RECORD ON APPEAL
Volume V of V

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No: 2009-CP-22-01655

Appellate Case No. 2012-213634

Supreme Court No. 2014-002394

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

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

v.

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

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

v.

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

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

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

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

Finally, the Master Deed is a contract that creates duties and obligations of the parties involved with the Condo. Those parties include the Developer, the Council of Co-Owners (SVCOC), the Board of Directors (BOD) and the unit owners. The Bylaws establish how the Condo will be governed Together, the Master Deed and Bylaws create the fiduciary duties and obligations of the BOD, both the Developer controlled BOD and the Owner controlled BOD, with respect to the governance of SVCOC. As noted below, Section 5 6 of the Master Deed makes it an absolute requirement for the BOD to maintain, keep up and repair the property. ***There is no option.***

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

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

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

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA HORIZONTAL PROPERTY ACT (The Act):

Section 27-31-20. Definitions.

(d) "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;

(e) "Council of co-owners" means all the co-owners as defined in subsection (d) of this section; but a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum of the adoption of decisions;

(f) "General common elements" means and includes:

(1) The land whether leased or in fee simple and whether or not submerged on which the apartment or buildings stands; provided however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed;

(3) the basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be construction or installed, except as otherwise provided or stipulated;

(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like in existence or to be constructed or installed;

(6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;

(7) All other elements of the property, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep and safety;

(g) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways, elevators, finger piers, sanitary services common to the apartments of a particular floor and the like;

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

Section 27-31-70. Common elements shall not be divided

The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership Any covenant to the contrary shall be void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Master Deed of Shipyard Village HPR:

Section 5.6 Operation and Maintenance

"Except as specifically provided herein, the maintenance, repair, replacement, management, operation and use of the **Common Elements and Limited Common Elements SHALL**[1] be the responsibility of the Board."

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

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

Section 6.1 **Enumeration of Expenses**
"Except as otherwise provided herein, each Co-owner shall bear in proportion to his respective interest in the Common Elements the following expenses:"
a) Expenses incurred in operating, maintaining, improving, repairing and replacing the Common Elements
e) Contributions to provide sufficient reserves to make such major repairs or replacements to the Common Elements as may be required from time to time.

Section 7.1 **Council of Co-owners, Board of Directors and Manager**
"The regime ***SHALL*** be administered by a Council of Co-owners, an incorporated association which ***SHALL*** act by and through a Board of Directors elected as herein provided."

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

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

7. Admit that Sections 3.6, 4 3, 5.5, 5 6, 7.1, 7.4, 9 4, 9.6, 9.9, 12.1, 16.1, 16 2, and 16.4 of the Master Deed, as amended, impose affirmative duties on the Defendant and the individual A, B, C And D Unit Co-owners regarding the maintenance, replacement, and repair of their individual units and the regime's common elements. A copy of the Master Deed and By-Laws of the Shipyard Village HPR, including their amendments, are attached hereto, and marked as **Exhibit Nos. 1-4.** (The Master Deed of Shipyard Village Horizontal Property Regime dated July 7, 1984, and recorded on **July 9, 1984, in Deed Book 201 at page 880,** in the Office of the Register of Deeds for Georgetown County, South Carolina; First **Amendment** to Master Deed of Shipyard Village Horizontal Property Regime (1st Amendment) recorded **August 5, 1998, in Deed Book 891 at Page 001,** in the Office of the Register of Deeds for Georgetown County, South Carolina; Second Amendment to Master Deed of Shipyard Village Horizontal Property Regime (2nd Amendment) recorded **January 19, 1999, in Deed Book 910 at Page 25,** in the Office of the Register of Deeds for Georgetown County, South Carolina (said Second Amendment was recorded in **Deed Book 942 at Page 46**); and the **Bylaws of Shipyard Village Horizontal Property Regime** attached to the Master Deed dated July 7, 1982, recorded in Deed Book 201, at Page 929, on July 9, 2002, in the Register of Deeds Office in Georgetown County ("ROD"), South Carolina (20 pages)); and

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

9. Admit that Sections 2 2, 5 2, 5 3, 6.1, 6.2, 6.3, 6.4, 6.5, 7 1, 7.3, and 11 5 of the By-Laws, as amended, impose affirmative duties on the Defendant and the individual A, B, C And Unit Co-owners regarding the maintenance, replacement, and repair of their individual units and the regime's common elements A copy of the Master Deed and By-Laws of the Shipyard Village HPR, including their amendments, are attached hereto, and marked as **Exhibit Nos. 1-4.** (See Exhibits 1-4 listed above under Request to Admit 7)

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

Section 7.2 **Voting**
" .The affirmative vote of the Co-owners of fifty-one percent or more of the value of the Regime Property shall be required to adopt decisions submitted to the Co-owners for a vote pursuant to this Master Deed or By-laws; unless, however, ***the Master Deed or Bylaws require a greater percentage for a particular act or decision and except as otherwise provided in Article XIV hereof."***

Section 7.4 **Bylaws and Regulations**
"The Council and the administration of the Regime ***SHALL*** be governed by (1) the Bylaws attached to this Master Deed as Exhibit E and hereby incorporated by reference herein, and (2) any regulations (Regulations) adopted pursuant to the Bylaws."

Section 14.1 **Amendments**
"This Master Deed and all Exhibits incorporated by reference herein, including the By-Laws, ***may be amended from time to time by resolution adopted by the affirmative vote of Co-owners of two-thirds (2/3) of the total interest in the Common Elements*** subject to the following conditions: No amendment by the Co-owners shall be in violation of the Act and no amendment shall alter the dimensions of a Unit or the Percentage Interest in the Common Elements appurtenant thereto without the consent of the Co-owners of such Unit.

Section 16.2 **Compliance**
"Each Co-owner shall comply strictly with the By-laws and with the administrative rules and regulations adopted pursuant thereto..."

By-laws of Shipyard Village HPR:

Section 1.4 **Voting**
A Co-owner's voting rights and the vote required to adopt decisions shall be as set out in Article VII and Exhibit C and D of the Master Deed ***Holders of fifty-one (51%) percent OR MORE of the value of the Regime Property as a whole must vote affirmatively to adopt any matter before the Council. Votes can be cast only at meetings of the Council convened in accordance with the Bylaws...***

Section 1.5 **Consents**
"Any action which may be taken by a vote of the Co-owners may also be taken by written consent to such action ***signed by all Co-owners entitled to vote, or, in the case of Units owned by two or more Co-owners, by the designated voting member."***

Section 2.1 **Form of Administration**
"The Council ***SHALL*** act by and through its Board of Directors."

Section 2.2 **Authorities and Duties**
"In its discretion and as required by the Act, the Master Deed, and these Bylaws, the Board of Directors ***SHALL*** provide for the following:
(1) The contracting with a managing agent to provide for the surveillance and security of the Regime Property, the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same:
(4) The enactment of reasonable regulations governing the operation and use of Common Elements:
(6) The enforcement of the terms of the Master Deed, these Bylaws, and any regulations promulgated pursuant to the Bylaws;
(7) The general administration of the Council and the Regime on behalf of and for the benefit of all Co-owners."

Section 2.14 **Minutes of Meetings**
"The Secretary of the Council ***SHALL*** prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of such minutes ***SHALL*** be distributed to each Co-owner within thirty (30) days following each meeting, and all such minutes ***SHALL*** be made available for examination and copying by any Co-owner at any reasonable time "

Section 5.2 **Budget**
"The Board of Directors ***SHALL*** prepare, adopt and present or cause to be prepared and presented, to the Co-owners at their annual meeting an annual budget (the Budget) for the Regime for the next fiscal year. The Budget as adopted by the Board of Directors ***SHALL*** set forth with particularity the anticipated Common Expenses for the fiscal year together with the **amount of reasonable reserves for payment of future Common Expenses and contingencies."**

Section 6.1 **Maintenance by Manager**
The Manager or the Board of Directors ***SHALL*** provide for the maintenance, repair and replacement of the Common Elements.

Section 6.2 **Maintenance by Co-owner**
Except for Time Sharing Units, the Units ***SHALL*** be maintained in good condition and repair by their respective co-owners. Except for Co-owners of Time Sharing Units, each Co-owner shall also provide for the routine cleaning of all Limited Common Elements reserved for the use of his Unit . .

Section 6.3 **Default by Co-owner**
"In the event that any Co-owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Co-owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors ***SHALL***, after giving such Co-owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such Co-owner by an Individual Assessment."

Section 6.4 **Expenses**
"The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors, including losses by storm, fire or other casualty insured by the Council, ***SHALL*** be Common Expenses "

Section 6.5 **Improvements**
The Board of Directors ***SHALL*** provide for the making of such improvements and additions to the Common Elements as may be approved from time to time by a majority of the Co-owners The cost of such improvements ***SHALL*** be a Common Expense; provided, however, that no Co-owner ***SHALL*** without his consent be assessed in any one (1) year for the making of improvements to the Common Elements an amount in excess of one (1%) percent of the value of his Unit as set forth in the Master Deed unless such improvements have been approved by Co-owners holding two-thirds (2/3) of the Percentage Interest in the Common Elements

Section 7.3 **Enforcement**
"The Board of Directors ***SHALL*** enforce the terms of the Act, the Master Deed and these Bylaws and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations."

The Problem(s)
SVCOC consists of four (4) high rise buildings comprising 160 condos as follows:

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

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

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

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

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

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

- Section 14.1 of the Master Deed (see above), provides that the Master Deed "***may be amended from time to time by resolution adopted by the affirmative VOTE of the Co-owners of two-thirds (2/3) of the total interest in the Common elements.***"
- Section 7.2 of the Master Deed (see above), provides '***The affirmative VOTE of the Co-owners of fifty-one percent OR MORE SHALL be required to adopt decisions submitted to the Co-owners for a VOTE pursuant to this Master Deed and the Bylaws, UNLESS, however, the Master Deed or Bylaws require a greater percentage for a particular act or decision and except as otherwise provided in Article XIV hereof.***" As noted above, Article XIV requires an affirmative VOTE of two-thirds (2/3) of the total interest in the Common Elements

- Section 7.4 of the Master Deed provides that *'The Council and the administration of the Regime SHALL be governed by (1) the Bylaws..."* Thus, we must look to the Bylaws to determine how a VOTE is to be taken

- Section 1.4 of the Bylaws provides that *'Holders of fifty-one (51%) percent OR MORE of the value of the Regime Property as a whole must VOTE affirmatively to adopt any matter before the Council. VOTES can be cast only at meetings of the Council convened in accordance with the Bylaws..."* Thus, in order to VOTE on a proposed action, a meeting must be held.

- The first attempt to have the proposed amendment approved was at the annual meeting in 2006. As noted above, approval required 2/3rds of the membership interest to approve. The amendment as proposed was to make windows and sliding doors the maintenance responsibility of SVCOC. **The amendment did NOT pass.**

- In response, the BOD then initiated a mail referendum seeking consent for adoption of the proposed amendment without another meeting.

- Section 1.5 of the Bylaws provides that *"Any action which may be taken by a VOTE of the Co-owners may also be taken by written consent to such action signed by all Co-owners entitled to VOTE....."* Thus, for the proposed amendment to be adopted, **100% of the Co-owners** were required to give their consent in writing. Not only did the BOD **NOT** obtain consent from 100% of the Co-owners but the BOD can **NOT** evidence they received any written consent since the consent forms that may have been received were not retained.

- Despite the fact that unanimous consent was **NOT** obtained, the BOD advised the membership the amendment had passed and recorded an amendment, compounding their negligent action and negligent misrepresentation, by recording an amendment only making windows SVCOC maintenance responsibility in September 2006. **There is no question this amendment is NOT valid.**

- Subsequently, the BOD realized the alleged proposed amendment did not include sliding doors. Instead of starting over with the proposed amendment, the BOD negligently had a "Correction and Clarification" amendment recorded in November 2007. Clearly, this amendment is NOT valid since the original amendment was NOT valid.

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

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

The Record

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

Parades Preliminary Report
January 4, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

At the Annual meeting in April 2006, members were given a report on the reason for the proposed amendment. As was typical, no mention of the damage occurring due to water intrusion was provided to the members The vote on the proposed amendment did NOT pass Subsequently the BOD again tried to have the amendment passed by mail referendum (Consent). As the record clearly shows, the BOD knew or should have known that the effort to gain approval by unanimous consent, as required by Section 1 5 of the Bylaws, was NOT achieved. Despite its knowledge, the BOD reported to the membership that the amendment had passed. Further, as the record clearly shows the amendment as recorded was flawed in that it only included windows This resulted in a corrective amendment being recorded to add doors without any vote by the membership

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

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

SUMMARY OF HISTORIC MAINTENANCE RESERVE FUNDING & EXPENDITURES

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

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

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

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

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

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

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

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

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

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

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

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

1. **NEGLIGENCE**: As the record clearly shows, beginning with the Developer controlled BOD and continuing with the Owner controlled BOD, each BOD has been negligent in fulfilling their specific duties as set forth in the Master Deed and By-laws as follows:

   (a) Failing to properly maintain, repair, replace the common elements of Building A&B by **NOT** having a systematic annual inspection of the common elements to use as a basis for routine preventative maintenance of the Common elements;

(b) Failing to properly investigate reported leaks by **NOT** engaging one or more design professionals to conduct a proper forensic investigation of the cause of the reported leaks and any potential damage that may have been occurring to the Common elements;

(c) In the case of the Developer controlled BOD, placing their loyalties to the Developer above their loyalties owed to SVCOC members as the BOD by **NOT** engaging a design professional to determine the impact on the building envelope from reported continuous water intrusion through unit windows;

(d) In the case of the initial Owner controlled BOA, by **NOT** having a comprehensive building inspection done to ensure the buildings and Common elements were in good condition at turnover from the Developer;

(e) Failing to act on recommendations of contractor's who reported symptoms of major problems and recommended the BOD engage a design professional to investigate;

(f) Failing to have a Reserve Study done to support properly funding the maintenance reserve for future repair and replacement of Common elements;

(g) Using the existing maintenance reserve as a "slush" fund for Common Expenses that should have been assessed to owners resulting in a seriously underfunded maintenance reserve;

(h) Failing to have BOD meeting minutes accurately reflect reports and business conducted at BOD meetings by **NOT** including copies of relevant documents as part of the meeting minutes;

(i) Failing to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to properly maintain, repair and replace Common Elements and Limited Common Elements in a timely manner thus contributing to the extraordinarily high cost of repairs to Buildings A and B which have increased substantially over time;

(j) Failing to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to require the Unit Owners to maintain, repair and replace certain aspects of their Unit and associated Limited Common Elements thus contributing to the extraordinarily high cost of the repairs to Buildings A and B which have increased substantially over time;

(k) The governing documents of the Shipyard Village Horizontal Property Regime impose an affirmative duty on the BOD to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings A and B;

(l) Failing to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements as evidenced by regular reference to the lack of funding in the reserves account as reported in the meeting minutes and correspondence reviewed; and

(m) The Third Amendment to the Master Deed was **NOT** properly passed/adopted by a 2/3rds VOTE of the Association members as required by Section 14 1 of the Master Deed and Section 1 3 of the By-Laws at the annual meeting in April 2006 as noted above The record further indicates the Association members did NOT unanimously consent to the proposed amendment as required by Section 1 5 of the Bylaws, as noted above In fact, the affidavit of Vickie Gallagher, the SVCOC community manager, clearly states no meeting was held for the re-vote.

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

(n) Failed and is currently failing to properly assess the co-owners in Buildings A and B for costs that are their responsibility pursuant to the Master Deed and its Amendments. Although the plaintiffs acknowledge that some costs for the repairs should be shared, they are unjustly being over-assessed for work to correct damage and distress to the Units and contributory damages to Common and Limited Common Elements that are the responsibility of the Unit Owners in Buildings A and B pursuant to the Master Deed and its Amendments. Furthermore, the Plaintiffs are being over- assessed for the BOD's failure to maintain and repair the Common Elements and Limited Common Elements of Buildings A and B; and

(o) In allowing any claims that the regime property owners may have had against any potentially responsible party to be barred by the applicable statute of limitation or repose or by res judicata, such that the regime property owners will be forced to expend substantial amounts of money to repair, replace, and reconstruct substantial portions of Building A and B's common elements and the individual units; and

(p) Ignoring recommendation of one or more contractors. Specifically, Procon sent a letter dated April 9, 1993 reporting on its inspection of their waterproofing work in 1990. In that letter, the contractor reported observations of symptoms indicating potentially serious problems with various concrete structural systems and recommended the BOD engage a structural engineer to do further investigation. Receipt of the letter was **NOT** acknowledged at the next BOD meeting and **NEVER** acted upon.

(q) Again in 1994, Procon by letter dated March 9, 1994 reported on it inspection of the condition of the buildings and again recommending the BOD engage a structural engineer to evaluate symptoms of concrete structural issues. While this letter was acknowledged at the subsequent BOD meeting, action was tabled and **NEVER** addressed at subsequent meetings

(r) Case law, see Queen's Grant HPR vs Daniel International Corp clearly establishes the duty of a BOD when it has information indicating the possibility of design/construction defects to wit ***"Should the Regime NOT uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains, it may be liable to the homeowners for its omissions."*** By ignoring the numerous on-going water intrusion reports, by ignoring and failing to act on recommendations by Procon to engage a design professional to determine the source of water intrusion and the damages being incurred, the SVCOC BOD was grossly negligent in its duties to the homeowners by allowing the statutory period to pursue recovery for any and all potential construction defects to pass Had the BOD acted timely, it is a certainty the conditions found fifteen years later would have been found in 1995 and action against the Developer commenced Further, the damage to the property and Common Elements resulting from continuous water intrusion would have cost far less to repair AND the damage would have been repaired long before Buildings C & D were constructed.

(s) In using the existing maintenance reserves to fund unusual operating expenses such as hurricane deductibles, emergency repairs, etc resulting in depletion of the maintenance reserve to the point that funds were not available for projects to be funded from the maintenance reserves. An example is the proposal to waterproof the buildings in 1990 that was significantly modified due to lack of reserves

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

(t) Failure to engage design professional(s) to investigate reports of water intrusion and potential damages to common elements. Specifically, on several occasions the record reflects one or more BODs knew or should have known serious problems existed in Buildings A&B. Rather than engaging appropriate design professionals to investigate the symptoms of the problems, the BOD either ignored logical actions or tabled taking any action. Examples include:

- During the Developer control period, it was reported to the membership the Developer was working to resolve the water intrusion problem. At the Annual meeting, April 30, 1988, it was reported "the sealing of the windows, sliding glass doors and building exteriors" had been completed. This is the only report on the Developer efforts to resolve on-going water intrusion problems. In essence, the Developer put a "Band-Aid" on the problem. Subsequently, after Owners took control in 1989, there were continued reports of water intrusion through various components of the building envelope. The owner BOD took NO action to investigate and determine the true source of the problem. It should be noted that had the BOD engaged a design professional in 1989/1990, it is extremely likely the building deficiencies would have been identified and action against the Developer begun It is also very likely the extent of damage would have been significantly less than what is now being repaired. Further, the owner BOD by NOT investigating the problem allowed the statutory time period to file an action against the Developer to lapse

- In 1993 and again in 1994, the Owner BOD received a reports from its waterproofing contractor, Procon, indicating serious potential structural deficiencies due to on-going water intrusion at surfaces that had not previously been waterproofed with a recommendation to engage a design professional to do a proper forensic investigation. The BOD ignored the recommendation. Had the BOD acted, it is very likely the serious building deficiencies would have been identified and legal action been taken against the Developer It should also be noted that had action against the Developer been taken at this time, the damage to the Common elements would not be anywhere near the order of magnitude of the existing damage now.

- In 2001, after Building C&D came on line and found they had on-going water intrusion, the BOD engaged a design professional to conduct a forensic investigation. The results of that investigation led to legal action against the Developer That action was eventually settled and the net proceeds were sufficient to repair the damage that existed and set aside reserves for future maintenance needs While the BOD is to be commended for moving forward on legal action for Building C&D, it was grossly negligent in not have a forensic investigation done at the same time of Building A&B Had there been a forensic investigation done on Building A&B, it is likely the lawsuit filed for C&D would have included A&B. It is also likely the cost to repair the damage at that time would be substantially less than it is now.

(u) Opinions (a) through (t) as stated above clearly evidence that the C and D Co-owners have been damaged in an amount in excess of their assessment to repair and reconstruct Buildings A and B and as such their assessment should be zero

2. **NEGLIGENT MISREPRESENTATION**: From the beginning of SVCOC, the record reflects the fact that the BOD did not advise the owners of the serious problems existing in Buildings A&B Minutes of BOD meetings are very general in nature and for the most part do not include, as part of the minutes, reports received from contractors engaged to provide services, inspections, etc regarding the condition of the buildings. In addition, minutes of Annual owners meetings as a rule respond to queries from owners in a very general way without any content, even though each BOD knew or should have known there were serious problems with Buildings A&B

(a) From the inception of SVCOC, the BOD appears to have intentionally not disclosed to the members the true condition of the buildings. During the Developer control period, the standard response to any comments/questions from owners about water intrusion problems was that the Developer was aware of the problems and working to solve them. The reality was the Developer was doing just enough to keep the problem quiet to avoid being sued by the members This was a clear breach of the fiduciary duty of loyalty (act in the best interest of the members).

(b) Other examples include the 1993 and 1994 letters from Procon reporting on building conditions and recommending the BOD engage a structural engineer to evaluate what appears to be the beginning of serious problems. Neither of these letters were mentioned at the Annual meetings in 1993 or 1994

(c) A review of the record clearly indicates that Annual meetings were highly choreographed. The BOD, as part of its Annual report, should have advised the members of the serious problems. They did **NOI**.

(d) The meeting minutes and other correspondence reviewed indicates the seriousness of the defects and deficiencies of Common Elements and Limited Common Elements of Buildings A and B were downplayed by the BOD; and

(e) The Annual meeting in 2006 appears to be the first time all owners were given an indication of the window problems in Building A&B with an order of magnitude of the potential cost to replace the windows. There was no report on the potential damage that might be occurring due to water intrusion.

(f) The BOD knew or should have known the proposed amendment to the Master Deed was not adopted in accordance with the provisions of the Master Deed and Bylaws Despite this knowledge, the BOD advised all Co-owners the proposed amendment had been passed and recorded the Third Amendment in September 2006 As such, Plaintiffs as well as all other owners have been damaged to the extent of legal fees incurred for legal counsel related by the BOD as well as Plaintiffs from the time Plaintiffs challenged the proposed amendment to present.

(g) The negligent misrepresentation of conditions by the BOD is a clear breach of the fiduciary obligations of the BOD.

3. **FAILURE TO ACT IN GOOD FAITH**

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

<u>SUMMARY</u>

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

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

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

CLOSING

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

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

Yours truly,

Michael R. Parades, PCAM

Attachments

EXHIBIT 1

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

EXPERIENCE

7/09-Present Realtor-Dunes Properties

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

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

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

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

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

MICHAEL R. PARADES, PCAM

1983 - 1985 **ACCOUNTING MANAGER** -Support Systems International Incorporated, Charleston, S.C. Managed and systematized monthly financial statements for 125 cost centers, including consolidated financial statements for parent manufacturing corporation and sales and service subsidiaries; supervised, prepared and executed financial data reviews, budget variance reports, multi-state tax filings, and annual detailed analysis for external auditors; assessed corporate policies and procedures; developed and recommended changes to perpetuate an efficient organization and reduce costs; and organized and supervised transition period after 50 million dollar purchase of primary competitor

1979 - 1983 **SENIOR ACCOUNTANT** - Deloitte Haskins & Sells, Columbia, S C. In charge of various audits with primary emphasis in Real Estate Development, Hospitality, Health Care Industries, and Governmental Accounting.

1978 - 1979 **BOOKKEEPER** - Addlestone International Corporation, Charleston S C. Responsible for payroll, inventory, accounts payable, and associated records of parent corporation and subsidiaries.

1967 - 1976 **UNITED STATES NAVY** - Nuclear trained Machinist's Mate, submarine qualified. Attained qualifications as Engineering Officer of the Watch and Engineering Watch Supervisor Honorably discharged.

EDUCATION

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

PROFESSIONAL DESIGNATIONS

1981 Certified Public Accountant(CPA) by South Carolina, retired 2005

1998 Professional Community Association Manager (PCAM) by National Board of Certification for Community Association Managers (NBC-CAM).

2003-2006 Accredited Association Management Company (AAMC) by National Board of Certification for Community Association Managers (NBC-CAM)

2005 Qualified as Expert Witness in SC State Court in matters related to Community Association Management, Community Association Governance and Board Fiduciary Duties

2009 Licensed as Real Estate Salesman by SC Real Estate Commission

2010 Qualified by SC Real Estate Commission as Instructor for classes related to Homeowner Associations.

MEMBERSHIPS

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

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

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

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

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

Lawsuits Involved as Expert Witness

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

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

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

Bluebeards Castle Villas I Board of Directors
Bluebeards Castle Hilltop Villas Board of Directors,
Bluebeards Castle Villas III Board of Directors
Vs
Fairfield Resorts, Inc., Equivest Finance Inc., RCI Resort Management, Inc., Equivest Capital, Inc., John S. Cavanaugh and Bluebeard's Castle Pirates Pension

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

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

MRP Addendum-Lawsuits

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

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

Montecito Enclave, LLLP, et al vs Guggenheim Enclave, LLC et al

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

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

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

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

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

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

This lawsuit has been dismissed.

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

Distant Island Community Association vs Mark Christmus

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

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

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

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

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

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

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Jay Kalan, MD and Kalan Enterprises, Inc, Plaintiffs
vs
Peckerhead Pub LLC, Lynne D. Wilken and Michael E. Godfrey, Defendants and 3rd Party Plaintiffs
Vs
Dry Creek LLC, Nathaniel Rackett, Heritage Plaza HPR and Hilton Head Kitchen and Bath, Inc., 3rd Party Defendants

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

Simmons Pointe HOA, Inc., Plaintiff
Vs
Patricia Tyner, Defendant and 3rd Party Plaintiff
Vs
Ravenel Associates, Inc. and John Collins, 3rd Party Defendants

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

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

Michael McNulty, Plaintiff (2010 CP 31-1313)
Vs
Al Shadwick, Jack Shadwick, Cross Creek Plantation POA, Inc., Cross Creek Plantation Country Club, Inc., Cross Creek Development of Oconee, Inc., John Doe 1, John Doe 2, John Doe 3 Defendants

MRP Addendum-Lawsuits

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

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

Lisa A. Viera, Plaintiff (US District Court 3:10-CV-1659-MJP)
Vs
Gramercy Capital Corporation d/b/a Gramercy Realty, EMCOR Facilities Services, Inc, TRW& Associates, Inc., Commercial Roof Solutions, LLC and Liquid Plastics, Inc. Defendants

Lawsuit relates to personal injury due to negligence of defendants.

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

William Erickson and Randy McDaniel on behalf of themselves and all other similarly situated, Plaintiffs (2010-CP-18-2787)
Vs
Alison Dailey, in her capacity as Chairman and Director of the Highlands of Legend Oaks POA, Inc. Defendant

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

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

Meridian Place HOA, Inc., Plaintiff (2010-CP-10-0506)
Vs
Ravenel Associates Regime and Association Management, Inc., Ravenel Associates, Property Management Services, Inc., Ravenel Associates, Inc.

Lawsuit is a breach of contract lawsuit.

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

Rivergate Homeowners Association, etal, Plaintiffs (2010-CP-26-03901)
Vs
WW & LB Development Co. LLC, Wayne Winderman Individually, etal, Defendants

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

MRP Addendum-Lawsuits

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

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

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

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

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

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

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

IN RE: South Capital Group Inc., Debtor

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

Exhibit 2

FIDUCIARY OBLIGATIONS

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

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

- The Duty of Care and
- The Duty of Loyalty

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

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

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

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

DUTY OF CARE

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

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

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

Fiduciary Obligations

Elements of The Duty of Care:

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

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

Fiduciary Obligations

DUTY OF LOYALTY

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

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

Thus the duty of loyalty relates to:

- Conflicts of Interest
- Corporate Opportunity
- Confidentiality

Conflicts of Interest

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

Corporate Opportunity

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

Confidentiality

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

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

EXHIBIT 3

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

April 25, 2011

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

Re: Report of Findings and Professional Opinions
Richard Fisher et al vs. Shipyard Village Council of Co-Owners, Inc
Civil Action No. 2009-CP-22-01655
Shipyard Village Buildings A and B
Litchfield by The Sea
Pawley's Island, Georgetown County, South Carolina
ECS Project No 14-5831

Gentlemen:

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

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

Respectfully submitted,
ECS CAROLINAS, LLP represented by;

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

I:/geotech/reports/5800/5831/14-5831report4252011.doc

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ECS CAROLINAS LLP AND STEPHEN J GEIGER BACKGROUND

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CLOSING

ATTACHMENTS

ECS CAROLINAS LLP AND STEPHEN J. GEIGER BACKGROUND

ECS Firm Overview

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

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

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

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

Stephen J. Geiger, P.E. Experience Overview

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

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

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

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

PROJECT DESCRIPTION

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

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

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

Building Permit Applicant:	Lesley Construction Company P.O. Box 461 Easley, SC
Architect:	Mr. Joe Hiller P O. Box 5898B Greenville, SC

Owner:	Fairlane/Litchfield c/o Lesley Construction P.O. Box 627 Easley, SC
Attorney for Owner:	Mr. Randall S Hiller P.O. Drawer 100 Easley, SC
Fire Control:	Jackson Associates Engineering Consultants 1312 Annapolis Drive Raleigh, NC
Testing:	Walker Laboratories 1707 East Pamplico Highway Florence, SC

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

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

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

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

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

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

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

Board of Directors

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

Managing Agents

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

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

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

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

SUMMARY OF MASTER DEED AND AMENDMENTS

The Master Deed, subsequent Amendments to the Master Deed and Bylaws define pertinent features, duties, etc of the Property, Owners, Association and Manager. The Master Deed and Bylaws for Phase I of Shipyard Village (Buildings A and B) was filed with Georgetown County Register of Deeds on July 7, 1982 Article II, Section 2 1 of the Master Deed defines the following pertinent items:

> "Common Elements" shall mean and refer to both the General Common Elements and Limited Common Elements and include all portions of the Regime Property not included within the Units.
>
> "Common Expenses" shall mean and refer to (a) all expenses incident to the administration, repair and replacement of General Common Elements and the Limited Common Elements, after excluding therefrom such expenses which are the responsibility of a Co-Owner as set forth herein, (b) expenses determined by the Council to be Common Expenses and which are lawfully assessed against Co-Owners, and (c) expenses incident to the General Common Elements and Limited Common Elements as defined in the Act or declared Common Expenses by this Master Deed.
>
> "General Comment Elements" shall mean and refer to all Regime Property exclusive of the Units and Limited Common Elements
>
> "Limited Common Elements" shall mean and refer to those special Common Elements designated as appurtenant to and reserved for the exclusive use of a specific Unit.
>
> "Units" shall mean and refer to the apartment (as defined by the Act) and described herein For purposes other than describing the physical boundaries of a Unit and unless the context clearly indicates otherwise, the term "Unit" shall also mean and refer to a Time Sharing Unit

Article III Section 3 6 of the Master Deed defines the "Boundaries of Unit in Phase I" and as subdivided into subparts (a), (b) and (c). The following statements are included in this Section of the Master Deed.

> Each Unit is composed of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings and building materials enclosed within the following boundaries.
>
> a) The upper boundary of the Unit shall extend to the unfinished interior surfaces of the unfinished sheetrock ceiling The lower boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the floor.
>
> b) The perimetrical boundaries of the Unit shall extend to the unfinished interior surfaces of the perimeter walls of the Unit, excluding load-bearing structural interior walls or components

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

Section 3 7 of the Master Deed defines the "Common Elements" by the following statement:

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

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

(i) Except for such portion reserved as Limited Common Elements, all land within the boundaries of the Regime Property, together with all easements, rights and hereditaments appurtenant thereto.

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

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

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

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

Article IV of the Master Deed states specific requirements regarding Ownership and use of the Units Section 4 3 of Article IV states:

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

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

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

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

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

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

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

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

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

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

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

A May 23, 2006 email from Ms Kelly Lawson of K A. Diehl & Associates to the BOD indicates that a new vote was taken by proxy in which 75 4% of the Unit Owners responded with 72.45% percent voting in favor of the Sixth Amendment. Ms. Lawson announces passage of the Sixth Amendment in this email. We understand that the validity of the second vote, and therefore the validity of the Sixth Amendment, remains in question

Regardless, the Sixth Amendment to the Master Deed as filed with Georgetown County essentially transfers the maintenance, repair and replacement of "the window, screens, frames and casings which are part of the window openings of the Unit" to the Association by making them Common and Limited Common Elements No reference to the sliding glass doors is provided in the Sixth Amendment as filed with Georgetown County The Sixth Amendment was recorded with Georgetown County on September 26, 2006

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

SUMMARY OF HISTORIC RESERVES FUNDING

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

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

SUMMARY OF HISTORIC RESERVES ACCOUNT EXPENDITURES

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

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

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

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

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

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

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

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

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

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

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

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

REVIEW OF CORRESPONDENCE

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

1983

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

1985

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

1986

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

1987

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

1988

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

1989

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

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

1990

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

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

1991

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

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

1992

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

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

1993

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

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

Waccamaw retained Procon Waterproofing, Inc. (Procon) to provide a preliminary inspection of the structural concrete slabs for Buildings A and B. Mr Bob Gallagher of Procon states in a letter to Waccamaw dated April 9, 1993 " .we recommend that a structural engineer further evaluate the cracking and spalling which is occurring the pre-cast slabs and beams." Procon further indicates that they would not undertake any concrete repairs until the recommended investigation is complete

1994

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

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

1995

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

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

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

1996

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

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

1997

Meeting minutes from May 1997 indicate that pressure washing of sliding glass doors would not be done due to water penetration. Window casing rust is discussed on Building B and Mr. Bobby Warner is to "check all of B Buildings windows for rust problems." No subsequent report of Mr. Warner's window observation was identified The October 1997 minutes indicate that $189,196 was spent on repairs related to Hurricane Fran. A special assessment in the amount of $73,555 is necessary to fully to fund those repairs as the insurance proceeds were not sufficient. The second warranty claim against the developer was settled for $46,748 05 It is noted that rust is appearing around several windows in Building B

1998

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

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

1999

In January 1999 it was reported that only "$30,000 to $35,000" was in the reserves account. A special assessment for painting and waterproofing Buildings A and B was proposed. The February minutes stated that the special assessment in the amount of $300,000 for painting and waterproofing Buildings A and B did not pass. February 1999 minutes from a special meeting of the BOD state that a stucco expert will be contacted to review Buildings A and B. It is further reported that the so stated expert would be Mr Bruce Henderson, a local contractor who prepared the repair estimate associated with the $300,000 special assessment March 1999 minutes of a special meeting of the BOD indicate that some stucco repairs were undertaken at an expense of $24,600. The Board stated that the rust on the stucco was from wire mesh and that "rebar was not a factor after all in the repairs".

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

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

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

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

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

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

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

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

2000

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

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

2001

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

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

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

2002

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

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

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

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

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

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

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

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

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

2003

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

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

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

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

2004

The January 2004 minutes discuss proposed "structural and cosmetic repairs to the stucco" on Buildings A and B. Two proposals were received by the Board in the amounts of $35,660 and $49,850. The lower cost repair proposal was accepted. The cost of litigation related expenses for the Buildings C and D lawsuit is also discussed. The February 2004 minutes indicate that the BOD is requiring the Owner of Unit B-53 replace a broken window and state that if the Unit Owner does not replace the window the Board will do so and assess the Unit Owner the cost. The aforementioned stucco repairs were reported to be complete in the April 2004 minutes. The BOD was questioned on the low balance of the reserve fund.

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

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

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

2005

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

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

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

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

2006

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

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

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

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

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

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

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

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

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

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

2007

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

The April 2007 minutes discuss a balcony investigation by a structural engineer who determined that "some work is needed but not extensive." Mr. Richard Bennett, SYVCOC's on-site maintenance person had previously observed balconies in August 2006 and characterized distress using a 1 to 5 scale, with 5 being the worst condition. Consequently, there is disagreement with the structural engineer's assessment. Ms Kellie Diehl states that many sliding doors have water penetration problems. Additional discussions of the exterior coating application to Buildings A and B is discussed but warranty issues exist unless all windows are replaced It is reported that the reserve account had approximately $1,391,000, the majority of that money being proceeds from the Buildings C and D settlement It is further noted that many sliding glass doors have water penetration problems

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

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

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

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

2008 and 2009

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

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

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

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

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

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

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

EVALUATIONS OF BUILDINGS A AND B PRIOR TO 2006

Prior to 2006 few consultants had been engaged to evaluate, observe, inspect, etc Buildings A and B Documents made available to us indicate that Procon Waterproofing, Inc (Procon) in April 1993 performed a preliminary inspection of the structural concrete condition and recommended that a structural engineer be hired to evaluate the cracking and spalling in beams and slabs. Procon performed another preliminary inspection of Buildings A and B in February 1994 and again recommended that an engineering evaluation of the observed structural concrete distress be performed. A reference to a November 15, 1993 Procon letter regarding painting and waterproofing is contained in meeting minutes but no copy of this letter has been identified.

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

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

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

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

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

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

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

EVALUATIONS OF BUILDINGS A AND B SINCE 2006

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

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

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

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

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

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

SUMMARY OF CONSULTANTS FINDINGS

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

Structural

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

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

Building Envelope

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

Interiors

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

Roofing

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

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

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

SUMMARY OF ECS OBSERVATIONS

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

Structural

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

Building Envelope

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

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

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

Structural

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

Building Envelope

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

Interiors (Building A only)

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

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

Ancillary Items

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

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

REPAIR ALTERNATIVES AND COSTS

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

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

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

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

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

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

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

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

Phase I – Building B

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

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

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

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

Phase 2 – Building A

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

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

Change Orders 1 through 12 total $370,157.22 The corresponding revised contract sum would therefore be $4,396,637.22. The revised contract sum represents a 9 19 percent increase above the original contract sum of $4,026,480

The values of pending Change Orders 13 through 21 are $230,962.12 If accepted as submitted and no other Change Order requests are submitted by SPS and approved by SKA, the revised contract sum will be $4,627,599 34, a 14 93 percent increase above the original contract sum of $4,026,480

PROPOSED ASSESSMENT OF CONSTRUCTION AND DESIGN FEES

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

In summary, the proposed special assessment requires payment of $88,398 from each Unit Owner in Buildings A and B, $64,868 from each three bedroom Unit Owner in Buildings C and D and $68,471 from each four bedroom Unit Owner in Buildings C and D The allocations are based upon the respective Unit's interest in the project as follows; all Units in Buildings A and B – 0.6751%, three bedroom Units in Buildings C and D – 0 75949% and four bedroom Units in Buildings C and D - 0 80168% The special assessment funding is proposed as follows:

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

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

PROFESSIONAL OPINIONS

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

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

7 The consultant reports reviewed clearly identify deficient and defective conditions in Buildings A and B as presented in the "Summary of Consultant Findings" section of this report that are the direct result of the BOD not properly or failing to maintain, repair or replace the Common Elements and Limited Common Elements as required by the Master Deed.

8 The consultant's reports reviewed clearly identify deficient and defective conditions in Buildings A and B that are the direct result of the Building A and B Unit Owners not properly or failing to maintain, repair or replace certain aspects of their Units as required by the Master Deed

9. The failure of the BOD to maintain, repair and replace Common Elements and Limited Common Elements of Building A and B in a timely manner, as well as Unit Owners in Buildings A and B failure to maintain, repair and replace certain aspects of their Units has resulted in an extraordinarily high special assessment (nearly $11,000,000) to fund repairs of Buildings A and B

10. The failure of the BOD to maintain, repair and replace Common Elements and Limited Common Elements of Building A and B in a timely manner, as well as Unit Owners in Buildings A and B failure to maintain, repair and replace certain aspects of their Units and associated Limited Common Elements has directly contributed to the severe deterioration of structural and non-structural elements of Buildings A and B and the extraordinarily high cost to remedy such conditions.

11. The Master Deed, and the BOD's exclusive allocation of all window and sliding glass door replacement to the Unit Owners in Buildings A and B, correspondingly shall assign damages to the Units, Common Elements and Limited Common Elements, resulting from moisture penetration around and through these Unit aspects to the individual Building A and B Unit Owners.

12 Based upon observations of at least 15 Units in Building A and our interpretations of Unit conditions in pre-construction walkthrough videos, moisture penetration through and around windows and sliding glass doors has been a long standing and persistent condition The meeting minutes and other reviewed correspondence confirm that the Unit Owners in Buildings A and B had actual and/or constructive knowledge of the moisture penetration into their Units.

13. The BOD has had long-standing actual and/or constructive knowledge of various defects and deficiencies to the Units in Buildings A and B and the BOD's failure to require the Unit Owners to maintain, repair and replace certain aspects of their Units and associated Improvements to Limited Common Elements clearly reflects its negligence

14. The BOD did not engage qualified professionals to assess/evaluate the long known suspect deficient conditions in a timely manner. The BOD's failure to engage qualified professionals in a timely manner permitted the distress to Buildings A and B to reach a severe condition.

15. The BOD's failure to engage qualified professionals to assess/evaluate the long known suspect deficient conditions in a timely manner. The BOD's failure to engage qualified professionals in a timely manner prohibited the design and implementation of a repair program which would have lessened the severity of the distress.

16 The BOD's failure to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to properly maintain, repair and replace Common Elements and Limited Common Elements in a timely manner has contributed

to extraordinarily high cost of repairs to Buildings A and B which have increased substantially over time.

17. The BOD's failure to provide and set aside adequate reserves for capital repairs and replacements, in conjunction with their failure to require the Unit Owners to maintain, repair and replace certain aspects of their Unit and associated Limited Common Elements has contributed to the extraordinarily high cost of the repairs to Buildings A and B which have increased substantially over time.

18. The governing documents of the Shipyard Village Horizontal Property Regime impose an affirmative duty on the BOD to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings A and B.

19. The BOD failed to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements as evidenced by regular reference to the lack of funding in the reserves account as reported in the meeting minutes and correspondence reviewed.

20 Substantial evidence exists that the Unit Owners in Buildings A and B have had longstanding actual and/or constructive knowledge of water intrusion and associated damage to their Units and contiguous Units. The evidence includes the conditions described by the various consultants who have assessed/evaluated Buildings A and B, conditions obvious in the pre-construction walkthrough videos, and personal observations.

21 Substantial evidence exists that the Unit Owners in Buildings A and B have had longstanding actual and/or constructive knowledge of damage to the balconies of their Units. The evidence includes the conditions described by the various consultants who have assessed/evaluated Buildings A and B, personal observations and documents reviewed.

22 The BOD have had actual and/or constructive knowledge that structural and non-structural aspects Buildings A and B were in serious disrepair and their failure to maintain, repair and replace such aspects properly and in a timely manner has allowed the defects and damages to substantially worsen.

23 The BOD have not acted with due care and in good faith in their affirmative duties, pursuant to the governing documents of the Shipyard Village Horizontal Property Regime, to maintain and repair and thereby prevent progressive damages to the Common Elements and Limited Common Elements of Buildings A and B This is evidenced in the documents and electronic media reviewed and my observations.

24. The BODs assessment of nearly $11,000,000 for the repair of Buildings A and B is a direct result of the BOD breaching its duty of due care and acting in good faith in the performance of its duties to maintain, repair and prevent future damages and distress to the Common Elements and Limited Common Elements of Buildings A and B

25. The Sixth Amendment to the Master Deed was not properly passed/adopted by a 2/3 vote of the Association members as required by Section 1.2, 1.3, 1.4 and 1.5 of the By-Laws which describe the requirements for voting The provision in Section 1 5 which states: "Any action which may be taken by a vote of the Co-Owners may also be taken by written consent to such action signed by all Co-Owners entitled to vote, or in the case of Units owned by two or more Co-Owners, by the designated voting member." No evidence exists that the written consent of all Co-Owners was obtained nor that a

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

26. The BOD has failed and is currently failing to properly assess the Unit Owners in Buildings A and B for costs that are their responsibility pursuant to the Master Deed and its Amendments. Although the plaintiffs acknowledge that some costs for the repairs should be shared, they are unjustly being over-assessed for work to correct damage and distress to the Units and contributory damages to Common and Limited Common Elements that are the responsibility of the Unit Owners in Buildings A and B pursuant to the Master Deed and its Amendments. Furthermore, the Plaintiffs are being over-assessed for the BOD's failure to maintain and repair the Common Elements and Limited Common Elements of Buildings A and B

27. The magnitude of the Change Orders approved through April 7, 2001 totals $1,994,971.31. With approval of the pending Change Orders, the total Change Order amount will likely exceed $2,000,000. The Change Order totals clearly demonstrate that the degree of deterioration and distress of Buildings A and B is more severe than SKA could reasonably account for during design, and more than SPS could account for during preparation of their bids.

28 The 15 percent contingency established by SKA is deficient through at least the April 7, 2011 as the previously stated contract values have been greatly exceeded, particularly in the case of Building B. The absences of adequate contingencies in the original SKA construction estimate will result in increases beyond the expected project costs The increased costs would be expected to result in increased assessments to the Unit Owners

29. Opinions 1 through 28 stated above clearly justify that the assessment allocations to the plaintiffs shall be substantially reduced.

RE-ALLOCATION OF ASSESSMENTS

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

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

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

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

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

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

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

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

CLOSING

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

ATTACHMENTS

Curriculum Vitae of Stephen J Geiger, P.E

Aerial Photograph

Site Plan

January 2010 Shipyard Village Photographs

October 18, 2010 Shipyard Village Building A Exterior Photographs

October 18, 2020 Shipyard Village A Interior Photographs

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

Reserves Funding Summary

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

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

Assessment Allocation Summary

Curriculum Vitae of Stephen J Geiger, P.E.

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

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

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

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

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

REPRESENTATIVE EXPERIENCE:

- **GEOTECHNICAL ENGINEERING** - Mr. Geiger has performed hundreds of geotechnical explorations. He has determined field exploration requirements, directed drill crews, evaluated subsurface test data and prepared geotechnical recommendations He has extensive experience with standard penetration testing, electronic cone penetration testing, pressuremeter testing, and geophysical methods of site exploration. Mr. Geiger has provided recommendations for shallow, deep and pile foundations, site improvement, ground modification alternatives, seismic site response, reinforced earth and value engineering

- **MATERIALS TESTING** - Mr. Geiger has performed construction phase testing and observations and managed hundreds of construction and testing projects involving earthwork, foundations, structural masonry and concrete, pre-cast concrete, asphalt paving materials and structural steel. He has consulted with clients, architects and engineers in developing testing programs for all types of construction projects. He has managed testing programs for a variety of project types including IBC Special Inspections He has reviewed construction testing reports, resolved problems related to construction materials and construction problems.

- **FORENSIC ENGINEERING** - Mr. Geiger has managed thousands of materials engineering projects. He has developed testing programs to identify cause and design solutions for materials compatibility problems. He has resolved problems with moisture penetration through structures, concrete and asphalt failures, soils related distress, and masonry distress. Mr Geiger has direct experience using non-invasive methods to evaluate poured in-place concrete, masonry and pre-cast concrete elements, including structural load testing.

- **PROPERTY CONDITION SURVEYS** - Mr. Geiger has performed over 100 property condition surveys for industrial, commercial, multi-family, resort, waterfront facilities, and institutional buildings. These surveys include evaluation of site improvements, building components, roofing, pavements, electrical systems, mechanical systems, HVAC systems, and ADA compliance.

- **PAVEMENT SYSTEMS** - Mr. Geiger has direct experience in the design of new pavements and rehabilitation of distressed pavements These pavement systems include secondary public roadways, highways and airfield applications. Mr. Geiger has also performed numerous pavement condition surveys through destructive and non-destructive methods, providing recommendations for repair and upgrade of the pavement and managing the implementation of repairs

- **EXPERT WITNESS** - Mr. Geiger has provided expert witness consultation and testimony for geotechnical and building materials distress claims His clients range from private entities to attorneys to the Federal government.

BOB GALLAGHER'S AFFIDAVIT

EXHIBIT 6.1

1

PROCON
WATERPROOFING, INC.

EXHIBIT 4

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

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

April 9, 1993

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

RE: Sandpiper B
Shipyard A&B

Mr. Shellenburger,

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

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

Sincerely,

Bob Gallagher
PROCON Waterproofing, Inc.

BG/sjl

EXHIBIT B

PROCON
WATERPROOFING, INC.

