character shall be placed upon the property at any time, provided, however, that this provision shall not apply to shelters and sheds used by the contractor during the construction of the multi-unit buildings or common area improvements or other necessary construction, it being clearly understood that these latter temporary structures may not, at any time, be used as residences or permitted to remain on the building site after completion of construction.

(j) All garbage and refuse from the individual units shall be deposited with care in garbage containers or receptacles

intended for such purpose, said containers or receptacles to be kept at all times in the space provided therefor.

(k) It shall be the responsibility of each unit owner and the Board of Directors of The St. Clements Homeowners Association, to prevent the development of any unclean, unsightly or unkempt conditions of the limited and general common areas.

(l) So long as the Declarant shall retain ownership of any units, it, its agents or representatives may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within said project and may erect such signs pertaining thereto as it deems appropriate.

(m) The use of the condominium or any units therein may be further restricted under the By-Laws of the Association, its Rules and Regulations.

7.1 All Use restrictions and affirmative obligations set forth in this MASTER DEED shall run with the land and shall be binding on all parties and persons claiming under them for a period of Twenty (20) years from the date of recordation of this MASTER DEED, ~~after which time~~ said restrictions and obligations will automatically extended for successive periods of Ten (10) years, unless an instrument signed by the then owners of condominium units entitled to vote at least Ninety (90%) percent of the Association affected by such restrictions and obligations has been recorded agreeing to change such restrictions and obligations in whole or in part.

7.2 In the event of a violation or breach of any of these restrictions, or of any other covenants of this MASTER DEED, by any property owner, invitee, guest, renter or agent thereof, the owners of other units or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel the compliance of the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Board of Directors of The St. Clements Homeowners Association shall have the right whenever there shall have been any violation of these restrictions to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, if after Thirty (30) days written notice of such violation it shall not have been corrected or removed by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or conditions contained in this MASTER DEED, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The remedies set out herein for such violation or breach are cumulative with any other legal or equitable rights available to any entity or person. The invalidation by any court of any restrictions or obligations in this MASTER DEED shall in no way affect any of the other restrictions, which shall remain in full force and effect.

7.3 All present and future owners, tenants and occupants of units, and employees, guests and invitees thereof, shall be subject to, and shall comply with the provisions of this MASTER DEED, the By-Laws and any Rules and Regulations as may be adopted in accordance with the By-Laws; said MASTER DEED, By-Laws and Rules and Regulations may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any unit or any common element, shall constitute an agreement that the provisions of this MASTER DEED, By-Laws, and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person

having, at any time, any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE VIII EASEMENTS

8.0 In addition to easements and rights established and/or reserved elsewhere in this MASTER DEED, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

(a) In case of any emergency originating in or threatening any unit, including limited common elements, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right shall be immediate.

(b) Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, ducts, cables, wires, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same to remove violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

(c) The initial and subsequent Boards of Directors for the Association may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the unit and/or common areas and facilities and limited common areas and facilities; and, each unit owner hereby grants to the Board of Directors for the Association, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each owner such instruments as may be necessary to effectuate the foregoing.

(d) Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, docks and lanes as the same from time to time may exist upon the common areas and facilities; and for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved or intended for such purposes, for all unit owners of units in The St. Clements, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

(e) The Declarant hereby reserves unto itself easements for ingress and egress and for the storage of materials and the right to grant such easements over any of the common areas and limited common areas and facilities of The St. Clements to be used for, by, or in connection with any other future construction of or at The St. Clements, which may hereafter be erected on the property described in Exhibit A, pursuant to this MASTER DEED, or as may become necessary for the purpose of the Declarant, its grantee, lessee, successors or assigns, servicing such construction with utility services, drainage, and easements for ingress and egress. Declarant further retains an easement of access to all units in the Project for a period of six months after closing of such unit for the purpose of performing warranty

or "punch-list" work, whether or not the owner is present or consents.

(f) In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment so long as it naturally exists; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire and/or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such unit and/or common areas and facilities in accordance with this MASTER DEED, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

ARTICLE IX THE ASSOCIATION

9.0 To provide for the administration and maintenance of The St. Clements Horizontal Property Regime by the unit owners a non-profit South Carolina Corporation known and designated as The St. Clements Homeowners Association, Inc. (hereinafter the "Association"), has been organized, a true copy of its Articles of Incorporation having been attached hereto as Exhibit C, and the provisions thereof incorporated herein by reference. The Association shall administer the operation and management of the condominium, The St. Clements, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and duly adopted By-Laws. A true copy of the original By-Laws are attached hereto as Exhibit D and incorporated herein by reference.