EXHIBIT 5

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

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

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

March 9, 1994

RE: Litchfield By The Sea
Buildings A & B

Mr. Crocker,

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

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

-REVIEW OF THE BUILDINGS-

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

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

-continued-

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

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

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

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

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

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

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

-continued-

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

-SUMMARY-

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

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

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

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

Sincerely,

Bob Gallagher
General Manager

BG/sjl

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

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

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

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

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

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

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

Shipyard Village COC
Maintenance Reserve Schedule

EXHIBIT 6

Repair/Replacement Cost over 30 years

Description	Est Useful Life	One Time Repl. Cost	Bldgs A & B	Bldgs C & D	Total
CONCRETE COMPONENTS:					
Sidewalks	60	$59,500	$17,850	$17,850	$35,700
Curbs & Gutters	60	$94,180	$28,254	$28,254	$56,508
Total		$153,680	$46,104	$46,104	$92,208
SITE IMPROVEMENTS:					
Seal coat asphalt	5	$14,992	$44,976	$44,976	$89,952
Asphalt mill & overlay	20	$126,496	$63,248	$63,248	$126,496
Beach access-bridge #1	15	$19,950	$19,950	$19,950	$39,900
Beach access-bridge #2	15	$18,240	$18,240	$18,240	$36,480
Bridge foundations	30	$19,800	$9,900	$9,900	$19,800
Exterior Wood Stairs	6	$6,110	$15,275	$15,275	$30,550
Total		$205,588	$171,589	$171,589	$343,178
SITE UTILITIES:					
Water Mains	10	$13,300	$19,950	$19,950	$39,900
Sewer Mains	10	$4,800	$7,200	$7,200	$14,400
Stormwater-structure & pipe	10	$7,600	$11,400	$11,400	$22,800
Dredge Retention Pond	20	$10,500	$5,250	$5,250	$10,500
Total		$36,200	$43,800	$43,800	$87,600
MISC SITE IMPROVEMENTS:					
Entrance Signs	10	$2,000	$3,000	$3,000	$6,000
Fountains	10	$10,000	$15,000	$15,000	$30,000
Mailboxes	35	$22,400	$11,200	$11,200	$22,400
Total		$34,400	$29,200	$29,200	$58,400
BUILDING EXTERIORS:					
Roofing Bldgs A & B	20	$293,200	$293,200		$293,200
Roofing Bldgs C & D	20	$360,000		$360,000	$360,000
Recoat with Allgard-Bldgs A & B	10	$700,000	$2,100,000		$2,100,000
Recoat with Allgard-Bldgs C & D	10	$400,000		$1,200,000	$1,200,000
Coat ceilings	5	$80,000		$480,000	$480,000
Caulking	20	$20,000		$20,000	$20,000
Total		$1,853,200	$2,393,200	$2,060,000	$4,453,200
WINDOWS/SLIDERS & CARPET:					
Windows & Sliders-Bldgs A & B	35	$922,880	$922,880		$922,880
Windows & Sliders-Bldgs C & D	35	$735,000		$735,000	$735,000
Corridor carpeting	9	$74,000	$111,000	$111,000	$222,000
Total		$1,731,880	$1,033,880	$846,000	$1,879,880
BUILDING SYSTEMS:					
Vent pipe-Bldgs A & B	10	$64,000	$192,000		$192,000
Common area HVAC	6	$3,000	$7,500	$7,500	$15,000
Garage Sprinkler heads	25	$10,000	$5,000	$5,000	$10,000
Pumps & Compressors	5	$1,000	$3,000	$3,000	$6,000
Total		$78,000	$207,500	$15,500	$223,000

Shipyard Village COC
Maintenance Reserve Schedule

Description	Est. Useful Life	One Time Repl. Cost	Repair/Replacement Cost over 30 years Bldgs A & B	Bldgs C & D	Total
ELEVATORS (one each building)	20	$308,600	$154,800	$154,800	$308,600
SWIMMING POOLS:					
Pool shell structure	60	$318,500	$0	$0	$0
Whitecoat (plaster)	10	$49,000	$73,500	$73,500	$147,000
Spa whitecoat	10	$5,000	$7,500	$7,500	$15,000
Pool Decks-cool crete	10	$14,000	$21,000	$21,000	$42,000
Concrete decks	30	$115,500	$57,750	$57,750	$115,500
Pool pumps	5	$5,400	$2,700	$2,700	$32,400
Computer feeder	10	$10,000	$15,000	$15,000	$30,000
Pool Filters	10	$5,400	$8,100	$8,100	$16,200
Spa Heater	10	$7,000	$10,500	$10,500	$21,000
Pool Furniture	15	$18,250	$18,250	$18,250	$36,500
Pool house roof	50	$30,000	$0	$0	$0
Pool house refurbish	20	$20,000	$10,000	$10,000	$20,000
Perimeter fencing	60	$28,600	$0	$0	$0
Total		$626,650	$224,300	$224,300	$475,600
GRAND TOTALS		$5,028,198	$4,304,373	$3,591,293	$7,921,666

NOTES:

1 The above information is taken from the Replacement Reserve Inventory in the Miller+Dodson Reserve Study

2 Total cash needed for repair/replacements over a 30 year period is allocated between Bldgs A & B (which are both the same) and Bldgs C & D (which are different from A & B)

3 For identified assets whose estimated life is longer than 30 years, no funding was allocated.

4 Based on the above, annual reserve funding should be:

Bldgs A & B	$4,304,373	Divide by 30	$143,479
Bldgs C & D	$3,591,293	Divide by 30	$119,710
	Total Straight line f Total		$263,189

Shipyard Village CofC
Historical Reserve Fund Activity
EXHIBIT 7

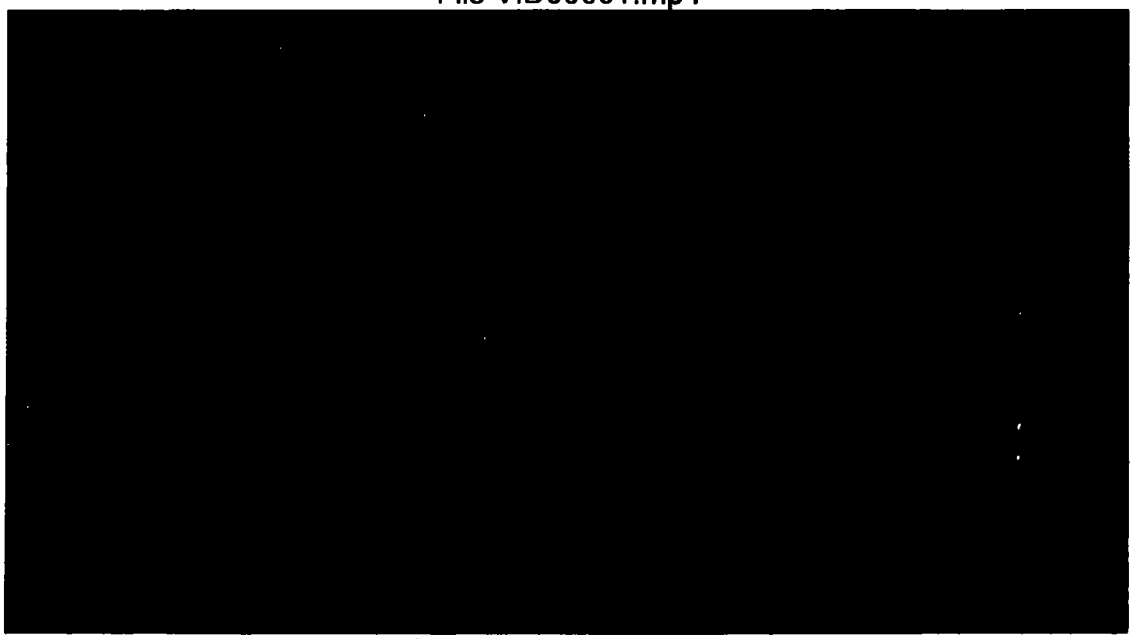
FYE	Beg. Bal.	Reg. Funding	Sp. Assmnts	Other Funding	Total Funding	Expenditures	End. Bal
FYE 12/31/83	$0	$20,153			$20,153	$0	$20,153
FYE 12/31/84	$20,153	$20,153			$20,153	$0	$40,306
FYE 12/31/85	$40,306	$20,153			$20,153	$0	$60,459
FYE 12/31/86	$60,459	$22,128			$22,128	$0	$82,587
FYE 12/31/87	$82,587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

Shipyard Village CofC
Historical Reserve Fund Activity

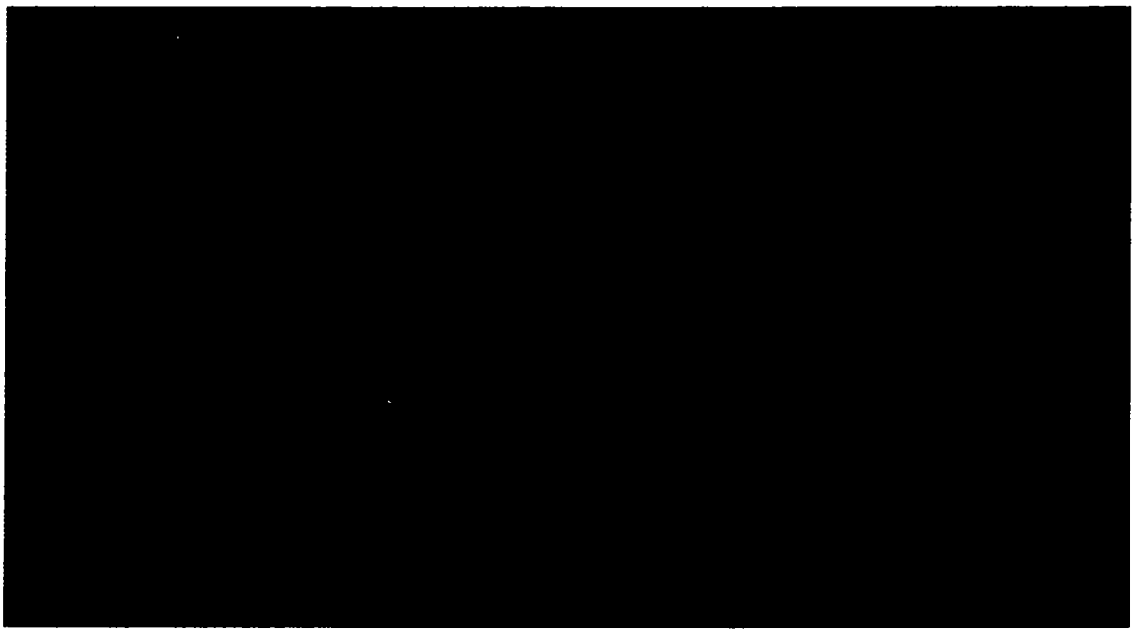
FYE	Beg. Bal.	Reg. Funding	Sp. Assmnts	Other Funding	Total Funding	Expenditures	End. Bal
FYE 12/31/99	$3,444	$107,423	$216,430	$33,739	$357,592	$235,402	$125,634
FYE 12/31/00	$125,634	$106,893		$12,969	$119,862	$205,190	$40,306
FYE 12/31/01	$40,306	$132,774	$252,998	$15,320	$401,092	$229,241	$212,157
FYE 12/31/02	$212,157	Missing financial reports for FYE 2002, ending balance is from FYE 12/31/03 Audit					$299,552
FYE 12/31/03	$299,552	$132,264			$132,264	$80,376	$351,440
FYE 12/31/04	$351,440	$120,612		$4,109	$124,721	$212,826	$263,335
FYE 12/31/05	$263,335	$250,008		$239,659	$489,667	$418,655	$334,347
FYE 12/31/06	$334,347	$283,395	$32,392	$2,387,393	$2,703,180	$1,318,033	$1,719,494
FYE 12/31/07	$1,719,494	$274,087		$91,825	$365,912	$385,330	$1,700,076
FYE 12/31/08	$1,700,076	$274,087		$100,710	$374,797	$306,525	$1,768,348
FYE 12/31/09	$1,768,348	$274,087		$38,740	$312,827	$291,743	$1,789,432
FYE 12/31/10	$1,789,432						

UNIT A12

File VID00001.mp4



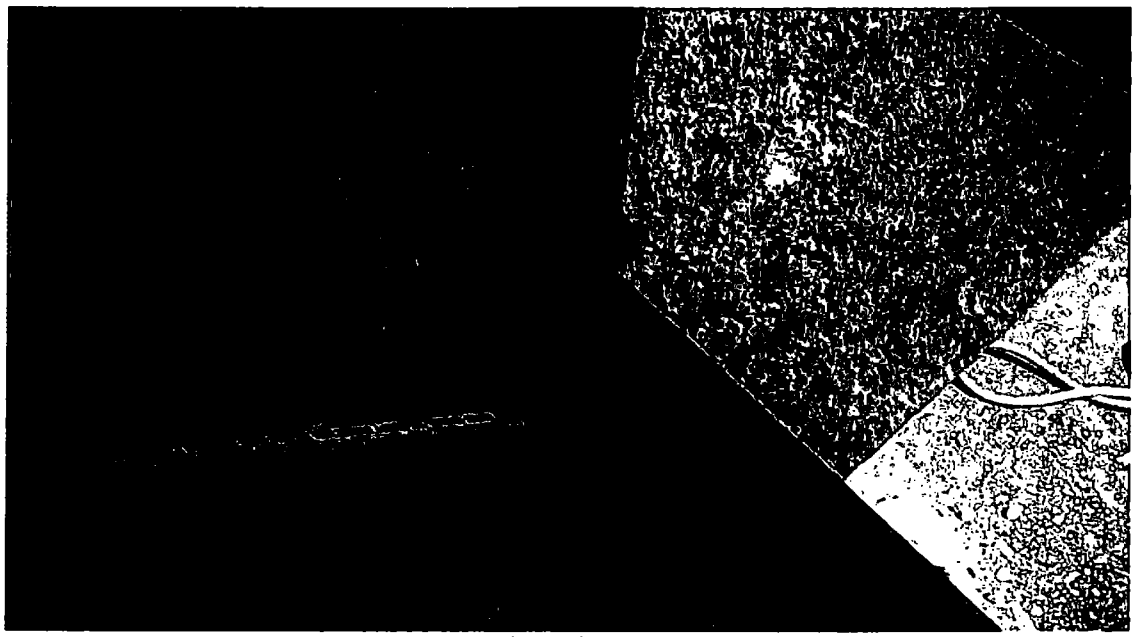
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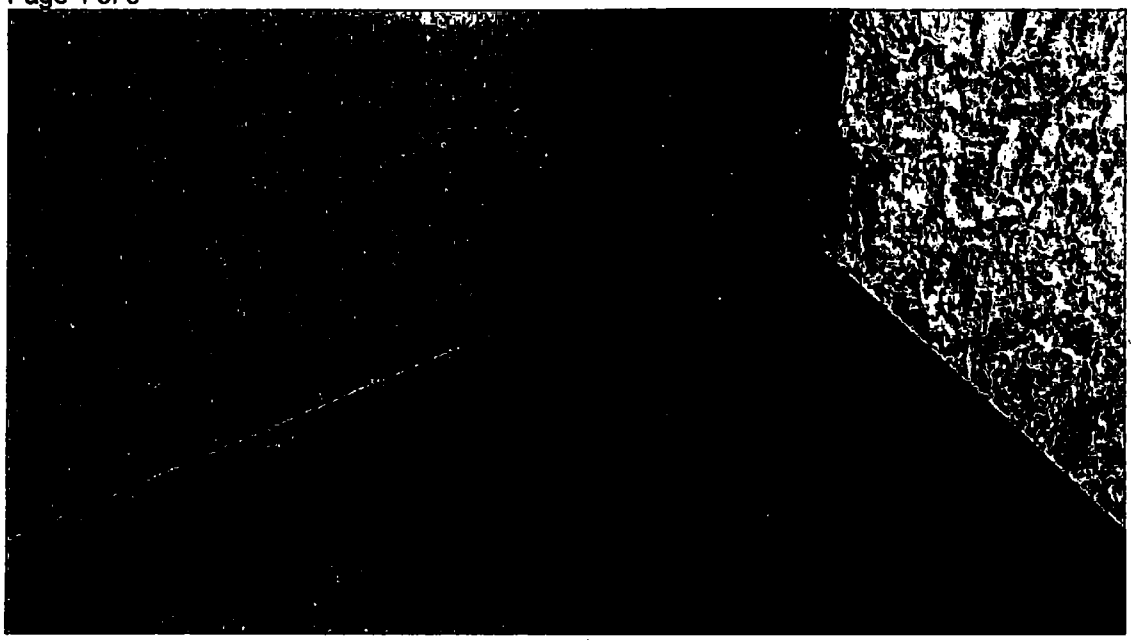
2- 43:12



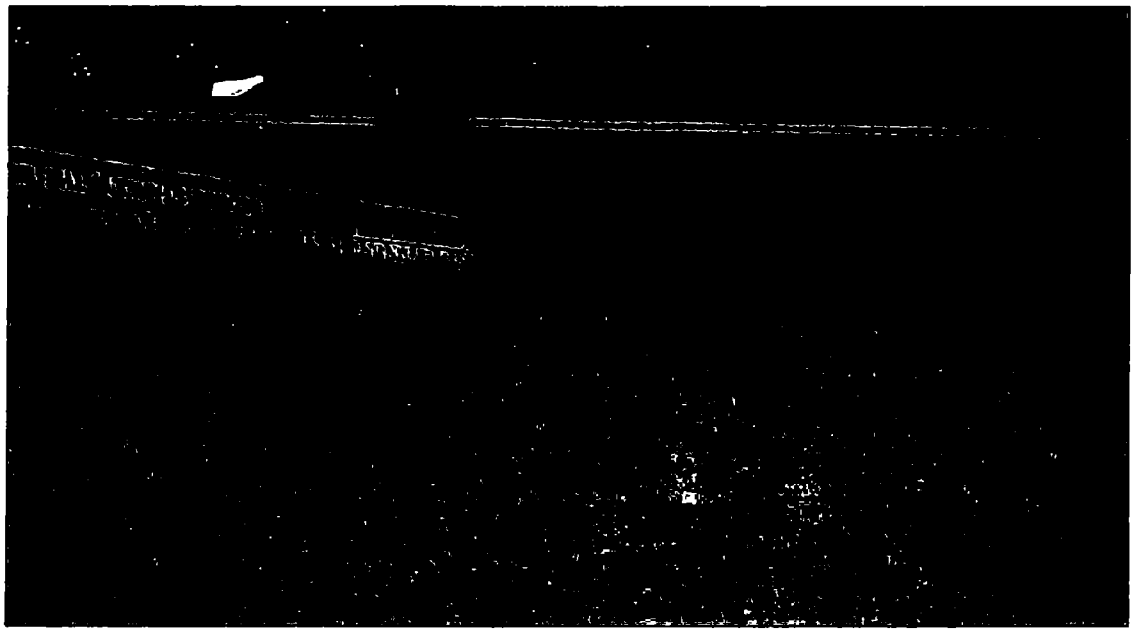
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6 – 50:50



7 – 50:56



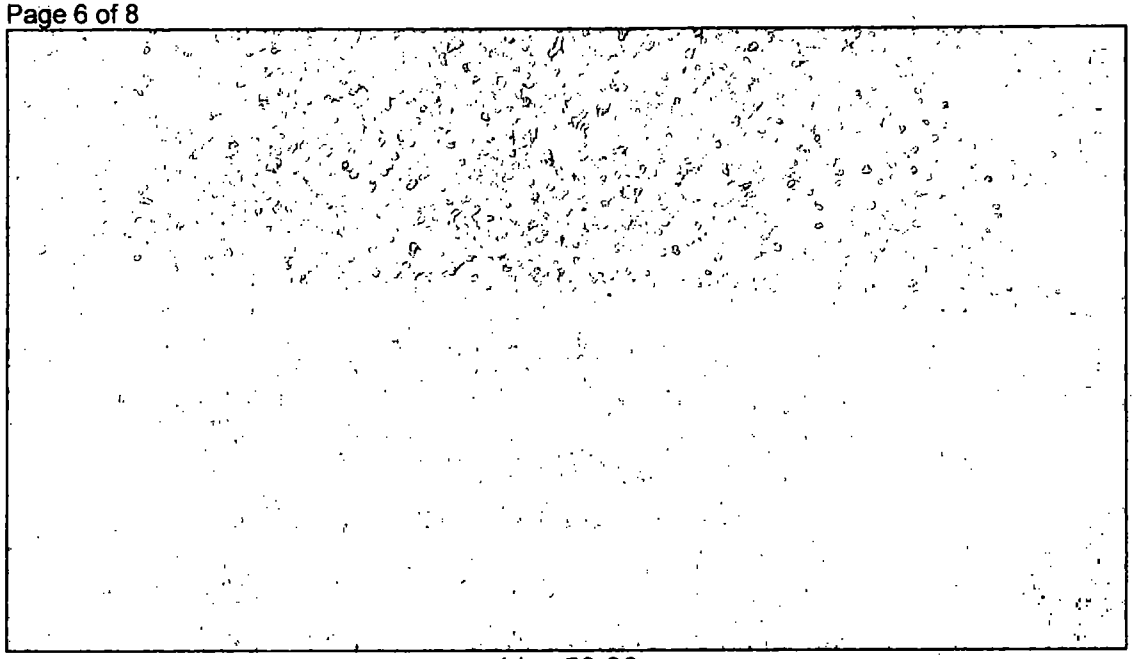
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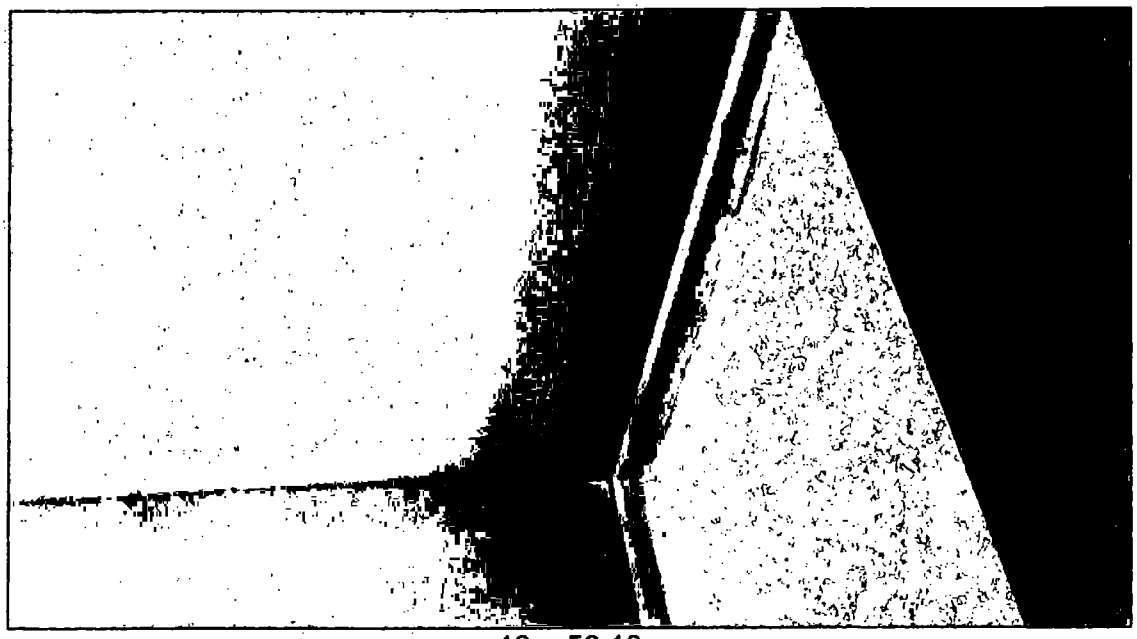
9 – 52:05



10 – 52:28



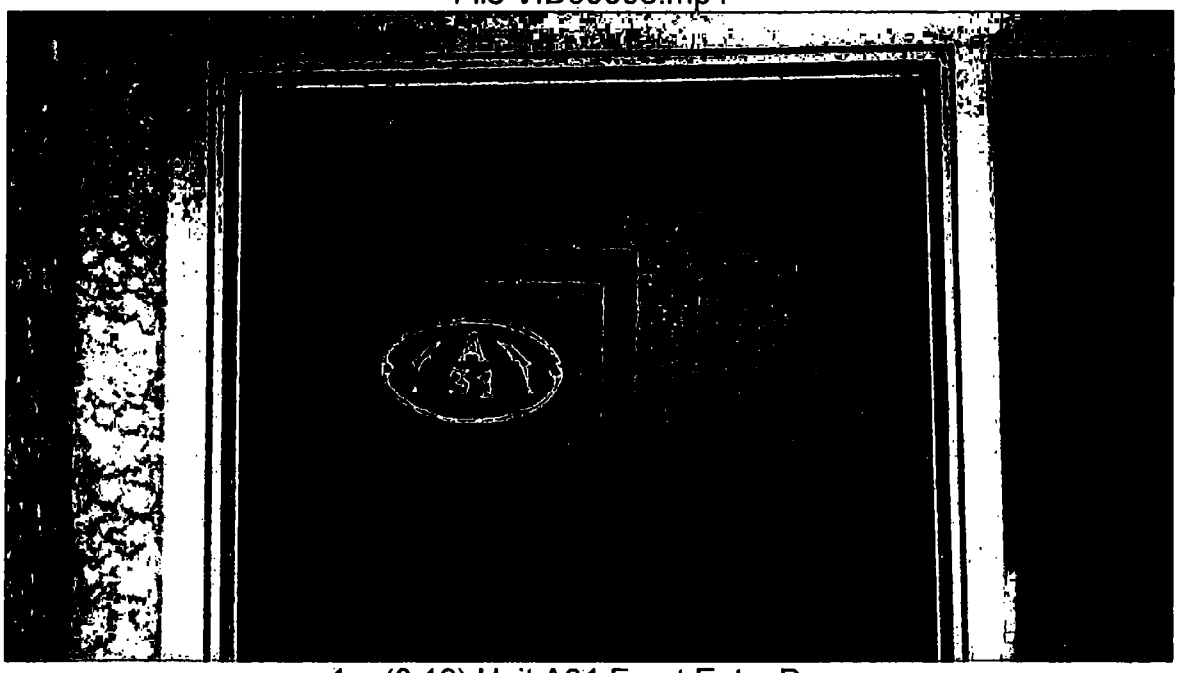
11 – 53:38



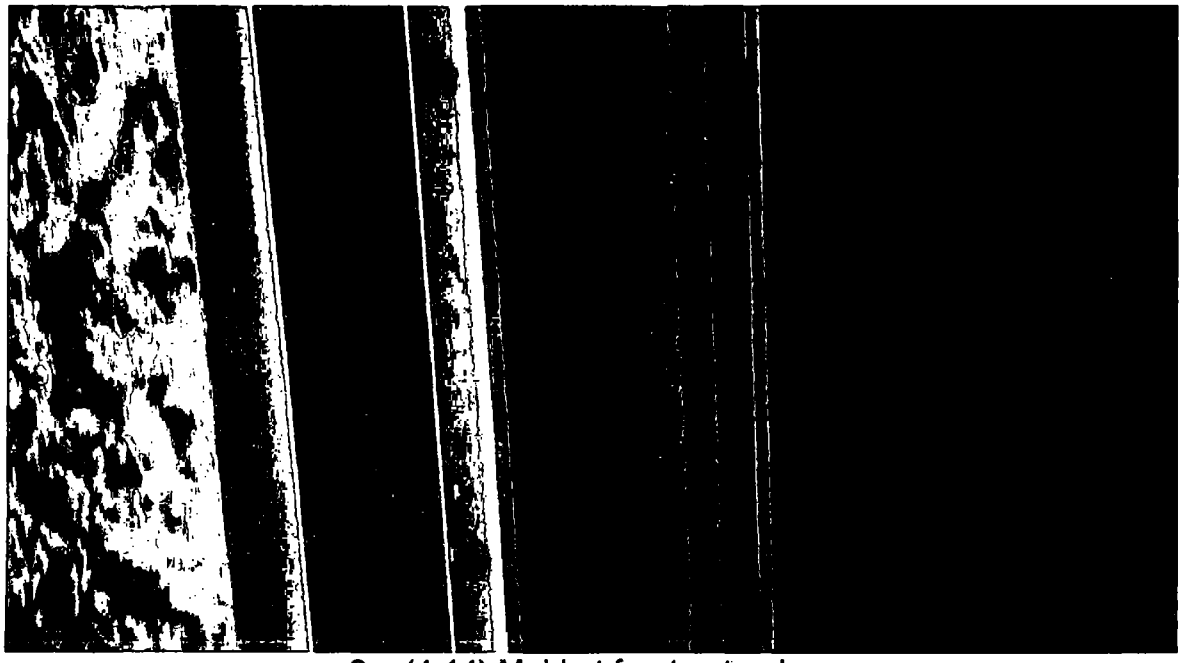
12 – 56:13

UNIT A31

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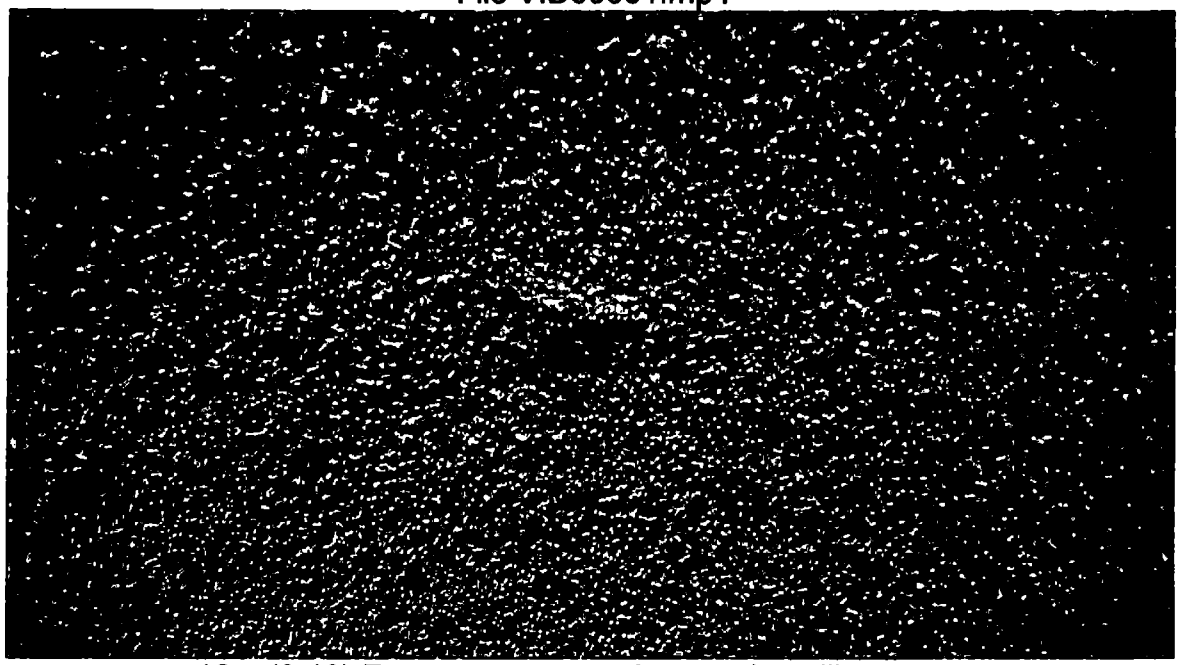


1 – (0:19) Unit A31 Front Entry Door



2 – (4:14) Mold at front entry door

File VID00001.mp4



16 – (0.13) Front entry, water damage in ceiling texture



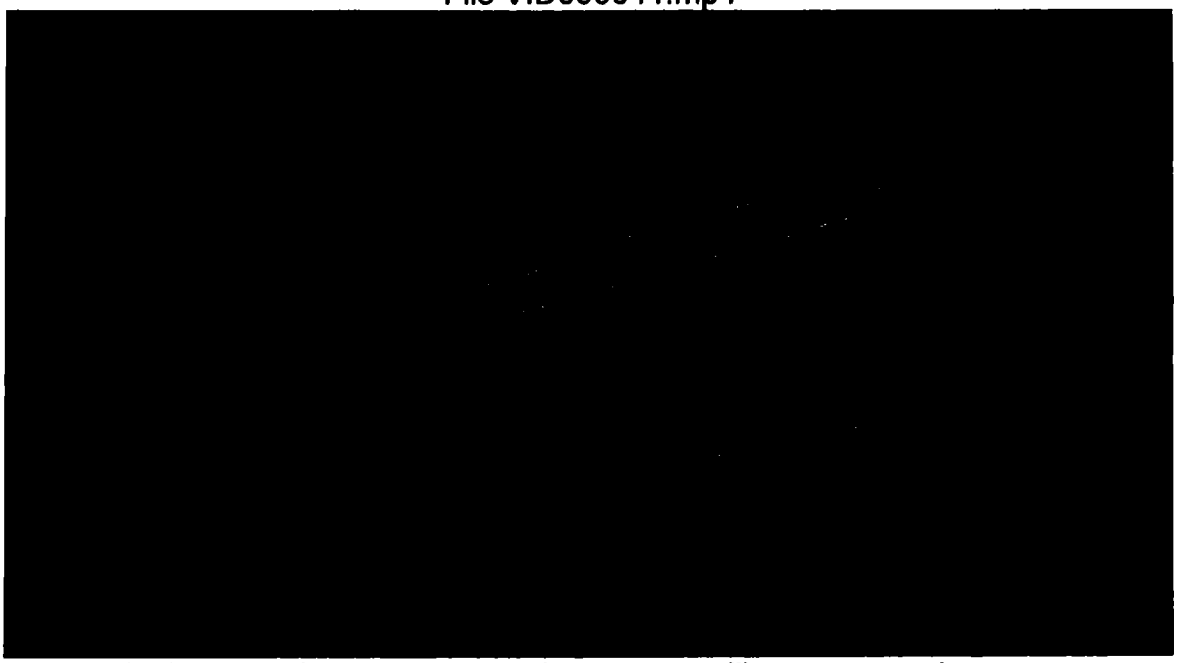
17 – (0.01) Front entry, water damage in ceiling texture

File VID000033.mp4



18 (18:20) Bedroom #1, water damage in closet

File VID000041.mp4



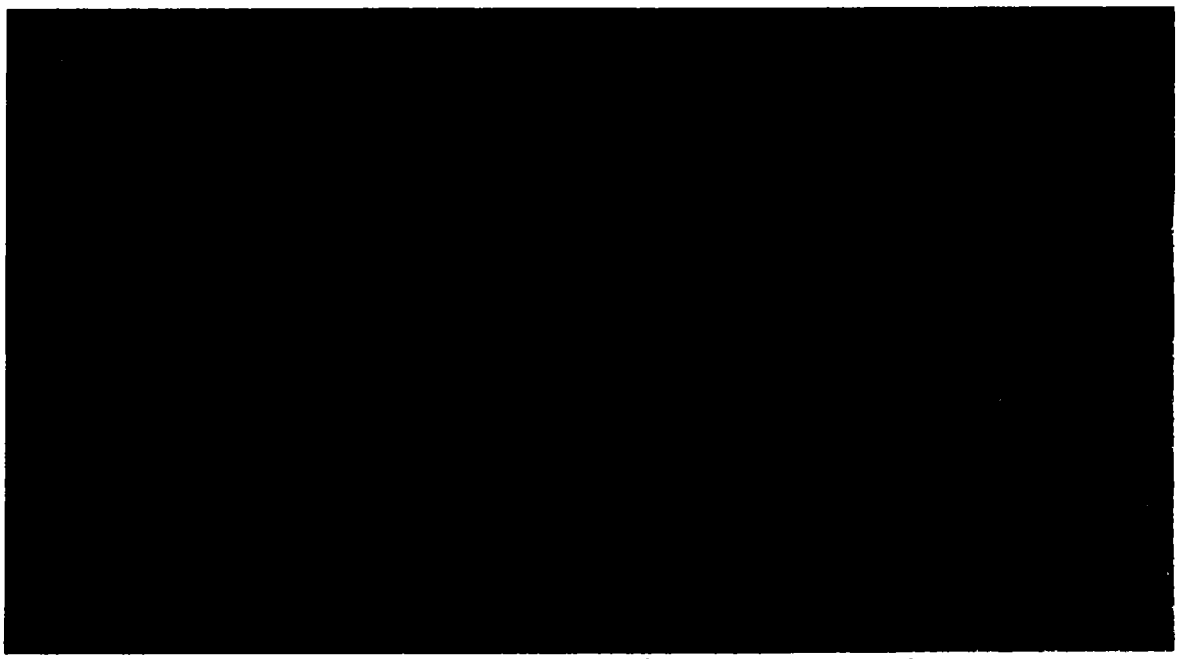
19 (5.39) Living room, water damage at ceiling texture at bar area



20 – (5:49) Living room, water damage at ceiling near bar area



21 – (5:53) Living room, closer view of 20 (5:49)



22 – (6.10) Living Room, damaged ceiling texture at bar area



23 – (11:17) Living room, water damage at ceiling at sliding glass



24 – (11:25) Living room, water damage at ceiling at sliding glass



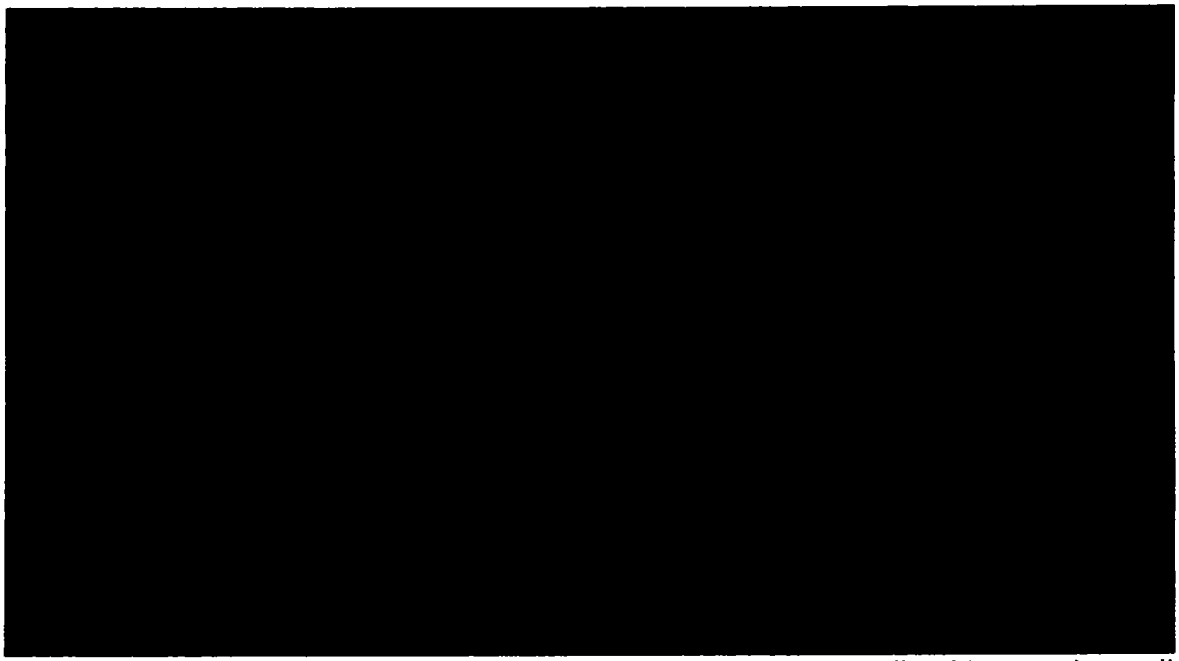
25 – (11:38) Living room, water damage at ceiling



26 – (11:57) Living room, mold at switch at sliding glass

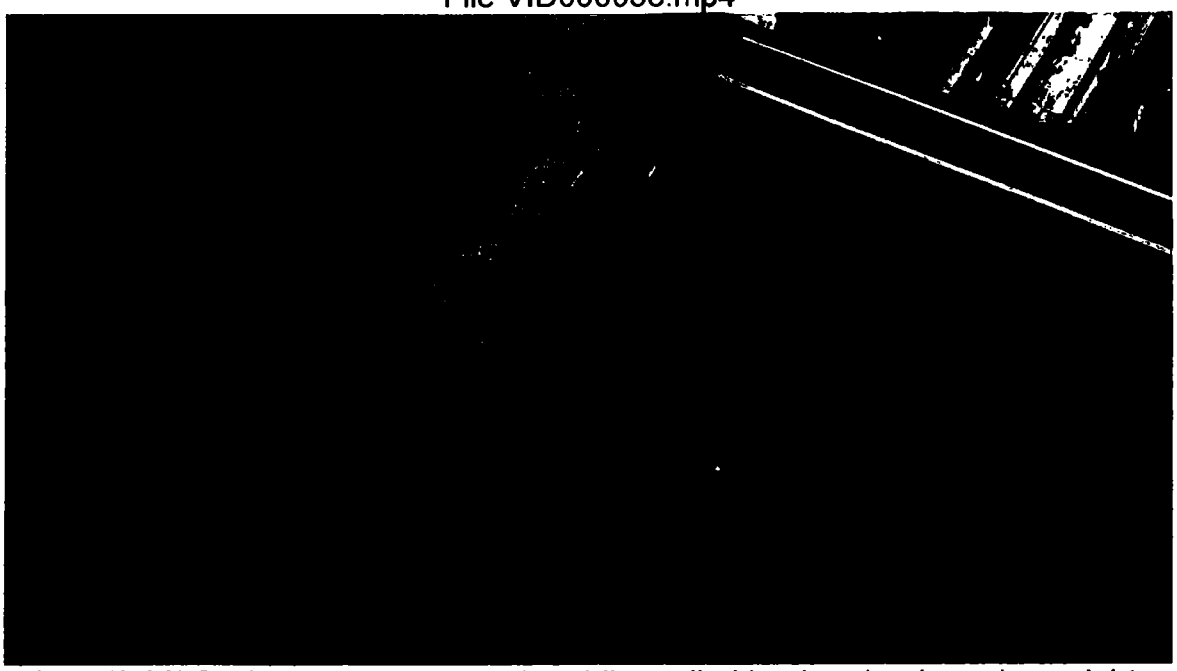


27 – (12:04) Living room, mold at switch at sliding glass



28 – (11:52) Living room, mold at switch at sliding glass, pencil writing on the wall to show to Russ Frank

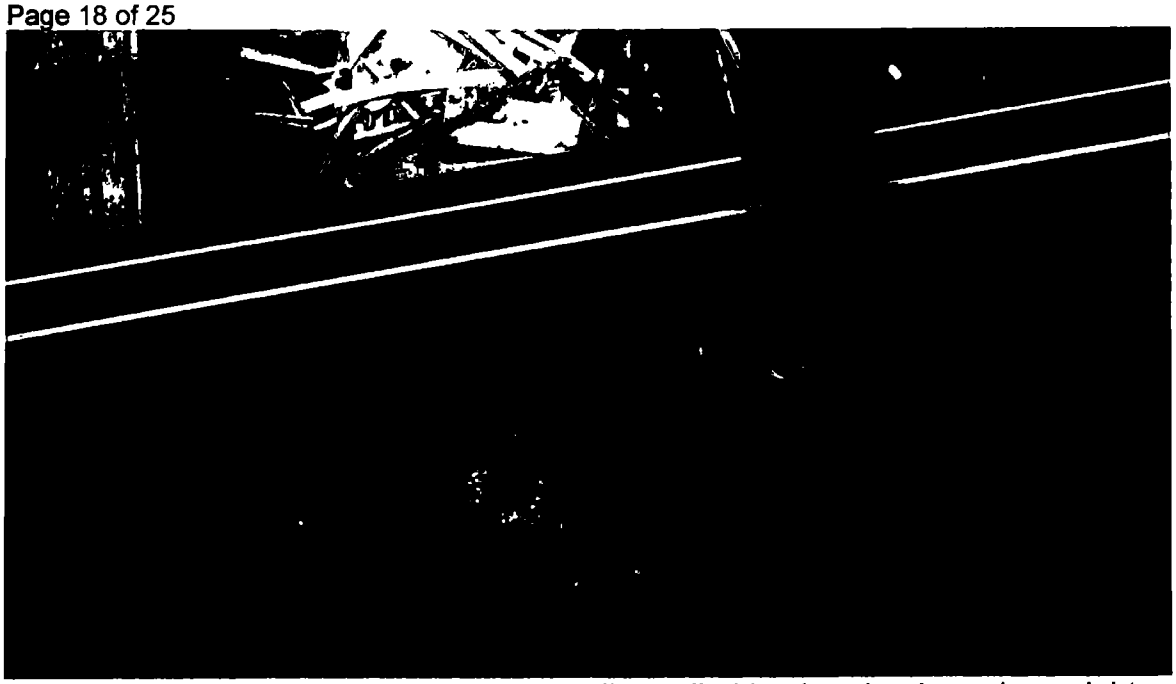
File VID000058.mp4



30 – (0:32) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



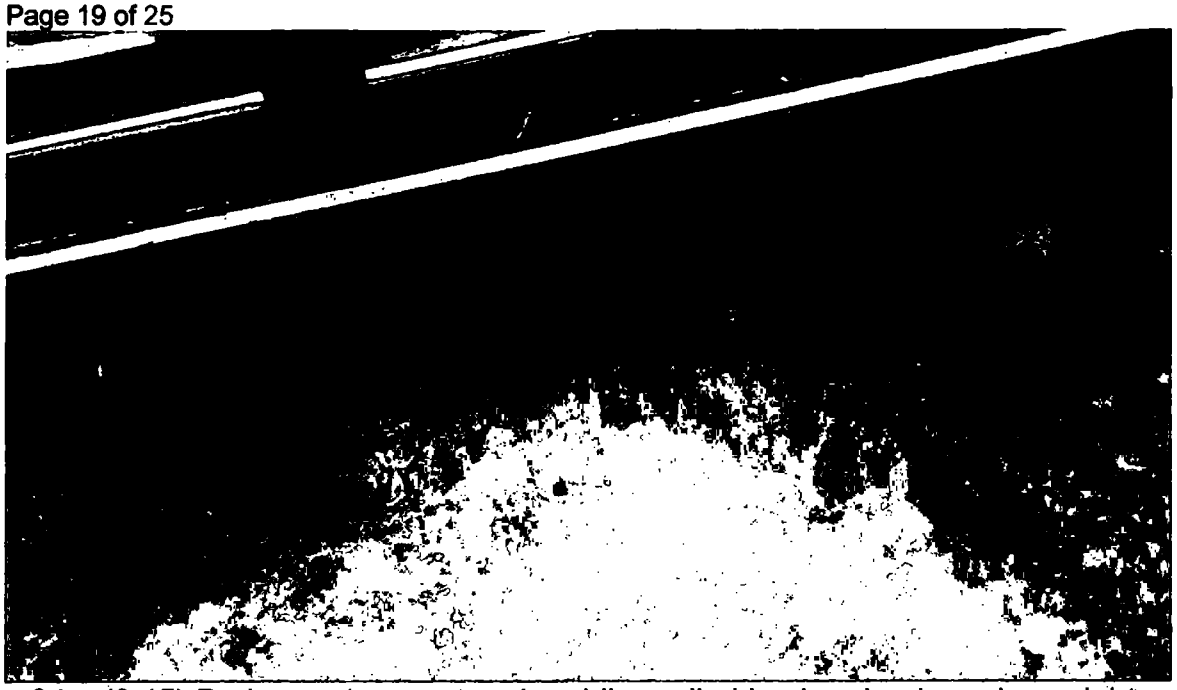
31 – (0:33) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



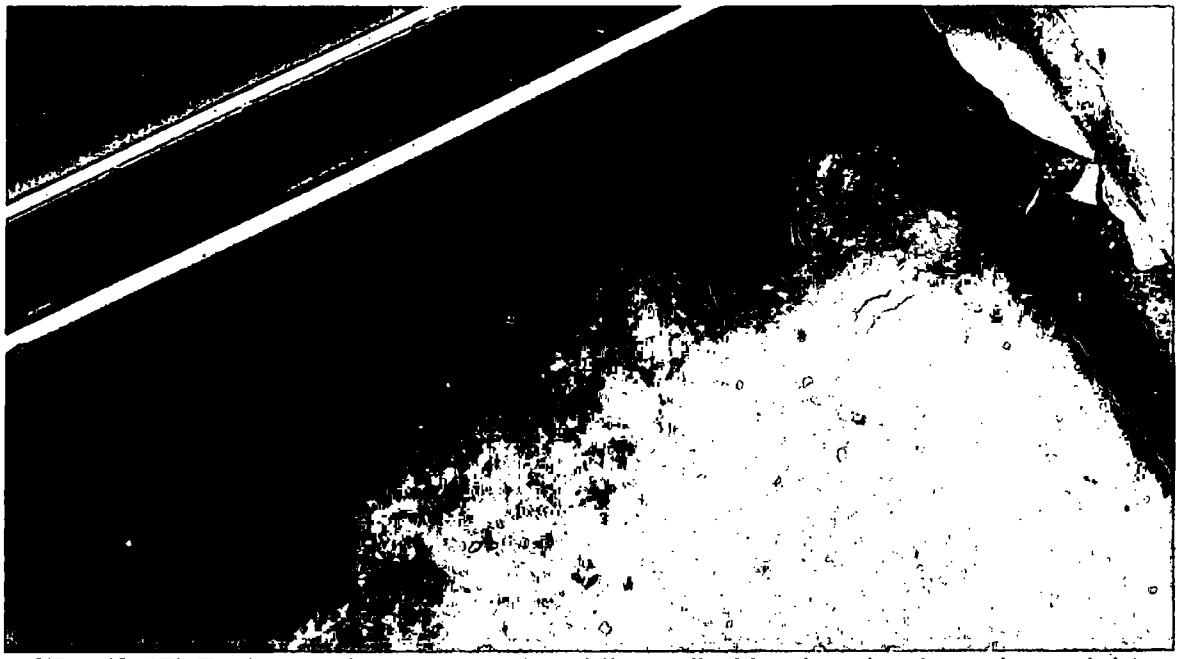
32 – (0:38) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



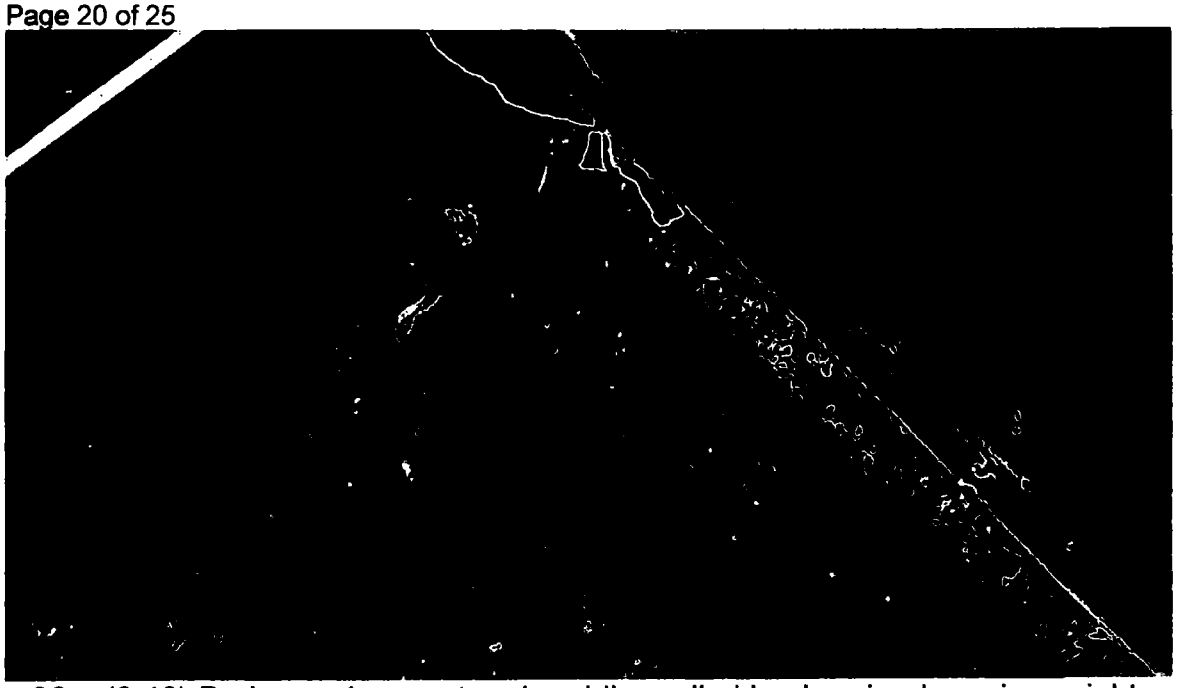
33 – (0:42) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage and rotted wood



34 – (0:45) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



35 – (0:47) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



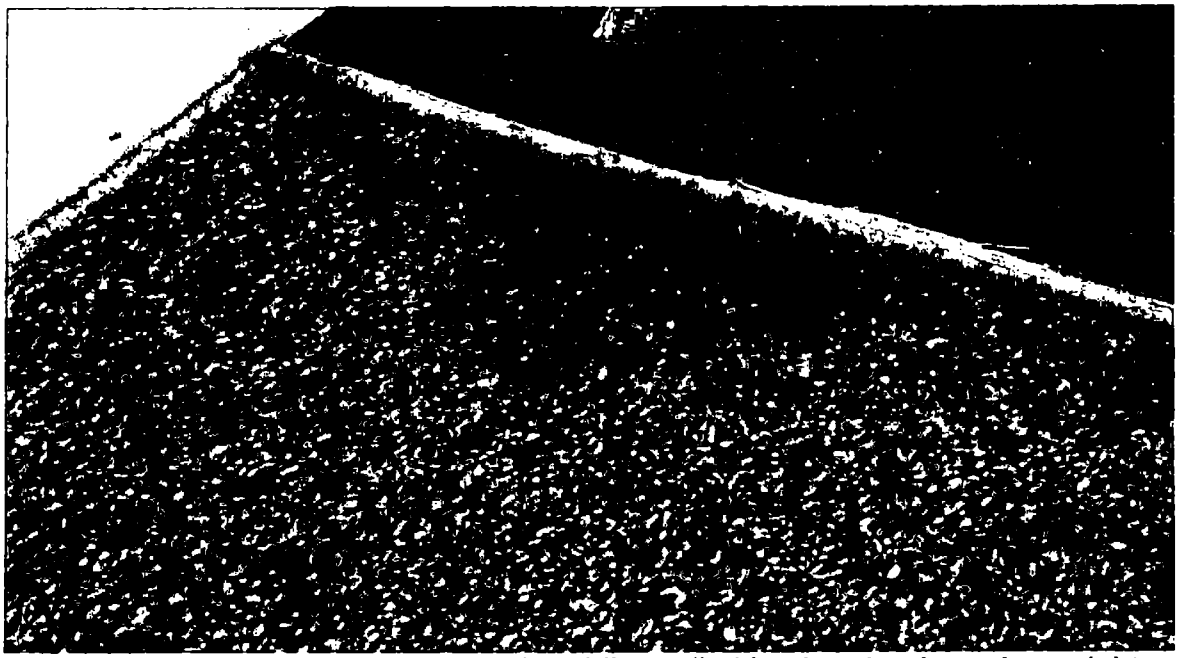
36 – (0:48) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage



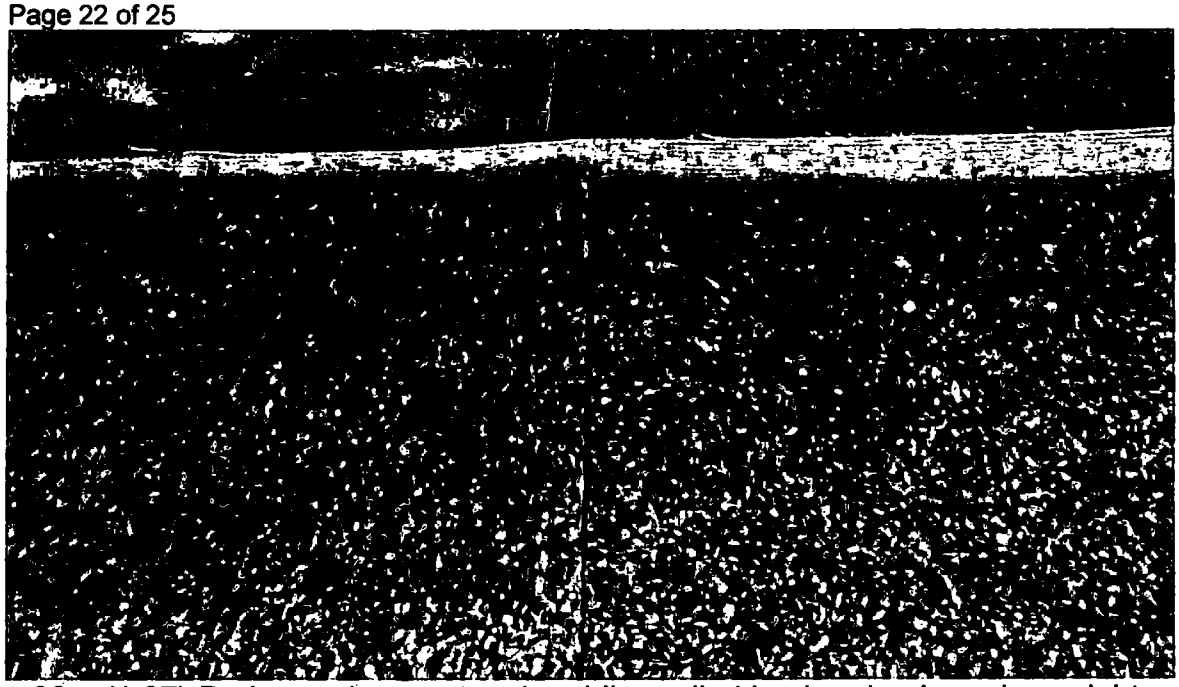
37 – (0:54) Bedroom 1, carpet and padding rolled back, rained previous night, water present, water damage, cracking in slab



38 – (0:58) Bedroom 1, carpet and padding rolled back, rained previous night, wet carpet padding

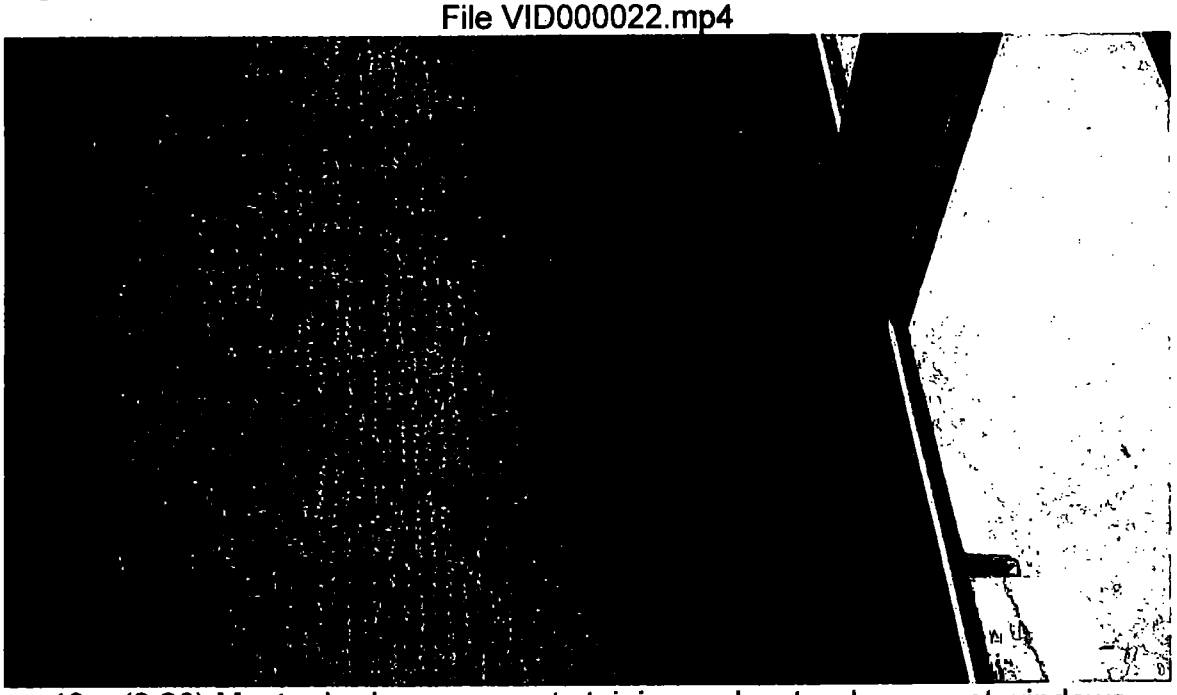


39 – (1:04) Bedroom 1, carpet and padding rolled back, rained previous night, wet carpet padding

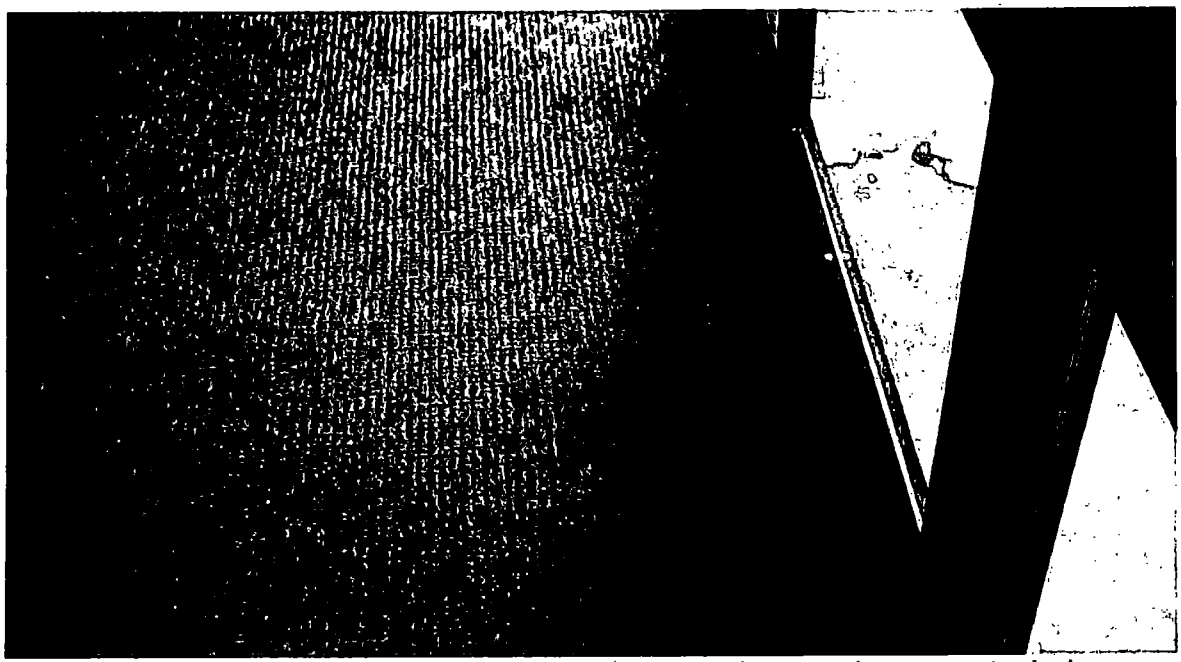


39 – (1:07) Bedroom 1, carpet and padding rolled back, rained previous night, wet carpet padding

File VID000022.mp4



40 – (8:20) Master bedroom, carpet staining and water damage at windows



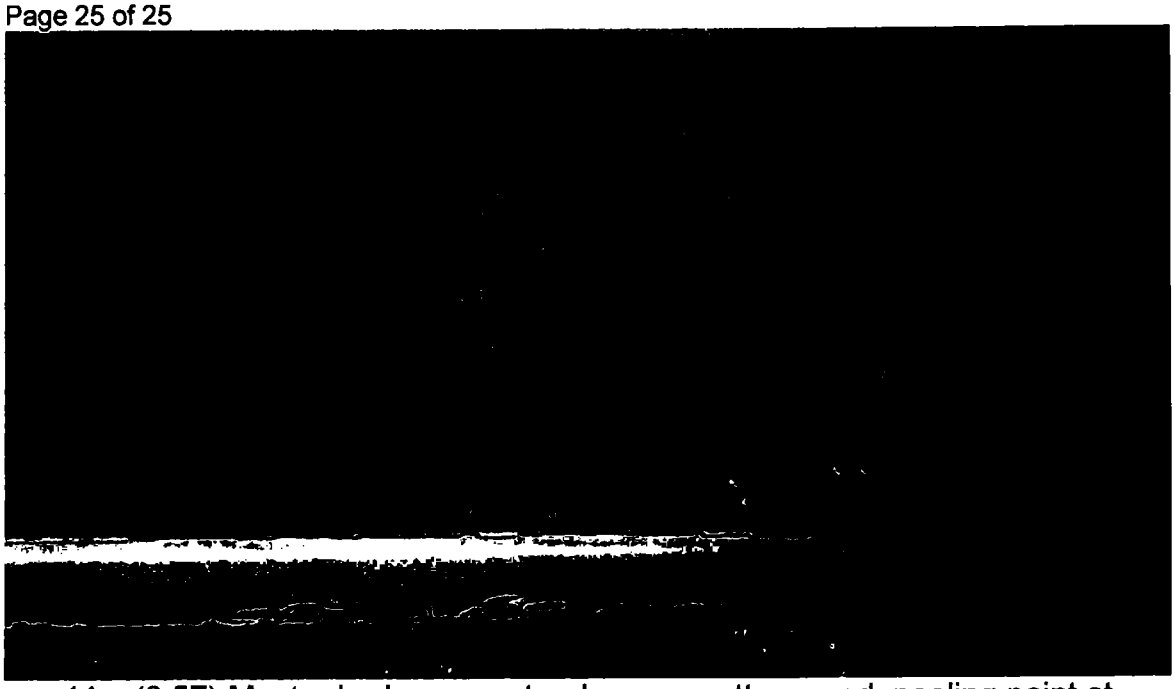
41 – (8:23) Master bedroom, carpet staining and water damage at windows



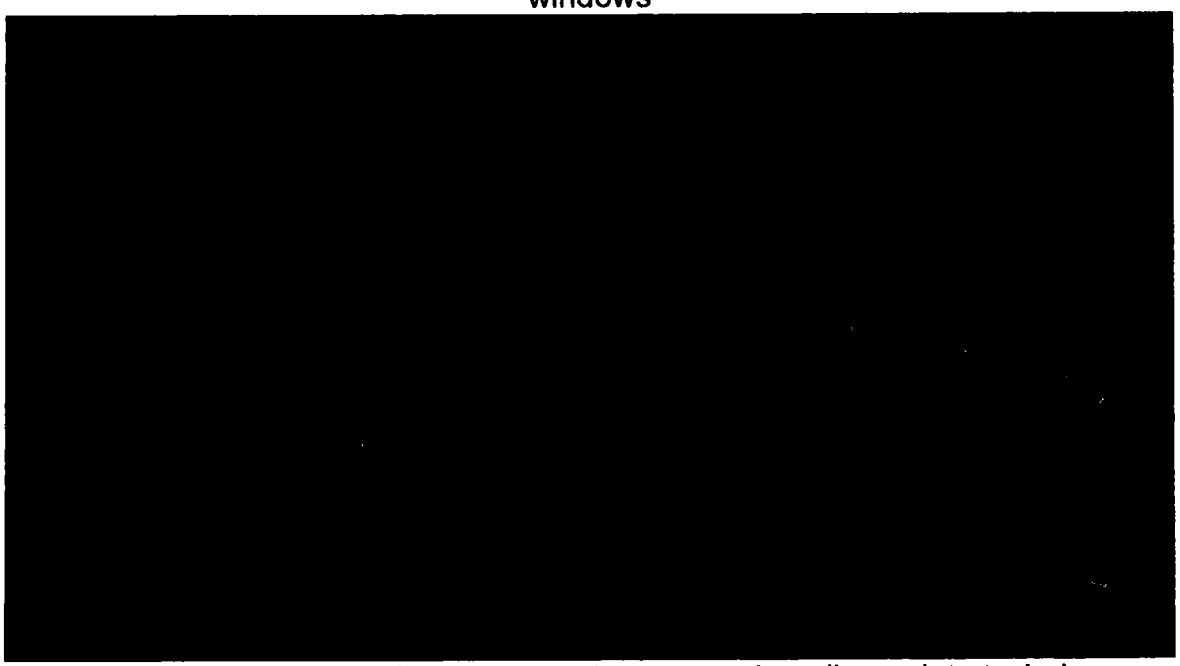
42 – (8:36) Master bedroom, carpet staining and water damage at windows



43 – (8:51) Master bedroom, water damage, rotten wood and peeling paint at windows



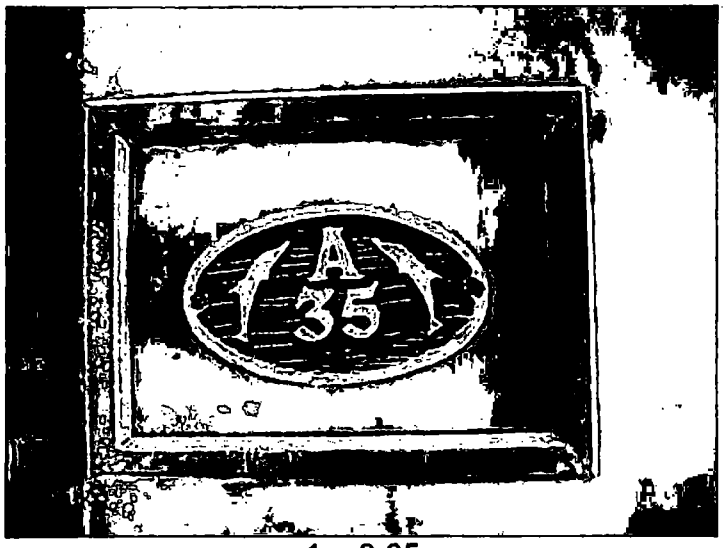
44 – (8:57) Master bedroom, water damage, rotten wood, peeling paint at windows



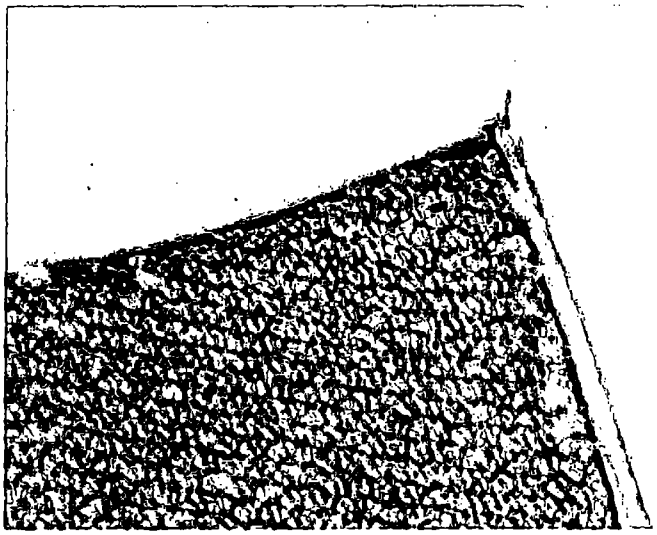
45 – (14:00) Master bedroom, water damage and peeling paint at windows