9.1 MANAGEMENT OF ASSOCIATION.

(a) Declarant shall be sole responsible for, and have all rights and control of, the management of the Association, as herein described, for a period of time not to exceed One Hundred Twenty (120) days after Seventy-five (75%) percent of the unit estates in the condominium project have been conveyed to the unit purchasers. Within One Hundred Twenty (120) days after conveyance of Seventy-five (75%) percent of the unit estates of the condominium project to the unit estate purchasers, or within Three (3) years of Recordation of this MASTER DEED, whichever first occurs, Declarant shall transfer the right and responsibility for management of the Association to the unit owners to be exercised through the Association. Such transfer of the rights and responsibility for management of the Association will not preclude or prevent Declarant from exercising continued influence in the management of the Association through such votes as are allocated to Declarant through the ownership of unit estates.

(b) Until transfer of the rights and responsibility for management of the Association occurs, as set forth in the above paragraph, the Board of Directors of the Association shall consist of those Three (3) individuals as are appointed by the Declarant to the initial Board of Directors of the Association as stated in the Articles of Incorporation for the Association or successors or replacements for such Directors as named by Declarant. The Board of Directors as described herein shall have the exclusive control and responsibility for the operation and management of the Associa-

tion, exercising all powers, duties and obligations, free from interference or control of the purchasers of the units.

9.2 MEMBERSHIP AND VOTING RIGHTS. Membership and voting rights in the Association shall be as provided in Article VI of the Articles of Incorporation referred to and incorporated herein as stated hereinabove subject to the Declarant's rights of management control of the Association as set out above. Membership shall be mandatory for all unit owners of all units at The St. Clements. All owners of all units shall be members of the Association as provided in the Articles of Incorporation and By-Laws of the Association.

9.3 POWERS. The Association shall have all powers granted to it as stated in Article V of said Articles of Incorporation.

9.4 COMMON EXPENSES. The common expenses of the Association shall be shared by the unit owners in amounts determined by applying each unit owner's proportionate share of ownership in the common areas and facilities to the total common expenses of the Association, and as assessed against the unit owners, and their units as provided for hereinafter.

9.5 MANAGEMENT AND MAINTENANCE.

(a) The Association, as a common expense, shall be responsible for the maintenance, repair, and replacement of all the common areas and facilities, and limited common areas including those portions thereof which contribute to the support of the building or buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas, limited common areas and facilities, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities or limited common areas, the Association shall, at its expense, repair such incidental damage. Whenever the Association incurs expenses in the maintenance, replacement or repair of common areas or facilities or limited common areas, and such expense is occasioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, lessees, or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, or otherwise exceed the amount of the available insurance proceeds.

(b) The Association shall have the right to make or cause to be made such alterations or improvements to the common areas, limited common areas and facilities which do not prejudice the rights of the owner of any unit in the use and enjoyment of his unit, provided the making of such alterations or improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the owners of units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a certain unit and certain unit or units requested the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the unit or units exclusively or substantially benefited, the assessment to be lev-

THE ST. CLEMENTS
EXHIBIT B TO MASTER DEED

Schedule of percentage (%) of undivided interest in common elements appurtenant to dwellings in The St. Clements. Statutory value is for statutory purposes only and has no relationship to the actual value of each dwelling. "Proportionate interest in Common Elements" refers to those below.

DWELLING NUMBER	STATUTORY VALUE	PERCENTAGE OF OWNERSHIP
101	\$128,000	1.5075%
102	128,000	1.5075%
103	128,000	1.5075%
104	128,000	1.5075%
105	128,000	1.5075%
106	128,000	1.5075%
107	128,000	1.5075%
108	128,000	1.5075%
109	128,000	1.5075%
201	128,000	1.5075%
202	128,000	1.5075%
203	128,000	1.5075%
204	128,000	1.5075%
205	128,000	1.5075%
206	128,000	1.5075%
207	128,000	1.5075%
208	128,000	1.5075%
209	128,000	1.5075%
301	128,000	1.5075%
302	128,000	1.5075%
303	128,000	1.5075%
304	128,000	1.5075%
305	128,000	1.5075%
306	128,000	1.5075%
307	128,000	1.5075%
308	128,000	1.5075%
309	128,000	1.5075%
401	128,000	1.5075%
402	128,000	1.5075%
403	128,000	1.5075%
404	128,000	1.5075%
405	128,000	1.5075%
406	128,000	1.5075%
407	128,000	1.5075%
408	128,000	1.5075%
409	128,000	1.5075%