UNIT A35

File MOV127.mod



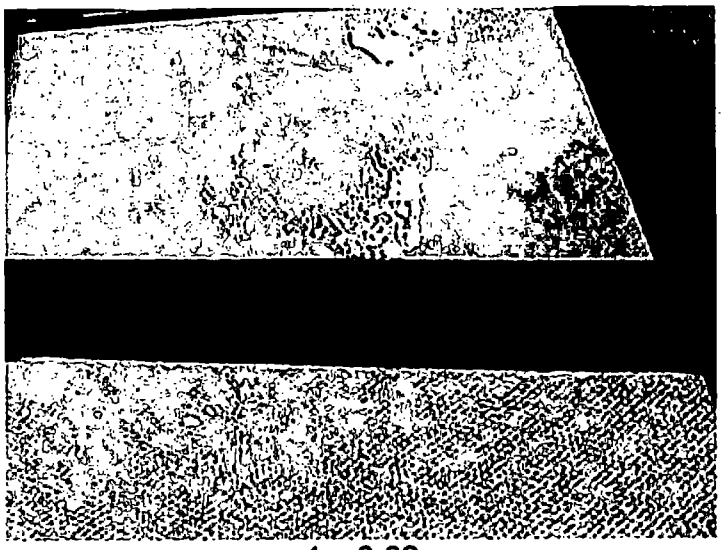
1 – 0:05



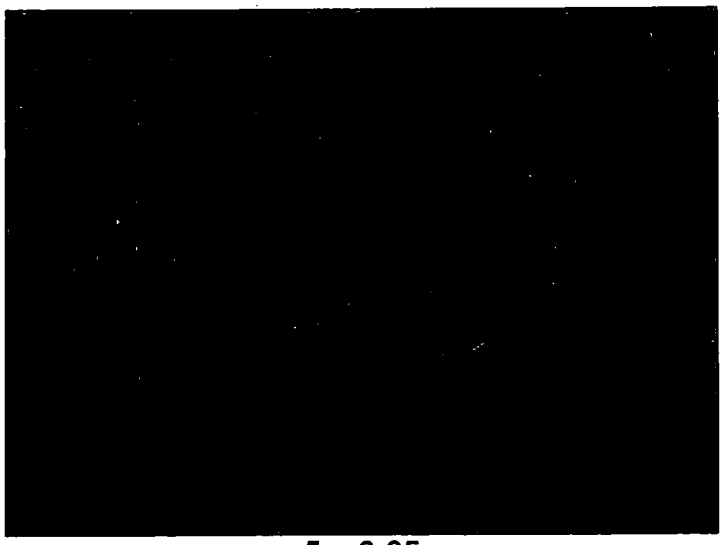
2 -0:59



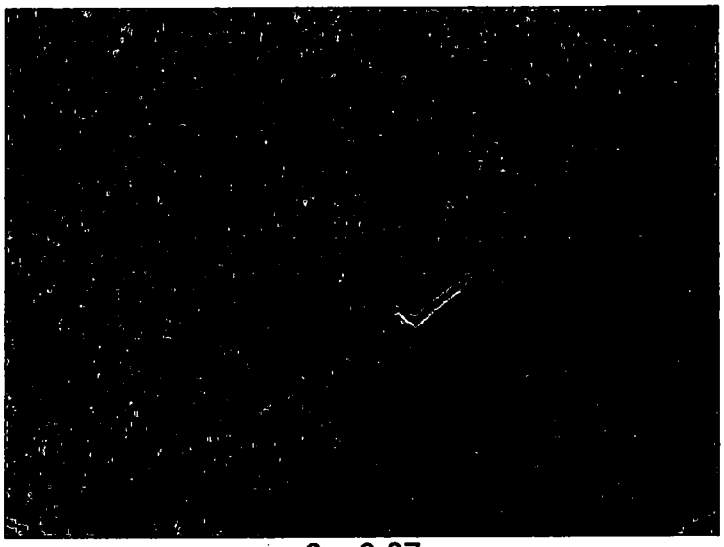
3 – 1:05



4 – 3:02



5 – 3:05



6 – 3:07

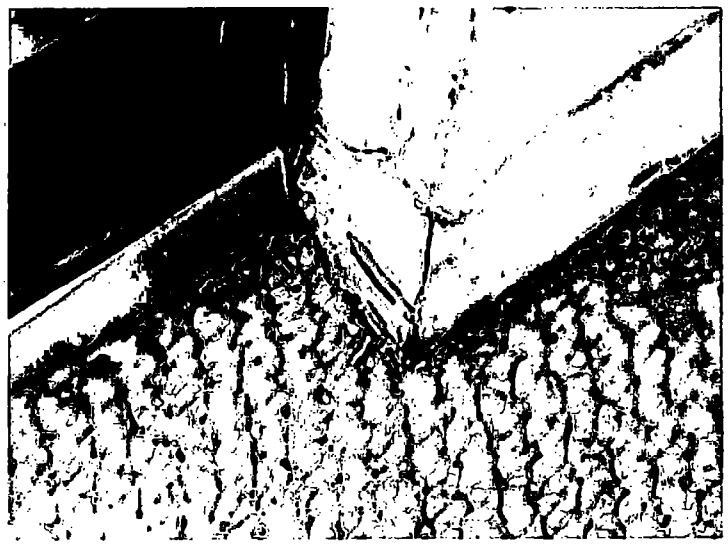
File MOV19.mod



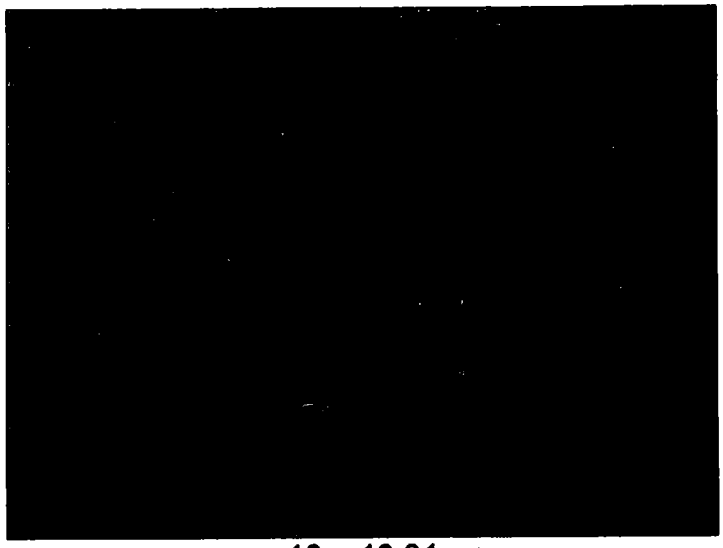
7 – 3:11



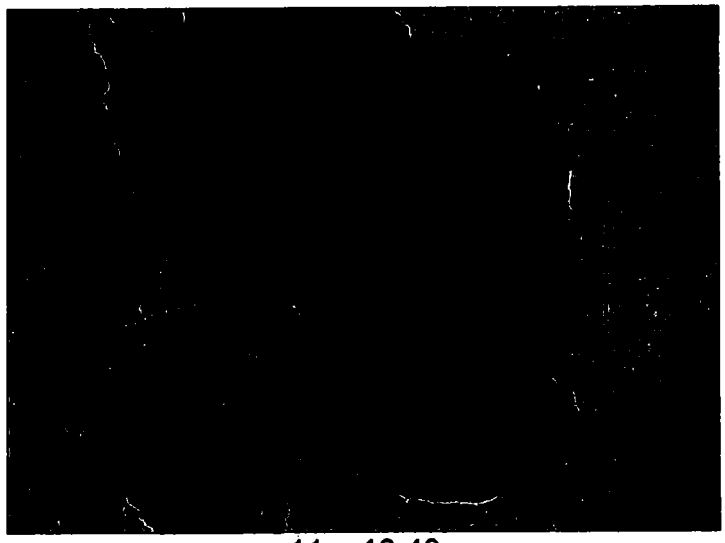
8 – 9:22



9 – 10:24

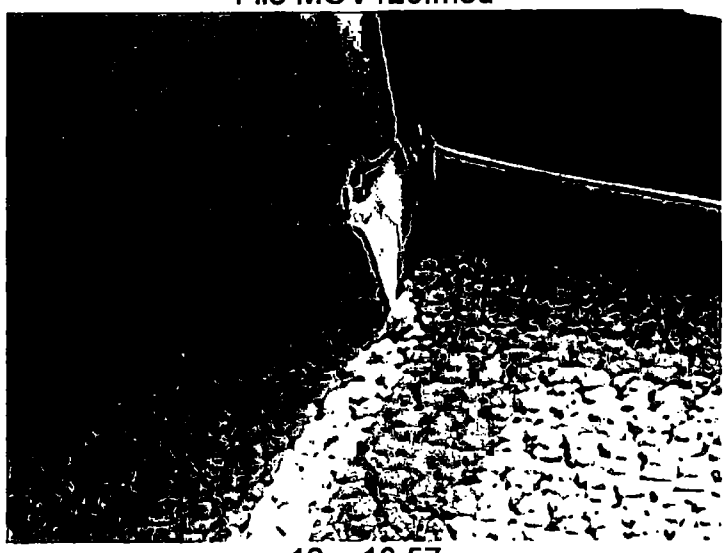


10 – 13:31



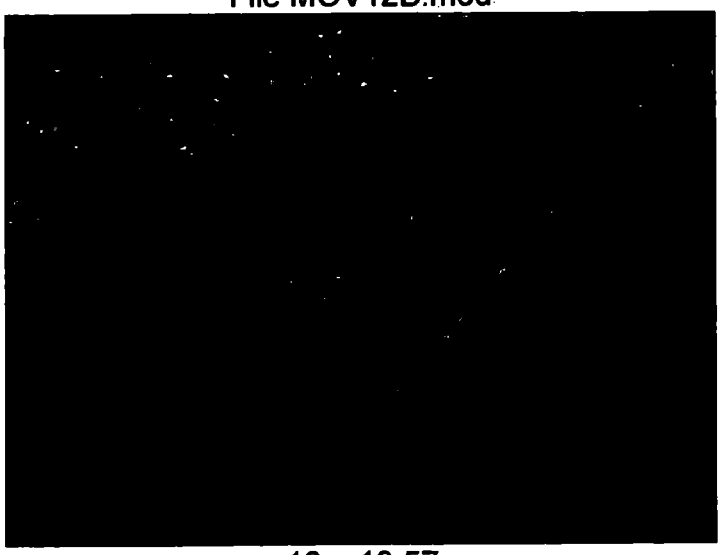
11 – 13:43

File MOV129.mod



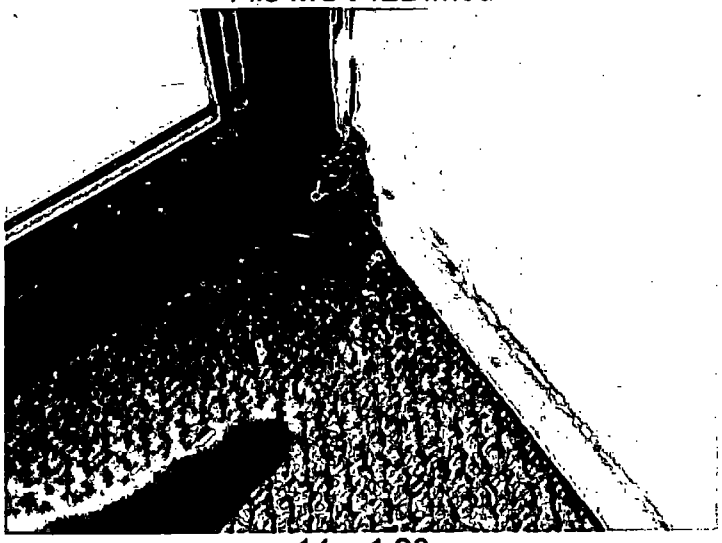
12 – 13:57

File MOV12B.mod

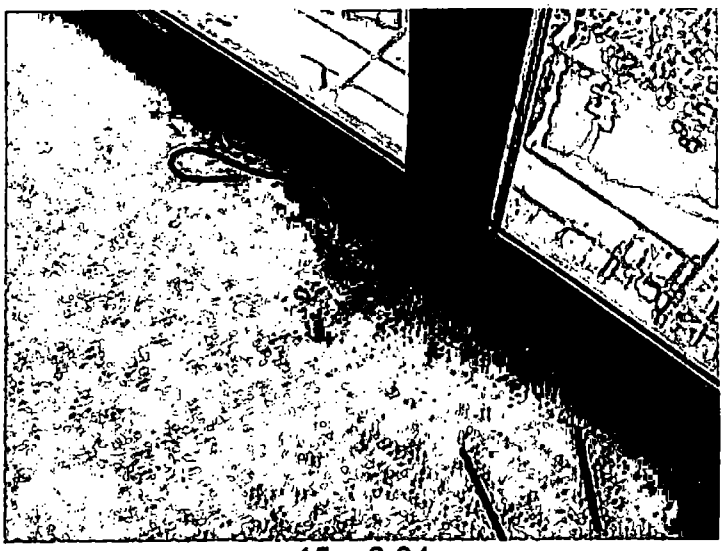


13 – 13:57

File MOV12D.mod



14 – 1:23



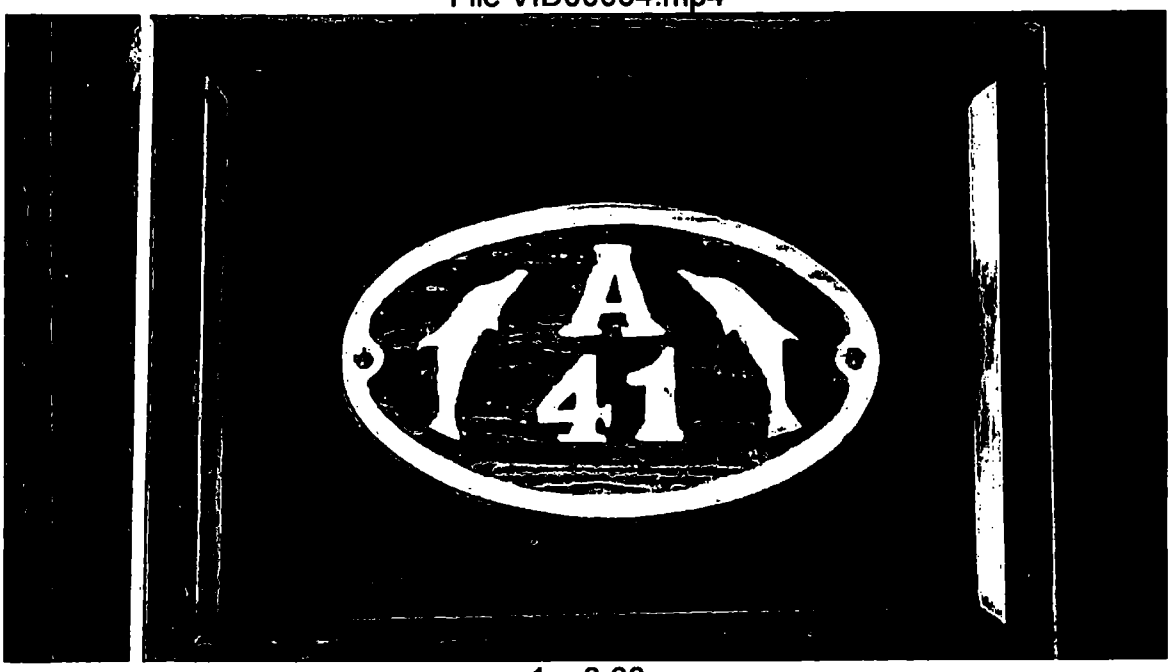
15 – 2:04



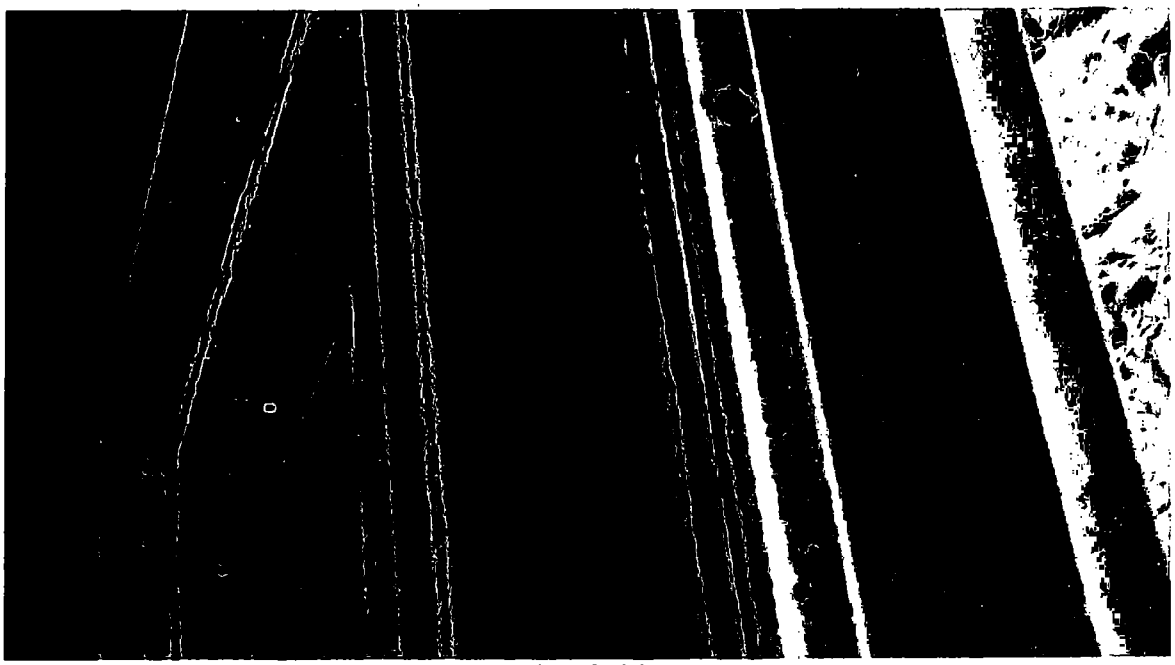
16 – 2:08

UNIT A41

File VID00004.mp4

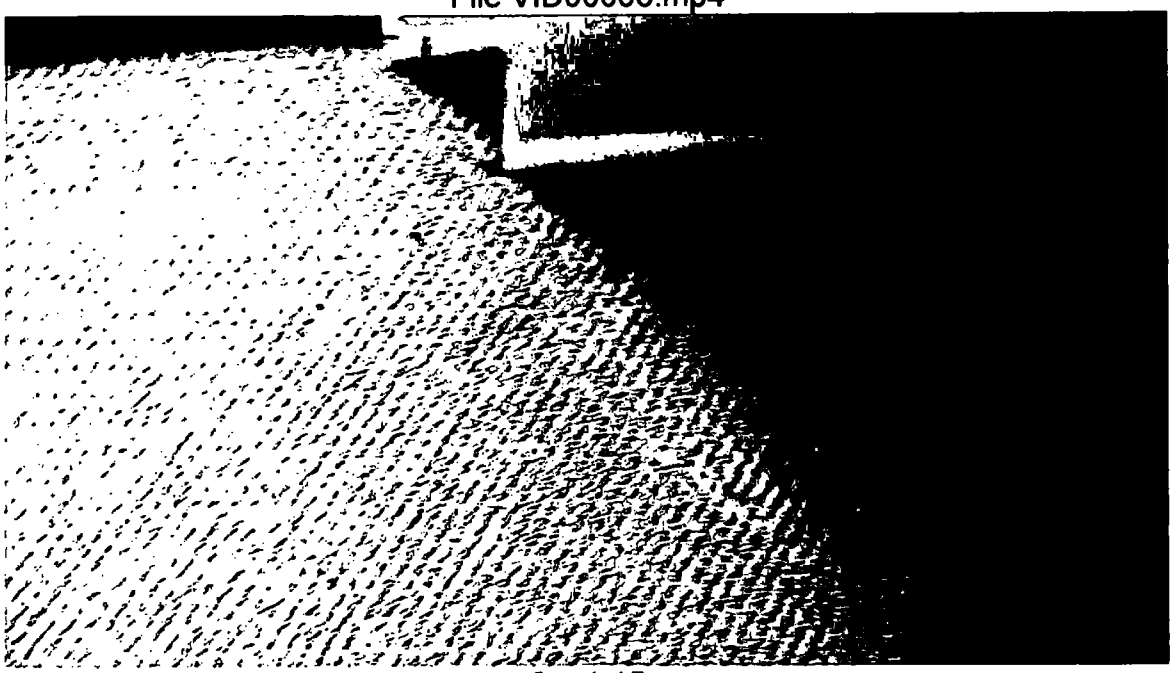


1 – 0:03



2 – 0:11

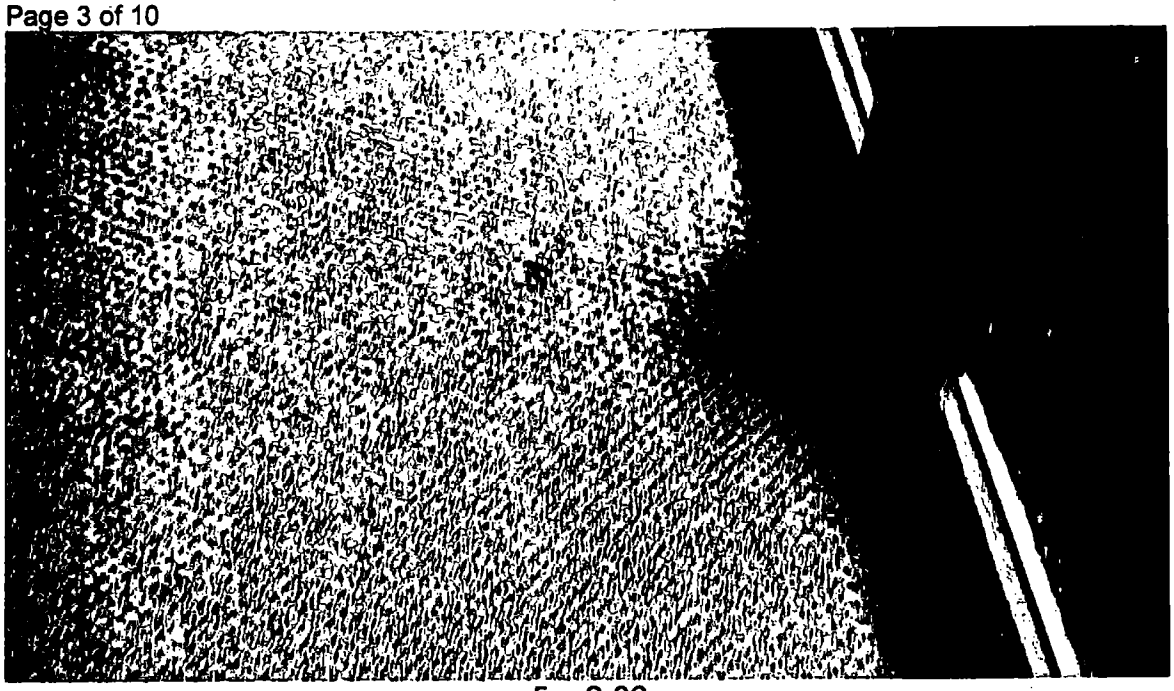
File VID00003.mp4



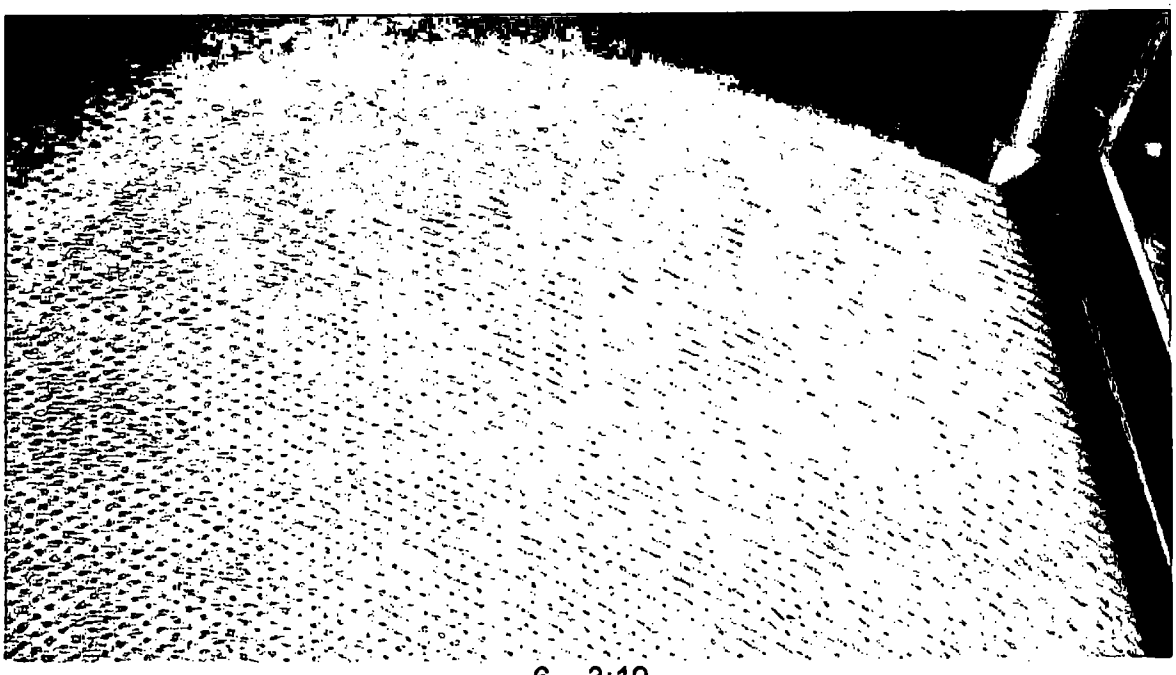
3 – 1:15



4 – 1:36



5 – 2:06



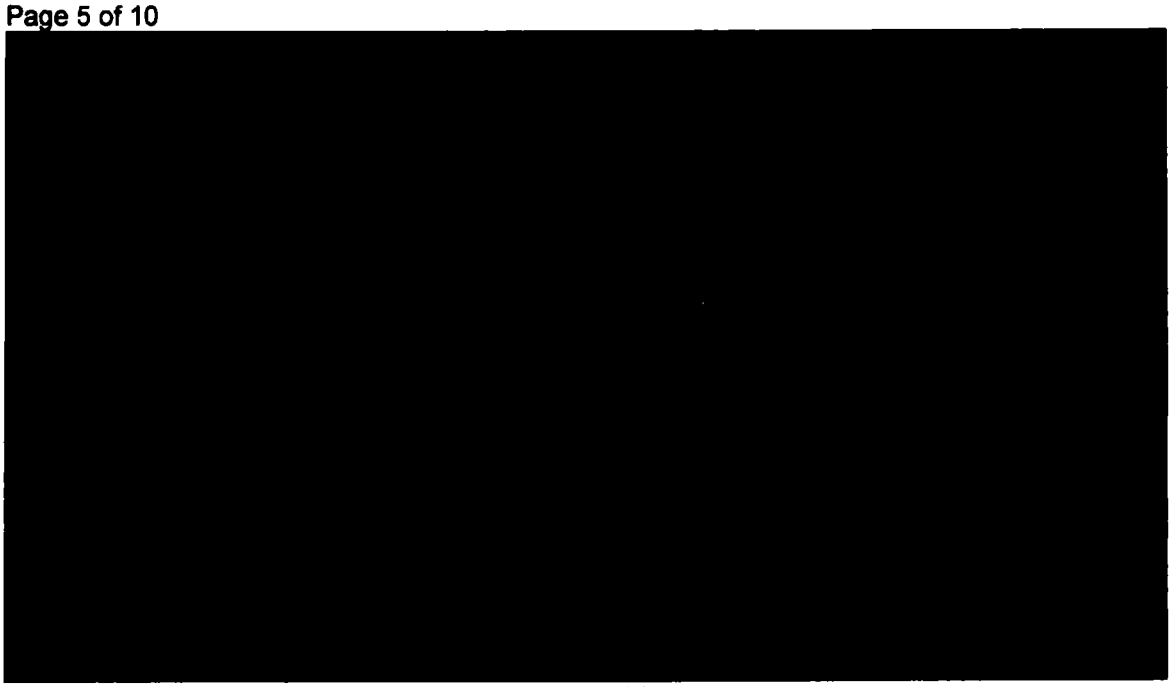
6 – 3:19



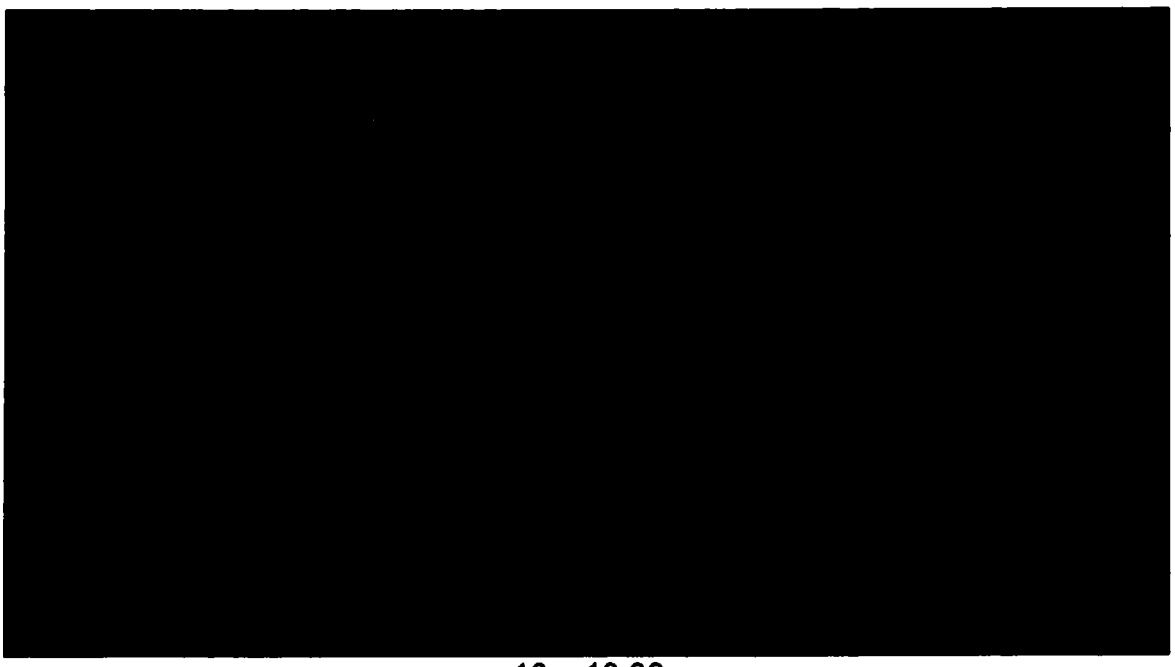
7 – 11:19



8 - 11:49

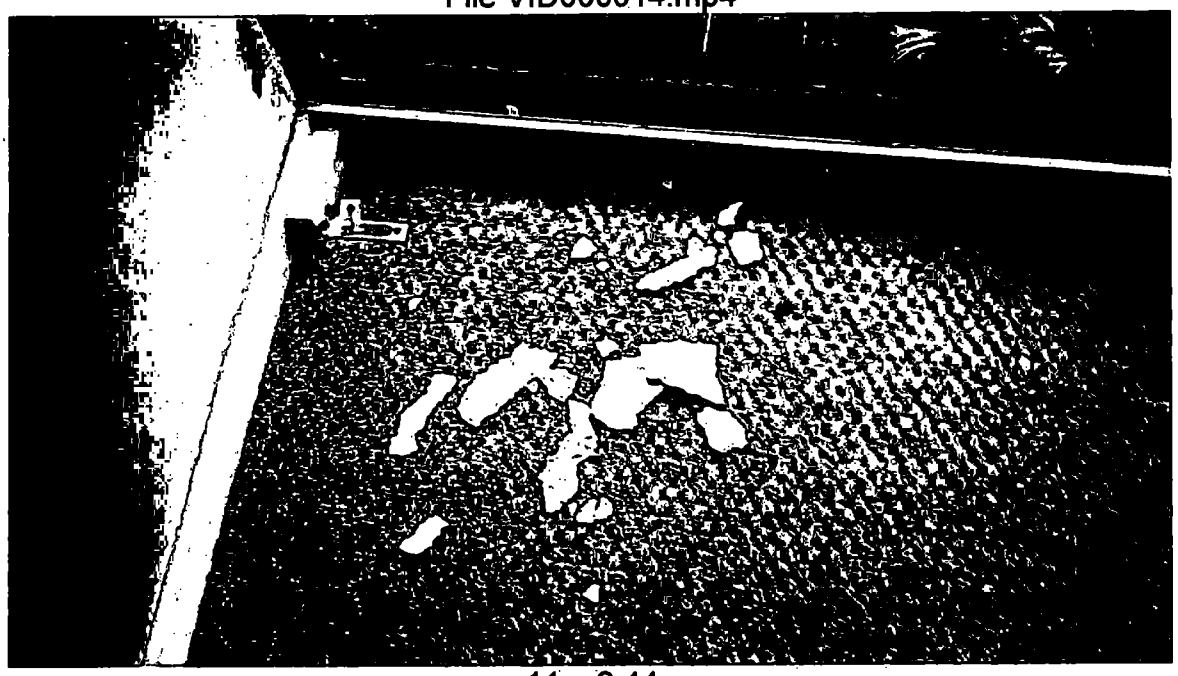


9 – 13:03

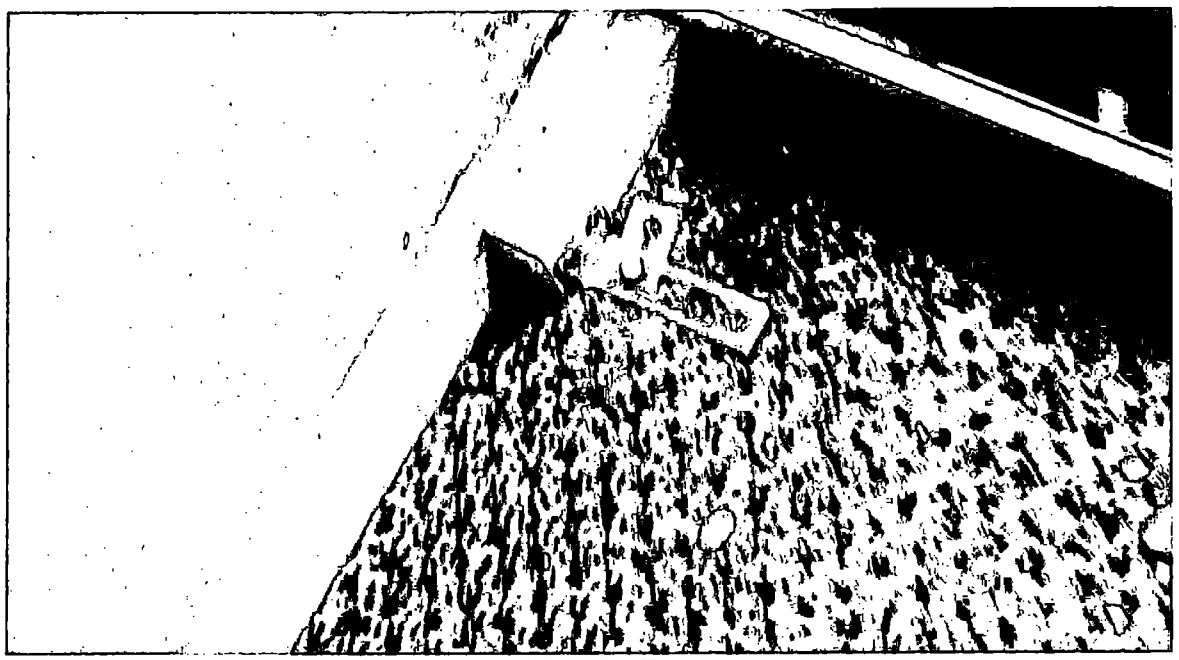


10 – 13:06

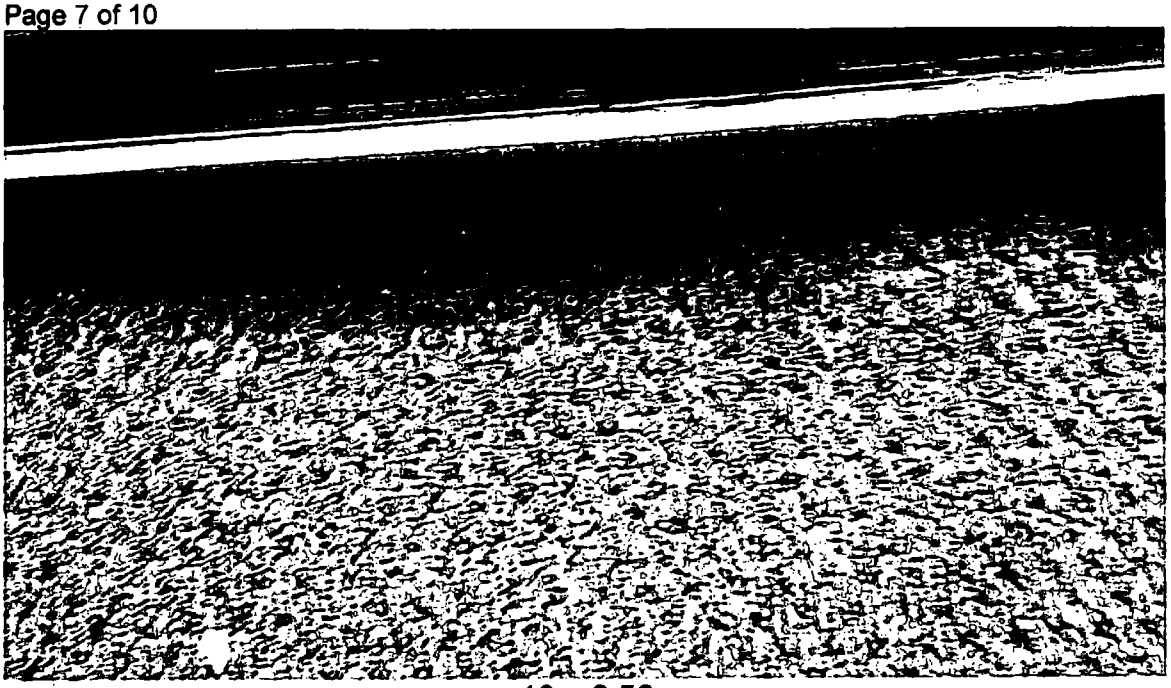
File VID000014.mp4



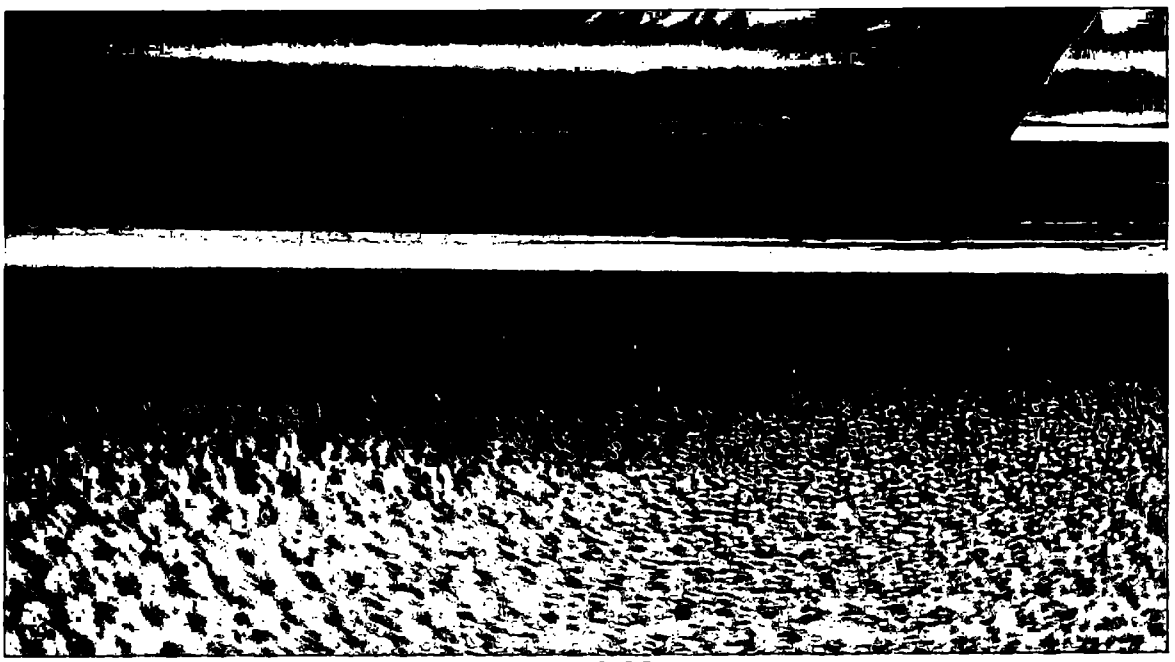
11 – 2:44



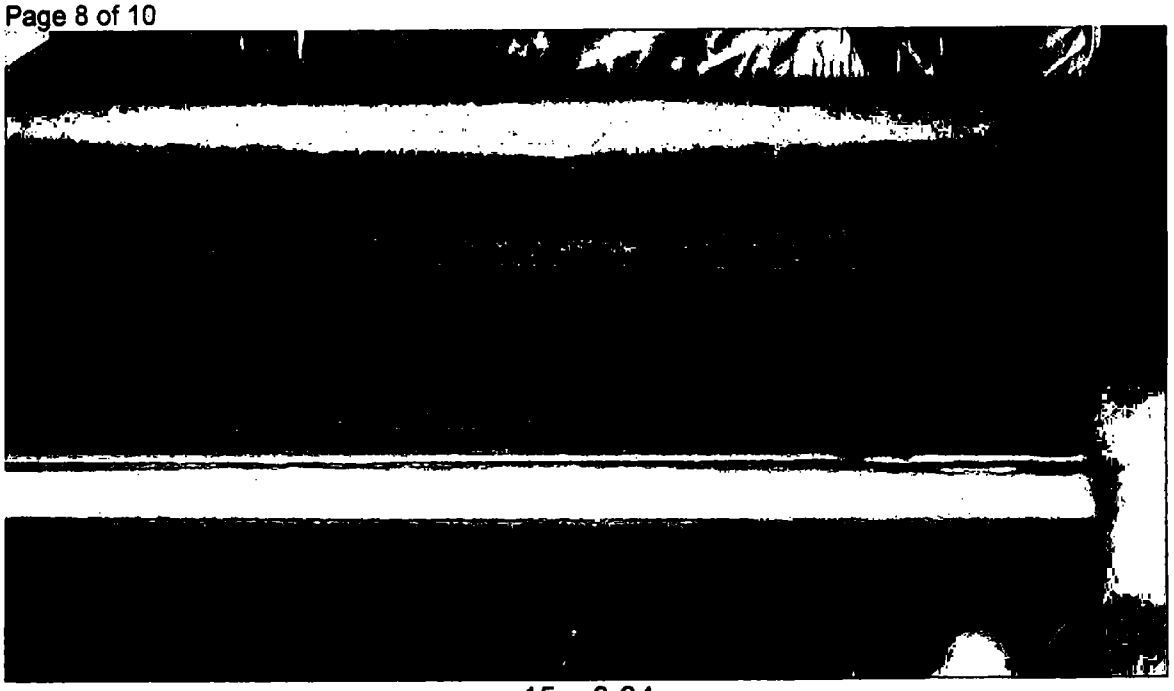
12 – 2:47



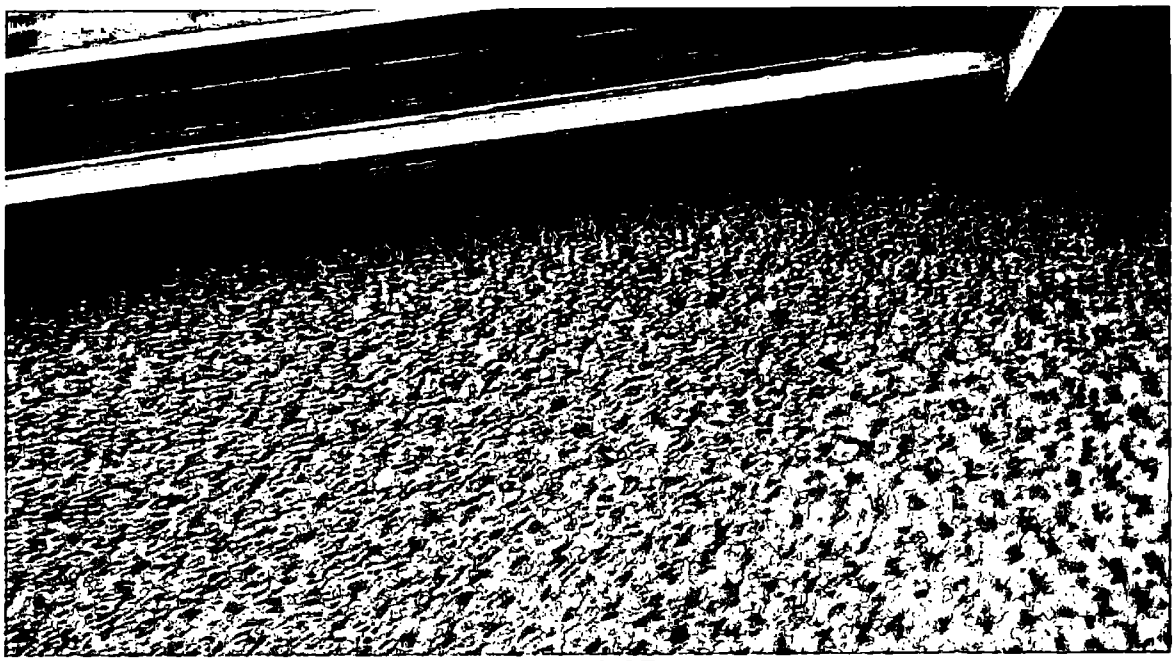
13 – 2:58



14 – 3:02



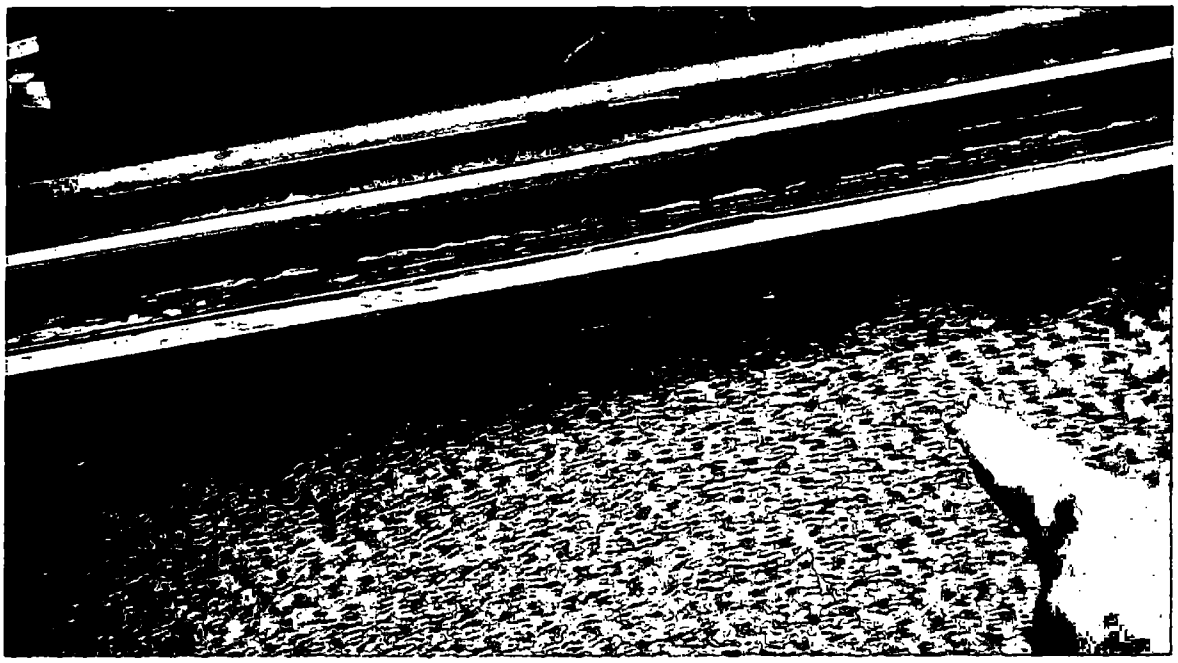
15 – 3:04



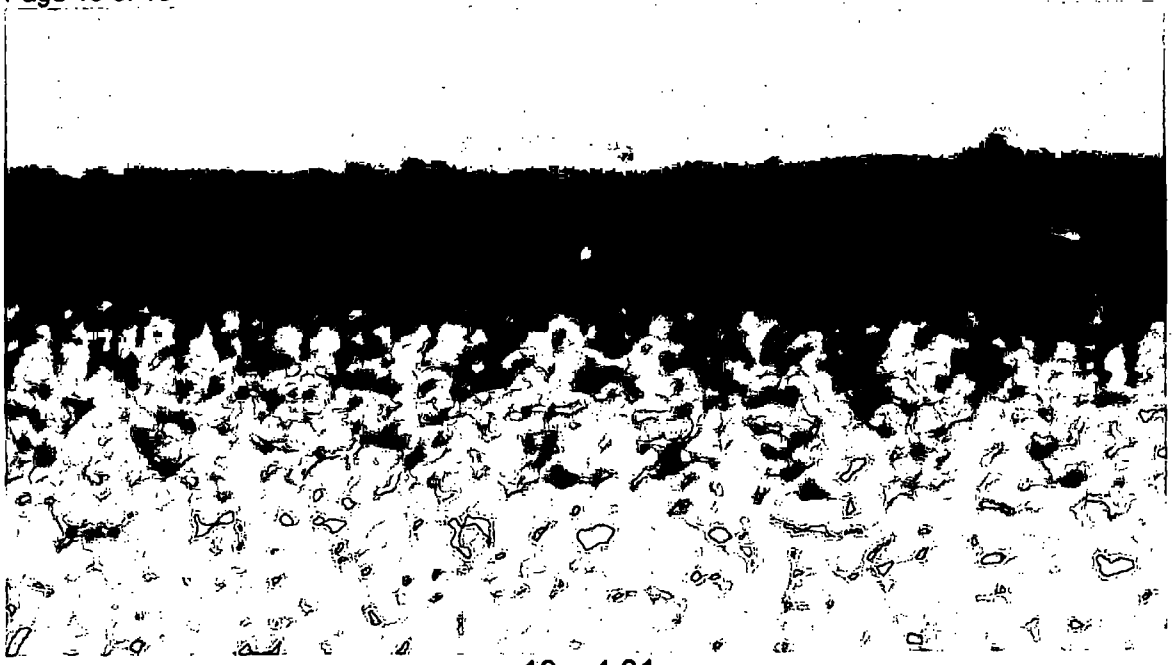
16 – 3:27



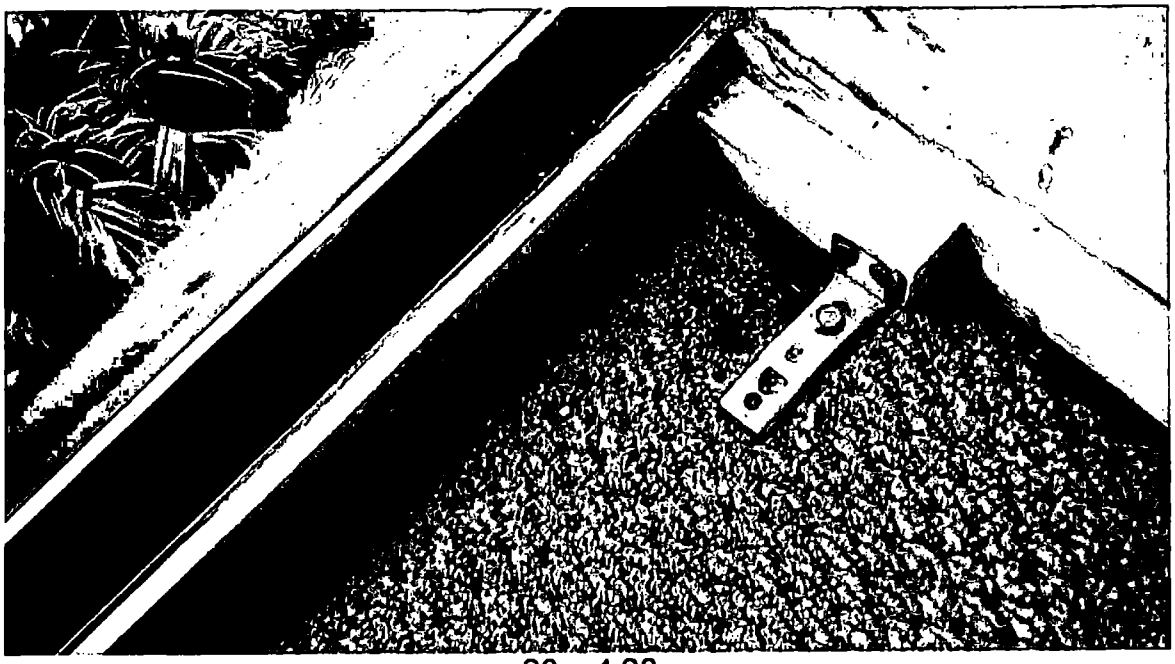
17 – 3:38



18 – 3:52



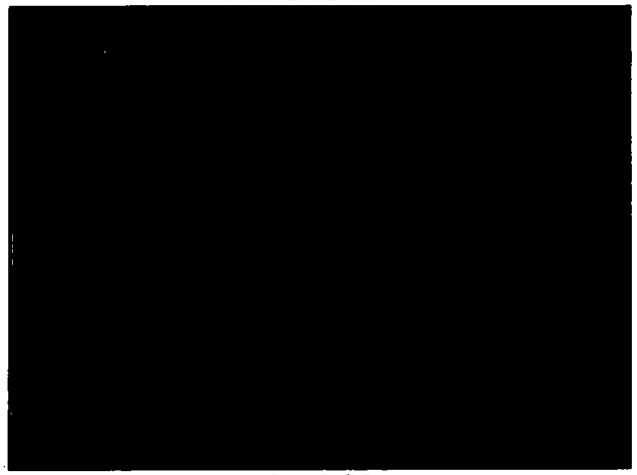
19 – 4:01



20 – 4:28

UNIT B12

File B12.wmv



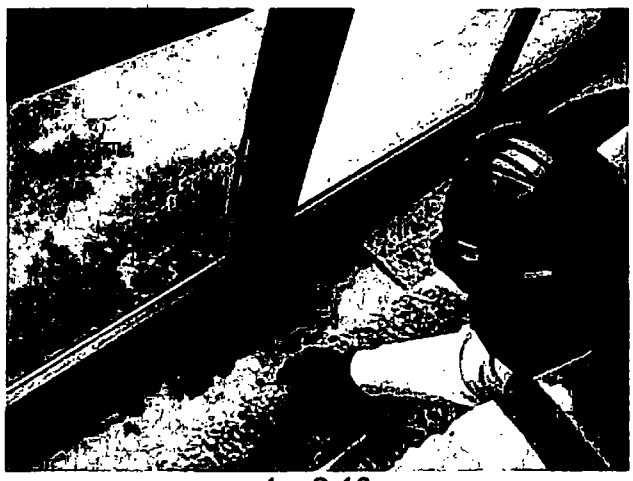
1 – 0:00



2 – 1:00



3 – 2:03



4 – 2:10



5 – 3:01



6 – 3:02



7 – 3:08

File B-STA2B12.wmv

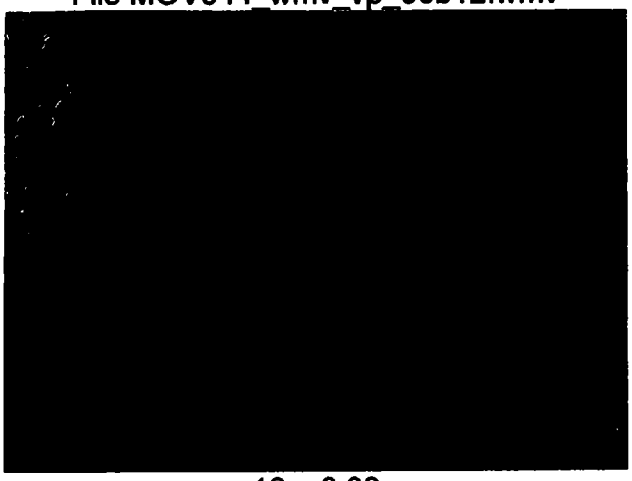


8 – 0:03

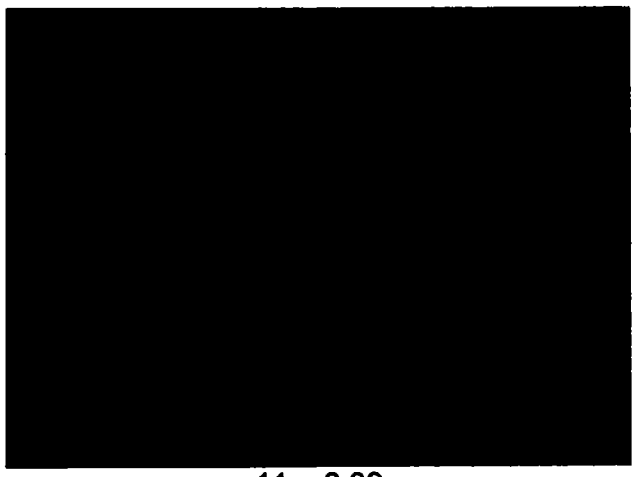


9 – 0:05

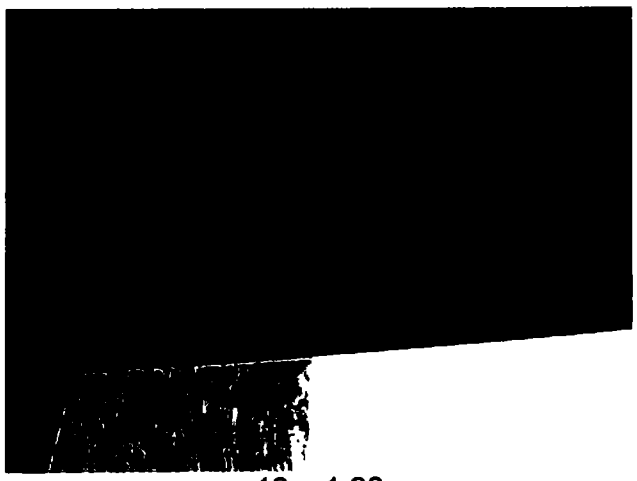
File MOV044_wmv_vp_00b12.wmv



10 – 0:38



11 – 0:39



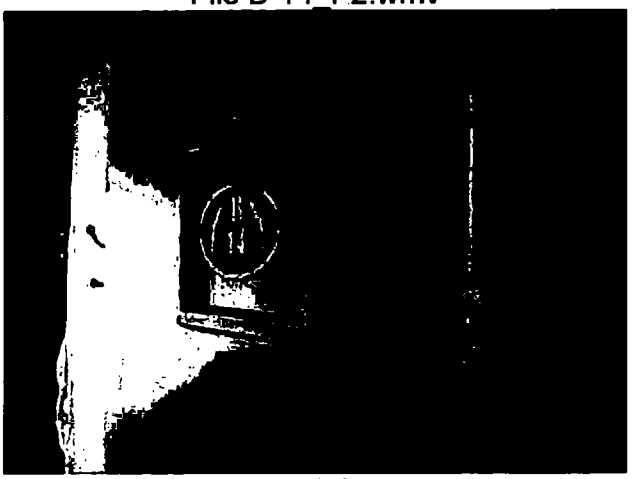
12 – 1:20



13 – 1:29

UNIT B14

File B-14_P2.wmv



7 – 0:03

File B-14_BR1.wmv



1 – 0:26



2 – 0:30



3 – 0:35



4 – 0:37

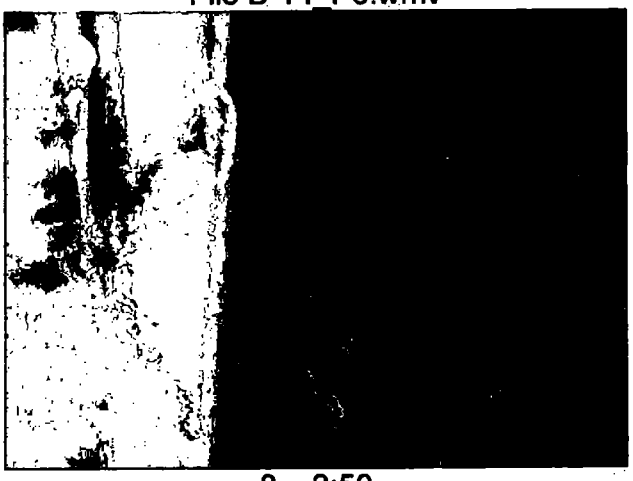


5 – 0:53

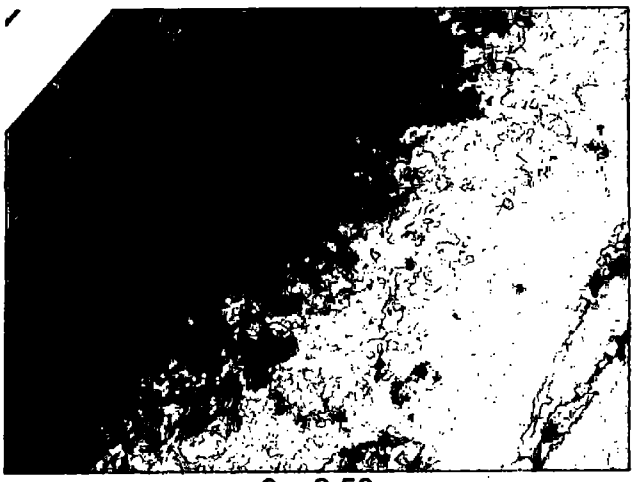


6 – 1:00

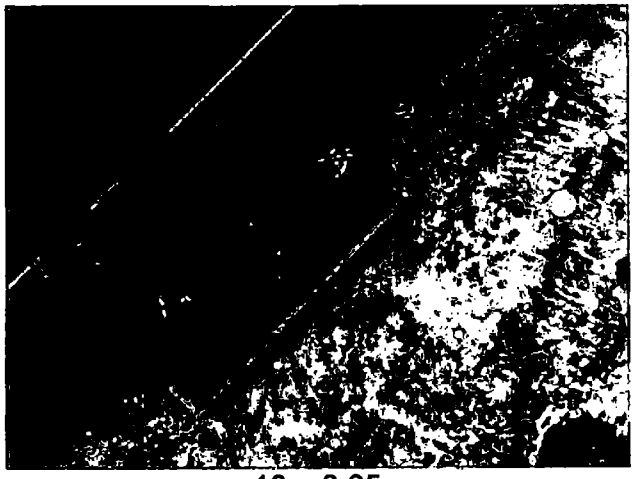
File B-14_P3.wmv



8 – 2:50



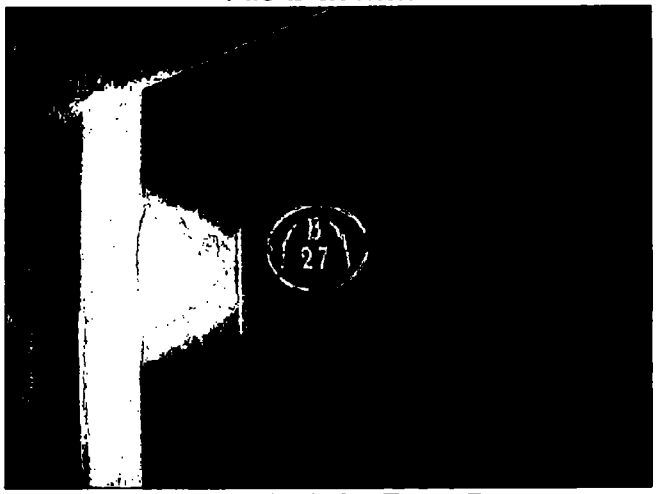
9 – 2:59



10 – 3:05

UNIT B27

File B-27.wmv



1 – (0:08) Unit 27 Front Door

File B-27_P2.wmv



2 – (0:30) Living room, left side of sliding glass door with carpet removed



3 – (0:33) Living room, mid left side of sliding glass door with carpet removed



4 – (0:34) Living room, middle of sliding glass door with carpet removed



5 – (0:35) Living room, middle right side of sliding glass door with carpet removed



6 – (0:36) Living room, right side of sliding glass door with carpet and padding removed



7 – (1:00) Living room, mid left side of sliding glass door with carpet and padding removed

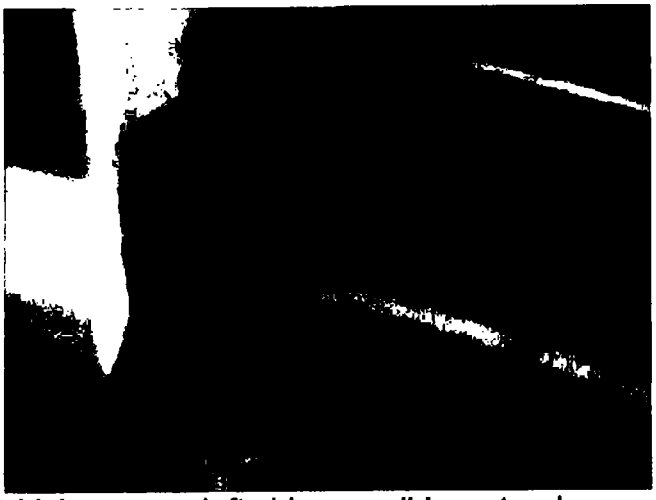


Photo 14 – (2:12) Living room, left side, possible water damage and black mold, cable line



Photo 15 – (2:15) Living room, middle left of sliding glass, possible water damage and black mold, cable

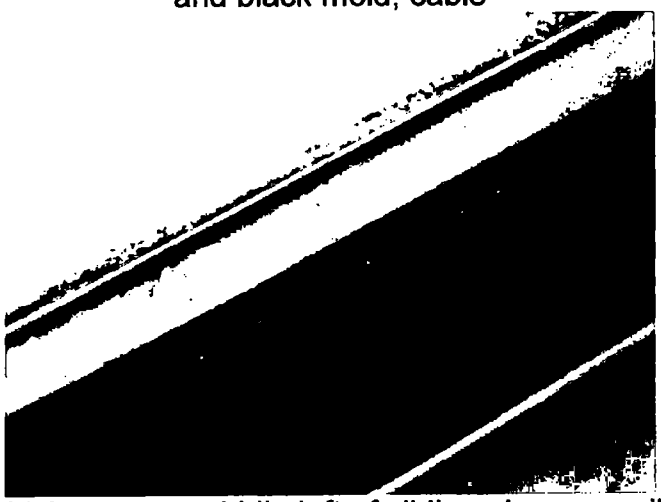


Photo 16 – (2:23) Living room, middle left of sliding glass, possible water damage and black mold, cable



Photo 17 – (2:27) Living room, middle of sliding glass, possible water damage and black mold, cable



Photo 18 – (2:28) Living room, closer view of Photo 17, middle left of sliding glass, possible water damage and black mold, cable



Photo 19 – (2:35) Living room, middle right of sliding glass, possible water damage and black mold, cable



Photo 19 – (2:40) Living room, middle right of sliding glass, possible water damage and black mold, cable



Photo 20 – (2:59) Living room, right of sliding glass, possible water damage and black mold, cable

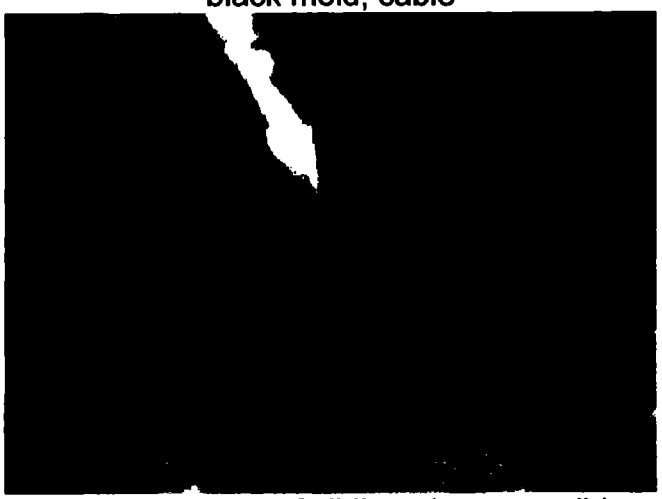
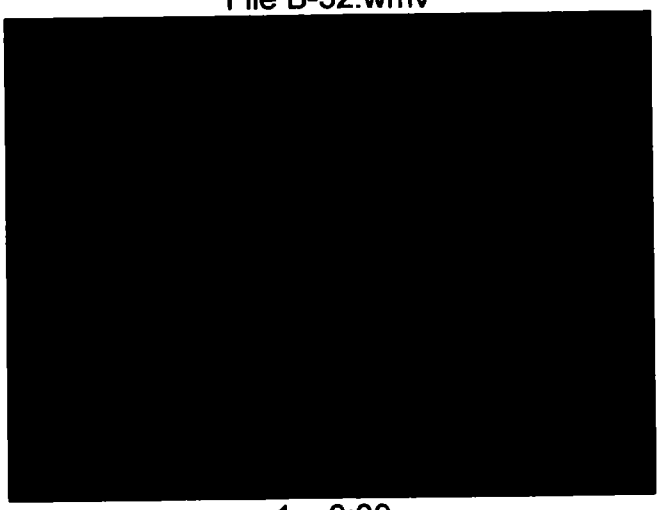


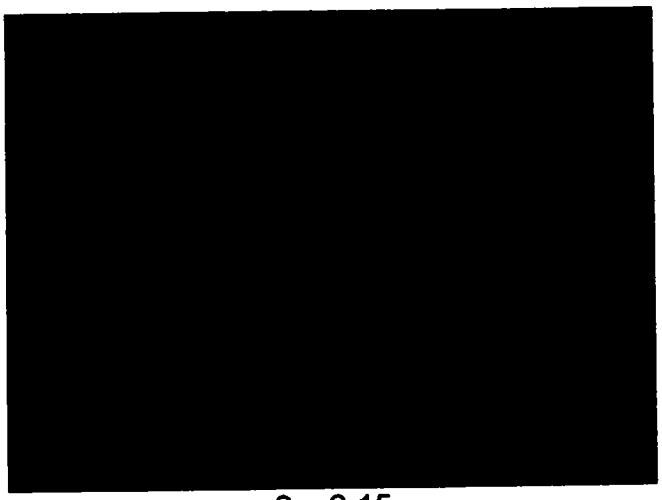
Photo 21 – (3:02) Living room, right of sliding glass, possible water damage and black mold, cable

UNIT B32

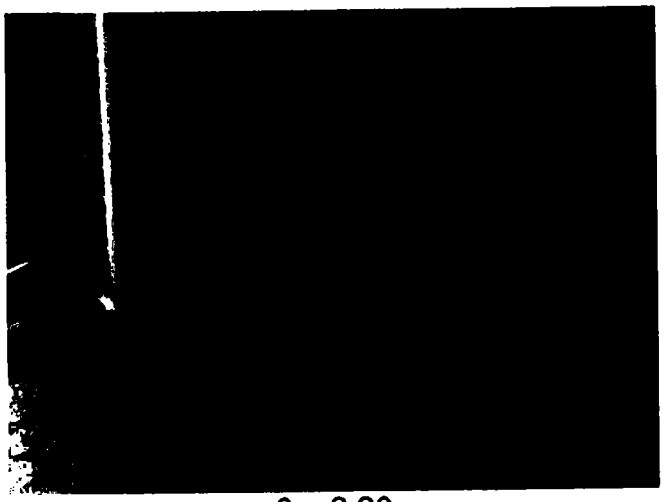
File B-32.wmv



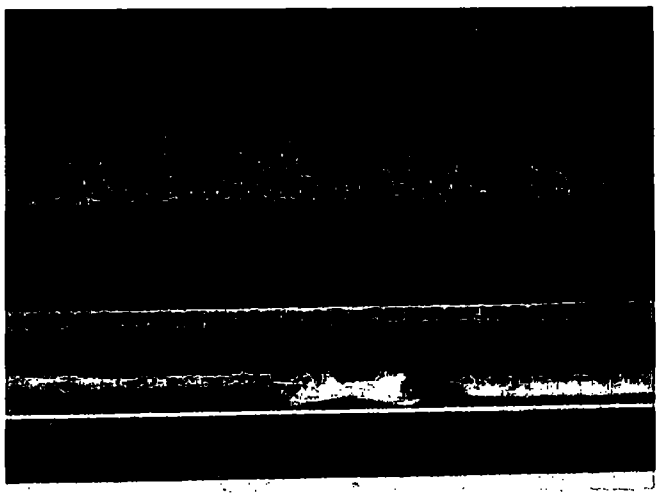
1 – 0:00



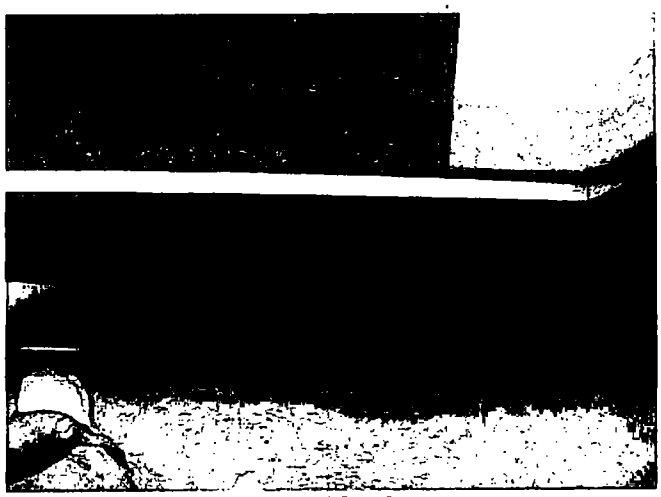
2 – 2:15



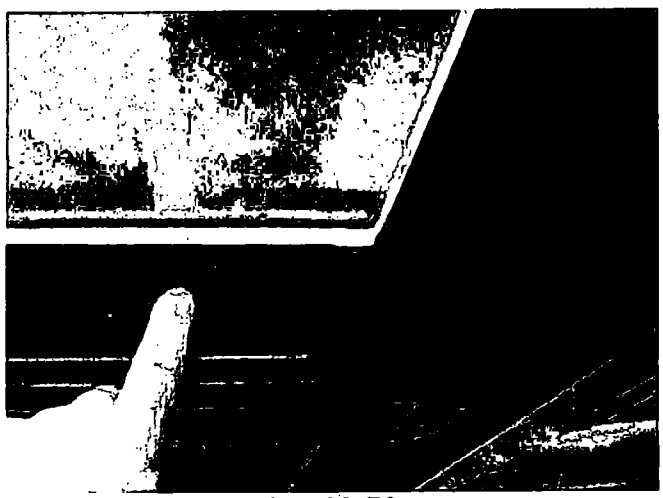
3 – 2:23



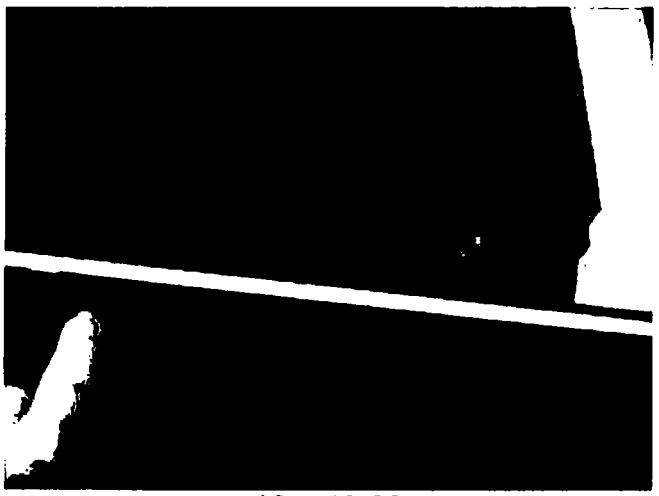
7 – 12:33



8 – 12:52



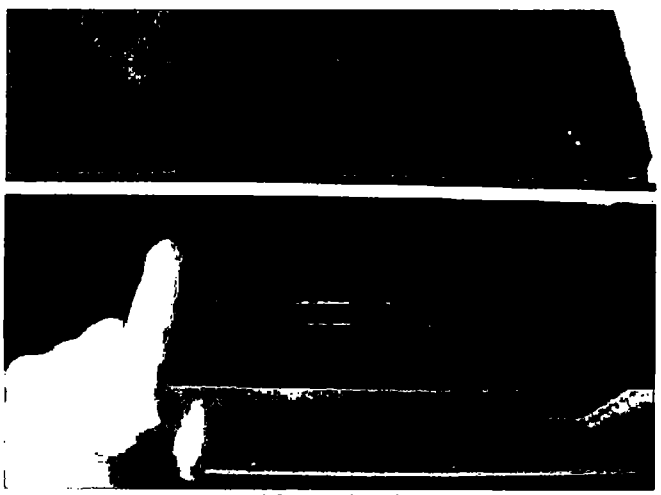
9 – 12:59



10 – 13:02



11 – 13:05



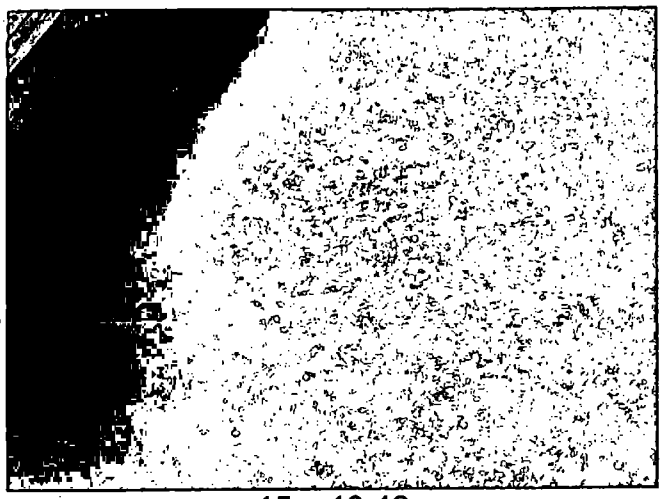
12 – 13:08



13 – 13:29



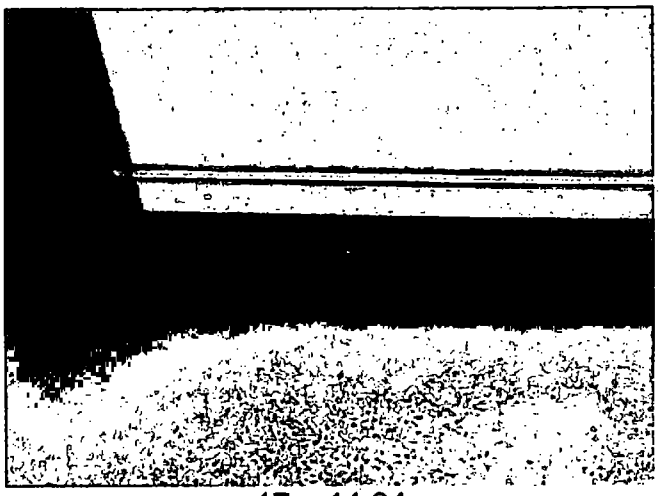
14 – 13:42



15 – 13:48



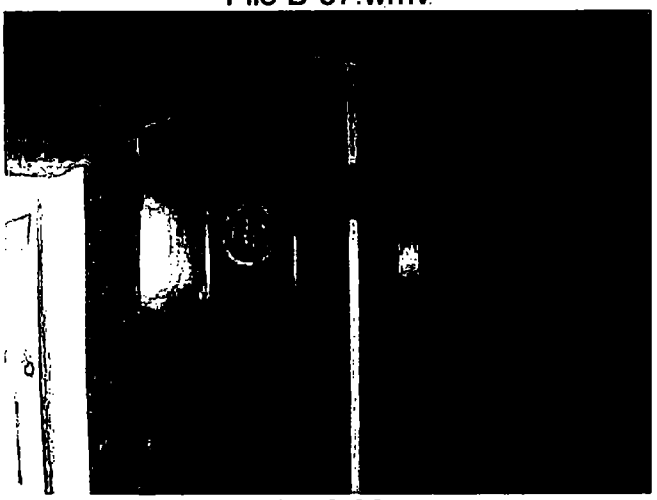
16 – 13:56



17 – 14:04

UNIT B37

File B-37.wmv



1 – 0:00

File BR1.wmv



2 – 0:07



3 – 0:13



4 – 0:25



5 – 0:41



6 – 0:16



7 – 0:22

UNIT B51

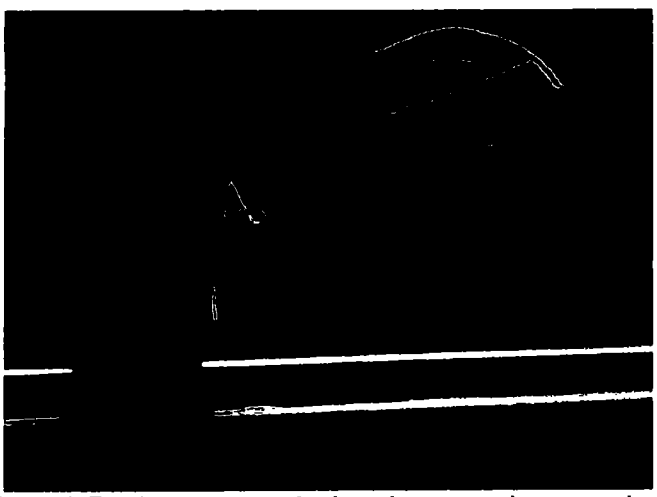
B-51.wmv



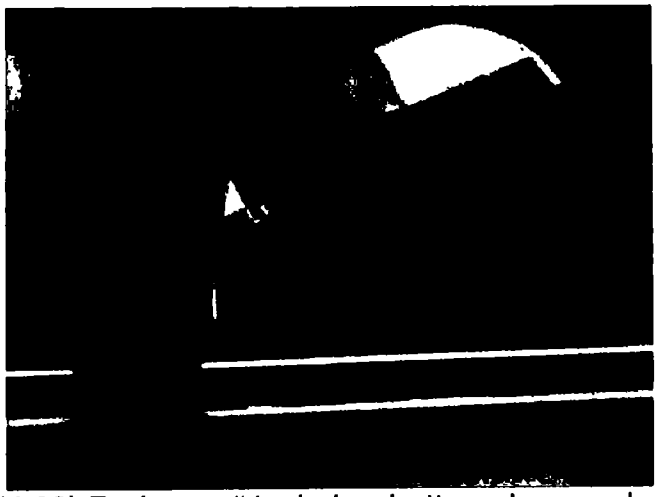
1 – (3:59) Bedroom #1 window upper left damage



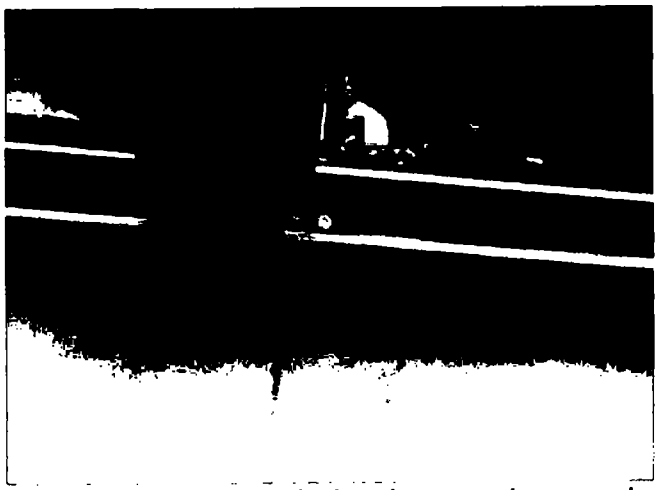
2 – (4:05) Bedroom #1 window bottom damaged wood



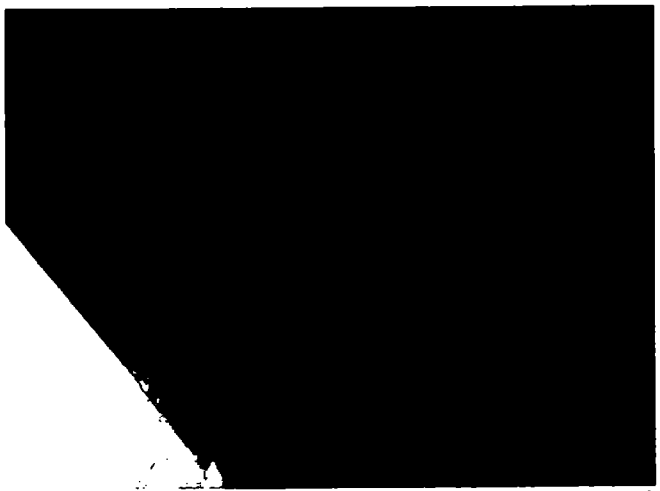
3 – (4:09) Bedroom #1 window bottom damaged wood



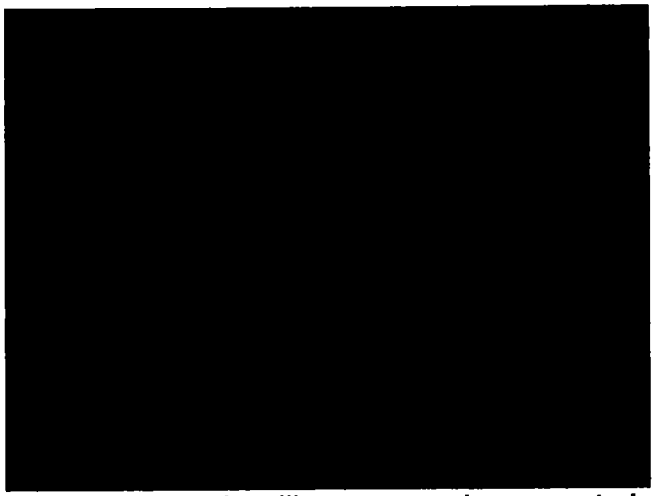
4 – (4:09) Bedroom #1 window bottom damaged wood



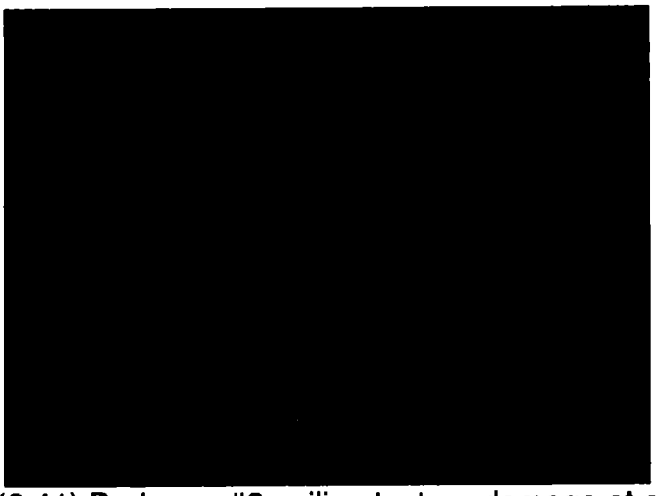
5 – (4:17) Bedroom #1 window bottom damaged wood



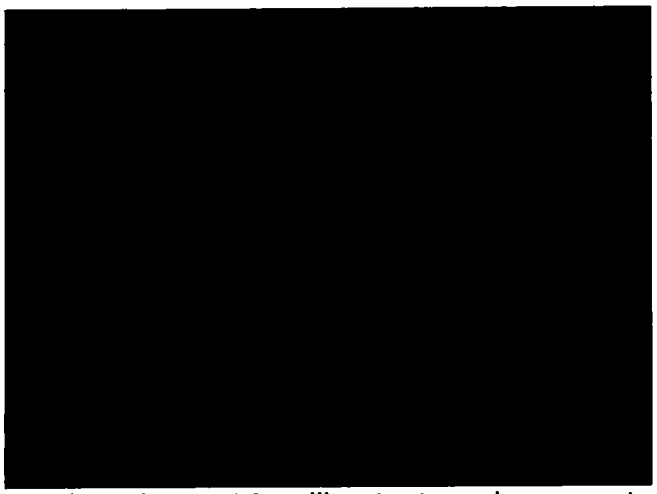
6 – (6:02) Bedroom #2 ceiling texture damage at windows



7 – (6:31) Bedroom #2 ceiling texture damage at sink area



8 – (6:41) Bedroom #2 ceiling texture damage at entry



9 – (7:11) Bedroom #3 ceiling texture damage at entry



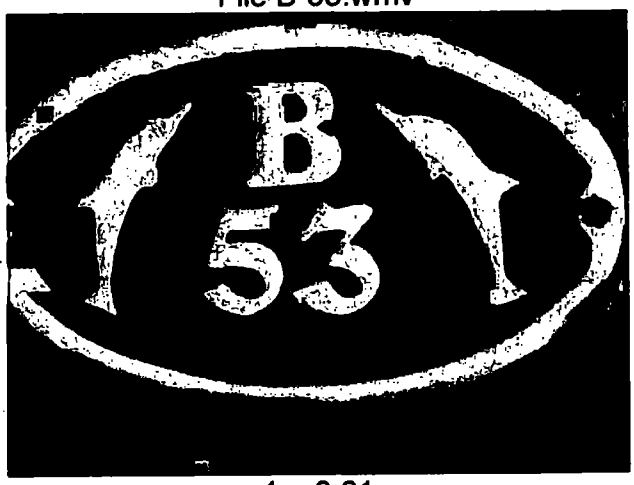
10 – (9:06) Kitchen window sill water damage to wood



11 – (9:07) Kitchen window sill water damage to wood

UNIT B53

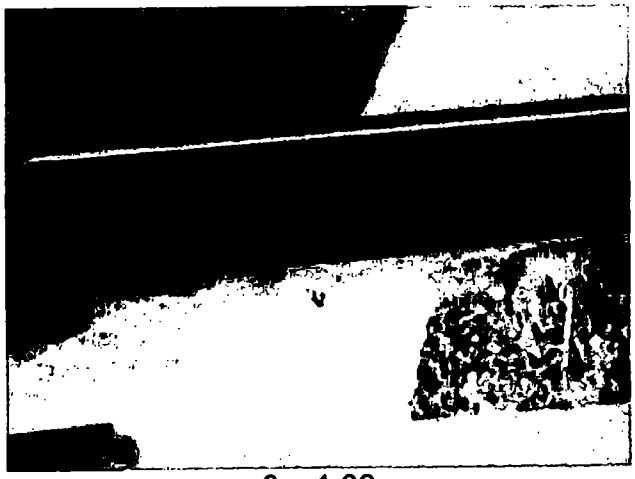
File B-53.wmv



1 – 0:01



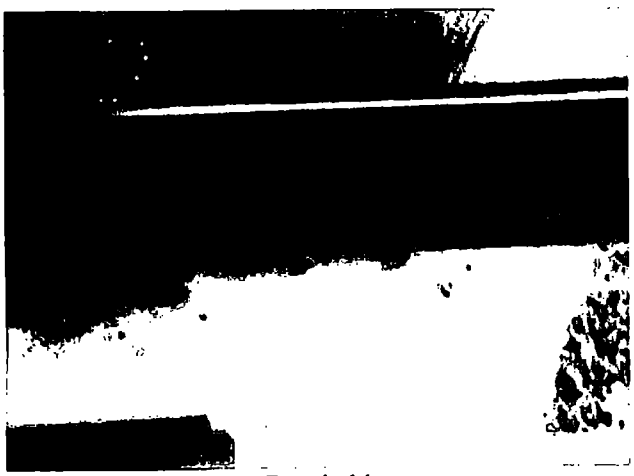
2 – 0:30



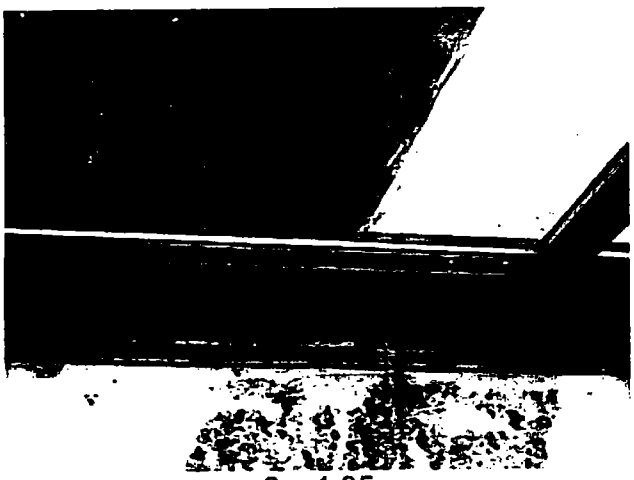
3 – 1:36



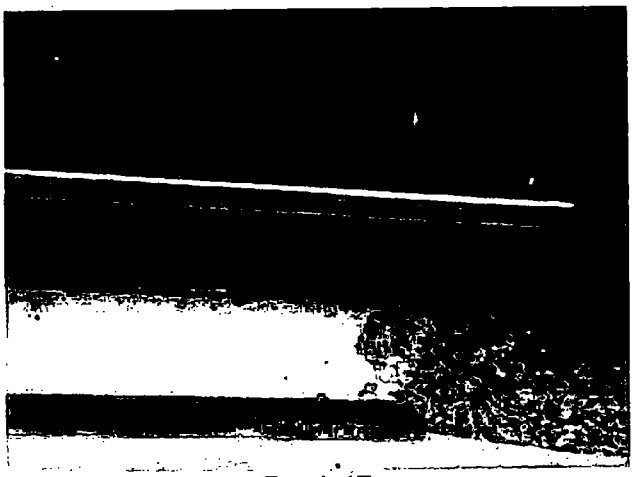
4 – 1:37



5 – 1:41



6 – 1:35

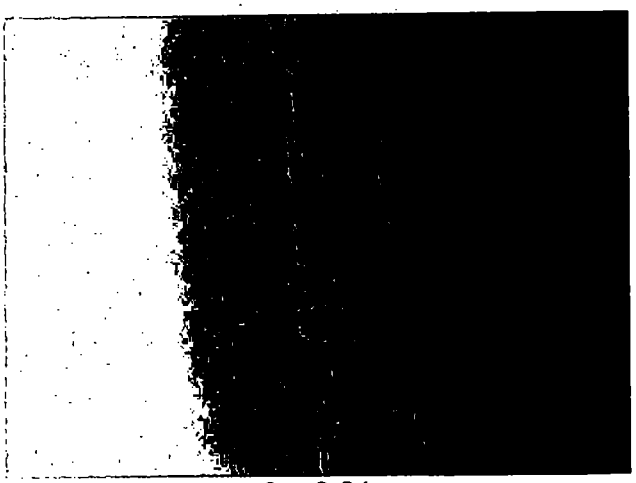


7 – 1:47

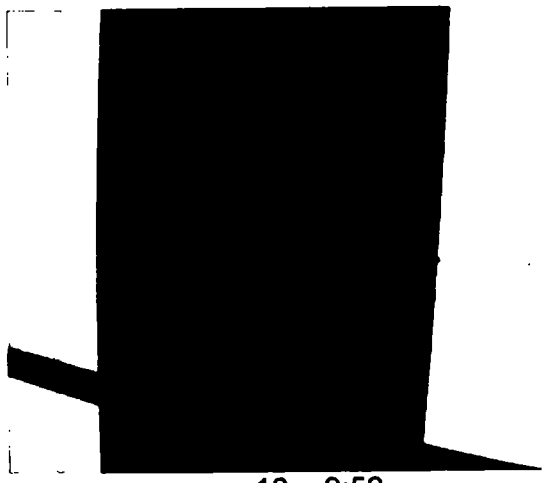
File B-53B.wmv



8 – 2:29



9 – 3:21



10 – 9:52



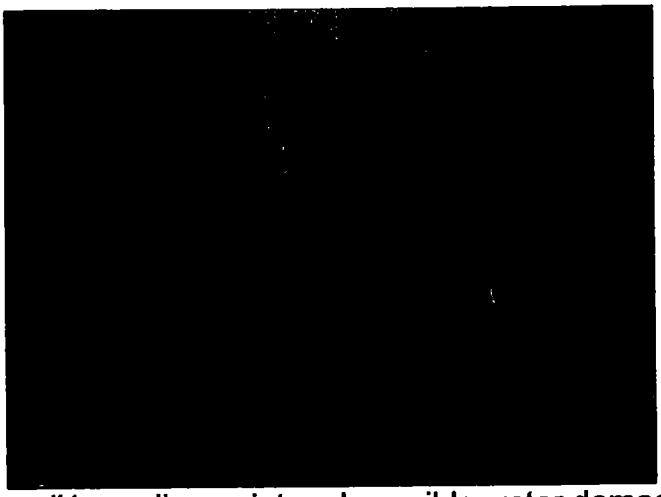
11 – 10:01

UNIT B54

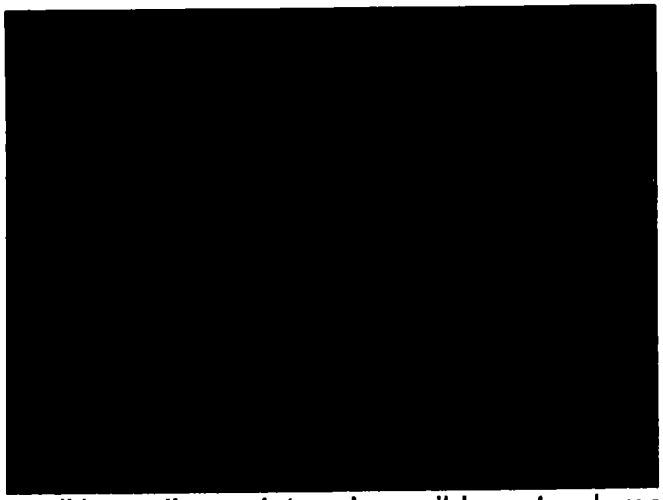
File B-54.wvm



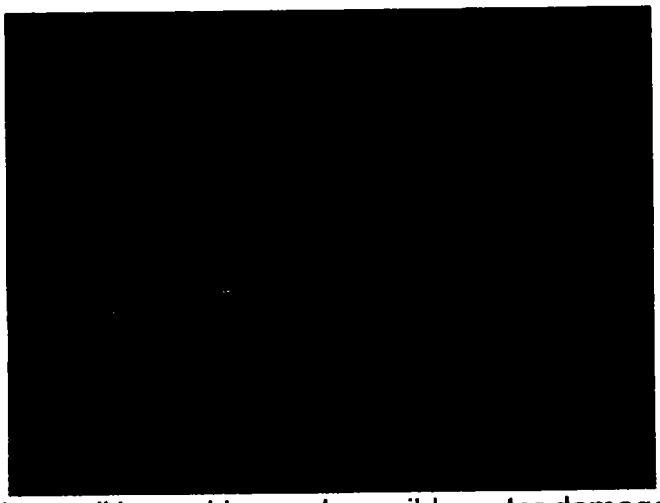
1 – (0:02) B54 Unit Door



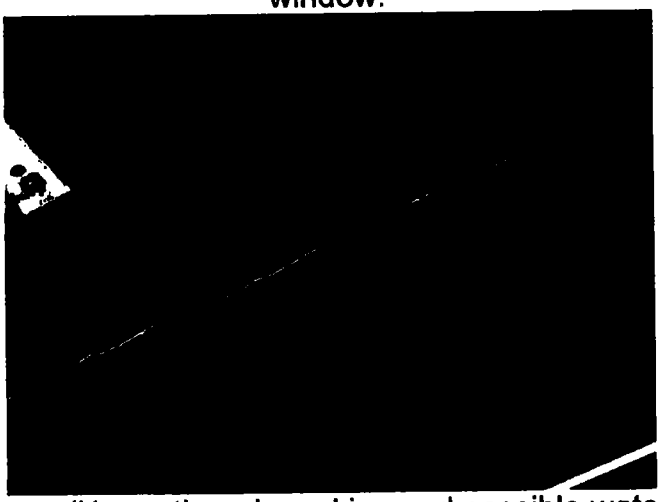
2 – (2:59) Bedroom #1, peeling paint and possible water damage at right bottom of window.



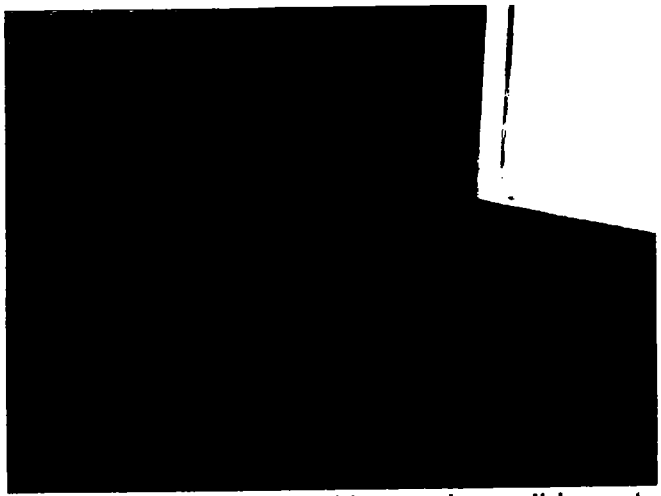
3 – (3:09) Bedroom #1, peeling paint and possible water damage at top right of window and wall.



4 – (3:22) Bedroom #1, cracking and possible water damage along wall at window.



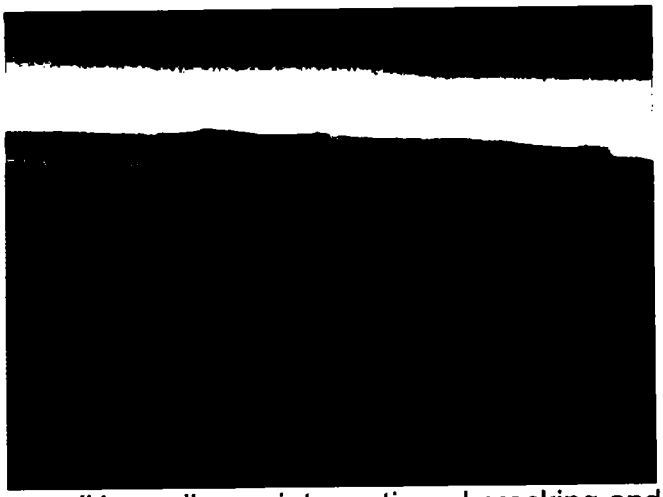
5 – (3:47) Bedroom #1, continued cracking and possible water damage along wall at window.



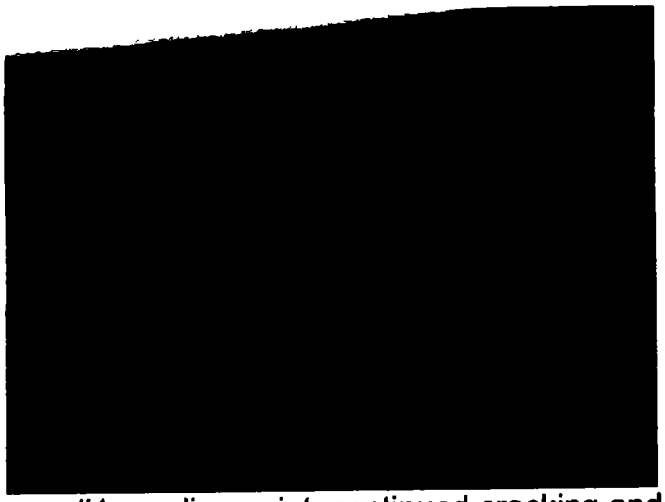
6 – (4:04) Bedroom #1, continued cracking and possible water damage along wall at window



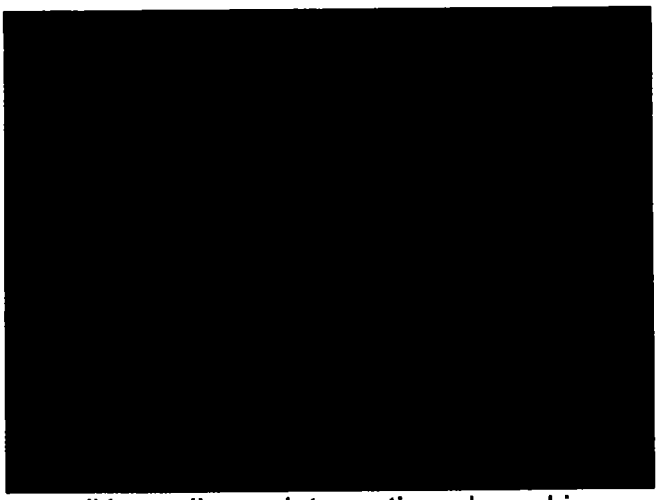
7 – (4:06) Bedroom #1, continued cracking and possible water damage along wall at window



8 – (4:11) Bedroom #1, peeling paint, continued cracking and possible water damage along wall at window sill at left side

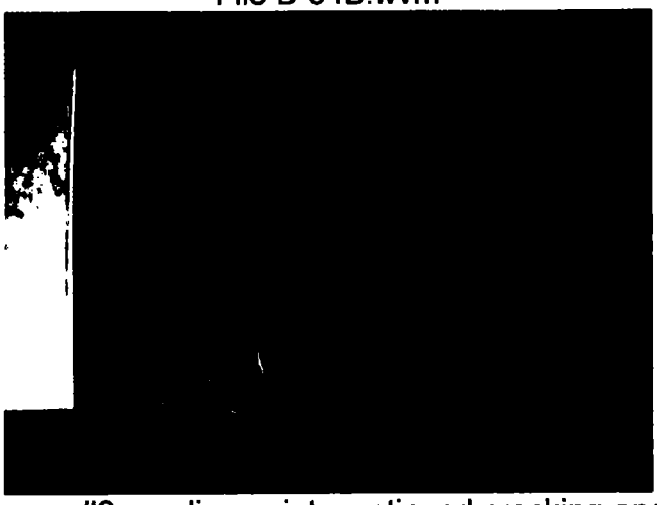


9 – (4:15) Bedroom #1, peeling paint, continued cracking and possible water damage along wall at window sill at left side

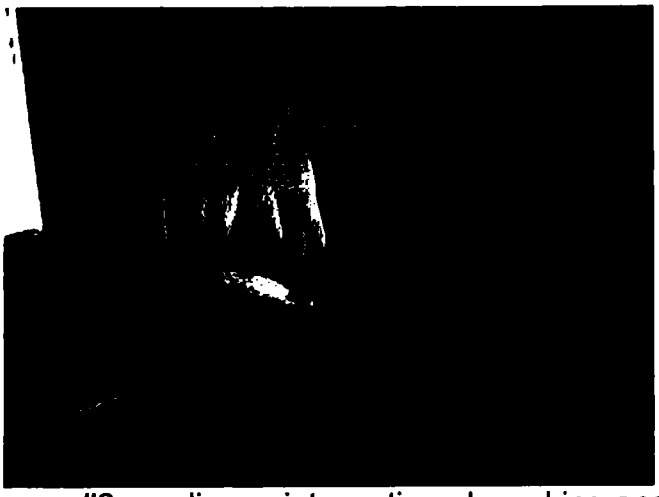


10 – (4:21) Bedroom #1, peeling paint, continued cracking and possible water damage along wall at window sill at right side

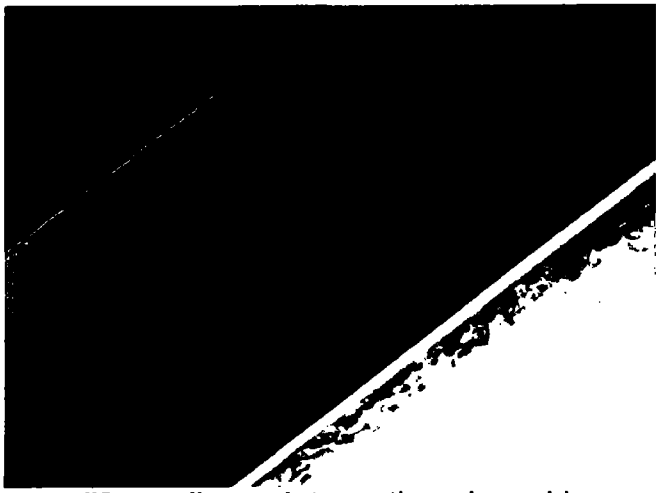
File B-54B.wvm



11 – (1:41) Bedroom #2, peeling paint, continued cracking and possible water damage along wall at window right side



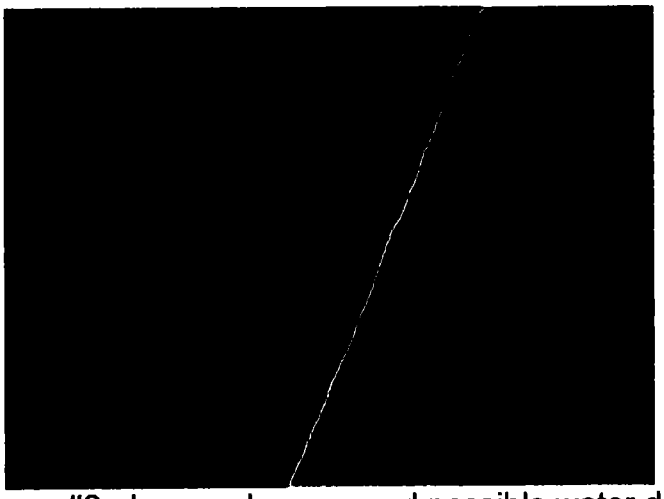
12 – (1:46) Bedroom #2, peeling paint, continued cracking and possible water damage along wall at window right side



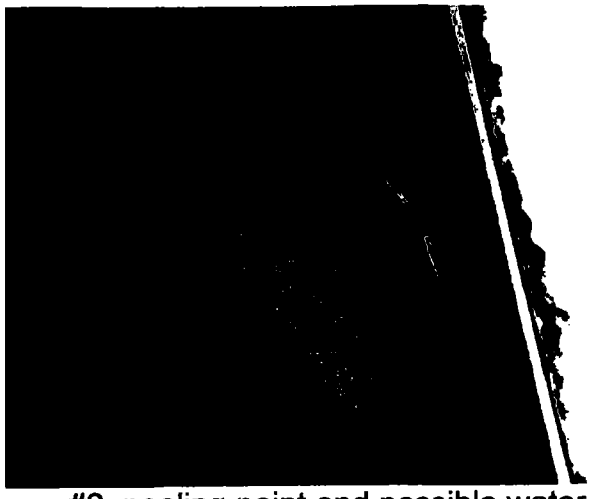
13 – (2:09) Bedroom #2, peeling paint, continued cracking and possible water damage at top right side of window



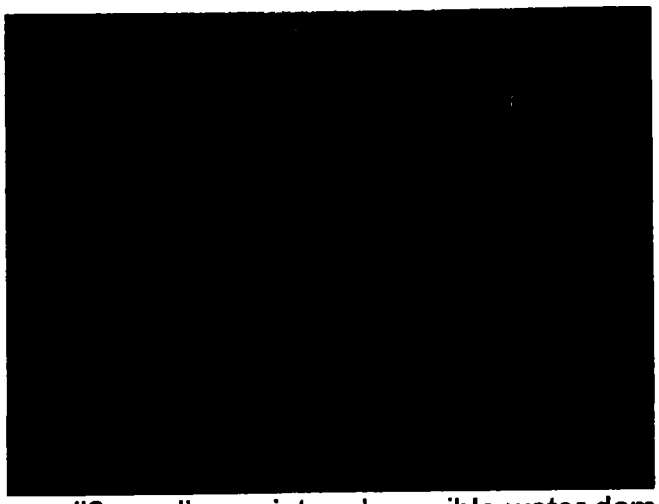
14 – (2:25) Bedroom #2, continued cracking and possible water damage along wall at top right side



15 – (2:40) Bedroom #2, damaged corner and possible water damage along left side at window



16 – (3:01) Bedroom #2, peeling paint and possible water damage along wall at window left side



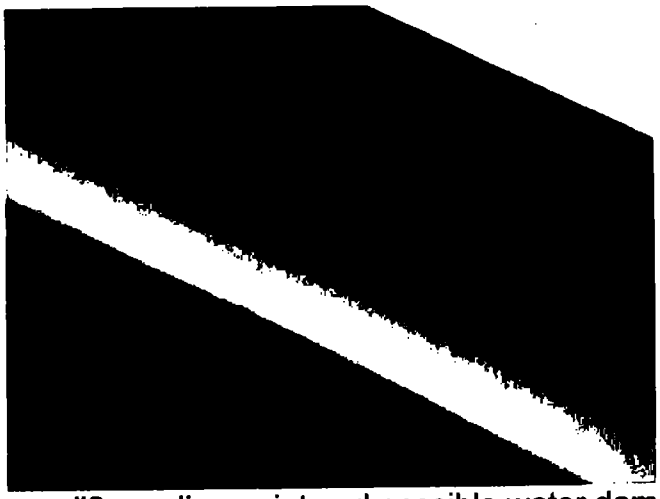
17 – (3:08) Bedroom #2, peeling paint and possible water damage along wall at window left side



18 – (3:20) Bedroom #2, peeling paint and possible water damage along wall at window midway



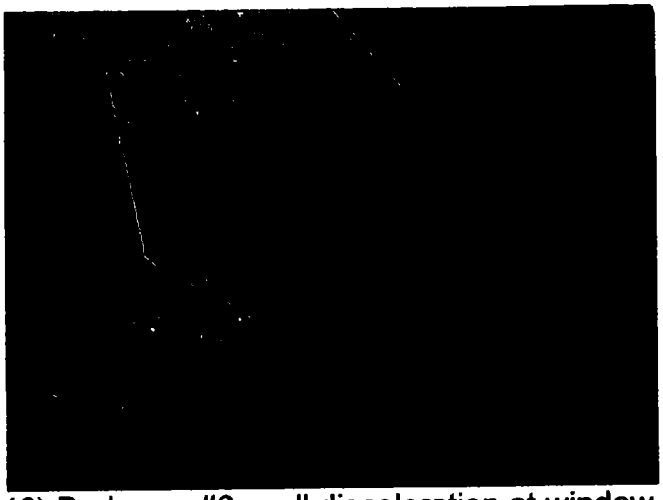
19 – (3:23) Bedroom #2, peeling paint and possible water damage along wall at window midway



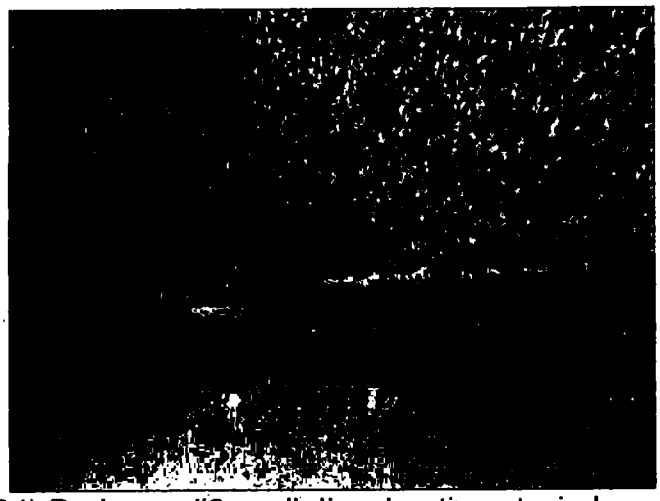
20 – (3:25) Bedroom #2, peeling paint and possible water damage along wall at window midway



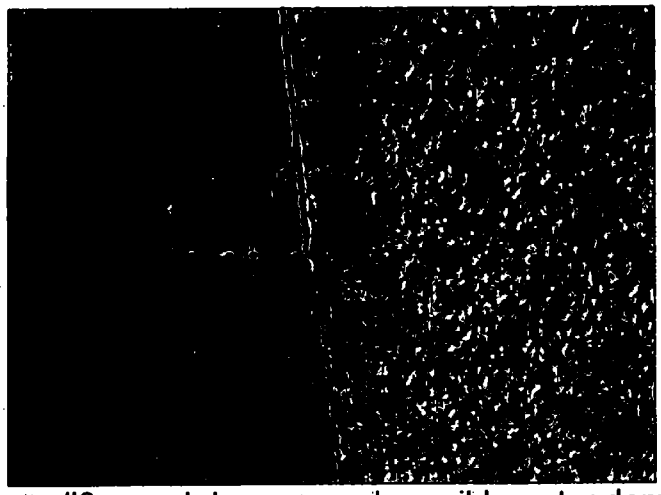
21 – (4:25) Bedroom #2, wall crack and possible water damage



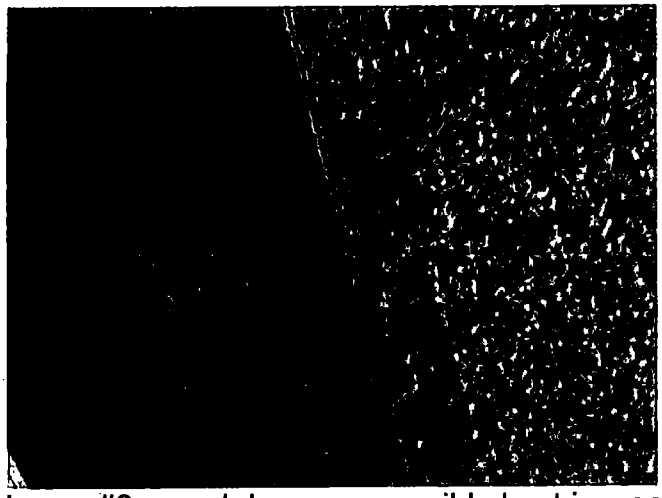
22 – (6:40) Bedroom #3, wall discoloration at window left side



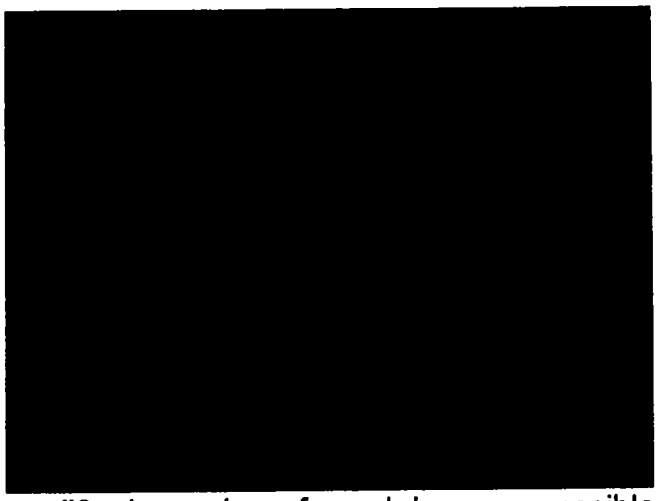
23 – (7:34) Bedroom #3, wall discoloration at window right side



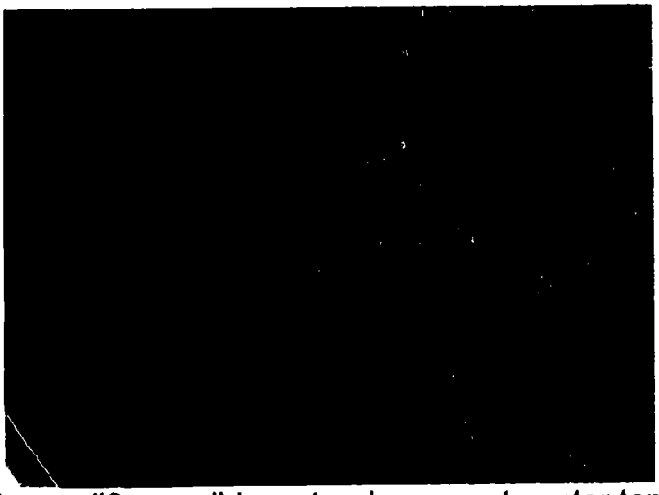
24 – (7:09) Bedroom #3, wood damage and possible water damage at center top of window and ceiling



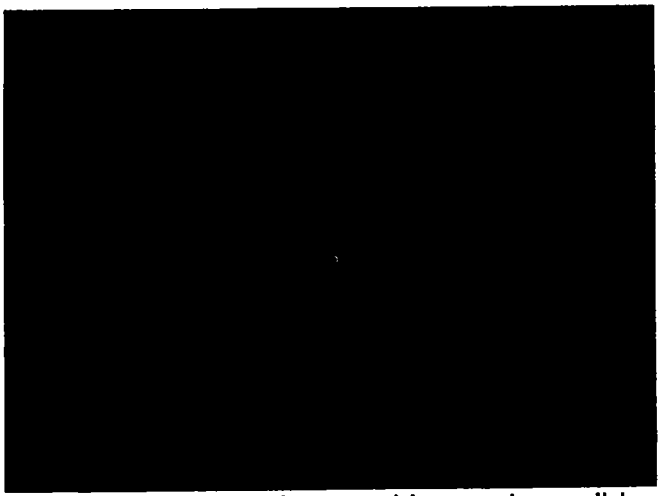
25 – (7:21) Bedroom #3, wood damage, possible knot in wood and possible water damage at center top of window and ceiling



26 – (7:23) Bedroom #3, closer view of wood damage, possible knot in wood and possible water damage at center top of window and ceiling



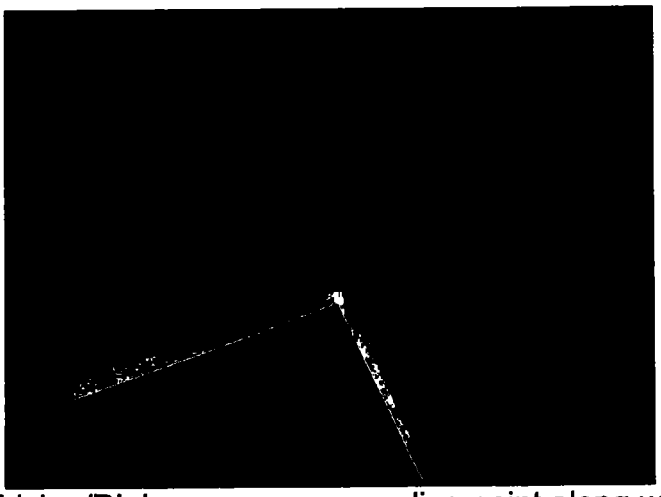
27 – (7:28) Bedroom #3, possible water damage at center top of window and ceiling



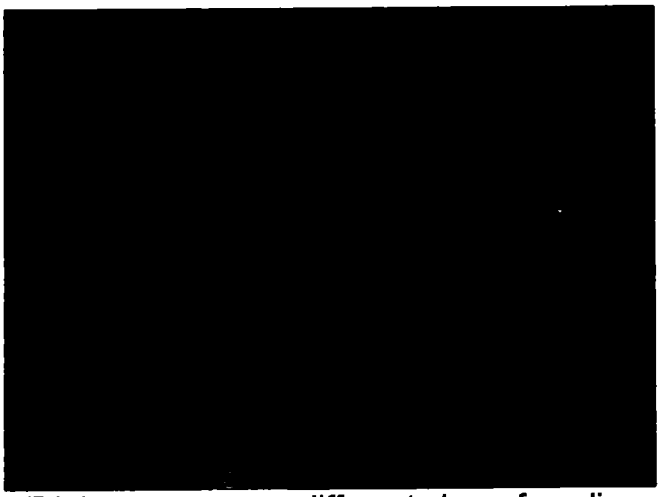
28 – (7:38) Bedroom #3, peeling paint, cracking and possible water damage at right side of window and ceiling



29 – (11:06) Living/Dining room area, possible termite damage along wall



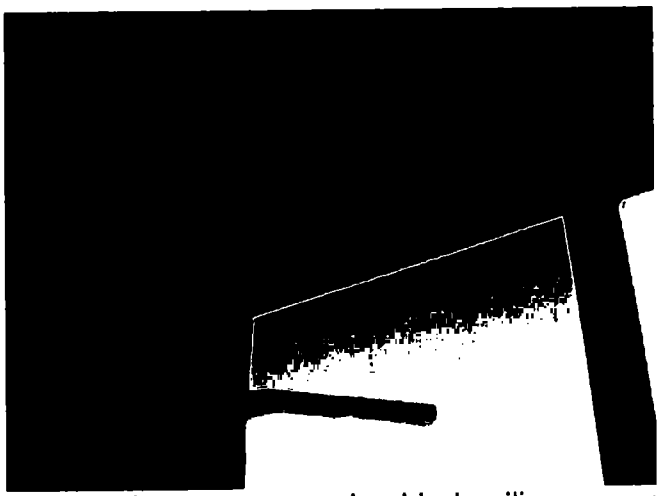
30 – (11:23) Living/Dining room area, peeling paint along wall to left and discoloration along wall to right



31 – (11:34) Living/Dining room area, different view of peeling paint along wall in picture 29 (11:23)



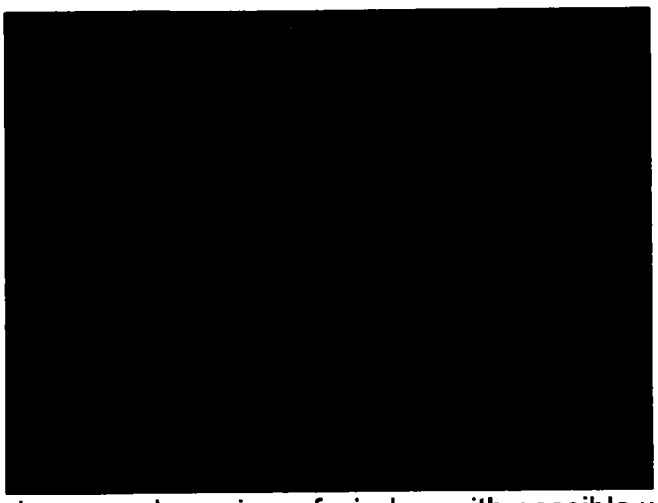
32 – (12:40) Living/Dining room area, possible water damage in corner at sliding glass



33 – (12:55) Living/Dining room area, buckled ceiling area at sliding glass



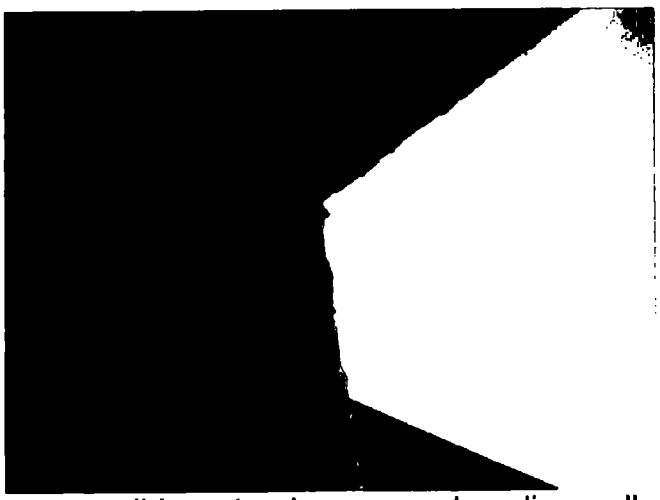
34 – (14:13) Kitchen, window with possible water damage



35 – (14:15) Kitchen, up-close view of window with possible water damage in picture 33 (14:13)



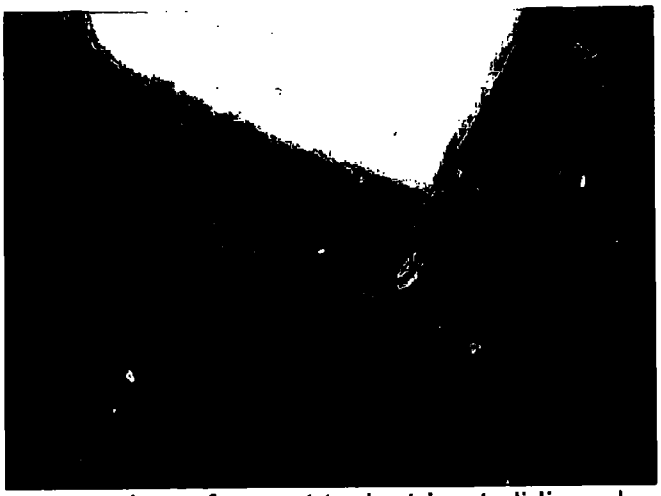
36 – (14:31) Kitchen, possible water damage and peeling wall paper at top of window



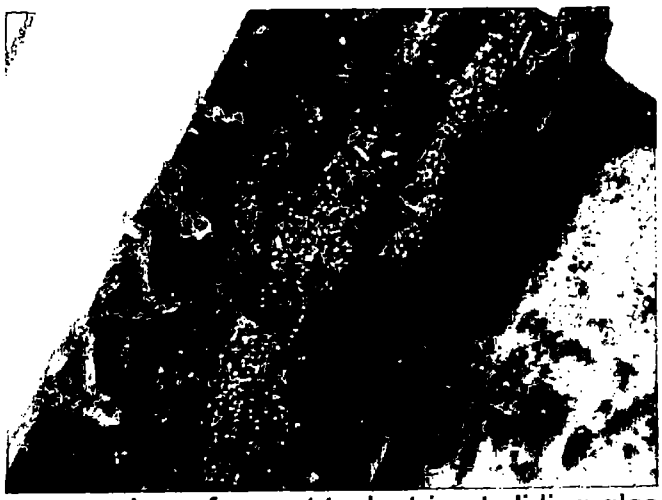
37 – (14:36) Kitchen, possible water damage and peeling wall paper at left top of window



43 – (1:28) Living room, View of carpet tack strip, possible water damage



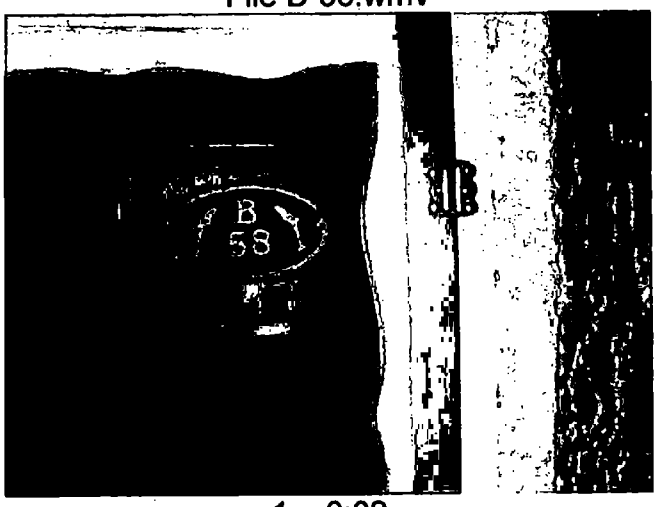
44 – (1:46) Living room, view of carpet tack strip at sliding glass doors, possible water damage and mold



45 – (1:48) Living room, view of carpet tack strip at sliding glass doors, possible water damage and mold

UNIT B58

File B-58.wmv

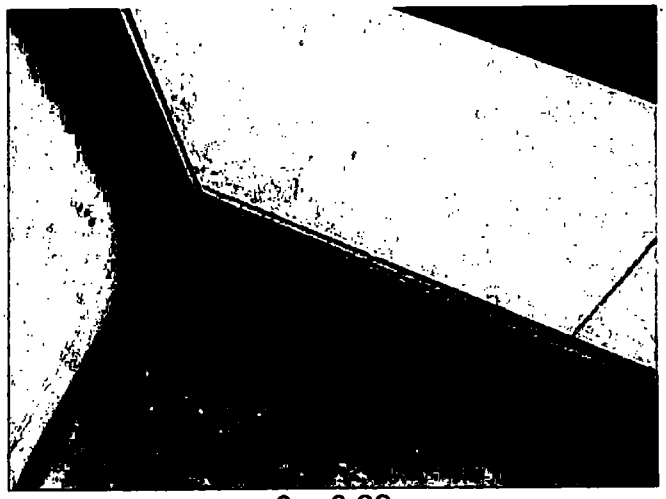


1 – 0:02

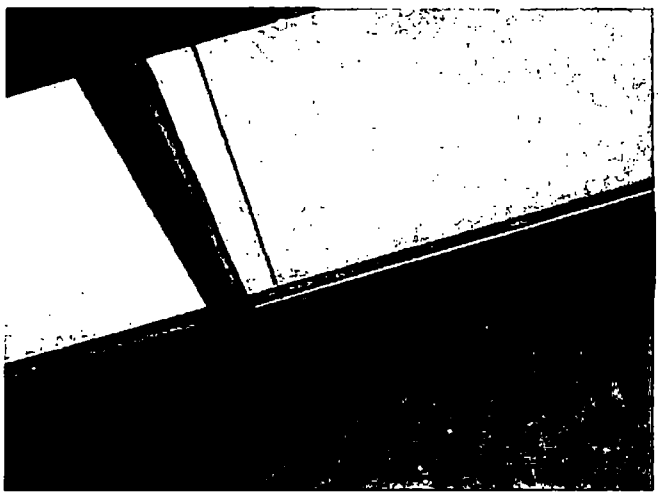
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2 – 0:14



3 – 0:22



4 – 0:25

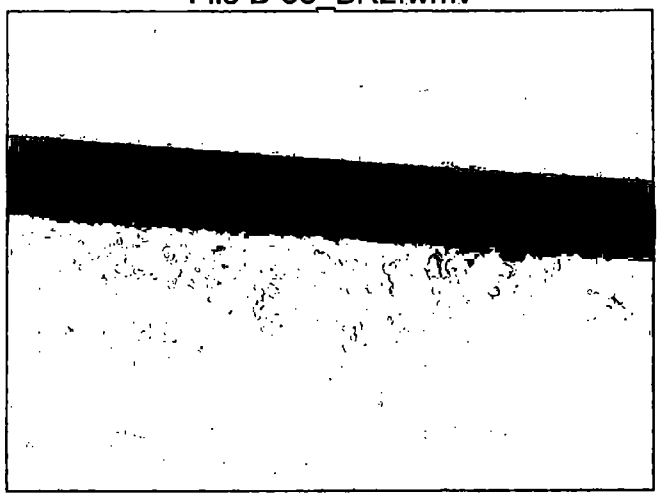


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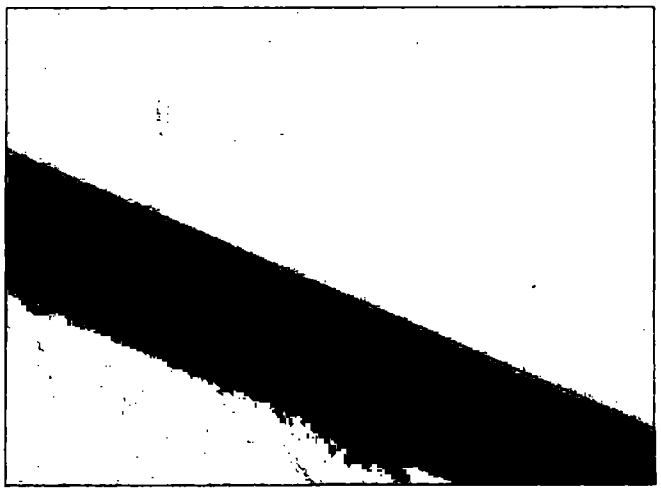


6 – 0:36

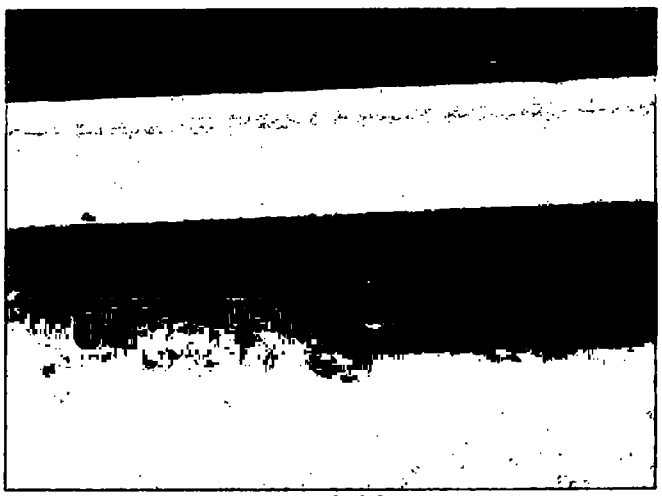
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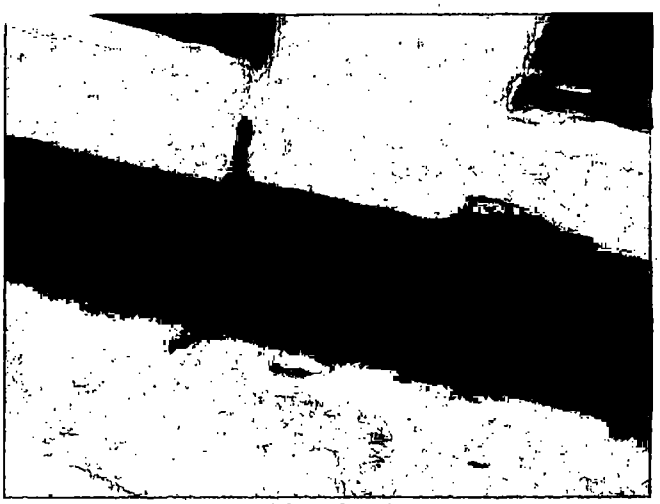
7 – 0:31



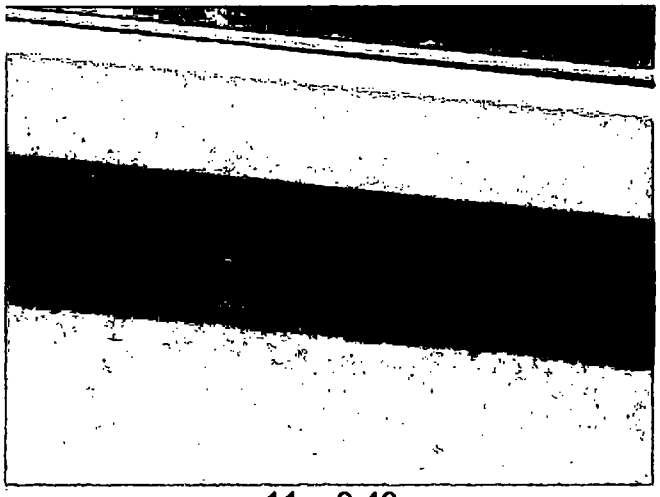
8 – 0:35



9 – 0:38



10 – 0:41



11 – 0:43

APPLIED BUILDING SCIENCES INC.

ENGINEERS ■ ARCHITECTS ■ ENVIRONMENTAL CONSULTANTS

June 30, 2011

David J. Mills, Esquire
14361 Ocean Highway, 3rd Floor
Pawley's Island, South Carolina 29585

Re: Fisher et al vs. Shipyard Village Council of Co-Owners, Inc.
Shipyard Village, Litchfield by The Sea
Pawley's Island, South Carolina
Civil Action No. 2009-CP-22-01655
ABS Project No. 950.10113

Dear Mr. Mills:

Pursuant to your request, I have reviewed documents pertaining to this case. In addition, ABS personnel conducted two site visits to observe conditions during the recent rehabilitation of the subject facility. The purpose of my work was to determine the validity of the claims by some of the homeowners that they have been unfairly assessed for the rehabilitation of Buildings A and B at Shipyard Village. This report summarizes my findings.

Description and Background

Shipyard Village was originally constructed around 1982 in the Litchfield by the Sea development. This facility consisted of two "V" shaped condominium buildings situated along the ocean front; these structures are referred to as Buildings A and B. These buildings included a combination of cast-in-place and pre-cast concrete primary structural elements with wood-framed in-fill walls. The exteriors are clad with cementitious stucco and aluminum framed fenestration. The original facility included a pool and cabana between the two condominium buildings. In the late 1990's two additional condominiums were erected just west of the pool. These buildings, referred to as C and D, joined the Council of Co-Owners around 1998.