501	128,000	1.5075%
502	128,000	1.5075%
503	128,000	1.5075%
504	128,000	1.5075%
505	128,000	1.5075%
506	128,000	1.5075%
507	128,000	1.5075%
508	128,000	1.5075%
509	128,000	1.5075%
601	128,000	1.5075%
602	128,000	1.5075%
603	128,000	1.5075%
604	128,000	1.5075%
605	128,000	1.5075%
606	128,000	1.5075%
607	128,000	1.5075%
608	128,000	1.5075%
609	128,000	1.5075%
701	128,000	1.5075%
702	128,000	1.5075%
703	128,000	1.5075%
704	128,000	1.5075%
705	128,000	1.5075%
706	128,000	1.5075%
707	128,000	1.5075%
708	128,000	1.5075%
709	128,000	1.5075%
PH-1 (may be used as a commercial or residential unit)	256,000	3.0150%
<u>Pool-1</u> (commercial)	128,000	1.5075%
C-1	<u>42,667.00</u>	<u>1.5024</u>
	8,490,667.00	100.0000*

* Rounded from 99.9974

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 11-ALJ-17-0546-CC

St. Clements Homeowners Association Appellant

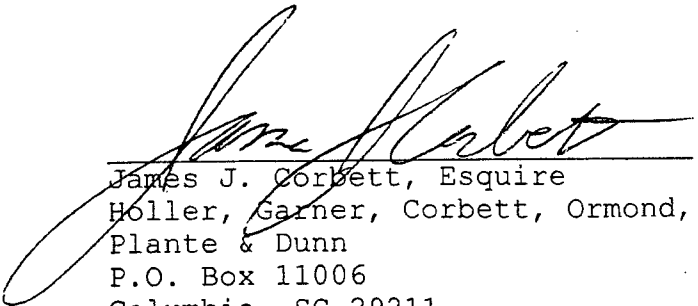
v.

Be Mi, Inc., d/b/a St. Clements Beach
Bar & Grill and South Carolina
Department of Revenue Respondents,

NOTICE OF APPEAL

St. Clements Homeowners Association appeals the Final Order and Decision of the Honorable Shirley C. Robinson filed June 5, 2012 and the Order Denying Interveneror's Motion for Reconsideration of the Honorable Shirley C. Robinson, dated July 30, 2012. Appellant received written notice of entry of this Order on August 1, 2012.

August 29, 2012



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Plante & Dunn
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Attorney for Appellant

Other counsel of record is:

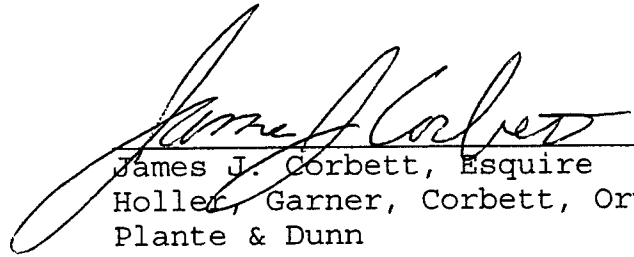
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Date: July 3, 2013



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 11-ALJ-17-0546-CC

Be Mi, inc., d/b/a St. Clements Beach Bar & Grill,
Respondent.

v.

South Carolina Department of Revenue,

And St. Clements Homeowners Association, Intervenor,

Of whom St. Clements Homeowners Association is the
Appellant

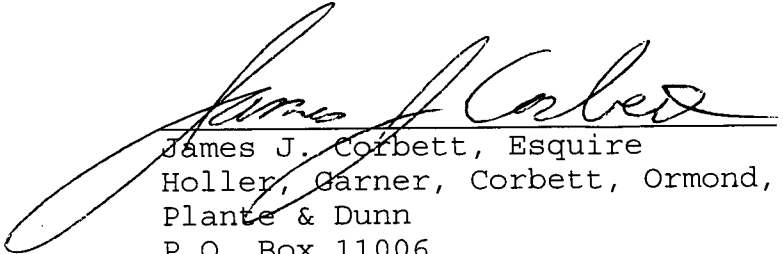
And South Carolina Department of Revenue is the
Respondent.

Appellate Case No. 2012-212861

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Be Mi, Inc., d/b/a St. Clements Beach Bar & Grill by depositing a copy of it in the United States mail, postage prepaid, on July 9, 2013, addressed to its attorney of record, Clifford L. Welsh, Esquire, 457 Main Street, North Myrtle Beach, South Carolina 29582 and to South Carolina Department of Revenue by depositing a copy of it in the United States mail, postage prepaid on July 9, 2013 addressed to its attorney of record, Kathryn Brown, Esquire, Law and Compliance Division, Post Office Box 12265, Columbia, South Carolina 29211.

July 9, 2013


James J. Corbett, Esquire
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SC Court of Appeals