Methodology

I was provided with reports and affidavits produced by the plaintiffs. In addition, I visited the office of ECS Carolinas, LLP to review their file. Finally I was provided with documents from the files of the Shipyard Village Council of Co-Owners (HOA) and the Shipyard Village Council

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Charleston, SC 29405
ph 843.724.1456
fx 843.724.1458

1416 Chapin Road
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ph 803.345.3833
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398 College Avenue
Clemson, SC 29631
ph 864.680.6582

10612-D Providence Road, #702
Charlotte, NC 28277
ph 704.634.7276

email info@appliedbuildingsciences.com ■ web www.appliedbuildingsciences.com

of Co-Owners Board of Directors (BOD). Documents from these sources were often, but not entirely, duplicative.

I visited the site on November 17, 2010 and Wayne Butler, Associate AIA visited the site on November 30, 2010. During these site visits, we documented the progress of the rehabilitation and, where possible, observed the remaining undisturbed conditions at the site. We also sorted through debris removed from the demolished areas to ascertain the condition of the windows, doors, stucco and framing.

Based on my reviews and site visits, I have developed the following opinions:

Shipyard Opinions

1) The BOD enlisted the assistance of technical experts and consultants to provide them guidance as to the condition of Buildings A & B. The BOD acted in accordance with their recommendations. At times these recommendations were conflicting; the BOD made choices based on the best information at their disposal and within the constraints of their budgets.
    a. 1993: Procon recommended engaging an engineer to survey the facility so that they can propose on the waterproofing scope of repairs.
    b. 1994: Procon accepted an engagement to survey the facility so that they can recommend their own waterproofing scope of repairs. Procon then provided pricing for this work. Highlights from this report include:
        i. Reports that all 1990 waterproofing work performed by Procon is performing as intended.
        ii. Reports that metal casing beads on corridor side of facility are beginning to corrode.
        iii. States that concrete walkways are in good condition with only a few, isolated areas which should be surveyed by an engineer.
        iv. Indicates that concrete spalling is minor.
        v. Identifies corroded bridge plates.
        vi. Some handrail stanchions not adequately filled.
        vii. Failed to identify defective windows and improper flashing installed after Hurricane Hugo.
        viii. Failed to identify improper stucco repairs around windows after Hurricane Hugo
    c. 1994: Procon reported that wall-to-slab sealants (installed by Procon in 1990) are in good condition and performing as intended. They opine that water in the balcony wing-walls is from deck slab absorption. Later, in 2008, Spectrum determined that this water is entering via the roof (Gallagher 602).

d. 1998: Henderson Waterproofing was engaged to survey the buildings. They recommended approximately $300,000 in stucco and concrete repairs.
e. 1999: Henderson performed triage repairs as HOA did not fund full scope. Site Maintenance Supervisor Warner monitored repairs and reported to the BOD that the damage was not as severe as Henderson characterized; he relayed that no rebar is corroded. Subsequently he advised that the BOD does not need an engineer to assess the building.
f. 2002: McGee engaged to study Building A & B windows. He reported that the Hugo replacement windows were the wrong model for this facility and that many leak under hose spray. The BOD recognized that the windows are individual responsibilities and notifies owners. Attorneys at Finkel and Altman reported that there was a viable entity to pursue for window case.
g. 2003: Finkel and Altman reverse position on window case. They reported that there was no viable entity to pursue as the statutes had expired.
h. 2003: Keystone Construction studied window leak issues. They reported that water was leaking through stucco and not windows; this contradicted McGee's report. Keystone identified absence of flashing at window openings as part of the problem. They also reported that the windows were improperly sized and that poorly installed stucco was used to infill the gap around the windows.
i. 2004: Bobby Warner recommended Absolute Painting and Waterproofing to perform stucco repairs. Upon completion of repairs, owners were notified that they must repair windows.
j. 2005: Reserved depleted to fund Building C&D litigation. BOD moved to increase monthly assessments to replenish reserves.
k. 2005: BOD engages a thermographer to scan for moisture in Buildings A & B. Water penetration around windows was found with no great amounts of water identified elsewhere.
l. 2005: BOD had Bennett develop window installation standards so that each owner is required to perform the identical scope when replacing a window.
m. 2006: BOD interviewed McGee & Associates and Schneider & Associates to develop a window and stucco priority plan for Buildings A & B.
n. 2006: Schneider reported that the balcony damage was more severe than initially anticipated. He ranked the order of window stacks that need repairs as 8, 1 and the 4 with the others to follow.

2) The BOD engaged financial consultants and property managers to provide them with guidance regarding the operating and reserve budgets for the HOA. The BOD followed the guidance of these professionals.
   a. Reserve studies were completed in 1986, 1990, 1992, 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004 and 2008.

b. An analysis of the reserves shows that they were funded in accordance with the reserves each year unless there was a significant event that prevented such funding. Examples of such events are Hurricane Hugo, Hurricane Fran and the unanticipated fire suppression system modifications.
c. An analysis of expenditures shows that BOD was responsible in the use of the reserve funds. The most significant event which consumed reserves other than building maintenance was funding of the litigation regarding Buildings C & D.
d. ABS's analysis of the reserves and expenditures is available upon request.

3) Geiger's report mischaracterizes the BOD's actions with respect to funds spent on maintenance of the facility. His values completely neglect any money which did not come directly from the reserves such as warranty work and over $1M spent on building envelope work subsequent to Hurricanes Hugo and Fran.
   a. 1983: Binswanger Glass recaulked all windows in 1983 as a warranty item.
   b. 1986: Lesley Construction and LBTS performed repairs as part of warranty efforts and out of courtesy
   c. 1986: Sliding glass door thresholds were modified by the Developer in 1986. Several repair mock-ups were created and tested to select the best option.
   d. 1986: Bennett Painting was engaged to repair exterior finish where it was cracked and chipped. They also repaired areas of the deck coverings to prevent spalling in beams.
   e. 1987: The BOD met with the Developer and Bennett Painting to resolve on-going leaks. The Developer paid to reseal the windows and doors.
   f. 1989-1990: Subsequent to Hurricane Hugo, over $825,000 was expended on repairs which included new roofs, new windows on the ocean elevations, stucco repairs, and the application of an elastomeric coating by Procon Associates for $106,000.
   g. Procon was engaged to replace corroded roof grates.
   h. 1992: Fascias and gravel stops were repaired along the roof
   i. 1992: Stairways reroofed
   j. 1994: Procon and Associates was paid $44,500 to replace deteriorated T-1-11 siding with synthetic stucco.
   k. 1994: Procon and Associates was engaged to survey the exterior and provide repair recommendations. Subsequently, Procon was paid $34,000 to replace corroded metal casing beads on corridor side of facility. This is pursuant to Procon's recommendations.
   l. 1995: All the handrail stanchions were filled as per Procon's recommendations. In addition, all window and door frames were resealed.
   m. 1996: Henderson Painting coated all breezeways.

n. 1996: Subsequent to Hurricane Fran, nearly $190,000 was spent on repairs including nearly $75,000 for roofs. This included stucco, window and Building A rebar repair.
o. 1999: Subsequent to the membership's rejection of a special assessment, the BOD subsequently had Henderson perform "triage" repairs for $24,000.
p. 1999: BOD developed a bulk purchase plan for A&B owners to seal SGD's and Windows. Each A&B owner had to opt-in/opt-out of bulk deal for $1,500. Owners were reminded that they were responsible for their own window maintenance.
q. 2001: BOD reported that $253,000 spent on painting and waterproofing.
r. 2002: BOD notified owners about conditions reported by McGee pertaining to window leaks.
s. 2004: Absolute Painting and Waterproofing performed stucco repairs for $25,660. Unit owners notified to perform window repairs. BOD negotiated bulk window maintenance price for owners from Absolute.
t. 2005: BOD approves $142,400 to re-roof Building A and an additional $13,000 to move roof-top HVAC equipment.
u. 2006: Perkins Waterproofing performed isolated repairs to Buildings A & B.

4) The BOD encountered issues not related to the building enclosure at A & B which consumed financial resources that could have been used for A & B building enclosure maintenance.
   a. 1987: Flooding damaged ground level flatwork
   b. 1987: Insurance required the construction of a pool fence
   c. 1988: Fire pump needed repair
   d. 1988: Replaced common area carpeting
   e. 1989: Improved site lighting, added dune fencing, replaced corroded door hardware
   f. 1991: Fire Marshall required roof grates to be replaced
   g. 1992: State Elevator Inspector required upgrades
   h. 1992: Replaced fire suppression jockey pump
   i. 1993: Fire Marshall determined that the original supply from the water main must be upgraded. Included riser to the roof. Total cost was approximately $110,000.
   j. 1993: Fire suppression monitoring system installed
   k. 1993: Elevator telephones upgraded
   l. 1995: Elevator repairs
   m. 1999: BOD moved to special assess HOA for $300,000 to fund Henderson repairs. HOA voted down the special assessment. The special assessment was defeated by the C&D units owners (A/B 89% for. C/D 73% against, 47.8% of membership for)

n. 1999: Maintenance cost increase 5% due to C&D EIFS inspections
o. 1999: Elevators required new fire control panels
p. 1999: Two fire sprinkler lines burst in Building B
q. 2001: HOA assessed $253,000 to fund EIFS litigation on Buildings C&D
r. 2004: Building B elevator repairs
s. 2004: Litigation fund was depleted; HOA reserves moved to supplement litigation funding
t. 2005: Site maintenance supervisor Warner approved excess payments to the window painting contractor totaling $22,488.62.
u. 2005: Improved site drainage $4,526.00
v. 2006: Fire Marshall required emergency lighting upgrade
w. 2006: BOD had additional flood venting installed on the ground level storage areas to reduce the property insurance premiums
x. 2006: Fire suppression system repairs $12,140.00
y. 2006: Expended $17,000 on Schneider & Associates to study water intrusion.

5) Shipyard Village changed the Master Deed to make windows common elements for technical reasons and not financial reasons.
   a. Windows, once installed, cannot be considered independent of the opaque wall areas. They both work as part of a larger system called the building enclosure. The building enclosure separates the interior from the exterior in a manner as to protect the interior from weather and to provide a space which can be climate controlled.
   b. Windows transition to walls at an interface. This interface must be properly detailed with flashings and sealants to prevent the intrusion of water. In addition, windows are not intended to be watertight under all conditions; therefore the flashings must collect and redirect that water back to the exterior.
   c. Prior to the inclusion of Buildings C & D, the HOA included many aspects of window repair, replacement and maintenance as part of annual operating costs, reserve costs or insurance funded repairs.
   d. The two year history of the window leakage and replacement at Unit B28, owned by the Morrows is an excellent example of the inherent difficulty for the BOD to exercise its authority when confronted with conflicting technical information regarding the performance of the windows and wall.
      i. April 17, 2004: Morrows reported an on-going leakage problem in Unit B28. The Morrows believed that the issue was related to water leaking through the stucco. Site maintenance manager Bobby Warner reported to the board that water leaked through the window.

ii. October 12, 2004: Warner reported to the BOD that he visited the site during a rain event and reiterated that the leakage was related to the window.

iii. March 4, 2005: The BOD records that the Morrows replaced the windows in B28.

iv. April 15, 2005: Morrows reported to the BOD that their Unit still leaks despite having new windows installed. They engaged an engineer who identified stucco cracks as the source of the water intrusion. The Morrows also forwarded a memo from Architect Hiller who opined that water intrusion in B28 was not related to windows.

v. June 17, 2005: The Morrows report to the BOD that leakage in their Unit remains unresolved. New site maintenance manager Bennett is directed to investigate this issue. He identifies sealant joint failures at the windows/stucco interface which could be a problem. Bennett also founds cracked stucco over CMU at a previous repair which could allow water intrusion.

vi. October 14, 2005: A thermographer was engaged to scan the walls in B28 to determine the source of the leakage (Both Buildings A & B were scanned).

vii. February 17, 2006: The Morrows attend the BOD meeting with their engineer Manning. Manning described his study which indicated that repairing one window will not solve leak issues. The leakage occurred at the window/stucco interface. The repair required a vertical stack of windows to be removed, flashed and replaced. This resulted in the BOD discussing the need for windows to be a common element.

viii. February 18, 2006: The BOD discussed the Morrow matter along with a letter that the Morrows sent to all A & B unit owners. In addition, the difficulty that owners have with regard to finding qualified contractors to work for one unit owner on a tall building was shared. A show-of-hands vote was taken to see if the BOD's motion from the previous day should be on a proxy ballot. The majority present were in favor of the motion.

e. I visited the site in 2010 and observed the windows and doors that were removed. Most of the aluminum frames exhibited corrosion from contact with stucco or concrete. The windows were designed to be attached with nail flanges which extended over the face of the exterior sheathing and were covered with stucco. Removing and replacing this type of window cannot be accomplished without damaging the stucco.

6) There is no evidence that the BOD had actual and/or constructive knowledge of damages and/or deficient conditions upon which they failed to act.

a. 1994: Procon's survey stated that structural elements are in good condition with a few isolated areas which may be a concern. Concrete spalling wass described as "minor" as only stucco materials have released from areas of the concrete substrate.
b. 1999: Henderson proposes to repair damaged rebar. Only limited work was performed due to special assessment not passing. This work was monitored by Bobby Warner. Warner reported to the BOD that the rebar was not damaged. Only wire mesh was corroded.
c. 2006: Bennett reports that Schneider & Associates identified "rebar showing through" on some balconies.
d. 2006: Schneider reports that balcony damage is more severe than initially anticipated. The repairs will be more complex as they are tube-slabs.
e. 2008: Spectrum Engineering Services reports that rebar is exposed on the lanais (decks) where concrete has spalled away.

Rebuttal to Geiger Opinions

Please refer to page 32 of the ECS report for Mr. Geiger's summary of opinions. The item numbers below correspond to his item numbers.

1) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendation from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the fiduciary responsibility of a homeowner's association board of directors.

2) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendations from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the obligations of a homeowner's association board of directors.

3) The basis for this allegation appears to be Mr. Gallagher's affidavit. A review of the affidavit and subsequent events shows that the BOD engaged Gallagher's company Procon to perform the repairs which he recommended. Though Gallagher mentioned conditions such as spalling and cracking, he characterized these conditions as minor and isolated. There is no record that Gallagher provided a follow-up report to the BOD warning that the work he performed did not address all of the conditions of which he had concern. The record clearly indicates that the BOD responded appropriately to Gallagher's recommendations.

4) Geiger alleges that the seriousness of the conditions was downplayed according to the meeting minutes and correspondence. There are records indicating that the BOD received conflicting reports from various professionals. Bobby Warner, a member of the property management staff, reported to the board on multiple occasions that the severity of damage was not as high as had been characterized by some contractors. He also advised the board that they did not need to engage engineers to assess conditions or manage repairs when that had been recommended by others. There is no evidence the BOD downplayed the seriousness of any conditions. Rather, they were made to choose between alarming characterizations made by contractors who would have benefited financially from extensive repairs and the more conservative representations of a maintenance staff professional who was seen as a trusted representative of the HOA.

5) Aspects of this allegation are true. There are records that the original developer and builder performed repairs to leaking windows shortly after construction. However the wording of this paragraph is deliberately misleading. Geiger completely ignores the fact that all ocean side windows were removed and replaced after Hurricane Hugo. He also fails to acknowledge that much of the window maintenance, prior to the addition of Buildings C & D, was performed collectively based assessments as each owner had a nearly identical stake in the repairs. The issue of individual window repairs only became a significant issue after the addition of Buildings C & D to the association as these owners already had new windows. Coincidentally, the change in the HOA composition came approximately 10 years after the windows were replaced and these windows were approaching the end of their expected useful life. When the HOA voted to not fund a collective window effort, the BOD issued a reminder to the owners that they are responsible for the window maintenance. And, the BOD also arranged for bulk pricing to allow the Building A & B owners to spread the contractor mobilization costs between several homeowners.

6) There is no evidence indicating that the BOD failed to enforce the provisions of the Master Deed requiring Unit Owners in Buildings A & B to maintain, repair and replace certain aspects of their units. Rather the record clearly shows that individual unit owners were notified of needed repairs and violations. It also shows that some owners, who had performed maintenance on their own, inquired about refunds from the BOD when similar repairs were undertaken on a widescale by the HOA. This included such things as reimbursements for window replacements.

7) This allegation is not supported by the evidence. For example, the first time the BOD was notified of significant slab reinforcement corrosion was in 2006 by Schneider & Associates. The BOD responded by engaging more qualified consultants to fully

investigate these conditions and to develop a repair plan. Prior to 2006, the BOD engaged contractors such as Procon and Henderson to provide them with recommendations for repairs; these contractors were subsequently engaged to perform the repairs.

8) This allegation is also not supported by the evidence. The records show that the BOD placed the owners on notice of needed repairs and worked to arrange bulk pricing for this work when appropriate.

9) The need for the $11,000,000 assessment is more directly associated with the fact that the facility is located ocean front and was constructed nearly 30 years ago. The construction technology, means and methods available today are more robust but they are also more expensive. For example, the implementation of cathodic protection is an appropriate repair and it will reduce the potential for future rebar corrosion. However, this technology was not widely available at the time the facility was constructed and none of the construction professionals recommended it to the BOD prior to the current repairs. My experience is that similarly aged and located properties undergo major rehabilitations every 25 to 30 years.

10) This allegation is redundant to previous allegations. It is unsupported by the evidence.

11) The Master Deed was amended to make windows and doors common elements; therefore this allegation is without merit. That notwithstanding, there was never any testing performed to demonstrate that water leaked through any windows. The hose testing performed by McGee was not reported to comply with published standards for window leak testing. Within a year of McGee's work, Keystone reported that no water leaked through windows; they reported water penetration through the stucco. The windows and stucco have been removed and there is no means to determine whether the windows did, or did not, actually leak.

12) The records do reflect that leaks occurred from time to time in various units. These leaks were attributed to the roof, windows, stucco, sliding glass doors, fenestration in neighboring units, HVAC equipment, water heaters, kitchen fixtures, bathroom fixtures and laundry equipment. Each of these conditions, when reported to the board, was referred to the property manager or site maintenance supervisor for further investigation. When needed, the board notified owners of the need to repair or maintain fixtures and equipment. The BOD also undertook to repair the roofs and secure roof-top HVAC equipment to resolve leak issues.

13) This allegation is without merit and is not supported by the evidence.

14) This allegation is without merit and not supported by the evidence. Geiger claims that the BOD did not engage qualified professionals to assess the facility. The records show that qualified construction professionals were providing guidance to the BOD as early as 1993 and a professional property manager was engaged from the inception of the HOA. Ironically, the first construction professional to submit a letter to the BOD was Mr. Gallagher who provided an affidavit for the plaintiffs; Mr. Geiger relies on this affidavit.

15) This allegation is redundant and without merit. The BOD followed the recommendations of the qualified construction professionals engaged to provide assessments.

16) This allegation is without merit. The BOD sought guidance on the preparation of a reserve schedule; this schedule was improved and revised throughout the history of the HOA. The BOD funded the reserved in accordance with the schedule each year except when significant mitigating circumstances prevented it. The availability of reserve funds for maintenance and repairs was impeded in the early 2000's as reserves were diverted to the fund for Buildings C & D litigation.

17) This allegation is without merit as the reserves were appropriately budgeted and funded.

18) This item is a statement of fact and not an allegation. To the extent that this is an interpretation of a contract, Mr. Geiger's education and experience do not qualify him to render opinions on the fiduciary responsibility of a homeowner's association board of directors.

19) Mr. Geiger's reading of the BOD minutes does not include an actual analysis of how money was collected and allocated by the BOD. Reports about the lack of funding are related to the total reserves available after expenditures. Large projects, catastrophic events, unforeseeable projects and litigation funding depleted the reserves at times. However, the reserves were adequately budgeted and funded each year. Also, reimbursements from insurance carriers, warranty claims and even the Buildings C & D litigation subsequently replenished the reserves. Mentions of low reserves in the minutes demonstrate that the BOD was vigilant with regard to reserve funding.

20) This allegation is redundant and without merit. See item 12.

21) This allegation is redundant and without merit. See item 7.

22) In 2002, McGee's window study report includes mention of rotten wood structural elements. This is the first report suggesting that serious wall damage was present at the

site. The BOD was restricted in implementing and funding repairs due to reserves being diverted to the litigation fund for Buildings C & D. In addition, the conflicting technical reports made the source of water intrusion unclear; one report cited windows as the source while the other cited stucco. The BOD had authority to take action on the stucco but not the windows. Subsequently, the BOD engaged Absolute Waterproofing to repair areas of the stucco. The BOD also coordinated window repairs between Absolute and the owners. Schneider's 2006 report is the first that suggests serious concrete damage existed. Pursuant to this report, the BOD engaged more qualified consultants and eventually selected SKA to develop and manage the repairs.

23) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

24) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

25) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

26) This allegation is without merit.

27) This item is a statement of facts with regard to the cost of the project. It is informative to note that Geiger does not fault construction professionals such as SKA and SPS for not being able to anticipate the degree of distress in the buildings. However, Geiger believes that the volunteer members of the BOD, who are not construction professionals, had a duty to understand the state of the structural condition of Buildings A & B in a manner above and beyond the information provided to them by construction professionals between 1993 and 2006.

28) A review of the project expenditures since Geiger issued his report would be needed to determine if this is actually an issue.

Re-Allocation of Assessment

There is no justification for re-allocation of assessments. Historically, the HOA has adhered to the principle that all association costs are to be borne by the owners in accordance with the Master Deed. In fact, this issue was addressed with the owners on June 15, 2001 in a letter entitles Urgent Message and Notice of Proxy which stated:

> It is now important for A and B owners to support this year's assessment. We are not competing owners but neighbors protecting our investments and all owners (A, B, C and D) are at risk and responsible for repairs to any buildings in our Association as stated in the Master Deed and By-Laws.

This position was reiterated on April 16, 2005 at the Shipyard Village Council of Co-Owners, Twenty Third Annual Members' Meeting. The following excerpt is from the minutes:

> Joe Henson (B46) asked how the owners in the A and B building will be affected by the lawsuit and repairs needed in C and D. The Board explained that the A, B, C and D buildings are all part of Shipyard Village Council of Co-Owners, Inc. and all expenses, regardless of what building, are shared by all owners based on percentage of ownership.

Given that this policy is in accordance with the Master Deed, and that this policy has historically been enforced, there is no justification for re-allocating the assessments for the recent repairs to Buildings A and B.

Summary

The evidence clearly shows that the Shipyard Village Council of Co-Owners' Board of Directors acted in good faith to preserve and maintain the condition of Buildings A and B. They engaged consultants and professionals to provide input with regard to maintaining the structures and the financial state of the HOA. The BOD responded to these inputs by funding reserves in accordance with recommended schedules and by funding efforts to repair and replace building systems as needed.

There is no evidence that the BOD deliberately withheld information or misled the HOA with regard to the condition of Buildings A and B. Similarly, there is no evidence that the BOD conveniently altered the Master Deed to make fenestration a common element in anticipation of the rehabilitation effort; this decision was made based on a review technical and factual issues which revealed that window maintenance was more appropriately an HOA responsibility.

Finally, the BOD acted within the scope of the Master Deed with respect to the assessments to rehabilitate Buildings A and B. Their interpretation and enforcement of the Master Deed is identical to the manner in which this was done previously when Building A and B owner were assessed to fund the litigation and repairs for Buildings C and D.
Should additional information be made available to me, I reserve the right to consider such information, and to, if necessary, revise my opinions.

Please call with any questions you may have.

Best regards,

APPLIED BUILDING SCIENCES, INC.

J. Lawrence Elkin, PE

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER NO 16913 J. LAWRENCE ELKIN

SOUTH CAROLINA APPLIED BUILDING SCIENCES, INC No. C02897 CERTIFICATE OF AUTHORIZATION

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2009-CP-22-01655

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne KOCHANSKI, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savona, Ann D. Savona, William John Savona and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008 and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC;

AFFIDAVIT OF
J. LAWRENCE ELKIN, P.E.

Harry L. Belk and Jan C. Belk; Dennis)
E. Barrett and Wilma J. Barrett; First)
Family Properties, Inc., Cynthia L.)
Jones, Sandra D. Huggins and)
Margaret S. Dover, Thomas Franklin)
Huggins, Frank S. Krouse and Barbara)
T. Krouse, Judith W. Mill, William Mill)
and Susan Mill, Gene R. Riley and)
Patricia C. Riley, Harold LeMaster and)
Patti LeMaster; Joseph P. Heaton and)
Frances H. Heaton; Robert N. Kelly;)
H.S. Keeter and Sandra C. Keeter;)
Linda A. Mendicino; Captains Quarters)
D-24 Association of Owners, Inc.,)
Michael H. Sanders and Rebecca H.)
Sanders, Ruth Gray Wheliss, David B.)
Shivell and Nicki M. Shivell, Debra B.)
Leeke, Joseph Alan Capobianco and)
Lara Serro, Sharon Gibson Daniel, Gary)
C. Andes and Andrea W. Andes, Jay)
Hendler and Laura Hendler, Joy P.)
McConnell, Charles W. Fortner, Judith)
C. Woodson, Warren W. Riggs and)
Charles G. Martin, Riggs Ventures, LLC)
and SGS Beach Partners, LLC; Morgan)
J. Mann and Angela M. Mann; Michael)
Cameron Foster, Sr. and Laura Lee)
Foster; Captains Quarters Unit D-31)
Association of Multiple Ownerships,)
Inc., Evelyn Gail Earnest, Francis G.)
Thomson and Arleen S. Thomson,)
Robert W. Dalton, Red Oak Limited)
Partnership, William R. McKeown and)
Margaret A. McKeown, Norman K.)
Moon and Barbara W. Moon, David T.)
McGill and Carol G. McGill, Rick L.)
Bledsoe and Susan H. Bledsoe,)
Geoffrey A. Wienke and Pamela L.)
Wienke, A. Donald Ross, III and Nancy)
Kay Ross, Dennis J. Straw and)
Roxanne B. Straw, and Resort)
Investments of Litchfield, LLC; Georgia)
M. Pruitt and Howard M. Pruitt, Jr.; Jean)
T. Blaylock; William C. Covington, Jr.)
and Donna C. Covington; Litchfield)
Captain's Quarters, LLC; James A.)

Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame,

Plaintiffs,

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn, deposes and states as follows:

1. My name is J. Lawrence Elkin. I am over the age of eighteen (18) years and competent to make this Affidavit.

2. I am currently employed as the Senior Professional Engineer at Applied Building Sciences, Inc. of Charleston, South Carolina. My experience includes over fifteen (15) years of diagnostic evaluations, building repair design, and construction project management.

3. I have extensive experience in evaluations of roof, wall, fenestration, floor and foundation systems to identify moisture infiltration paths and to determine the potential for moisture accumulation within these systems.

4. I am a licensed Professional Engineer in the states of Alabama, Florida, Georgia, Kentucky, North Carolina, Mississippi, South Carolina and Tennessee. My Professional Engineering license is in good standing in all of those states, and I have been qualified as an expert in the field of engineering in both state and federal courts.

5. In further support of my qualifications, I have appended to my Affidavit a current copy of my Curriculum Vitae as **Exhibit A**.

6. During my service as a designated expert witness for the Defendant in this case, I have performed site inspections of the subject premises; reviewed thousands of pages of background documents; reviewed the Master Deed to the Shipyard Village Council of Co-Owners; and otherwise made myself familiar with the condition of the buildings prior to repair, the proposed remediation of the buildings, and the allocation of repair charges to Unit Owners.

7. I have also reviewed "Plaintiffs' Notice of Motion and Motion for Partial Summary Judgment Against Defendant Shipyard Village Council of Co-Owners, Inc." and the Affidavits of Plaintiffs' retained experts Stephen J. Geiger, P.E. ("Geiger") and Derek A. Hodgin, P.E. ("Hodgin") submitted in support thereof.

8. I submit my Affidavit to counter those of Geiger and Hodgin and explain to the Court my differences of opinions with the Plaintiffs' witnesses.

9. First, I disagree with Hodgin's assertion in his Affidavit that "the 2006 Amendment alters the dimensions of the units and/or percentage interest in the Common Elements." (Hodgin Affidavit, para. 7)

10. I too have reviewed the Master Deed as well as the Amendments cited in Hodgin's Affidavit and I disagree with his opinion. It is difficult to articulate the basis of my disagreement with Hodgin's opinion as his Affidavit contains nothing more than recitals of the Master Deed and Amendments and concludes with his stark, unsubstantiated "opinion" that the 2006 Amendment alters the dimensions of the units and/or percentage interest in the Common Elements. His opinions contain no measurements, dimensions, calculations or percentages to provide factual support for his conclusion. I can affirmatively state, however, that no data I have seen during the course of my extensive involvement in this case has led me to conclude that any Amendment effected any change whatsoever in the dimensions of any Unit or the percentage of any Unit Owners interest in the Common Elements. I have reviewed Hodgin's deposition where he admits that the Amendment does not change the dimensions of the unit and he is unclear as to how it would have changed the percentage ownership.

11. I call the Court's attention to my June 30, 2011 report submitted in this matter, a true and accurate copy of which is appended to my Affidavit as **Exhibit B**. I set forth therein my background in this case, the materials I have reviewed, opinions I have rendered, and my rebuttal to the opinions proffered on Plaintiffs' behalf by Geiger.

12. I understand from my review of Geiger's Affidavit in support of Plaintiffs' Motion that his analysis of the damages here is relatively straightforward and

mathematical: he contends that because the owners of the A and B Buildings paid for the cost of windows and doors replaced, they should bear a proportionate share of the "soft costs" attributable to the entire project. Stated otherwise, Geiger's Affidavit is submitted in support of Plaintiffs' attempt to "shift" a proportionate share of the "soft costs" for the entire project away from the Plaintiffs' (i.e. the owners of certain C and D Units) back to the entire Association.

13. I strongly disagree both with Geiger's methodology and with the assumptions underlying the conclusions set forth in his Affidavit.

14. At the outset, it is my opinion that Geiger's August 30, 2011 Affidavit represents a substantial departure from the position he (and Plaintiffs) have consistently maintained in this case. Specifically, one of the functions of my service as an expert witness in this case was to thoroughly review and comment upon Geiger's April 25, 2011 report submitted to support Plaintiffs' claims (Geiger's Report is appended to Plaintiffs' Motion for Partial Summary Judgment as **Exhibit 11**). Geiger's lengthy report culminates in a spreadsheet characterized as an "Assessment Allocation Summary", appended as the last page of his report. On this "Assessment Allocation Summary", Geiger set forth his view of the amounts Plaintiffs should have actually been charged to fund the remediation project. Geiger's summary designates General Conditions, Overhead and Profit, Contingency, and Engineering Contract Administration as "soft costs" which, he claims, should have been paid on a proportionate basis by the Building A and B Owners (resulting in a reduction of the amount allocated to the Building C and D Plaintiffs).

15. Geiger's August 30, 2011 Affidavit in support of Plaintiffs' Motion for Partial Summary Judgment, however, contains a significant departure from his original opinion. Specifically, at paragraph 5(d) of his August 30 Affidavit, Geiger designates "Engineering and Design Fees of $131,500.00" as "soft costs" which should be shifted away from the C and D Unit Owners and made the responsibility of the entire Association. This is wholly inconsistent with the position Geiger espoused in his April 25, 2011 report and the appended Assessment Allocation Summary. In those documents, Geiger designated Engineering and Design Fees of $131,500.00 as "All Common" expenses which were not to be included in the "soft costs" allegedly attributable to replacement of windows and doors. By re-designating the Engineering and Design fees in the amount of $131,500.00, Geiger has now attempted to shift a pro rata portion of that charge away from the "All Common" category to a percentage of "soft costs" to be borne by the Association.

16. I dispute Geiger's "Assessment Allocation Summary" and Affidavit not only with regard to his methodology, but more fundamentally with his assumptions relating to "soft costs."

17. It is important to note that the remediation of the Shipyard A and B Buildings cannot be viewed in isolation as a "window and door replacement project." As catalogued in Sutton Kennerly & Associates' "Structural and Façade Repairs for Shipyard Village Opinion of Project Cost"; in Geiger's report; and in my report, the Board of Directors here was faced with a systemic failure of the building system. I catalog in significant detail at paragraph 5 of my report that windows are not independent of the stucco wall system, but are instead part of the building enclosure.

Transitions must be interfaced properly, detailed with flashing and sealants to prevent the intrusion of water.

18. As noted at paragraph 12 of my report, my review of the Association's voluminous records reflect that leaks occurred throughout various units at different times, but these leaks were not limited to windows and sliding glass doors. On the contrary, leaks were attributed to the roof, the stucco, HVAC equipment, and other factors. As further noted in paragraph 11 of my report, there are contradictory records as to the source of the leaks. One report, for example, noted that no water leaked through windows, but water penetration occurred through the stucco (a Common Element which is a repair responsibility of the Association). Unit B-28, for example, provides informative background as to the inherent difficulty for the Board of Directors when confronted with conflicting technical information concerning the source of the leaks. One source reported that Unit B-28 was leaking at the windows; the Unit Owner engaged an engineer who identified stucco cracks (a Common Element) as a source of the water intrusion.

19. Simply put, windows and doors in the A and B Buildings cannot be viewed independently. They are part of an integrated building enclosure system which all parties agreed was in dire need of repair. The cost of repairs attendant to the replacement of windows and doors cannot be neatly or mathematically calculated for purposes of allocation. In my opinion, this is also true as to the "soft costs" attendant to window and door replacement as well.

20. Geiger purports to assign a pro rata percentage of soft costs (i.e. 29.4797%) to "soft costs" allocable to replacing windows and doors. In my experience,

this simple mechanical application of a pro rata percentage does not reflect the reality of engineering services, contract administration, or other "soft costs" involved in a replacement project. Geiger has not performed any analysis of the "soft costs" actually incurred relating to window and door replacement.

21. The A and B buildings' cladding systems had to be repaired. "Soft costs" attendant to that repair would certainly have been incurred whether the windows and doors were replaced with newly engineered windows and doors, or if the existing windows and doors were simply removed and stored while the cladding was repaired to prevent leaks, then re-installed on the buildings. In other words, Geiger has not calculated – nor can he – the specific amount of engineering or design or administration fees actually attributable to the process of replacing the windows and doors. Under those circumstances, in my opinion, it would be unfair and not reflective of actual contract administration to apply a simple mechanical formula and thus "reallocate" soft costs. My experience in construction management is that there is no direct, one-to-one correlation between hard costs and soft costs on a project, and certainly not in a project the size and scope of Shipyard Village.

22. Another way to consider this issue is to analyze the soft costs if the stucco clad walls were to be repaired and the windows simply removed and re-installed. There would be no changes to fees associated with the general conditions, OH&P, contingency, design or contract administration. The only difference would be the unit cost of the fenestration which is already being paid in whole by the A & B Unit Owners.

23. Accordingly, I reaffirm the opinions set forth in detail in my June 30, 2011 report that the Board of Directors of the Shipyard Village Council of Co-Owners, Inc. did

not breach any fiduciary duty in its maintenance of the buildings or in the allocation of charges for repair in the exercise of its business judgment.

FURTHER AFFIANT SAYETH NOT.

J. Lawrence Elkin, P.E.

Charleston, South Carolina
October 26, 2011

SWORN to before me this
24 Day of October 2011.

Notary Public for South Carolina
My Commission Expires: 2-17-20

APPLIED BUILDING SCIENCES INC.
ENGINEERS, ARCHITECTS AND
ENVIRONMENTAL CONSULTANTS

J. LAWRENCE ELKIN, P.E.

Senior Professional Engineer
Adjunct Professor of Engineering: Trident Technical College

Mr. Elkin's professional career includes more than ten years of experience in diagnostic evaluations, building repair design, and construction project management. His expertise is primarily in the physics of Thermodynamics and Fluid-dynamics as they apply to building envelope systems. He has performed evaluations of roof, wall, floor and foundation systems to identify moisture infiltration paths and determine the potential for moisture accumulation within these systems. Mr. Elkin has developed computer models and databases to simulate and track building failures. He has particular expertise regarding evaluations of thermal/moisture barriers, designing repairs for failed building envelopes and managing building envelope remediation projects. More recently Mr. Elkin has focused on building assembly failures associated with inappropriate building practices and misinterpretation of building code requirements. Mr. Elkin has also provided expert testimony to assist in the resolution of construction litigation.

Mr. Elkin is also knowledgeable in the fields of mechanical systems. He has performed indoor air quality evaluations and thermal comfort studies in accordance with American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) standards. Mr. Elkin has also designed mechanical systems including a ventilation network for the Smithsonian Institute in Washington, D.C. and a Department of Energy research facility.

Mr. Elkin combines his knowledge of building materials, thermo-fluid science and mechanical equipment to diagnose complex moisture intrusion problems. These problems are often linked to fungal growth and deterioration of building components. Mr. Elkin works closely with Industrial Hygiene and Environmental Science professionals to assess the cause and extent of mold contamination. Using sound engineering principles, Mr. Elkin develops unique and cost-effective solutions to resolve moisture and fungal growth problems.

Education

- Master of Science in Mechanical Engineering, Rose-Hulman Institute of Technology, 1993.
- Bachelor of Science in Mechanical Engineering, Rose-Hulman Institute of Technology, 1991.

Registrations

- Professional Engineer: Alabama, Florida, Georgia, Kentucky, North Carolina, Mississippi, South Carolina, & Tennessee.

Previous Experience

- Applied Building Sciences, Inc., Senior Engineer, 2004 to Present.
- Campbell, Schneider and Associates, LLC, Engineering Associate, 1998 to 2004.
- Titan Atlantic Group, Inc., Facilities Engineer, 1997 to 1998.
- Law Engineering and Environmental Services, Inc., Facilities Engineer, 1995 to 1997.
- Doty Scientific, Inc., Design Engineer, 1993 to 1995.

1890 Milford Street – Charleston, South Carolina 29405 – Tel 843.724.1456 – Fax 843.724.1458
205 Columbia Avenue – Chapin, South Carolina 29036 – Tel 803.345.3833 – Fax 803.345.2823

EXHIBIT
A
2170

Principal Areas of Practice

- Thermal/Moisture Related Problems
- Mechanical Systems
- Building Envelope Failures
- Hurricane/Catastrophe Assessments
- Roofing Failures
- Facility Condition Assessments

Publications & Lectures

- ASHRAE Guide for Hot and Humid Climates, Project Committee Member, ASHRAE, Atlanta, GA, 2007
- BEC Window Flashing Rodeo Results. *Proceedings of the ASTM Symposium: Up Against a Wall*, ASTM, Tampa, FL, 2007
- Using a Heat and Moisture Transfer Simulation to Diagnose Moisture-Related Expansion/Contraction Problems in an Exterior Roof/Wall Assembly. *Proceedings of the Performance of Exterior Envelopes of Whole Buildings IX International Conference*, ASHRAE/DOE, Atlanta, GA. 2004
- Mold Mitigation. *Architectural Series*. Four Hour Seminar. Trident Technical College, Charleston, SC. 2004 to 2006
- Building Code Issues and Underfloor Moisture Problems in Warm, Humid Climates, *RCI Interface: Journal of the Roof Consultants Institute, Vol. XXI, No. 10.*, Roof Consultants Institute, Raleigh, NC, 2003.
- Employing the Sealed Floor Technique to Resolve Underfloor Moisture Problems in Warm, Humid Climates, *RCI Interface: Journal of the Roof Consultants Institute, Vol. XXI, No. 11.*, Roof Consultants Institute, Raleigh, NC, 2003
- Field Techniques to Diagnose Moisture and Mold Problems, RJMW Hurricane Catastrophe Seminar, April, 2001.
- Solving Water Intrusion and Mold Problems in South Carolina, Medical University of South Carolina, 2002 to 2005
- Window Flashing Workshop, *Performance of Exterior Envelopes of Whole Buildings X International Conference*, ASHRAE/DOE, Clearwater, FL. 2007

Awards

- *American Institute of Architects South Carolina: Alliance Award, 2007*

Professional Organizations

- *American Society of Heating, Refrigerating, and Air-Conditioning Engineers* (ASHRAE). Voting Member of Technical Committee 4.4: Building Materials and Envelope Performance. Member Technical Committee 1.12 Moisture in Buildings.
- *National Institute of Building Sciences: Building Envelope and Thermal Environment Council* (BETEC). Board of Directors Member. Chairman of the Heat, Air and Moisture Research Coordinating Committee.
- *Building Enclosure Council-Charleston:* Member –Board of Directors and past Vice Chairman.

Post Graduate Courses and Seminars

- Roofing Industry Educational Institute, Roofing Technology Course, 36 hours, 1999.
- Sto Exterior Plaster Applicator Training, 16 hours, 1996.
- Exterior Design Institute, Third Party EIFS Inspector Course, 40 hours, 1999.
- BETEC, Air Barriers Seminar, 8 hours, 2001.
- ASHRAE/DOE, Performance of Exterior Envelopes of Whole Buildings VIII, 48 hours.
- ASHRAE/DOE, Performance of Exterior Envelopes of Whole Buildings IX, 48 hours AIVC/BETEC, Ventilation, Humidity Control and Energy, 16 hours.
- DOE/ORNL, WUFI Pro Training, 2002. 20 hours
- NBSC/DOE/ORNL, Advanced WUFI Training, 2006, 40 hours
- ABAA, Air Barrier University, 2005, 8 hours.
- BETEC, Air Barriers.III, Air Barrier Solutions for Buildings in North American Climates, 2001, 8 hours.
- BETEC, M^4 – Mold, Moisture, Misery and Money, 2003, 16 hours
- BETEC/CMHC, Rain Penetration Control: Applying Current Knowledge, 2002, 8 hours.

Examples of Previous Studies

Thermal/Moisture Related Problems

- Evaluation of residential moisture intrusion and mold growth, numerous locations in FL, GA, NC and SC.
- Wall Condensation, Breakers North Tower, Myrtle Beach, SC.
- Air Infiltration and Wall Condensation, Charleston Public Works, Charleston, SC.
- Evaluation of moisture intrusion and mold growth at Dialysis Clinics, Inc, James Island, SC.
- Crawl space moisture issues, numerous locations GA, NC and SC.
- Evaluation of moisture intrusion and mold growth at Piggly Wiggly Corporate Office, North Charleston, SC.
- Floor framing failures due to condensation and decay, over 75 locations along the Atlantic Coast.
- Hardwood flooring failures, North and South Carolina.

Mechanical Systems

- Design of HVAC systems for the Department of Energy's Natural Exposure Testing Facility: Hollywood, SC.
- Design of a ventilation system for a subterranean storage facility, Smithsonian Institute, Washington, D.C.
- Compressor and reversing valve failure analysis in heat pump systems: Charleston, SC
- Analysis of domestic water valve failures: numerous locations in NC and SC.
- Burst pipe analysis: numerous locations NC, TN, and SC.
- HVAC duct installation evaluations: numerous locations, SC.
- HVAC condensate drainage system failure: Shem Creek Inn, Mt. Pleasant, SC
- Thermal comfort study, Gaston County Health Department, Gastonia, NC.
- Design of a warehouse heating and ventilation system, Garner, NC.
- Evaluation of residential sooting problems, SC.

Building Envelope Failures

- Residential and Commercial stucco and Fiber Reinforced Plaster evaluations, numerous locations in FL, NC, and SC.
- Exterior Brick Veneer Failure, NNPTC, Naval Weapons Station, Goose Creek, SC.
- Residential brick veneer failures in NC and SC.
- Cedar Siding Failure, The Cottages At Shipyard, Hilton Head Island, SC.
- Brick veneer failure, Embassy Suites, Washington, D.C.
- Residential and Commercial EIFS evaluations, numerous locations in GA, NC, PA, SC, and TN.
- Moisture intrusion through cast-in-place concrete, Caravelle Towers, Myrtle Beach, SC.

Hurricane/Catastrophe Assessments

- Evaluation and restoration projects in Mississippi and Louisiana after Hurricane Katrina, 2005
- Evaluation of wind damaged structures in Florida after Hurricanes Charley, Francis, Jean and Ivan, 2004.
- Inspection of wind and flood related structural, exterior and roof damage to commercial and residential structures after Hurricanes Bertha, Bonnie, Floyd and Fran, 1996 to 1999.
- Metal building collapse due to severe thunderstorm and inadequate bracing, Goose Creek, SC

Roofing Failures

- Asphalt shingle failures: numerous locations in NC, SC and GA.
- EPDM membrane failures: numerous locations in NC, SC and GA.
- Smooth and gravel surfaced built-up roof failures: numerous locations in NC, SC and GA.
- Standing seam roof failures: numerous locations in IL, NC, SC and GA.
- Modified bitumen roof system failures: numerous locations in NC, SC and GA.

Facility Condition Assessments

- Mariners Cay, Folly Beach, SC
- CVS Pharmacies, Greenville, Spartanburg and Columbia, SC.
- Southeast Eyecare Centers, Greensboro, Winston-Salem, and High Point, NC.
- Numerous Apartment complexes in North Carolina, South Carolina, Virginia, and Georgia.
- Tanger Outlet Shopping Center, Dalton, GA.
- Former Wachovia Building, Fayetteville, NC.

APPLIED BUILDING SCIENCES INC.

ENGINEERS ■ ARCHITECTS ■ ENVIRONMENTAL CONSULTANTS

June 30, 2011

David J. Mills, Esquire
14361 Ocean Highway, 3rd Floor
Pawley's Island, South Carolina 29585

Re: Fisher et al vs. Shipyard Village Council of Co-Owners, Inc.
Shipyard Village, Litchfield by The Sea
Pawley's Island, South Carolina
Civil Action No. 2009-CP-22-01655
ABS Project No. 950.10113

Dear Mr. Mills:

Pursuant to your request, I have reviewed documents pertaining to this case. In addition, ABS personnel conducted two site visits to observe conditions during the recent rehabilitation of the subject facility. The purpose of my work was to determine the validity of the claims by some of the homeowners that they have been unfairly assessed for the rehabilitation of Buildings A and B at Shipyard Village. This report summarizes my findings.

Description and Background

Shipyard Village was originally constructed around 1982 in the Litchfield by the Sea development. This facility consisted of two "V" shaped condominium buildings situated along the ocean front; these structures are referred to as Buildings A and B. These buildings included a combination of cast-in-place and pre-cast concrete primary structural elements with wood-framed in-fill walls. The exteriors are clad with cementitious stucco and aluminum framed fenestration. The original facility included a pool and cabana between the two condominium buildings. In the late 1990's two additional condominiums were erected just west of the pool. These buildings, referred to as C and D, joined the Council of Co-Owners around 1998.

Methodology

I was provided with reports and affidavits produced by the plaintiffs. In addition, I visited the office of ECS Carolinas, LLP to review their file. Finally I was provided with documents from the files of the Shipyard Village Council of Co-Owners (HOA) and the Shipyard Village Council

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Clemson, SC 29631
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10612-D Providence Road, #702
Charlotte, NC 28277
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EXHIBIT B

of Co-Owners Board of Directors (BOD). Documents from these sources were often, but not entirely, duplicative.

I visited the site on November 17, 2010 and Wayne Butler, Associate AIA visited the site on November 30, 2010. During these site visits, we documented the progress of the rehabilitation and, where possible, observed the remaining undisturbed conditions at the site. We also sorted through debris removed from the demolished areas to ascertain the condition of the windows, doors, stucco and framing.

Based on my reviews and site visits, I have developed the following opinions:

Shipyard Opinions

1) The BOD enlisted the assistance of technical experts and consultants to provide them guidance as to the condition of Buildings A & B. The BOD acted in accordance with their recommendations. At times these recommendations were conflicting; the BOD made choices based on the best information at their disposal and within the constraints of their budgets.
    a. 1993: Procon recommended engaging an engineer to survey the facility so that they can propose on the waterproofing scope of repairs.
    b. 1994: Procon accepted an engagement to survey the facility so that they can recommend their own waterproofing scope of repairs. Procon then provided pricing for this work. Highlights from this report include:
        i. Reports that all 1990 waterproofing work performed by Procon is performing as intended.
        ii. Reports that metal casing beads on corridor side of facility are beginning to corrode.
        iii. States that concrete walkways are in good condition with only a few, isolated areas which should be surveyed by an engineer.
        iv. Indicates that concrete spalling is minor.
        v. Identifies corroded bridge plates.
        vi. Some handrail stanchions not adequately filled.
        vii. Failed to identify defective windows and improper flashing installed after Hurricane Hugo.
        viii. Failed to identify improper stucco repairs around windows after Hurricane Hugo
    c. 1994: Procon reported that wall-to-slab sealants (installed by Procon in 1990) are in good condition and performing as intended. They opine that water in the balcony wing-walls is from deck slab absorption. Later, in 2008, Spectrum determined that this water is entering via the roof (Gallagher 602).

d. 1998: Henderson Waterproofing was engaged to survey the buildings. They recommended approximately $300,000 in stucco and concrete repairs.
e. 1999: Henderson performed triage repairs as HOA did not fund full scope. Site Maintenance Supervisor Warner monitored repairs and reported to the BOD that the damage was not as severe as Henderson characterized; he relayed that no rebar is corroded. Subsequently he advised that the BOD does not need an engineer to assess the building.
f. 2002: McGee engaged to study Building A & B windows. He reported that the Hugo replacement windows were the wrong model for this facility and that many leak under hose spray. The BOD recognized that the windows are individual responsibilities and notifies owners. Attorneys at Finkel and Altman reported that there was a viable entity to pursue for window case.
g. 2003: Finkel and Altman reverse position on window case. They reported that there was no viable entity to pursue as the statutes had expired.
h. 2003: Keystone Construction studied window leak issues. They reported that water was leaking through stucco and not windows; this contradicted McGee's report. Keystone identified absence of flashing at window openings as part of the problem. They also reported that the windows were improperly sized and that poorly installed stucco was used to infill the gap around the windows.
i. 2004: Bobby Warner recommended Absolute Painting and Waterproofing to perform stucco repairs. Upon completion of repairs, owners were notified that they must repair windows.
j. 2005: Reserved depleted to fund Building C&D litigation. BOD moved to increase monthly assessments to replenish reserves.
k. 2005: BOD engages a thermographer to scan for moisture in Buildings A & B. Water penetration around windows was found with no great amounts of water identified elsewhere.
l. 2005: BOD had Bennett develop window installation standards so that each owner is required to perform the identical scope when replacing a window.
m. 2006: BOD interviewed McGee & Associates and Schneider & Associates to develop a window and stucco priority plan for Buildings A & B.
n. 2006: Schneider reported that the balcony damage was more severe than initially anticipated. He ranked the order of window stacks that need repairs as 8, 1 and the 4 with the others to follow.

2) The BOD engaged financial consultants and property managers to provide them with guidance regarding the operating and reserve budgets for the HOA. The BOD followed the guidance of these professionals.
   a. Reserve studies were completed in 1986, 1990, 1992, 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004 and 2008.

b. An analysis of the reserves shows that they were funded in accordance with the reserves each year unless there was a significant event that prevented such funding. Examples of such events are Hurricane Hugo, Hurricane Fran and the unanticipated fire suppression system modifications.
c. An analysis of expenditures shows that BOD was responsible in the use of the reserve funds. The most significant event which consumed reserves other than building maintenance was funding of the litigation regarding Buildings C & D.
d. ABS's analysis of the reserves and expenditures is available upon request.

3) Geiger's report mischaracterizes the BOD's actions with respect to funds spent on maintenance of the facility. His values completely neglect any money which did not come directly from the reserves such as warranty work and over $1M spent on building envelope work subsequent to Hurricanes Hugo and Fran.
   a. 1983: Binswanger Glass recaulked all windows in 1983 as a warranty item.
   b. 1986: Lesley Construction and LBTS performed repairs as part of warranty efforts and out of courtesy
   c. 1986: Sliding glass door thresholds were modified by the Developer in 1986. Several repair mock-ups were created and tested to select the best option.
   d. 1986: Bennett Painting was engaged to repair exterior finish where it was cracked and chipped. They also repaired areas of the deck coverings to prevent spalling in beams.
   e. 1987: The BOD met with the Developer and Bennett Painting to resolve on-going leaks. The Developer paid to reseal the windows and doors.
   f. 1989-1990: Subsequent to Hurricane Hugo, over $825,000 was expended on repairs which included new roofs, new windows on the ocean elevations, stucco repairs, and the application of an elastomeric coating by Procon Associates for $106,000.
   g. Procon was engaged to replace corroded roof grates.
   h. 1992: Fascias and gravel stops were repaired along the roof
   i. 1992: Stairways reroofed
   j. 1994: Procon and Associates was paid $44,500 to replace deteriorated T-1-11 siding with synthetic stucco.
   k. 1994: Procon and Associates was engaged to survey the exterior and provide repair recommendations. Subsequently, Procon was paid $34,000 to replace corroded metal casing beads on corridor side of facility. This is pursuant to Procon's recommendations.
   l. 1995: All the handrail stanchions were filled as per Procon's recommendations. In addition, all window and door frames were resealed.
   m. 1996: Henderson Painting coated all breezeways.

n. 1996: Subsequent to Hurricane Fran, nearly $190,000 was spent on repairs including nearly $75,000 for roofs. This included stucco, window and Building A rebar repair.
o. 1999: Subsequent to the membership's rejection of a special assessment, the BOD subsequently had Henderson perform "triage" repairs for $24,000.
p. 1999: BOD developed a bulk purchase plan for A&B owners to seal SGD's and Windows. Each A&B owner had to opt-in/opt-out of bulk deal for $1,500. Owners were reminded that they were responsible for their own window maintenance.
q. 2001: BOD reported that $253.000 spent on painting and waterproofing.
r. 2002: BOD notified owners about conditions reported by McGee pertaining to window leaks.
s. 2004: Absolute Painting and Waterproofing performed stucco repairs for $25,660. Unit owners notified to perform window repairs. BOD negotiated bulk window maintenance price for owners from Absolute.
t. 2005: BOD approves $142,400 to re-roof Building A and an additional $13,000 to move roof-top HVAC equipment.
u. 2006: Perkins Waterproofing performed isolated repairs to Buildings A & B.

4) The BOD encountered issues not related to the building enclosure at A & B which consumed financial resources that could have been used for A & B building enclosure maintenance.
   a. 1987: Flooding damaged ground level flatwork
   b. 1987: Insurance required the construction of a pool fence
   c. 1988: Fire pump needed repair
   d. 1988: Replaced common area carpeting
   e. 1989: Improved site lighting, added dune fencing, replaced corroded door hardware
   f. 1991: Fire Marshall required roof grates to be replaced
   g. 1992: State Elevator Inspector required upgrades
   h. 1992: Replaced fire suppression jockey pump
   i. 1993: Fire Marshall determined that the original supply from the water main must be upgraded. Included riser to the roof. Total cost was approximately $110,000.
   j. 1993: Fire suppression monitoring system installed
   k. 1993: Elevator telephones upgraded
   l. 1995: Elevator repairs
   m. 1999: BOD moved to special assess HOA for $300,000 to fund Henderson repairs. HOA voted down the special assessment. The special assessment was defeated by the C&D units owners (A/B 89% for, C/D 73% against, 47.8% of membership for)

n. 1999: Maintenance cost increase 5% due to C&D EIFS inspections
o. 1999: Elevators required new fire control panels
p. 1999: Two fire sprinkler lines burst in Building B
q. 2001: HOA assessed $253,000 to fund EIFS litigation on Buildings C&D
r. 2004: Building B elevator repairs
s. 2004: Litigation fund was depleted; HOA reserves moved to supplement litigation funding
t. 2005: Site maintenance supervisor Warner approved excess payments to the window painting contractor totaling $22,488.62.
u. 2005: Improved site drainage $4,526.00
v. 2006: Fire Marshall required emergency lighting upgrade
w. 2006: BOD had additional flood venting installed on the ground level storage areas to reduce the property insurance premiums
x. 2006: Fire suppression system repairs $12,140.00
y. 2006: Expended $17,000 on Schneider & Associates to study water intrusion.

5) Shipyard Village changed the Master Deed to make windows common elements for technical reasons and not financial reasons.
   a. Windows, once installed, cannot be considered independent of the opaque wall areas. They both work as part of a larger system called the building enclosure. The building enclosure separates the interior from the exterior in a manner as to protect the interior from weather and to provide a space which can be climate controlled.
   b. Windows transition to walls at an interface. This interface must be properly detailed with flashings and sealants to prevent the intrusion of water. In addition, windows are not intended to be watertight under all conditions; therefore the flashings must collect and redirect that water back to the exterior.
   c. Prior to the inclusion of Buildings C & D, the HOA included many aspects of window repair, replacement and maintenance as part of annual operating costs, reserve costs or insurance funded repairs.
   d. The two year history of the window leakage and replacement at Unit B28, owned by the Morrows is an excellent example of the inherent difficulty for the BOD to exercise its authority when confronted with conflicting technical information regarding the performance of the windows and wall.
      i. April 17, 2004: Morrows reported an on-going leakage problem in Unit B28. The Morrows believed that the issue was related to water leaking through the stucco. Site maintenance manager Bobby Warner reported to the board that water leaked through the window.

ii. October 12, 2004: Warner reported to the BOD that he visited the site during a rain event and reiterated that the leakage was related to the window.

iii. March 4, 2005: The BOD records that the Morrows replaced the windows in B28.

iv. April 15, 2005: Morrows reported to the BOD that their Unit still leaks despite having new windows installed. They engaged an engineer who identified stucco cracks as the source of the water intrusion. The Morrows also forwarded a memo from Architect Hiller who opined that water intrusion in B28 was not related to windows.

v. June 17, 2005: The Morrows report to the BOD that leakage in their Unit remains unresolved. New site maintenance manager Bennett is directed to investigate this issue. He identifies sealant joint failures at the windows/stucco interface which could be a problem. Bennett also founds cracked stucco over CMU at a previous repair which could allow water intrusion.

vi. October 14, 2005: A thermographer was engaged to scan the walls in B28 to determine the source of the leakage (Both Buildings A & B were scanned).

vii. February 17, 2006: The Morrows attend the BOD meeting with their engineer Manning. Manning described his study which indicated that repairing one window will not solve leak issues. The leakage occurred at the window/stucco interface. The repair required a vertical stack of windows to be removed, flashed and replaced. This resulted in the BOD discussing the need for windows to be a common element.

viii. February 18, 2006: The BOD discussed the Morrow matter along with a letter that the Morrows sent to all A & B unit owners. In addition, the difficulty that owners have with regard to finding qualified contractors to work for one unit owner on a tall building was shared. A show-of-hands vote was taken to see if the BOD's motion from the previous day should be on a proxy ballot. The majority present were in favor of the motion.

e. I visited the site in 2010 and observed the windows and doors that were removed. Most of the aluminum frames exhibited corrosion from contact with stucco or concrete. The windows were designed to be attached with nail flanges which extended over the face of the exterior sheathing and were covered with stucco. Removing and replacing this type of window cannot be accomplished without damaging the stucco.

6) There is no evidence that the BOD had actual and/or constructive knowledge of damages and/or deficient conditions upon which they failed to act.

a. 1994: Procon's survey stated that structural elements are in good condition with a few isolated areas which may be a concern. Concrete spalling wass described as "minor" as only stucco materials have released from areas of the concrete substrate.
b. 1999: Henderson proposes to repair damaged rebar. Only limited work was performed due to special assessment not passing. This work was monitored by Bobby Warner. Warner reported to the BOD that the rebar was not damaged. Only wire mesh was corroded.
c. 2006: Bennett reports that Schneider & Associates identified "rebar showing through" on some balconies.
d. 2006: Schneider reports that balcony damage is more severe than initially anticipated. The repairs will be more complex as they are tube-slabs.
e. 2008: Spectrum Engineering Services reports that rebar is exposed on the lanais (decks) where concrete has spalled away.

Rebuttal to Geiger Opinions

Please refer to page 32 of the ECS report for Mr. Geiger's summary of opinions. The item numbers below correspond to his item numbers.

1) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendation from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the fiduciary responsibility of a homeowner's association board of directors.

2) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendations from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the obligations of a homeowner's association board of directors.

3) The basis for this allegation appears to be Mr. Gallagher's affidavit. A review of the affidavit and subsequent events shows that the BOD engaged Gallagher's company Procon to perform the repairs which he recommended. Though Gallagher mentioned conditions such as spalling and cracking, he characterized these conditions as minor and isolated. There is no record that Gallagher provided a follow-up report to the BOD warning that the work he performed did not address all of the conditions of which he had concern. The record clearly indicates that the BOD responded appropriately to Gallagher's recommendations.

4) Geiger alleges that the seriousness of the conditions was downplayed according to the meeting minutes and correspondence. There are records indicating that the BOD received conflicting reports from various professionals. Bobby Warner, a member of the property management staff, reported to the board on multiple occasions that the severity of damage was not as high as had been characterized by some contractors. He also advised the board that they did not need to engage engineers to assess conditions or manage repairs when that had been recommended by others. There is no evidence the BOD downplayed the seriousness of any conditions. Rather, they were made to choose between alarming characterizations made by contractors who would have benefited financially from extensive repairs and the more conservative representations of a maintenance staff professional who was seen as a trusted representative of the HOA.

5) Aspects of this allegation are true. There are records that the original developer and builder performed repairs to leaking windows shortly after construction. However the wording of this paragraph is deliberately misleading. Geiger completely ignores the fact that all ocean side windows were removed and replaced after Hurricane Hugo. He also fails to acknowledge that much of the window maintenance, prior to the addition of Buildings C & D, was performed collectively based assessments as each owner had a nearly identical stake in the repairs. The issue of individual window repairs only became a significant issue after the addition of Buildings C & D to the association as these owners already had new windows. Coincidentally, the change in the HOA composition came approximately 10 years after the windows were replaced and these windows were approaching the end of their expected useful life. When the HOA voted to not fund a collective window effort, the BOD issued a reminder to the owners that they are responsible for the window maintenance. And, the BOD also arranged for bulk pricing to allow the Building A & B owners to spread the contractor mobilization costs between several homeowners.

6) There is no evidence indicating that the BOD failed to enforce the provisions of the Master Deed requiring Unit Owners in Buildings A & B to maintain, repair and replace certain aspects of their units. Rather the record clearly shows that individual unit owners were notified of needed repairs and violations. It also shows that some owners, who had performed maintenance on their own, inquired about refunds from the BOD when similar repairs were undertaken on a widescale by the HOA. This included such things as reimbursements for window replacements.

7) This allegation is not supported by the evidence. For example, the first time the BOD was notified of significant slab reinforcement corrosion was in 2006 by Schneider & Associates. The BOD responded by engaging more qualified consultants to fully

investigate these conditions and to develop a repair plan. Prior to 2006, the BOD engaged contractors such as Procon and Henderson to provide them with recommendations for repairs; these contractors were subsequently engaged to perform the repairs.

8) This allegation is also not supported by the evidence. The records show that the BOD placed the owners on notice of needed repairs and worked to arrange bulk pricing for this work when appropriate.

9) The need for the $11,000,000 assessment is more directly associated with the fact that the facility is located ocean front and was constructed nearly 30 years ago. The construction technology, means and methods available today are more robust but they are also more expensive. For example, the implementation of cathodic protection is an appropriate repair and it will reduce the potential for future rebar corrosion. However, this technology was not widely available at the time the facility was constructed and none of the construction professionals recommended it to the BOD prior to the current repairs. My experience is that similarly aged and located properties undergo major rehabilitations every 25 to 30 years.

10) This allegation is redundant to previous allegations. It is unsupported by the evidence.

11) The Master Deed was amended to make windows and doors common elements; therefore this allegation is without merit. That notwithstanding, there was never any testing performed to demonstrate that water leaked through any windows. The hose testing performed by McGee was not reported to comply with published standards for window leak testing. Within a year of McGee's work, Keystone reported that no water leaked through windows; they reported water penetration through the stucco. The windows and stucco have been removed and there is no means to determine whether the windows did, or did not, actually leak.

12) The records do reflect that leaks occurred from time to time in various units. These leaks were attributed to the roof, windows, stucco, sliding glass doors, fenestration in neighboring units, HVAC equipment, water heaters, kitchen fixtures, bathroom fixtures and laundry equipment. Each of these conditions, when reported to the board, was referred to the property manager or site maintenance supervisor for further investigation. When needed, the board notified owners of the need to repair or maintain fixtures and equipment. The BOD also undertook to repair the roofs and secure roof-top HVAC equipment to resolve leak issues.

13) This allegation is without merit and is not supported by the evidence.

14) This allegation is without merit and not supported by the evidence. Geiger claims that the BOD did not engage qualified professionals to assess the facility. The records show that qualified construction professionals were providing guidance to the BOD as early as 1993 and a professional property manager was engaged from the inception of the HOA. Ironically, the first construction professional to submit a letter to the BOD was Mr. Gallagher who provided an affidavit for the plaintiffs; Mr. Geiger relies on this affidavit.

15) This allegation is redundant and without merit. The BOD followed the recommendations of the qualified construction professionals engaged to provide assessments.

16) This allegation is without merit. The BOD sought guidance on the preparation of a reserve schedule; this schedule was improved and revised throughout the history of the HOA. The BOD funded the reserved in accordance with the schedule each year except when significant mitigating circumstances prevented it. The availability of reserve funds for maintenance and repairs was impeded in the early 2000's as reserves were diverted to the fund for Buildings C & D litigation.

17) This allegation is without merit as the reserves were appropriately budgeted and funded.

18) This item is a statement of fact and not an allegation. To the extent that this is an interpretation of a contract, Mr. Geiger's education and experience do not qualify him to render opinions on the fiduciary responsibility of a homeowner's association board of directors.

19) Mr. Geiger's reading of the BOD minutes does not include an actual analysis of how money was collected and allocated by the BOD. Reports about the lack of funding are related to the total reserves available after expenditures. Large projects, catastrophic events, unforeseeable projects and litigation funding depleted the reserves at times. However, the reserves were adequately budgeted and funded each year. Also, reimbursements from insurance carriers, warranty claims and even the Buildings C & D litigation subsequently replenished the reserves. Mentions of low reserves in the minutes demonstrate that the BOD was vigilant with regard to reserve funding.

20) This allegation is redundant and without merit. See item 12.

21) This allegation is redundant and without merit. See item 7.

22) In 2002, McGee's window study report includes mention of rotten wood structural elements. This is the first report suggesting that serious wall damage was present at the

site. The BOD was restricted in implementing and funding repairs due to reserves being diverted to the litigation fund for Buildings C & D. In addition, the conflicting technical reports made the source of water intrusion unclear; one report cited windows as the source while the other cited stucco. The BOD had authority to take action on the stucco but not the windows. Subsequently, the BOD engaged Absolute Waterproofing to repair areas of the stucco. The BOD also coordinated window repairs between Absolute and the owners. Schneider's 2006 report is the first that suggests serious concrete damage existed. Pursuant to this report, the BOD engaged more qualified consultants and eventually selected SKA to develop and manage the repairs.

23) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

24) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

25) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

26) This allegation is without merit.

27) This item is a statement of facts with regard to the cost of the project. It is informative to note that Geiger does not fault construction professionals such as SKA and SPS for not being able to anticipate the degree of distress in the buildings. However, Geiger believes that the volunteer members of the BOD, who are not construction professionals, had a duty to understand the state of the structural condition of Buildings A & B in a manner above and beyond the information provided to them by construction professionals between 1993 and 2006.

28) A review of the project expenditures since Geiger issued his report would be needed to determine if this is actually an issue.

Re-Allocation of Assessment

There is no justification for re-allocation of assessments. Historically, the HOA has adhered to the principle that all association costs are to be borne by the owners in accordance with the Master Deed. In fact, this issue was addressed with the owners on June 15, 2001 in a letter entitles Urgent Message and Notice of Proxy which stated:

> It is now important for A and B owners to support this year's assessment. We are not competing owners but neighbors protecting our investments and all owners (A, B, C and D) are at risk and responsible for repairs to any buildings in our Association as stated in the Master Deed and By-Laws.

This position was reiterated on April 16, 2005 at the Shipyard Village Council of Co-Owners, Twenty Third Annual Members' Meeting. The following excerpt is from the minutes:

> Joe Henson (B46) asked how the owners in the A and B building will be affected by the lawsuit and repairs needed in C and D. The Board explained that the A, B, C and D buildings are all part of Shipyard Village Council of Co-Owners, Inc. and all expenses, regardless of what building, are shared by all owners based on percentage of ownership.

Given that this policy is in accordance with the Master Deed, and that this policy has historically been enforced, there is no justification for re-allocating the assessments for the recent repairs to Buildings A and B.

Summary

The evidence clearly shows that the Shipyard Village Council of Co-Owners' Board of Directors acted in good faith to preserve and maintain the condition of Buildings A and B. They engaged consultants and professionals to provide input with regard to maintaining the structures and the financial state of the HOA. The BOD responded to these inputs by funding reserves in accordance with recommended schedules and by funding efforts to repair and replace building systems as needed.

There is no evidence that the BOD deliberately withheld information or misled the HOA with regard to the condition of Buildings A and B. Similarly, there is no evidence that the BOD conveniently altered the Master Deed to make fenestration a common element in anticipation of the rehabilitation effort; this decision was made based on a review technical and factual issues which revealed that window maintenance was more appropriately an HOA responsibility.

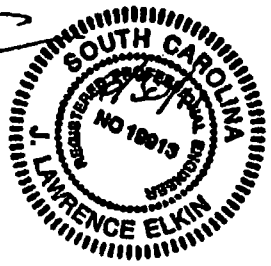
Finally, the BOD acted within the scope of the Master Deed with respect to the assessments to rehabilitate Buildings A and B. Their interpretation and enforcement of the Master Deed is identical to the manner in which this was done previously when Building A and B owner were assessed to fund the litigation and repairs for Buildings C and D.
Should additional information be made available to me, I reserve the right to consider such information, and to, if necessary, revise my opinions.

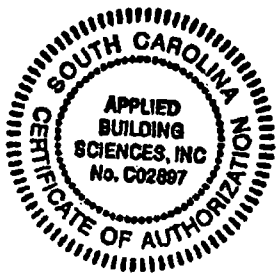
Please call with any questions you may have.

Best regards,

APPLIED BUILDING SCIENCES, INC.

J. Lawrence Elkin, PE





BRADHAM SERVICES, LLC
PO BOX 30698
MYRTLE BEACH, SC 29588

April 19, 2012

Mr. David Mills, Esq.

McNair Law Firm, P.A.
PO Box 1469
11019 Ocean Highway
Pawleys Island, SC 29585

Re: Richard Fisher etal Plaintiffs

Vs

Shipyard Village Council of Co-Owners, Inc. Defendant

Dear Mr. Mills:

As President of Bradham Services, LLC, I provide management consulting for associations and regimes, and receiver services activities for the court system and associations. I am confident I am an expert in the areas of property management, Home Owner Association governance, financial management, and fiduciary services as a result of my 38 years of operational experience in property management; nine years direct association management experience advising Associations' Board of Directors on their duties and responsibilities; hands-on manager experience managing day-to-day operations of large oceanfront condo associations for property owners and co-owners in the Grand Strand area; and coordinating the maintenance & repair of buildings and facility systems. My Bio is attached as Exhibit A.

My experience ranges from 25 years of service in the United States Air Force managing the United States Air Force's Military Housing and Hospitality programs to include homes, residential dormitories, hotel style facilities, restaurants, fitness centers and other hospitality services. My service culminated in my assignment as Commander, Air

Force Services Agency as a full colonel managing a $2 Billion dollar program with over $550 million in investment portfolio to re-invest in the activities for the future.

I was the senior Air Force official responsible for the operations and business aspects of the Air Force's Non-appropriated fund (NAF) financial management, food & hospitality programs, morale, welfare and recreational programs, housing needs, NAF new construction of facilities, NAF Human Resources, and NAF legal issues and concerns.

I offer thirteen years of property management experience in the Grand Strand area with the last eight and one half years as Vice President with one of the largest association management companies in the Myrtle Beach area. Ally Management Inc. managed large oceanfront condominium associations similar to Shipyard Village.

In my capacity as Vice President, I provided management services, advisory services, direct supervision, operational policy and procedures for day-to-day management of associations, and specialized central programs for 78 associations with 12,500 units. Eighty percent (80%) of the units were in oceanfront developments, with the remaining units in golf course communities and residential (single family homes) associations.

As an active association manager, I provided direct association management services to 13 of these associations, eleven (11) of which were oceanfront associations, providing direct management to over 3,000 units on a daily basis in addition to my Vice President duties. In this capacity, I had to recruit people for Board vacancies; advise directors on their duties and responsibilities; as well as provide the contractual management, administrative, accounting, and financial services for these thirteen associations. I also oversaw large construction maintenance & repair projects.

Materials reviewed as a basis of this report:

Pursuant to your request, I have reviewed documents pertaining to this case. Specifically, I reviewed the following documentation related to the ongoing litigation:

1. The Master Deed, Bylaws, and recorded amendments.
2. SC laws pertinent to the management of community associations (SC Horizontal Property Act and the SC Non-profit Act).
3. The Complaint & final 3rd amended Complaint, reports by Larry Elkin on behalf of the defendant, reports and various depositions and affidavits of individuals such as Steve Geiger, Kenneth Schneider, Derek Hodgin, Robert Gallagher, Michael Parades, and Richard Fisher, on behalf of the plaintiff.
4. Minutes of all Board, Annual and Special owner meetings since the inception of the Shipyard Village Council of Co-owners, Inc. (SVCOC) 1982 to present.

5. Reserve schedules and reserve contributions (first five years); approved budgets with reserve funding by the Council (last ten years history); a variety of audits of financial records of the SVCOC (1992-1993 and 1996-2010) describing the actual performance to plans/budgets for both the operational and reserve accounts.
6. Other documents provided through the discovery process to include association's records, Board of Directors records and files, and background information relevant to this case.

Community Association Management and Governances:

Mr. Parades' report states that Community Associations are essentially legal entities established by recorded documents called Master Deeds and Bylaws; SC Horizontal Property Act; and SC Nonprofit Corporation Act. Mr. Parades describes the content of the two SC Acts, so I will not restate them here. The Master Deed and Bylaws provide any specific requirements which might be unique to that specific Condo association. In that regard, I reviewed the Master Deed and Bylaws of Shipyard Village for any unique requirements relevant to the issues of Board duties; budgeting and planning for both operational and reserve funding to maintain, repair or replace common elements of the association; and finally any previsions of approval authorities for resourcing assessments (Co-owners share of the common expenses).

A. **Unique Master Deed and Bylaws requirements for the Board of Directors and their Duties:**

1. The Master Deed in Article XV, Section 15.2 provides that the **Grantor "shall be entitled to exercise, without the consent of the Co-owners, all rights granted to the Co-owners to elect the members of the Board of Directors** by the Act, this Master Deed, or the Bylaws" until eighty percent (80%) of the units authorized by this Master Deed to be constructed in all phases of the Regime Property or December 31, 1987.
2. The Bylaws in Article I, Section 1.1 define Council of Co-owners as the membership. **"Each Co-owner shall be a member of the Council."**
3. The Bylaws in Article II, Section 2.1, states **"that the Council shall act by and through its Board of Directors."** Accept for the Board of Directors in the first five years of operation, the Board of Directors are volunteer co-owners who are voted into office and serve at the pleasure of the Council of Co-owners. Only the Co-owners can vote the volunteers on the Board and the volunteers serve at the pleasure of the Council of Co-owners. The **Co-owners are the only group that can remove a director / board member for poor performance of their duties**

or for failure to make decisions that are considered for the benefit of all co-owners or conflicts of interest.

4. The Bylaws in Article II, Section 2.2 provides for the Authorities and Duties of the Board of Directors. Section (6) requires the **enforcement of the terms** of the Master Deed, these Bylaws, and any Regulations promulgated pursuant to the Bylaws; and Section (7) is the only place in the Bylaws that speaks to how a Director should act in administering the activities and that is **to act "on the behalf of and for the benefit of all Co-owners."**
5. Article II, Section 2.1 (1) allows the Board to **contract with a managing agent** "to provide for the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same."
6. The Master Deed defines **"Common Expenses"** in Article II Section 2.1 (g) as "(a) **all expenses incident** to the administration, **maintenance, repair, and replacement of the General Common Elements and the Limited Common Elements,** after excluding therefrom such expenses which are the responsibility of a Co-owner as set forth herein, (b) expenses determined by the Council (of co-owners) to be Common Expenses and which are **lawfully assessed against Co-owners,** and (c) expenses incident to the General Common Elements and Limited Common Elements as **defined in the Act or declared to be Common Expenses by this Master Deed."** Therefore, the **Co-owners are the only source of funding** to provide resources to pay **ALL** expenses of the association for the repair, replacement or to maintain the common elements.

The above sections of the Master Deed and Bylaws are unique to Shipyard Village in putting those duties in the hands of the Co-owners instead of the Board. This guidance supersedes any other regulatory document that might normally give those powers entirely to the Board of Directors to assess and approve the collection of any assessments determined to be necessary by the Co-owners.

B. <u>Budgeting and Assessing for the maintenance, repair, and replacement of Common Elements and Limited Common Elements:</u>

1. The Bylaws in Article IV, Section 5.2 budget: gives the power to prepare and present the budget to the Board of Directors. It states the Board **"shall prepare, adopt, and present or cause to be prepared and presented, to the Co-owners at their annual meeting an annual budget (the "Budget")** for the Regime for the next fiscal year. The budget, as adopted by the Board of Directors, shall set forth with particularity the anticipated Common

Expenses for the fiscal year together with the **amount of reasonable reserves** for the payment of **future** Common Expenses and **contingencies."**

2. Section 5.3 Approval of Budget: gives the power of **veto of the budget to the Council of Co-owners**. It states that "the budget, as adopted by the Board, **may be amended upon the motion and affirmative vote of Co-owners** holding two-thirds (2/3) of the Percentage Interest in the Common Elements. The Budget presented and as amended, if amendments are made, shall become the Budget of the Regime for the fiscal year." **Therefore, the Co-owners have the authority and responsibility to amend the budget if they feel it is inadequate in providing resources to maintain, repair or replace common elements.**
3. Section 5.5 Special Assessments: says that from time-to-time, there may be situations whereby funds are needed which were not covered in the Budget. It gives the power to collect special assessments to the Board, but the power to approve the collection of a special assessment to the Co-Owners. It says that the BOD can collect all assessments, only **if the special assessment is approved by a majority of the Co-owners**. Again, another power, **the power of veto, rests with the Co-owners not the BOD for special assessments to maintain, repair or replace common elements.**

The provisions above of the SVCOC are unusual as normally the power to approve the budget, direct special assessments, and to collect reasonable reserves lie with the Board of Directors. However, the SVCOC's governmental documents through these sections listed above, **shifts that burden to the Council of Co-owners in their role of oversight of the Board.**

Securing volunteers for Board of Director positions:

In my experience as an association manager, managing over twenty five different associations during the eight and one half years with Ally Management Inc., there was a need to recruit potential Board members from time to time. In this process, I would always provide the potential volunteer candidates with pertinent information about the job. I provided a copy of the governing directives that were specific to their association. I then discussed their fiduciary obligations, since they would be managing funds and property of others. One of the documents used was written by Arnold & Porter LLP in 2006 which laid out the Fiduciary Duties of a Director and Conflicts of Interest for nonprofit corporations with specific emphasis on financial management of the corporation. This summary article (which is attached as Exhibit B) is quite similar to the one presented by Mr. Parades in his report for determining Fiduciary Duties and definitions of what is required by Board members. The bottom-line effect of this document states that board members must be engaged and ask questions of a variety

of experts. It recognizes that board members are human and may not always be "right" or make the "perfect" decision.

One aspect of my job was to successfully recruit people to participate in the Board process. I explained that what they were being asked to do was not "superman type tasks," but to act as any reasonable, prudent individual would act without reckless regard or use of a personal agenda, and to act on behalf of and in the best interest of the membership as a whole. They were not being asked to always be right; but instead to engage in the proceedings of the group, ask questions, and to seek information that was readily available. In order to be able to act on behalf of others, they should listen to the wishes of the majority of the members and to do what was needed and required. I also provided copies of the budget, reserves, current financial information, any pertinent contracts and the latest audit to new Board members.

To ask more of a Board member than "to act as any prudent person would act" could discourage participation, restrict the type of individuals and experiences needed by the Board. It could be detrimental to the success of the association over the life cycle or history of the association. If other more stringent requirements were envisioned for board members, they would have been included in the specifics of the Master Deed and Bylaws. I found very little in the SVCOC's documents that laid out specific actions to comply with the fiduciary obligations other than **to be reasonable, act in good faith and with the best intentions of the membership at the heart of each decision**.

Opinions:

After having thoroughly reviewed the above regulatory directives; the records and minutes of the SVCOC Association of meetings as prepared by three different professional management companies hired by the Board of Directors (BOD) of the Council, and the reports involved from both the plaintiff and defendant's experts, I offer the following opinions:

1. **The SC Horizontal and Non-profit acts, as well as the Master Deed and Bylaws, define the duties of the Board of Directors (BOD) and outline the standards by which they should act. A review of the record shows the SVCOC BOD preformed as required by the governing directives.**

The BOD is a group, who by its charter, is constantly faced with many decisions, suggestions from others on how things should be run, differences as to services that should be provided, differences as to which items should be repaired, and many other suggestions by others on how the finances should be spent. **The record shows a**

multitude of competing requirements were presented at each and every meeting. This type of activity is expected when dealing with a large number of owners, with their own agendas, and whose suggestions are not constrained by available resources.

The Master Deed and Bylaws place the responsible "to act" on the shoulders of the elected volunteer Board. In the case of SVCOC, the Master Deed places the responsibility to prepare, present, and adopt an operating budget for common and limited common elements of expense with the Board. It requires the budget to include **an amount for reasonable reserves for payment of future common expenditures and contingencies. A review of the record shows on average about 12% to 15% was set aside for reserves and future requirements of the common elements.** The major question now is, was that level of effort enough? According to the reserve schedules prepared over the years and the analysis completed by Elkins, sufficient funds were collected in the normal types of account codes supporting the common and limited common elements to deal with future needs. This analysis by Elkin's of the useful life and the performance of the building envelopes, windows, and doors were similar to what Mr. Kenneth Schneider (Plaintiff's expert witness) concludes in his 2007 letter report to the managing agent. He felt the building envelope was preforming satisfactorily and the issues of the windows were a result of them being at the end of their useful life; therefore, making the time for the Board to consider soliciting "licensed expert" help to deal with the water intrusion situation, somewhere after 2008.

In addition in most cases, the reserve funds were spent on normal reserve type requirements similar to other buildings across the Grand Strand for the repair or replacement of common elements, except when reserve funds were used for the litigation that arose for buildings C&D. Also, the Board and the membership over the years felt the amount collected was sufficient as well. It appears to me after reviewing the record that any time there appeared to be shortages, a special assessment was recommended by the Board; however, the Co-owners did not always approve the assessments recommended by the Boards.

Finally, as required by the MD / Bylaws, these expenditures presented and adopted by the board and approved by the membership are shared by the Co-owners in proportion to their respective interest in the Common Elements through an annual assessment or a special assessment. If there is a difference of opinion as to how much should be assessed each year, the master deed directs the process to the bylaws whereby the final approval of how much will be resourced in both the operating and reserve categories **can be amended by the affirmative vote of Co-owners holding two thirds of the percentage interest in the Common Elements.** In other words, a final amended budget can be offered each year with the approval of 2/3rds Co-owners if additional funds are needed. My review of the record showed that **an amended budget was never called for by the Co-owners.**

A special assessment requires an affirmative vote of the majority of the Co-owners as well. The record does show several situations, which are also outlined in Elkin's report, whereby the BOD felt a special assessment was needed to provide resources over and above normal operating funds and the Co-owners voted those expenditures down. An example was in 1999 when the Board recommended a $300,000 special assessment to fund Henderson's suggested repairs to damaged rebar and the Council of Co-owners rejected the special assessment.

2. **I agree with the findings included in Larry Elkin's report as it relates to the board using technical experts to assist in making solid decisions, presenting satisfactory budgets for planned operating and reserve expenditures, that the BOD making sound building repair decisions for Buildings A&B throughout the 30 plus years' history, and now continuing to make repairs for all four buildings.**

As outlined in Larry Elkin's report (pertinent sections and timeline attached in Exhibit C), the activity clearly shows actions that I would expect to see from a Board who was involved in all the processes of building management, engaged in the decision making process, seeking information from available sources and asking "the right questions," thorough in their deliberations and selection of the course of action from the possible alternatives, prudent in their actions and always serving for the "good of the membership" without a "self-serving" agenda.

The record clearly shows the Board had enlisted the assistance of technical experts and consultants in every aspect of the management and upkeep of the buildings. In addition to the list of building experts provided in Elkin's report, from day one, **the BOD hired and relied on the advice of a Professional Property Management company over the years. These companies which had operated in the Grand Strand area for many years** prior to their contract with these Boards and each one (even those that no longer provide services to SVCOC) are still in business and doing well providing advice to Boards and BODs across the Grand Strand.

These management companies offered guidance concerning appropriate operating and reserve budget components using techniques successfully used over the years with other similar oceanfront operations. These management companies offered a framework to the board to outline the levels of effort for both operating and reserve funding each year and these management companies helped develop a responsible budget. **A review of the record shows there was never a time where by the Council membership over-road the amount of funds recommended by the**

management companies and the Boards in either the operating or reserve accounts at the time the Boards provided an approved budget to the Council of Co-owners for their approval or amendment.

The BOD used competent and licensed auditors to review the financial operations each year, to include a review of the reserve funding and schedule being used. All audits reviewed showed satisfactory management of both the operating and reserve accounts, always following generally accepted financial practices and procedures.

As for building repairs to buildings A&B and now with the inclusion of buildings C&D, the Board used a long litany of technical experts and consultants in the actual field of need to determine what type of repair was actually required. In most cases, these decisions were not "right and/or wrong" decisions, but a choice between one type of repair over another. **As explained in Elkin's report, in several cases the repair chosen was a result of the Co-owners not supporting the special assessment recommended** and needed to fund the more comprehensive repair project.

3. **The Acts, the Master Deed, and the Bylaws outline the basic Standards of Care required by the Boards. But, the standards of duty for the Board and its Directors are not "right and/or wrong" standards of responsibility and duty. They require some interpretation by the BOD.**

From the discussion above, it is easy to see that the standard to maintain, protect and enhance the common property of SVCOC, while outlined in the governing directives, allowed flexibility to the Boards to make decisions on how to proceed. There are **no "cookie cutter" approaches, nor a playbook on how to respond to every possible situation**. The Board is a group of individuals making real time decisions on a wide variety of issues. The record shows the Boards used the information available at the time to make what they felt was the best decision. From Elkin's report, one can see that even **the experts involved had differing opinions** as to what approach should be used and the extent of what actions should be taken. It is my experience that **the requirement to maintain is driven by the requirements themselves, what is seen or known about the requirements**, and as was the case with the SVCOC, **driven by competing priorities and resources** available to resolve those requirements.

If there was an unlimited pot of money, any decision would have been easy and one might start with the strictest solution, as suggested by Mr. Parades. But in the case of property management, **the amount of resources available comes from the Co-owners and is impacted by other requirements,** like mortgage payments, master

association dues, individual requirements to maintain personal property etc. In the case of SVCOC, the **final decision concerning the amount of money to be collected rests with the Co-owners through the affirmative vote of 2/3rds** of the percent of ownership interest and drives the final decision as to how much the Co-owners will pay. For this reason, the master deed provides a general responsibility to the Board to manage the affairs of the association within the directives of the master deed and bylaws, and with the amount of funds as upheld by the Council of Co-owners.

4. **The obligation of fiduciary duty for the Duty of Care and the Duty of Loyalty are also subjective in nature as well. The Board cannot and should not be held to a standard of perfection. The Master Deed and Bylaws section 2.2 (7) of SVCOC requires that directors act in good faith and on behalf of and the fulfillment of the benefit of all co-owners.**

The summary, which was presented in Mr. Parades' report to assist BODs, is quite similar in nature to one I had used in my management of similar Oceanfront associations which had been written by Arnold & Porter LLP. The summaries outline the duties and the actions that should be used by a Board of Directors (BOD).

The summary outlines three duties that a director owes the association... the duty of obedience, the duty of care and the duty of loyalty. **Using this framework and the mandates of the master deed/bylaws, BODs should be able to act properly; to allow these duties to be properly exercised; to protect its members from liability for their actions and the actions of the board.**

Nowhere in either summary, the summary provided by Mr. Parades or Arnold & Porter LLP, does it mandate that directors must or will always be correct. "20/20 Hind-sight" can make something look simple and clear; but in reality, whether or not someone or a board has acted responsibly or without reckless disregard or based upon ones' personal agenda, is somewhat subjective. In making such a determination, one must take the totality of the situation to make a determination of "good faith" or" bad faith" and one "with or without" negligence.

The presumption is that in making a business decision, the directors must act on an informed basis, in good faith and in the honest belief that the action being taken is in the best interest of the membership. The underlining measure of merit should be if **a director acted in a way that was detrimental to the association or in a way that benefited a particular third party over the membership.**

5. **It is my opinion that over the years the Boards of SVCOC were engaged, and focused on the acts that were provided for in the master deed within the scope of powers allowed by the bylaws.**

From my review of the record and the thousands of pages of information in the files, they show **that at no time did the board act outside of its scope. Instead it always relied on technical experts with whom they had hired and feedback from the membership to guide its decision process and final actions.**

An example of this is when the third amendment to the Master Deed and Bylaws was challenged. In response, the Board called for another counting of the votes before moving forward with the assessment.

6. **It is my opinion that the boards had a strong desire to be informed. From day one, a professional management company was used to guide operations of all boards.**

A review of the thirty plus years of minutes shows **the BOD provided a level of attention in all matters to insure they were informed.** They sought all materials from experts both inside and outside of the association. They used materials / information that **were reasonably available** to them from employees, vendors, general contractors, and licensed experts.

Nowhere in the regulatory guidance or master deed and bylaws is "expert" defined as Mr. Parades defined it as "a licensed Architect or Engineer," **instead the MD / Bylaws state that a director should use all materials or information that are reasonably available.** Most frameworks, like Arnold & Porter LLP, define experts as members of staff with experience in certain areas, other third party experts involved in specific aspects of property management and building repairs; advisors like professional management companies and financial management companies to oversee the books and budget process. These were the exact types of experts used by the SVCOC boards throughout the 30 plus years of the Council.

7. **According to Community Association Management (CAM), a training and resource group for association management, from their materials and industry practice, forensic experts like Mr. Parades calls for in his definition require larger sums of money for them to provide their advice; are used to support large special assessments actions or major projects; and are normally used by lawyers in litigation "down the**

road." In my opinion, these types of experts should normally be considered as a last resort as they tend to lead to a source of litigation, rather than to make a determination as to the proper use of resources.

In my experiences in normal day-to-day operations, responsible Boards use technical experts like vendors, general contractors and people in the business, to produce a solution. There is however, a time and place for retaining licensed architects and engineers, and that is why SVCOC is using them in the scope of repair as it relates to the current Building A&B repair.

8. **It is my opinion that the Duty of Loyalty was met by all Boards because according to the record, the directors acted in the best interest of the association rather than one's own interest.**

A review of the record shows **that every board, when confronted with a decision, acted for the good of the membership**. The Arnold & Porter framework suggests that **professional management companies be used to guide their decisions; use employees or other third party vendors** to assist with the care upkeep and surveillance of the general and limited common elements. In the case of the earlier Developer board, the **master deed and bylaws granted the right to the developer to appoint the Board** for a five year period from inception, and to serve at the pleasure of the Grantor.

The HPA section 27-31-190 requires co-owners to contribute a prorated share toward the expenses and administration of the general and limited elements and any other expenses **lawfully** called for by the Board during this period of time. Based upon the Master Deed, the Developer was allowed to appoint the Board for the first five years. Every Co-owner had access to the master deed prior to purchasing their units.

9. **Contrary to Parades' assertion of negligent misrepresentation regarding the conditions of Buildings A&B and water leaks in the building, the record shows the membership was kept abreast of actions being taken to deal with reported water leaks and facility deficiencies. A closer review of the record shows that in every case when there was a problem, a solution was offered.**

Sometimes the solution had to be modified as time went on or showed things were either not as bad as originally thought or other alternative solutions were presented and accepted. Mr. Parades asserts many alternate decisions should have been taken when using his "20 / 20 hind-sight" methodology or approach; unfortunately the BODs did not have the advantage of this "20 / 20 hind-sight".

Even the experts as defined by Mr. Parades had different opinions than other experts. An example of which is Mr. Kenneth Schneider. In Mr. Schneider's letter (attached as Exhibit D) which is a report to the managing agent in 2007, it states that the building envelope was performing "better than expected", the problems with the building were from the windows and doors reaching their life-expectancy and normal time to be replaced. This information from a licensed engineer was contrary to the information provided by one of the licensed engineers of an owner in Building A and information provided by other vendors, such as Pro Con, indicating breaks in stucco etc.

A review of the record shows **the volunteer boards were engaged and using the information available to assess the situation with the buildings.** There were even several times when recommendations were offered to the Council; however, the Co-owners did not accepted them and funding was denied.

When clearer evidence began to unfold after 2008 as to the condition of buildings A&B, **a plan was offered to remedy the situation.** Road blocks were imposed on the board that slowed the project that was needed to correct the situation. The board clearly tried to charge ahead to offer a solution that matched the requirement to the resources to fix the problems.

10. In my opinion, the directors, and the Boards as a whole, acted as any ordinary and / or prudent person would have acted when dealing with the issues of the association.

To believe otherwise, as Mr. Parades' asserts, would mean that every elected or appointed director over the course of the 30 year history of the association acted in bad faith, even though these directors came from different walks of life, with different experiences and agendas, and for different reasons, and were selected by individuals of their peers to handle the job and perform the duties. In my experience, if gross negligence, or misrepresentation, or acting in bad faith had actually been going on over the thirty plus years of SVCO's history, that activity would have been evident in the record. **There was no indication from the**

record that the Council of Co-owners felt these directors or Boards were not performing correctly nor required action to have the directors removed or Board replaced.

Summary:

The evidence and record clearly shows that the Shipyard Village Council of Co-owners' Board of Directors have historically acted in good faith with the best interest of all owners in their decision making processes as it related to building A&B maintenance and repair and any other decision brought before the boards over the thirty year history of the Council and regime.

While each of the directors realized their own limits and experiences, from day one these volunteer directors used others to assist them with their duties. Competent professionals and consultants with regard to the management of the common elements were put in-place. They put aside personal agendas and followed the guidance of these professional management companies. Most, if not all, of the companies are still providing services and guidance to Boards.

The record shows all directors were constantly engaged in the process of management and repair of the common elements by attending the meetings, asking questions, obtaining alternatives to solve problems, and making sound decisions. They offered reasonable solution that other prudent individuals might have offered to address the multitude of issues presented to them.

Through the thirty year history of the association, the Boards recommended numerous projects to maintain and repair the common elements... a list of which is included in Elkin's report. They used in-house and third party experts to provide proper surveillance to help them fulfill their part-time responsibilities. They set aside reasonable reserves and funds for contingency purposes to a degree similar to other boards with similar oceanfront requirements at levels recommended by professionals who managed similar situations and they were never challenged to amend their recommended levels, to add more funds to what had been identified, or adjusted the prorated share of all co-owners.

There was no evidence that the BOD deliberately withheld information or took actions that were not in the best interest of all co-owners regardless of their own personal benefits. And the actions as outlined in the minutes and records of the association were all taken within the scope of the master deed with respect to the legality of these actions; the assessments to fix problems identified to the boards by others; and the care of their fiduciary duties. They may not have always been

"perfect" in their decisions when looking at the decision with "20/20 hind-sight," but they always acted in good faith and for the benefit of all co-owners not the benefit of a third party.

Closing:

I make these opinions stated in this report to a reasonable degree of professional certainty. Specifically, I make these opinions using the information provided to me for review; my 38 years of management experience, and eight and half years of specific experience as an association manager charged with similar responsibilities and duties. Should additional information be made available to me, I reserve the right to consider such information, and to, if necessary, revise my opinions.

Thank you for allowing me to provide assistance to the Defendants of this case and please call me with any questions you may have.

Best regards,

Gary Bradham, Principle Consultant
Bradham Services, LLC

Exhibits:

A. Bio of Gary Bradham
B. Arnold & Porter 2006 Memorandum on Fiduciary Duties of a Director and Conflict of Interest
C. Larry Elkin's report, Applied Building Sciences Inc., dated June 30, 2011, Defendant's Expert Witness on building repairs and processes
D. Kenneth Schneider's February 7, 2007 letter to Managing Agent concerning Shipyard Village A&B Up-grading the window-walls

Exhibit A

Biography / Resume of Gary Bradham

GARY C. BRADHAM

PO Box 30698 * MYRTLE BEACH, S.C. 29588
(843) 215-5093 * Cell # 458-0947 * bradhamservices@gmail.com*sgcb@earthlink.net

CAREER OVERVIEW

Background includes 38 years of management at all levels, providing quality customer service, fiscal controls, hotel and property management services, and overseeing new construction programs. Well versed in strategic planning, budgeting and accounting. Extensive experience in staff development, team selection, developing and marketing new programs, procurement and inventory controls, and negotiating leases and contracts for managing large complexes.

MANAGEMENT

Principle personal assets include excellent leadership, organizational skills, integrity, enthusiasm, high energy, and team player. An effective public speaker with an ability to quickly establish rapport and motivate large groups.

CAREER HISTORY

December 2011 to present – President and single principle member, Bradham Services LLC, providing consulting and receiver services in the greater Grand Strand area.

May 1 2003 to Dec 2011 – Vice President, Development & Growth, Ally Management Inc. Responsible for directly managing 13 associations with over 3,000 units; marketing and sales activity for one of the largest property management companies on the Grand Strand growing the business to over 70 properties and 12,500 units in the eight years of service; providing construction liaison services for over six large construction repair projects; developing and deploying new contracting processes and Prime Vendor contracts which saved the associations millions of dollars over multiple years; and developing new collection procedures to compensate for the economic downturn and the resulting impacts on the associations which returned hundreds of thousands of dollars owed to the associations.

Sept 2002 to April 2003 - Associate faculty, Horry Georgetown Technical College, teaching business courses. Managing partner, Bradham & Polson Investments, LLC., for various investment holdings in the area.

May 2001-Sept 2002 - Senior Marketing Director, Sales and Real Estate, Restaurant Solutions, Inc. and part Owner of Churchill Coffee Company & Bistro, Myrtle Beach, SC. Responsible for the advertising and marketing program, sales and all real estate aspects of a new business, Churchill Coffee Company & Bistro, LLC.

April 1998-May 2001- Director, Hospitality, Burroughs & Chapin Co., Myrtle Beach, SC, Leader in SC's tourism. Selling company's hospitality & entertainment programs, exceeding performance standards by 150%.

- Responsible for all aspects of the company's hospitality programs and cooperative sales
- Managed business office of the condo rental company with 300 units; created and managed business office of the vacation packaging company to sell all aspects of the company; oversaw 7 hotels and the marketing call center, and coordinated company's transportation needs
- Responsible for staff selection, development and training, and performance evaluation

UNITED STATES AIR FORCE 1973-1998

Completing service as **Colonel** in the Air Force (AF) with a diverse and challenging background.

1995-1998 - Commander, Air Force Services Agency, San Antonio TX (Chief Executive Officer Equivalent) Led a multifunctional organization with responsibility for providing worldwide morale, welfare, recreation, (MWR) and quality of life programs effecting 573,000 military and civilian personnel. Led staff of 425 military and civilian employees in corporate headquarters and 46, 300 Services employees worldwide. Single organization responsible

for non-appropriated fund (NAF) management, food and hospitality programs, housing needs, NAF new construction program, and NAF legal issues and concerns

- Chief Executive Officer for $2 billion per year business with over $550 million in investments
- Responsible for quality of life, readiness and force projection through major programs including corporate marketing and purchasing, hotels, food service and clubs, sports, recreation (golf, bowling, libraries), child care, mortuary affairs, and wartime Services programs and training facilities
- Responsible for policy and procedures of the non-appropriated fund (NAF) accounting, budgeting, and investing system worldwide; and allocation of congressional approved funds for new construction

1994-1995 - Chief Programs, HQ Air Combat Command (ACC), Langley AFB VA (Chief Operating Officer Equivalent) Responsible for formulating policy and standards for field level dormitories, food, lodging, and recreational activities & programs for AF 's largest operating division. Led staff of 30.

- Oversaw 14,000 facilities, 550 activities, 17,000 employees, and budget of $300 million.
- Orchestrated a $4 million modernization initiative in fitness; automated operating systems for libraries, clubs, and golf courses; reduced loses in child development activities by $800 thousand

1992-1994 - Chief, Financial Division, HQ USAF/SV, Washington DC (Chief Financial Officer Equivalent) Financial Officer and principal advisor to Corporate head for financial and operational policy ($2 billion program)

- Developed and directed $80 million annual construction program for the Chief of Staff of the AF

1989-1991 - Chief Military Family Housing Division, HQ USAF/CE, Washington DC (Executive Director Equivalent) Managed funding and operations. Led 19 engineers, and housing experts with $1 billion budget.

- Developed requirements, AF priorities, and sought resources from Congress to improve operations

1987-1989 - Director Housing and Services, HQ SPACECOM, Peterson AFB CO (Regional VP Equivalent) Responsible for Command's multimillion dollar housing and Services programs at 33 locations around the world.

1984-1986 - Commander 363d Services Squadron, Shaw AFB SC (Chief Executive Officer Equivalent) One of the largest Tactical Air Command line Services organizations (Led 88 military and 200 civilian employees). Responsible for physical plant management and grounds for over 50 buildings and dormitories on the base

- Managed dormitory improvement program, renovating 6 dorms and building 2 new facilities
- *Selected from entire AF worldwide as AF's Outstanding Senior Level Manager of Year for 1986*

EDUCATION

- **Master of Business Administration (MBA),** Louisiana Tech University, 1980
- **BS in Business Administration,** The Citadel, Military College of South Carolina, 1973

PROFESSIONAL MILITARY EDUCATION:

- Completed 1 year resident **DoD Graduate Level Senior Management Program** - Industrial College of Armed Forces 1992 (Research paper "Integrating SVS & MWR" used to restructure career field)
- Graduate of 1 year resident **AF Mid-Level Management Program** - Air Command and Staff College - 1987 **(Top One-Third Graduate, Top performer, and Top 50 Research Project)**
- Graduate of **DoD Mid-Level correspondence course** - National Security Management 1986
- Graduate 1 year resident **AF Line Level Management Program**- Squadron Officers' School-1977

RELEVANT OTHER INFORMATION

- Computer skills include hands-on use of personal computer and a variety of software applications
- Holds South Carolina Real Estate Sales license and well versed in property management

GARY C. BRADHAM

Bradham Services Qualifications

- Company built on the personal reputation of Gary C. Bradham, who has 38 highly successful years of management - ranging from 25 years of service in the United States Air Force in the Air Force's Hospitality and Housing business. Thirteen years of management services in the Grand Strand area with Burroughs and Chapin Company and Ally Management Inc. providing management services to a large segment of property and project management. Taught business courses, as an adjunct instructor, for Horry Georgetown Technical College.

- Strong educational background in business functions. Bachelor of Science Degree in Business Administration from The Citadel; Master of Business Administration (MBA) from Louisiana Tech University; Master of Logistics and Resource Management from the National Defense University; and numerous mid-level management programs offered by the United States Air Force.

- Strong leadership, organizational, and fiscal management skills at all levels. Quality customer service through tight fiscal controls; organization; detail-oriented focus; deep-bred integrity; and high energy / enthusiastic approach.

- Team player who works well with key stakeholders. Gary takes the time to understand key processes of others and then develops the approaches needed to deliver on those processes. Gary is an effective problem solver, no matter the difficulty of the tasks or issue at hand.

- Provided direct supervision, policy and procedures for one of the largest Grand Strand Association Management companies - managing over 12,500 units at over 70 properties. Returned hundreds of thousands of dollars of past due assessments through a rent remit program; set-up and implemented a Prime Vendor program, which saved significant dollars; and implemented a team management approach, providing a feeling of personal services - while allowing savings and services normally reserved for larger entities.

- Developed innovative procedures to deal with the down-turn in the local economy and the impacts to associations across the Grand Strand. Developed national / regional contracts with deep discounts; Prime Vendor program to increase service while reducing costs; construction liaison services to ensure projects were on-time and within budget; new collection processes and procedures with key Collection Attorneys which drove significant funds back to the association where past assessments were owed; and improved customer services through teams.

- Participated as HOA expert in several construction defect lawsuits.

- Deep roots in the Grand Strand community as President of the Myrtle Beach Rotary Club; board member for the Pee Dee March of Dimes; Chairperson and Revenue committee member for several March for Babies annual event.

Exhibit B

Arnold & Porter's 2006 Memorandum on

Fiduciary Duties of a Director and Conflict of Interest

ARNOLD & PORTER LLP

Memorandum

From: James P. Joseph
Arnold & Porter LLP

Date: May 8, 2006

Re: Fiduciary Duties of a Director and Conflicts of Interest

The following is an overview of the duties of a member of a board of directors of a nonprofit corporation ("Corporation"), with particular emphasis on the financial management of the Corporation.

A director owes a fiduciary duty to the Corporation. In performing his or her duties, a director must act in the best interests of the Corporation (e.g., work to fulfill the Corporation's tax-exempt purposes and maintain its tax-exempt status). The director may not act in a way that is detrimental to the Corporation in an effort to benefit any third party. The director must disclose to the other members of the board of the Corporation when the board's actions may have a material impact on the director or another corporation or entity in which the director has a financial interest. The director must not participate in any board discussion or vote on such issues, unless the board determines that the director may so participate. If the board determines that the director may participate, the director may still decide that a conflict exists and that he or she should not participate in any discussion or vote.

I. General Duties That a Director Owes to the Corporation

The duties that a director owes the Corporation are the *duty of obedience*, the *duty of care* and the *duty of loyalty*. In general, under the "business judgment rule," if a board of directors properly exercises these duties, its members will be protected from liability for their actions on the board. In effect, there is a presumption that, in making a business decision, the directors acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interest of the Corporation. This presumption can be overcome with a showing that the board acted with gross negligence.

A. Duty of Obedience

- The directors of the Corporation must not engage in *ultra vires* acts – acts that the corporation, under its charter and applicable law, can not perform because such acts are prohibited or beyond the scope of the corporation's powers.

B. Duty of Care

- The duty of care generally describes the level of attention required of a director in all matters related to the Corporation. The duty of care is perhaps more accurately described as a "duty to be informed."

- A director has the responsibility to be informed about an issue before making a business decision relating to the issue.

  - A director will fulfill the duty of care if, prior to making a decision, he or she considers all material information reasonably available to him or her.

  - To fulfill the duty of care, the directors of a Corporation should follow deliberate procedures and consult with appropriate committees, officers, or employees of the Corporation or other outside experts in making corporate decisions.

C. Duty of Loyalty

- The duty of loyalty requires a director to act *solely* in the best interests of the Corporation rather than in his or her own interests, or those of his or her associates.

- One important aspect of the duty of loyalty is to retain the confidentiality of information that is explicitly deemed confidential by the Corporation, as well as information that appears to be confidential from its nature or matter.

- The duty of loyalty also encompasses a director's obligation to avoid conflicts of interest.

  - For a director, a violation of this duty may result in personal liability for a breach of fiduciary duty.

  - For the Corporation, such a breach may allow a court to void the corporate transaction in which a conflict was present.

II. Conflicts of Interest

- In general, a conflict of interest exists when the Corporation does business with:

  - a director of the Corporation;

  - another entity in which a director of the Corporation is also a trustee, director, officer, employee, consultant, or agent; or

- another entity in which a director has a financial interest (a "financial interest" can generally be defined to include an ownership or investment interest in the entity with which the Corporation is contracting, or a compensation arrangement with such entity).

- To avoid even the appearance of a conflict of interest, a director may want to treat as a conflict any transaction between the Corporation and (i) the director's spouse, descendants, or ascendants, (ii) any entity in which such a relative is a trustee, director, officer, employee, consultant, or agent, or (iii) any entity in which such a relative has a financial interest.

- In addition, the Corporation may have its own conflict of interest policy that must be followed.

- If a conflict of interest is or may be present, the director must:

  - Disclose to the board of directors or relevant committee of the board the material facts as to his or her relationship or interest.

  - Not participate in any board discussion or vote, unless the Corporation's board determines that the director may participate in such discussion or vote.

- If the board determines that the director may participate, the director may still decide that a conflict exists and that he or she should not participate in any discussion or vote.

- If a director follows these disclosure and recusal procedures, a party challenging a transaction on the grounds of a conflict of interest/breach of fiduciary duty will face a heightened burden.

II. The Duty of Care; Financial Management Obligations

In general, under the "business judgment rule," if a board of directors properly exercises the fiduciary duties discussed above, its members will be protected from liability for their actions on the board. In effect, there is a presumption that, in making a business decision, the directors acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interest of the Corporation. This presumption can be overcome with a showing that the board acted with gross negligence. Despite the relatively significant burden of trying to prove gross negligence by a nonprofit director, and despite the protections of the business judgment rule, nonprofit directors can be held responsible when an organization's finances are poorly managed.

A. General Mismanagement. This type of mismanagement is characterized by a pattern of actions or inactions that result in significant harm over a period of time. In one case, *Lynch* v. *John H. Redfield Foundation*, 88 Cal. Rptr. 86(Cal. Ct. App.1970), the directors of a foundation allowed the organization's income to accumulate in non-interest bearing accounts for over five years. This investment decision was made as a result of long-term disagreements among the directors that resulted in their inability to productively manage the foundation's assets. As stated by the court: "All three directors, in concentrating on their feud, left the foundation in a state of suspended animation for several years, ignoring their obligations to carry on its charitable purposes and to manage its assets with a degree of care and diligence which a prudent man would exercise in the management of his own affairs." *Id.* at 88. Although in the above case a feud was to blame for the financial mismanagement, more often such mismanagement is a result of neglect. More rarely, claims are made challenging the directors' decision-making. These claims often involve a single action, such as sale of an asset below value, and also often involve specific action by a board, rather than simply inattention.

B. General Neglect. The term "good faith" most obviously means an absence of any intent to take advantage of the corporation. It is largely a state of mind characterized by both "honesty" and "faithfulness to the director's duties and obligations." "Honesty" has been appropriately interpreted to mean "pureheartedness." "Faithfulness to the director's duties and obligations," however, is more than a mindset. It means some level of diligence in actually seeking to discharge the director's responsibilities. General neglect in decision-making, therefore, would not be good faith. In the leading case of *Stern et al.* v *Lucy Webb Hayes National Training School for Deaconesses and Missionaries, et al.*, 381 F. Supp. 1003 (D.D.C. 1974), the board of directors was found to have breached its fiduciary duty in part for allowing, through inaction and inattention, the reserve fund of the corporation to languish in investment vehicles that paid very low interest rates or no interest at all.

C. Bad Business Decisions. These type of claims are often characterized as a "waste of corporate assets." Because of the business judgment rule, discussed above, these claims are difficult to prove. In one case, *Mary* v. *The Lupin Foundation*, 609 So.2d 184 (La. 1992), a non-profit corporation sold its sole asset, a hospital, to a for-profit health care company for $17.5 million. A member of the non-profit board who objected to this sale sued his fellow board members, alleging that the market value of the hospital was as much as $5 million above the sale price, and that the sale below value was a breach of their fiduciary duty. This director further alleged

that the board never solicited other offers or made an attempt to value the hospital. The court held that these allegations, if true, would constitute a violation of the directors' fiduciary duty.

D. Mismanagement of Investments. The duty of care includes, and in fact mandates, that the board protect the assets of the Corporation. This includes the general management and investment of all of the Corporation's funds.

- A Reasonable Plan. A board is not an insurer of the adequate performance of a Corporation's funds in an investment vehicle, but investment decisions must be reasonable and defensible. The leading case in this area is *Johnson* v. *Johnson*. 516 A.2d 255 (N.J. Super. 1986). In this instance, the dispute involved the investment of funds owned by two charitable foundations. After a detailed review of various investment approaches, the court concluded that the individual in charge of investments had pursued a reasonable investment strategy. What is important about this case is that the defendant's investment approach was unsuccessful. Nonetheless, the court found that the defendant had pursued a reasonable course of action.

- Outside Advice. Directors are not expected, or legally required, to be experts in the stock market or other investment vehicles. Retention and reliance on an investment advisor with a good reputation is more than reasonable; it is an effective protection for the board, even if the advice given ultimately is flawed. For example, in one case, a court found that a nonprofit board's failed investment decisions did not violate its fiduciary duties where they were "based, in part, on research provided by the [organization's] analysts and conforming to guidelines set forth by various investment strategy groups composed of senior portfolio managers, who regularly monitored the suitability of equity investments and rate securities in various categories based upon performance." *In the Matter of Bankers Trust Company*, 636 N.Y.S.2d 741 (A.D.2d 1995).

- Oversight. In the vast majority of cases, nonprofit directors have incurred liability related to investments not because investments knowingly made simply underperformed, but rather, when the directors have delegated investment responsibility to an individual or committee, and then failed to oversee or supervise that person/entity. The leading case is *Stern* v. *Lucy Webb Hayes National Training School For Deaconesses & Missionaries*, discussed above, where the delegation of authority was permissible, but the board never sought or received a report as to the status or performance of the invested funds.

- Delegating or Abdicating Authority. While, as discussed above, it is not unusual for a nonprofit board to delegate investment responsibility (e.g., to a committee or individual director or staff member), boards should document such a delegation and be clear as to the scope of the delegation. A number of cases involving negligent investment liability arise out of the conduct of just one corporate officer or director who, through neglect or otherwise, is granted broad discretion which he or she ultimately abuses. In *Hoye* v. *Meek*, 795 F.2d 893 (10th Cir. 1986), the president of a company delegated investment responsibility to his son, also an employee of the company. While the son was subject to a board policy restricting investments to supposedly-safe government securities, he managed to make such investments in a very risky manner, with disastrous results. Although the President and other board members received monthly reports as to the finances of the organization, no action resulted from reviewing the reports that were provided. The court found the president liable for the losses.

- Uniform Act. Virtually all States have adopted the Uniform Management of Institutional Funds Act, which is generally applicable to directors of charitable corporations. This legislation essentially codifies a corporate standard of care for investment activity. A typical State statute provides as follows: In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions. D.C. Code § 32-406.

Exhibit C

Larry Elkin's Report, dated June 30, 2011

APPLIED BUILDING SCIENCES INC.

ENGINEERS ■ ARCHITECTS ■ ENVIRONMENTAL CONSULTANTS

June 30, 2011

David J. Mills, Esquire
14361 Ocean Highway, 3rd Floor
Pawley's Island, South Carolina 29585

Re: Fisher et al vs. Shipyard Village Council of Co-Owners, Inc.
Shipyard Village, Litchfield by The Sea
Pawley's Island, South Carolina
Civil Action No. 2009-CP-22-01655
ABS Project No. 950.10113

Dear Mr. Mills:

Pursuant to your request, I have reviewed documents pertaining to this case. In addition, ABS personnel conducted two site visits to observe conditions during the recent rehabilitation of the subject facility. The purpose of my work was to determine the validity of the claims by some of the homeowners that they have been unfairly assessed for the rehabilitation of Buildings A and B at Shipyard Village. This report summarizes my findings.

Description and Background

Shipyard Village was originally constructed around 1982 in the Litchfield by the Sea development. This facility consisted of two "V" shaped condominium buildings situated along the ocean front; these structures are referred to as Buildings A and B. These buildings included a combination of cast-in-place and pre-cast concrete primary structural elements with wood-framed in-fill walls. The exteriors are clad with cementitious stucco and aluminum framed fenestration. The original facility included a pool and cabana between the two condominium buildings. In the late 1990's two additional condominiums were erected just west of the pool. These buildings, referred to as C and D, joined the Council of Co-Owners around 1998.

Methodology

I was provided with reports and affidavits produced by the plaintiffs. In addition, I visited the office of ECS Carolinas, LLP to review their file. Finally I was provided with documents from the files of the Shipyard Village Council of Co-Owners (HOA) and the Shipyard Village Council

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Charleston, SC 29405
ph 843.724.1456
fx 843.724.1458

1416 Chapin Road
Chapin, SC 29036
ph 803.345.3833
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398 College Avenue
Clemson, SC 29631
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10612-D Providence Road. #702
Charlotte, NC 28277
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of Co-Owners Board of Directors (BOD). Documents from these sources were often, but not entirely, duplicative.

I visited the site on November 17, 2010 and Wayne Butler, Associate AIA visited the site on November 30, 2010. During these site visits, we documented the progress of the rehabilitation and, where possible, observed the remaining undisturbed conditions at the site. We also sorted through debris removed from the demolished areas to ascertain the condition of the windows, doors, stucco and framing.

Based on my reviews and site visits, I have developed the following opinions:

Shipyard Opinions

1) The BOD enlisted the assistance of technical experts and consultants to provide them guidance as to the condition of Buildings A & B. The BOD acted in accordance with their recommendations. At times these recommendations were conflicting; the BOD made choices based on the best information at their disposal and within the constraints of their budgets.
    a. 1993: Procon recommended engaging an engineer to survey the facility so that they can propose on the waterproofing scope of repairs.
    b. 1994: Procon accepted an engagement to survey the facility so that they can recommend their own waterproofing scope of repairs. Procon then provided pricing for this work. Highlights from this report include:
        i. Reports that all 1990 waterproofing work performed by Procon is performing as intended.
        ii. Reports that metal casing beads on corridor side of facility are beginning to corrode.
        iii. States that concrete walkways are in good condition with only a few, isolated areas which should be surveyed by an engineer.
        iv. Indicates that concrete spalling is minor.
        v. Identifies corroded bridge plates.
        vi. Some handrail stanchions not adequately filled.
        vii. Failed to identify defective windows and improper flashing installed after Hurricane Hugo.
        viii. Failed to identify improper stucco repairs around windows after Hurricane Hugo
    c. 1994: Procon reported that wall-to-slab sealants (installed by Procon in 1990) are in good condition and performing as intended. They opine that water in the balcony wing-walls is from deck slab absorption. Later, in 2008, Spectrum determined that this water is entering via the roof (Gallagher 602).

d. 1998: Henderson Waterproofing was engaged to survey the buildings. They recommended approximately $300,000 in stucco and concrete repairs.
e. 1999: Henderson performed triage repairs as HOA did not fund full scope. Site Maintenance Supervisor Warner monitored repairs and reported to the BOD that the damage was not as severe as Henderson characterized; he relayed that no rebar is corroded. Subsequently he advised that the BOD does not need an engineer to assess the building.
f. 2002: McGee engaged to study Building A & B windows. He reported that the Hugo replacement windows were the wrong model for this facility and that many leak under hose spray. The BOD recognized that the windows are individual responsibilities and notifies owners. Attorneys at Finkel and Altman reported that there was a viable entity to pursue for window case.
g. 2003: Finkel and Altman reverse position on window case. They reported that there was no viable entity to pursue as the statutes had expired.
h. 2003: Keystone Construction studied window leak issues. They reported that water was leaking through stucco and not windows; this contradicted McGee's report. Keystone identified absence of flashing at window openings as part of the problem. They also reported that the windows were improperly sized and that poorly installed stucco was used to infill the gap around the windows.
i. 2004: Bobby Warner recommended Absolute Painting and Waterproofing to perform stucco repairs. Upon completion of repairs, owners were notified that they must repair windows.
j. 2005: Reserved depleted to fund Building C&D litigation. BOD moved to increase monthly assessments to replenish reserves.
k. 2005: BOD engages a thermographer to scan for moisture in Buildings A & B. Water penetration around windows was found with no great amounts of water identified elsewhere.
l. 2005: BOD had Bennett develop window installation standards so that each owner is required to perform the identical scope when replacing a window.
m. 2006: BOD interviewed McGee & Associates and Schneider & Associates to develop a window and stucco priority plan for Buildings A & B.
n. 2006: Schneider reported that the balcony damage was more severe than initially anticipated. He ranked the order of window stacks that need repairs as 8, 1 and the 4 with the others to follow.

2) The BOD engaged financial consultants and property managers to provide them with guidance regarding the operating and reserve budgets for the HOA. The BOD followed the guidance of these professionals.
   a. Reserve studies were completed in 1986, 1990, 1992, 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004 and 2008.

b. An analysis of the reserves shows that they were funded in accordance with the reserves each year unless there was a significant event that prevented such funding. Examples of such events are Hurricane Hugo, Hurricane Fran and the unanticipated fire suppression system modifications.
c. An analysis of expenditures shows that BOD was responsible in the use of the reserve funds. The most significant event which consumed reserves other than building maintenance was funding of the litigation regarding Buildings C & D.
d. ABS's analysis of the reserves and expenditures is available upon request.

3) Geiger's report mischaracterizes the BOD's actions with respect to funds spent on maintenance of the facility. His values completely neglect any money which did not come directly from the reserves such as warranty work and over $1M spent on building envelope work subsequent to Hurricanes Hugo and Fran.
   a. 1983: Binswanger Glass recaulked all windows in 1983 as a warranty item.
   b. 1986: Lesley Construction and LBTS performed repairs as part of warranty efforts and out of courtesy
   c. 1986: Sliding glass door thresholds were modified by the Developer in 1986. Several repair mock-ups were created and tested to select the best option.
   d. 1986: Bennett Painting was engaged to repair exterior finish where it was cracked and chipped. They also repaired areas of the deck coverings to prevent spalling in beams.
   e. 1987: The BOD met with the Developer and Bennett Painting to resolve on-going leaks. The Developer paid to reseal the windows and doors.
   f. 1989-1990: Subsequent to Hurricane Hugo, over $825,000 was expended on repairs which included new roofs, new windows on the ocean elevations, stucco repairs, and the application of an elastomeric coating by Procon Associates for $106,000.
   g. Procon was engaged to replace corroded roof grates.
   h. 1992: Fascias and gravel stops were repaired along the roof
   i. 1992: Stairways reroofed
   j. 1994: Procon and Associates was paid $44,500 to replace deteriorated T-1-11 siding with synthetic stucco.
   k. 1994: Procon and Associates was engaged to survey the exterior and provide repair recommendations. Subsequently, Procon was paid $34,000 to replace corroded metal casing beads on corridor side of facility. This is pursuant to Procon's recommendations.
   l. 1995: All the handrail stanchions were filled as per Procon's recommendations. In addition, all window and door frames were resealed.
   m. 1996: Henderson Painting coated all breezeways.

n. 1996: Subsequent to Hurricane Fran, nearly $190,000 was spent on repairs including nearly $75,000 for roofs. This included stucco, window and Building A rebar repair.
o. 1999: Subsequent to the membership's rejection of a special assessment, the BOD subsequently had Henderson perform "triage" repairs for $24,000.
p. 1999: BOD developed a bulk purchase plan for A&B owners to seal SGD's and Windows. Each A&B owner had to opt-in/opt-out of bulk deal for $1,500. Owners were reminded that they were responsible for their own window maintenance.
q. 2001: BOD reported that $253,000 spent on painting and waterproofing.
r. 2002: BOD notified owners about conditions reported by McGee pertaining to window leaks.
s. 2004: Absolute Painting and Waterproofing performed stucco repairs for $25,660. Unit owners notified to perform window repairs. BOD negotiated bulk window maintenance price for owners from Absolute.
t. 2005: BOD approves $142,400 to re-roof Building A and an additional $13,000 to move roof-top HVAC equipment.
u. 2006: Perkins Waterproofing performed isolated repairs to Buildings A & B.

4) The BOD encountered issues not related to the building enclosure at A & B which consumed financial resources that could have been used for A & B building enclosure maintenance.
   a. 1987: Flooding damaged ground level flatwork
   b. 1987: Insurance required the construction of a pool fence
   c. 1988: Fire pump needed repair
   d. 1988: Replaced common area carpeting
   e. 1989: Improved site lighting, added dune fencing, replaced corroded door hardware
   f. 1991: Fire Marshall required roof grates to be replaced
   g. 1992: State Elevator Inspector required upgrades
   h. 1992: Replaced fire suppression jockey pump
   i. 1993: Fire Marshall determined that the original supply from the water main must be upgraded. Included riser to the roof. Total cost was approximately $110,000.
   j. 1993: Fire suppression monitoring system installed
   k. 1993: Elevator telephones upgraded
   l. 1995: Elevator repairs
   m. 1999: BOD moved to special assess HOA for $300,000 to fund Henderson repairs. HOA voted down the special assessment. The special assessment was defeated by the C&D units owners (A/B 89% for, C/D 73% against, 47.8% of membership for)

n. 1999: Maintenance cost increase 5% due to C&D EIFS inspections
o. 1999: Elevators required new fire control panels
p. 1999: Two fire sprinkler lines burst in Building B
q. 2001: HOA assessed $253,000 to fund EIFS litigation on Buildings C&D
r. 2004: Building B elevator repairs
s. 2004: Litigation fund was depleted; HOA reserves moved to supplement litigation funding
t. 2005: Site maintenance supervisor Warner approved excess payments to the window painting contractor totaling $22,488.62.
u. 2005: Improved site drainage $4,526.00
v. 2006: Fire Marshall required emergency lighting upgrade
w. 2006: BOD had additional flood venting installed on the ground level storage areas to reduce the property insurance premiums
x. 2006: Fire suppression system repairs $12,140.00
y. 2006: Expended $17,000 on Schneider & Associates to study water intrusion.

5) Shipyard Village changed the Master Deed to make windows common elements for technical reasons and not financial reasons.
   a. Windows, once installed, cannot be considered independent of the opaque wall areas. They both work as part of a larger system called the building enclosure. The building enclosure separates the interior from the exterior in a manner as to protect the interior from weather and to provide a space which can be climate controlled.
   b. Windows transition to walls at an interface. This interface must be properly detailed with flashings and sealants to prevent the intrusion of water. In addition, windows are not intended to be watertight under all conditions; therefore the flashings must collect and redirect that water back to the exterior.
   c. Prior to the inclusion of Buildings C & D, the HOA included many aspects of window repair, replacement and maintenance as part of annual operating costs, reserve costs or insurance funded repairs.
   d. The two year history of the window leakage and replacement at Unit B28, owned by the Morrows is an excellent example of the inherent difficulty for the BOD to exercise its authority when confronted with conflicting technical information regarding the performance of the windows and wall.
      i. April 17, 2004: Morrows reported an on-going leakage problem in Unit B28. The Morrows believed that the issue was related to water leaking through the stucco. Site maintenance manager Bobby Warner reported to the board that water leaked through the window.

ii. October 12, 2004: Warner reported to the BOD that he visited the site during a rain event and reiterated that the leakage was related to the window.

iii. March 4, 2005: The BOD records that the Morrows replaced the windows in B28.

iv. April 15, 2005: Morrows reported to the BOD that their Unit still leaks despite having new windows installed. They engaged an engineer who identified stucco cracks as the source of the water intrusion. The Morrows also forwarded a memo from Architect Hiller who opined that water intrusion in B28 was not related to windows.

v. June 17, 2005: The Morrows report to the BOD that leakage in their Unit remains unresolved. New site maintenance manager Bennett is directed to investigate this issue. He identifies sealant joint failures at the windows/stucco interface which could be a problem. Bennett also founds cracked stucco over CMU at a previous repair which could allow water intrusion.

vi. October 14, 2005: A thermographer was engaged to scan the walls in B28 to determine the source of the leakage (Both Buildings A & B were scanned).

vii. February 17, 2006: The Morrows attend the BOD meeting with their engineer Manning. Manning described his study which indicated that repairing one window will not solve leak issues. The leakage occurred at the window/stucco interface. The repair required a vertical stack of windows to be removed, flashed and replaced. This resulted in the BOD discussing the need for windows to be a common element.

viii. February 18, 2006: The BOD discussed the Morrow matter along with a letter that the Morrows sent to all A & B unit owners. In addition, the difficulty that owners have with regard to finding qualified contractors to work for one unit owner on a tall building was shared. A show-of-hands vote was taken to see if the BOD's motion from the previous day should be on a proxy ballot. The majority present were in favor of the motion.

e. I visited the site in 2010 and observed the windows and doors that were removed. Most of the aluminum frames exhibited corrosion from contact with stucco or concrete. The windows were designed to be attached with nail flanges which extended over the face of the exterior sheathing and were covered with stucco. Removing and replacing this type of window cannot be accomplished without damaging the stucco.

6) There is no evidence that the BOD had actual and/or constructive knowledge of damages and/or deficient conditions upon which they failed to act.

a. 1994: Procon's survey stated that structural elements are in good condition with a few isolated areas which may be a concern. Concrete spalling wass described as "minor" as only stucco materials have released from areas of the concrete substrate.
b. 1999: Henderson proposes to repair damaged rebar. Only limited work was performed due to special assessment not passing. This work was monitored by Bobby Warner. Warner reported to the BOD that the rebar was not damaged. Only wire mesh was corroded.
c. 2006: Bennett reports that Schneider & Associates identified "rebar showing through" on some balconies.
d. 2006: Schneider reports that balcony damage is more severe than initially anticipated. The repairs will be more complex as they are tube-slabs.
e. 2008: Spectrum Engineering Services reports that rebar is exposed on the lanais (decks) where concrete has spalled away.

Rebuttal to Geiger Opinions

Please refer to page 32 of the ECS report for Mr. Geiger's summary of opinions. The item numbers below correspond to his item numbers.

1) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendation from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the fiduciary responsibility of a homeowner's association board of directors.

2) The evidence does not support this allegation. There is a clear history that the BOD reserved funds for building maintenance and performed repairs in accordance with recommendations from construction professionals and property managers. Mr. Geiger's education and training does not provide a basis for determining the obligations of a homeowner's association board of directors.

3) The basis for this allegation appears to be Mr. Gallagher's affidavit. A review of the affidavit and subsequent events shows that the BOD engaged Gallagher's company Procon to perform the repairs which he recommended. Though Gallagher mentioned conditions such as spalling and cracking, he characterized these conditions as minor and isolated. There is no record that Gallagher provided a follow-up report to the BOD warning that the work he performed did not address all of the conditions of which he had concern. The record clearly indicates that the BOD responded appropriately to Gallagher's recommendations.

4) Geiger alleges that the seriousness of the conditions was downplayed according to the meeting minutes and correspondence. There are records indicating that the BOD received conflicting reports from various professionals. Bobby Warner, a member of the property management staff, reported to the board on multiple occasions that the severity of damage was not as high as had been characterized by some contractors. He also advised the board that they did not need to engage engineers to assess conditions or manage repairs when that had been recommended by others. There is no evidence the BOD downplayed the seriousness of any conditions. Rather, they were made to choose between alarming characterizations made by contractors who would have benefited financially from extensive repairs and the more conservative representations of a maintenance staff professional who was seen as a trusted representative of the HOA.

5) Aspects of this allegation are true. There are records that the original developer and builder performed repairs to leaking windows shortly after construction. However the wording of this paragraph is deliberately misleading. Geiger completely ignores the fact that all ocean side windows were removed and replaced after Hurricane Hugo. He also fails to acknowledge that much of the window maintenance, prior to the addition of Buildings C & D, was performed collectively based assessments as each owner had a nearly identical stake in the repairs. The issue of individual window repairs only became a significant issue after the addition of Buildings C & D to the association as these owners already had new windows. Coincidentally, the change in the HOA composition came approximately 10 years after the windows were replaced and these windows were approaching the end of their expected useful life. When the HOA voted to not fund a collective window effort, the BOD issued a reminder to the owners that they are responsible for the window maintenance. And, the BOD also arranged for bulk pricing to allow the Building A & B owners to spread the contractor mobilization costs between several homeowners.

6) There is no evidence indicating that the BOD failed to enforce the provisions of the Master Deed requiring Unit Owners in Buildings A & B to maintain, repair and replace certain aspects of their units. Rather the record clearly shows that individual unit owners were notified of needed repairs and violations. It also shows that some owners, who had performed maintenance on their own, inquired about refunds from the BOD when similar repairs were undertaken on a widescale by the HOA. This included such things as reimbursements for window replacements.

7) This allegation is not supported by the evidence. For example, the first time the BOD was notified of significant slab reinforcement corrosion was in 2006 by Schneider & Associates. The BOD responded by engaging more qualified consultants to fully

~~investigate these conditions and to develop a repair plan. Prior to 2006, the BOD~~ engaged contractors such as Procon and Henderson to provide them with recommendations for repairs; these contractors were subsequently engaged to perform the repairs.

8) This allegation is also not supported by the evidence. The records show that the BOD placed the owners on notice of needed repairs and worked to arrange bulk pricing for this work when appropriate.

9) The need for the $11,000,000 assessment is more directly associated with the fact that the facility is located ocean front and was constructed nearly 30 years ago. The construction technology, means and methods available today are more robust but they are also more expensive. For example, the implementation of cathodic protection is an appropriate repair and it will reduce the potential for future rebar corrosion. However, this technology was not widely available at the time the facility was constructed and none of the construction professionals recommended it to the BOD prior to the current repairs. My experience is that similarly aged and located properties undergo major rehabilitations every 25 to 30 years.

10) This allegation is redundant to previous allegations. It is unsupported by the evidence.

11) The Master Deed was amended to make windows and doors common elements; therefore this allegation is without merit. That notwithstanding, there was never any testing performed to demonstrate that water leaked through any windows. The hose testing performed by McGee was not reported to comply with published standards for window leak testing. Within a year of McGee's work, Keystone reported that no water leaked through windows; they reported water penetration through the stucco. The windows and stucco have been removed and there is no means to determine whether the windows did, or did not, actually leak.

12) The records do reflect that leaks occurred from time to time in various units. These leaks were attributed to the roof, windows, stucco, sliding glass doors, fenestration in neighboring units, HVAC equipment, water heaters, kitchen fixtures, bathroom fixtures and laundry equipment. Each of these conditions, when reported to the board, was referred to the property manager or site maintenance supervisor for further investigation. When needed, the board notified owners of the need to repair or maintain fixtures and equipment. The BOD also undertook to repair the roofs and secure roof-top HVAC equipment to resolve leak issues.

~~13) This allegation is without merit and is not supported by the evidence.~~

14) This allegation is without merit and not supported by the evidence. Geiger claims that the BOD did not engage qualified professionals to assess the facility. The records show that qualified construction professionals were providing guidance to the BOD as early as 1993 and a professional property manager was engaged from the inception of the HOA. Ironically, the first construction professional to submit a letter to the BOD was Mr. Gallagher who provided an affidavit for the plaintiffs; Mr. Geiger relies on this affidavit.

15) This allegation is redundant and without merit. The BOD followed the recommendations of the qualified construction professionals engaged to provide assessments.

16) This allegation is without merit. The BOD sought guidance on the preparation of a reserve schedule; this schedule was improved and revised throughout the history of the HOA. The BOD funded the reserved in accordance with the schedule each year except when significant mitigating circumstances prevented it. The availability of reserve funds for maintenance and repairs was impeded in the early 2000's as reserves were diverted to the fund for Buildings C & D litigation.

17) This allegation is without merit as the reserves were appropriately budgeted and funded.

18) This item is a statement of fact and not an allegation. To the extent that this is an interpretation of a contract, Mr. Geiger's education and experience do not qualify him to render opinions on the fiduciary responsibility of a homeowner's association board of directors.

19) Mr. Geiger's reading of the BOD minutes does not include an actual analysis of how money was collected and allocated by the BOD. Reports about the lack of funding are related to the total reserves available after expenditures. Large projects, catastrophic events, unforeseeable projects and litigation funding depleted the reserves at times. However, the reserves were adequately budgeted and funded each year. Also, reimbursements from insurance carriers, warranty claims and even the Buildings C & D litigation subsequently replenished the reserves. Mentions of low reserves in the minutes demonstrate that the BOD was vigilant with regard to reserve funding.

20) This allegation is redundant and without merit. See item 12.

21) This allegation is redundant and without merit. See item 7.

22) In 2002, McGee's window study report includes mention of rotten wood structural elements. This is the first report suggesting that serious wall damage was present at the

site. The BOD was restricted in implementing and funding repairs due to reserves being diverted to the litigation fund for Buildings C & D. In addition, the conflicting technical reports made the source of water intrusion unclear; one report cited windows as the source while the other cited stucco. The BOD had authority to take action on the stucco but not the windows. Subsequently, the BOD engaged Absolute Waterproofing to repair areas of the stucco. The BOD also coordinated window repairs between Absolute and the owners. Schneider's 2006 report is the first that suggests serious concrete damage existed. Pursuant to this report, the BOD engaged more qualified consultants and eventually selected SKA to develop and manage the repairs.

23) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

24) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

25) In this allegation Mr. Geiger is rendering a legal opinion that is beyond his education, training and expertise.

26) This allegation is without merit.

27) This item is a statement of facts with regard to the cost of the project. It is informative to note that Geiger does not fault construction professionals such as SKA and SPS for not being able to anticipate the degree of distress in the buildings. However, Geiger believes that the volunteer members of the BOD, who are not construction professionals, had a duty to understand the state of the structural condition of Buildings A & B in a manner above and beyond the information provided to them by construction professionals between 1993 and 2006.

28) A review of the project expenditures since Geiger issued his report would be needed to determine if this is actually an issue.

Re-Allocation of Assessment

There is no justification for re-allocation of assessments. Historically, the HOA has adhered to the principle that all association costs are to be borne by the owners in accordance with the Master Deed. In fact, this issue was addressed with the owners on June 15, 2001 in a letter entitles Urgent Message and Notice of Proxy which stated:

> It is now important for A and B owners to support this year's assessment. We are not competing owners but neighbors protecting our investments and all owners (A, B, C and D) are at risk and responsible for repairs to any buildings in our Association as stated in the Master Deed and By-Laws.

This position was reiterated on April 16, 2005 at the Shipyard Village Council of Co-Owners, Twenty Third Annual Members' Meeting. The following excerpt is from the minutes:

> Joe Henson (B46) asked how the owners in the A and B building will be affected by the lawsuit and repairs needed in C and D. The Board explained that the A, B, C and D buildings are all part of Shipyard Village Council of Co-Owners, Inc. and all expenses, regardless of what building, are shared by all owners based on percentage of ownership.

Given that this policy is in accordance with the Master Deed, and that this policy has historically been enforced, there is no justification for re-allocating the assessments for the recent repairs to Buildings A and B.

Summary

The evidence clearly shows that the Shipyard Village Council of Co-Owners' Board of Directors acted in good faith to preserve and maintain the condition of Buildings A and B. They engaged consultants and professionals to provide input with regard to maintaining the structures and the financial state of the HOA. The BOD responded to these inputs by funding reserves in accordance with recommended schedules and by funding efforts to repair and replace building systems as needed.

There is no evidence that the BOD deliberately withheld information or misled the HOA with regard to the condition of Buildings A and B. Similarly, there is no evidence that the BOD conveniently altered the Master Deed to make fenestration a common element in anticipation of the rehabilitation effort; this decision was made based on a review technical and factual issues which revealed that window maintenance was more appropriately an HOA responsibility.

Finally, the BOD acted within the scope of the Master Deed with respect to the assessments to rehabilitate Buildings A and B. Their interpretation and enforcement of the Master Deed is identical to the manner in which this was done previously when Building A and B owner were assessed to fund the litigation and repairs for Buildings C and D.
Should additional information be made available to me, I reserve the right to consider such information, and to, if necessary, revise my opinions.

Please call with any questions you may have.

Best regards,

APPLIED BUILDING SCIENCES, INC.

J. Lawrence Elkin, PE

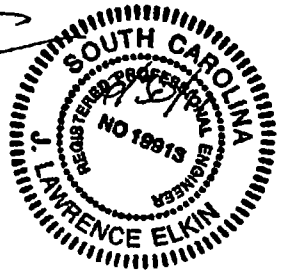




Exhibit D

Kenneth Schneider's February 7, 2007 letter

To Managing Agent concerning

Shipyard Village A&B Upgrading the window-walls

Exhibit D

Kenneth Schneider's February 7, 2007 letter

To Managing Agent concerning

Shipyard Village A&B Upgrading the window-walls



SCHNEIDER AND ASSOCIATES
ARCHITECTS
CHARLESTON, SOUTH CAROLINA

February 7, 2007

Kellie A. Diehl, PCAM
Richard Bennett
Shipyard Village Council of Co-Owners
PO Box 2537
Murrells Inlet, SC 29576

Re: Shipyard Village A&B
Up-grading the window-walls

Kellie & Richard

Dear ~~Ms. Diehl and Mr. Bennett~~,

Schneider and Associates' (S&A) recent and ongoing investigations of the window-wall systems at Shipyard A&B have revealed not-so-surprising conditions, relating to the behaviors of the building envelopes. With the exception of the doors and windows that are near the end of their life expectancy and considering that the buildings are now going on thirty (30) years old, I observe better than average building envelope performance. These buildings are the proud homesteaders of the Litchfield Front Beach Community. Generally, the buildings' architecture is uniquely expressed in the thin-shell concrete "egg crate" style of their era, made famous by the Bauhaus in its development of glass-and-concrete architecture.

Shipyard A&B are constructed of reinforced concrete masonry with "tube-slab" floor and roof systems and "curtain wall" window systems. These building systems were leading design elements at the time of A&B's construction. We have confirmed the composition of the wall systems through some recent destructive testing and have related the cause/effect conditions of the building envelopes' behavior. The destructive testing was necessary simply because no Architectural or Structural plans exist today. We have been able, through our destructive testing, to verify the Architectural and Structural systems as described to us by Joe Hiller, AIA, son of the original Architect, with whom I spoke some months ago. Joe still maintains his father's practice and, as a young apprentice, had worked on the Shipyard project.

During the destructive window testing on Ben and Katie Morrow's unit, B-28, we discovered the "stack" of units was leaking from top-to-bottom at the jamb and sill terminations. The existing conditions rely on the window-wall's frame configuration to "turn" the water to the exterior. The spandrel, formed by the slab edge, is insufficient to accomplish this alone. Expanding the vertical dimension of the spandrel will allow space

3690 Bohicket Road, Suite 1-D • John's Island, South Carolina 29455 • (843)768-1333 • (800)522-7663 • FAX (843)768-1716

for separate flashing assemblies; thus, the "knee-wall" concept. It is not only a functional solution, but also allows for a fresh look and less expensive maintenance costs.

In the mid-80's, "curtain walls" were an up-and-coming leading-edge technology for high-rise buildings; these "curtain walls" were employed in your two buildings and featured large expanses of glass. Glass has many advantages, but also has some disadvantages. Glass readily conducts solar heat; so, on cold days, standing in front of a sunny window is a pleasant experience. On the front beach in August, we may choose to close our blinds in order to assist the windows in reflecting the unwanted heat and take the load off our air conditioning systems. Another advantage of the window-walls is the view. On the beach, we would naturally seek to optimize our visual experience of the views we invested in.

The windows that we are proposing to replace those existing in your buildings are of much higher technology, in that they contain thermal breaks and insulated laminated glass, engineered to resist hurricane-force winds and flying debris. These are also much more energy efficient and stronger to withstand the hurricane-force winds. We considered replacing the window-walls in the bedroom stacks with a "look-a-like", but after studying the problem architecturally, we are proposing to construct a "knee-wall", which is a simple exterior wall that is about knee-high, and then set the window on top of the low wall. Please see the sketch attached. The window-wall construction proposed would consist of a "band" of sliding windows below which will be a low "band" of fixed stuccoed wall. This architecturally produces a much more upscale look. It is far more hurricane resistant; it is far more energy efficient, and it is far more waterproof. It is easy to build and easy to flash; it is easier to integrate into the existing building systems, costs far less to construct than replacing all of the existing windows with a "curtain wall", and less expensive to maintain.

Since the mid-80's, Building Code restrictions have increased significantly, making code-compliant construction more expensive to replicate. The Building Code mandates that all window replacements, not just Shipyard A&B's, must conform to the Code. The new construction proposed will bring these windows into Code compliance. Although we have not concluded that the window design on the ocean-side be changed in this manner, we believe that the windows on the land-side (Courtyard) should employ the "knee-wall" design. They will be far safer and your insurance rates should be favorably impacted. Additionally, this configuration will provide privacy and a low wall space for furniture.

Insurance premiums along all our coasts continue to sky-rocket because of losses due to hurricane damage. Condominium Regimes and other building owners will see significant savings in insurance premiums if the buildings are Code compliant. It is my belief that non-code-compliant condominiums and other multi-family structures along the coasts of Texas, Mississippi, Louisiana, Alabama, Georgia, Florida, South Carolina, North Carolina, and even up as far north as New Jersey, will continue to see higher and higher rates, which will eventually force them to modify their façades to bring the building envelopes into Code compliance.

Architecturally speaking, the reconfiguration of the window stacks in the Courtyards will give the buildings a new look and tie them into the renovations, which have just been completed at Shipyard C&D and will enhance all the property values at Shipyard.

Sincerely,
SCHNEIDER & ASSOCIATES, INC

Kenneth G. Schneider, Jr., AIA, NCARB, RRC

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen

(CONTINUED)

DEPOSITION OF:	GARY CURTIS BRADHAM
DATE:	Wednesday, May 3, 2012
TIME:	9:16 a.m. through 1:58 p.m.
LOCATION:	McNAIR LAW FIRM 11019 Ocean Highway Pawleys Island, South Carolina
TAKEN BY:	Attorneys for the Plaintiff(s)
COURT REPORTER:	MADONNA M. PERKINS Registered Professional Reporter Certified Livenote Reporter

M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008 and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H.S. Keeter and Sandra C. Keeter; Linda A. Mendicino; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC and SGS Beach Partners, LLC; Morgan

Cameron Foster, Sr. And Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. And Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame,

Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF:

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

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3	9/18/07 E-mail from Kellie Diehl	104	11
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STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * *

GARY CURTIS BRADHAM, being first duly sworn, testified as follows:

EXAMINATION

BY MR. SKEETS BELLAMY:

Q. Gary, do you mind if I call you Gary or Mr. Bradham?

A. You sure can.

Q. All right. As you know, this is a deposition that has been scheduled in the Shipyard case involving the C and D unit owners versus the association, not the board; the board has not been named individually.

The purpose of this deposition is a discovery deposition and it's to find out what you know, what you've been told, what opinions you have looked at, what documents you have relied upon in arriving to your opinion.

If, in the course of asking you some

A. I disagree with what a true expert is, okay?
Q. Well, let me tell you what my definition is.
A. Okay.
Q. That which the court would qualify as to give expert opinion in a particular field of endeavor.

MR. MILLS: Object to the form.

THE DEPONENT: And see, to me, an expert is a variety of people. It could be auditors, if you're dealing with a financial issue --

BY MR. SKEETS BELLAMY:
Q. I'm talking about --

MR. MILLS: Please let the witness finish.

THE DEPONENT: -- lawyers, if you're dealing with a legal issue; it could be general contractors, if you're dealing with a maintenance issue; it could be your maintenance staff.

That's what the fiduciary duties that I've referred to, as well as Mr. Parades had in his report, said were the type of people, experts that you would go and ask for information.

And a board then is only charged with reaching out to whatever, for reasonable -- to ask questions, seek advice and then make a decision based on that.

Now, I could not find anywhere where your definition, as you've just explained it to me, being a licensed architect and engineer, was something that I found either in the Master Deed or the Horizontal Property Act or the South Carolina Non-Property [sic] Act saying that that's what a board should do.

BY MR. SKEETS BELLAMY:

Q. All right. Well, my question is, you disagree -- the Court will have to determine who's an expert and who's not an expert. You would agree with that?

A. Of course.

Q. All right.

A. As well as when you would use them, because there are times, obviously, and I've said it in my report when you -- when an expert of that style, one that is licensed and so forth, is required. And I felt like the board actually did it in the time period in the 2005 area when that made some

sense.

Q. All right.

A. They had done it before that, okay? They had hired before that.

Q. Hired what?

A. Your definition of an expert.

Q. Who was that?

A. McGee.

Q. Okay. And what year was that?

A. 2002.

Q. Okay.

A. Okay?

Q. All right. Listen to my question now.

A. Yes, sir.

Q. Is that the first time that my definition of an expert was hired with regard to Buildings A and B?

A. You know, I didn't review it with that --

Q. In mind --

A. -- emphasis. However, I looked down the timeline that I attached that Larry Elkins provided, where I knew he was a licensed -- by your definition -- to see what he picked out. And up until that point, I've seen PROCON, PROCON, PROCON, you know, but that's --

Q. That's Bob Gallagher.

A. He's a general contractor.

Q. All right.

A. That's the kind of expert I would use, okay? Not an expert like you're talking about, licensed engineer or architect.

Q. All right.

A. He's a general contractor. I saw Henderson, who's a waterproofing person who was engaged to survey the buildings in '98. So I found a variety of people back in those early years when they were trying to figure out what was going on: Do we have a problem? Have we been able to fix it with some alternate solutions that are less expensive and then be able to solve the problem?

And in this particular environment in association management, you really deal a lot with competing priorities. And so you are -- while you have these issues with the building, you want to make sure you're using the right option in order to take care of the problem.

So I looked for and tried to follow through, if we had windows that said they were leaking, did it get reported? Yes, they were taken care of. Were there any other complaints from that

particular arena? Was it hairline cracks in stucco? Was the stucco repaired? I was looking for things like that, seeing what type of actions was it that the board was actually doing. And I didn't find anytime where the board had something put in front of them and did nothing.

Q. All right.

A. Unless I was to accept your definition that an expert is only a licensed architect and engineer, okay?

Q. Okay. But that was done with the McGee report in 2002.

A. '02.

Q. Okay. And that was the first time in your review that my definition of an expert was employed?

A. That's the first time I picked up on it. It could have -- you know, I didn't go through the records looking for that fact, other than using this (indicating).

Q. I'm just trying to use your --

A. Yes, sir.

Q. Okay.

A. Please, I'm not -- I'm just trying to make sure I'm communicating correctly to you.

Q. That's fine, that's fine.

Now, when you reviewed the minutes of the letter to the Shipyard Village Owners in September 26, 2007 -- and I'm going to give it to you.

A. Okay.

Q. Did you review this document?

A. (Pause.)

Q. First of all, just tell me if you reviewed this document.

A. Yes, I'm sorry.

(PLF. EXH. 2, 9/26/07 Letter from Shipyard Board of Directors, was marked for identification.)

BY MR. SKEETS BELLAMY:

Q. On Exhibit Number 2 to your deposition, which is a Council of Co-Owners, Inc., Shipyard Village, to Shipyard Village Owners, in September 26, 2007 -- now, at that point in time, A and B and C and D are on board?

A. That's correct.

Q. All right, sir.

A. They came on board in 1998.

Q. And it talks about problems, "Board's Action Taken to Remedy Water Intrusion in Building A and B Buildings." That's the caption.

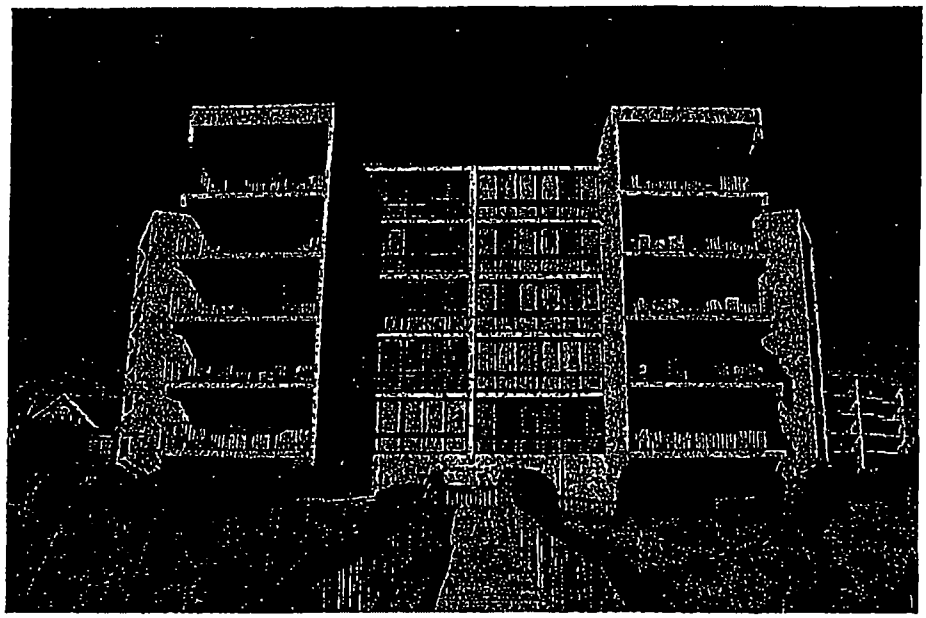
STRUCTURAL INSPECTION

OF

SHIPYARD VILLAGE CONDOMINIUMS

FOR

K. A. DIEHL AND ASSOCIATES



Spectrum Engineering Services, Inc.
490 Garlington Road • Greenville, South Carolina 29615 • 864-269-0431 • Fax 864-269-0428

4.0 ASSUMPTIONS

4.1 Roof Failure:

The present rolled roof system is failing and allowing rainwater to penetrate into the concrete below. The salt ions are carried through the concrete to the steel reinforcement. This roof membrane needs to be replaced with a single ply system that is sealed against the weather.

4.2 Façade Failure:

The stucco finish on the exterior of the structure is allowing rainwater to penetrate into the masonry and the concrete. This surface needs to be sealed.

4.3 Edge Beam Failure:

The outside edge of the lanai slabs is cracking away from the hollow core slabs due to rainwater intrusion into the area. Sealing the top and bottom surfaces will prevent this intrusion and stop the corrosion of the steel reinforcement.

4.4 Soffit Failure:

The soffits of the walkways and the lanais are seeing excess rainwater penetration through the slabs. This is noted in 4.3 above. Sealing the top of the slabs and the bottom of the slabs will protect and extend the life of the hollow core slabs.

4.5 Concrete Failure:

The concrete beams that support the floor slabs are also seeing rainwater penetration that is causing the steel reinforcement to corrode and the concrete to spall off.

4.6 Expansion Joint Failure:

The carbon steel expansion joints are corroded and not working. The joints themselves have heaved up enough to become a tripping hazard. The joints need to be replaced with a stainless steel joints.

4.7 Horizontal Surface Failure:

The top and bottom surfaces of the hollow core slabs are allowing rainwater to penetrate the slabs resulting in the corrosion of the steel reinforcement. Both the top and bottom surfaces should be coated to seal the slabs against rainwater intrusion.

4.8 HVAC Anchorage Failure:

The present roof mounted HVAC units are not securely anchored to the roof. There is a sturdy frame system the units are sitting on, but they are attached to this frame with thin gauge flashing and carbon steel self tapping screws. These need to be bolted down using stainless steel or aluminum angles and fasteners.

4.9 Window and Doors:

The present windows and doors have poor to nonexistent flashing to prevent wind driven rain from getting into the units. These obsolete objects need to be replaced.

5.0 RECOMMENDATIONS

5.1 Roof Failure:

The present rolled roof system needs to be replaced with a new EPDM roof system designed for the high wind area. The roof should also be bonded for 20 years.

5.2 Facade Failure:

The stucco finish on the exterior of the structure is allowing rainwater to penetrate into the masonry and the concrete. This surface can be seal by coating with a water proofing compound. It should be noted that these compounds generally last about five years.

5.3 Edge Beam Failure:

The outside edge of the lanai slabs is cracking away from the hollow core slabs due to rainwater intrusion into the area. Sika injection will bond the concrete together. Then sealing the top and bottom surfaces with an epoxy like Polymerica Master Shield NEB or equal will prevent this intrusion and stop the corrosion of the steel reinforcement.

5.4 Soffit Failure:

The soffits of the walkways and the lanais are seeing excess rainwater penetration through the slabs. Sealing the top and bottom surfaces with an epoxy like Polymerica Master Shield NEB or equal will prevent this intrusion and stop the corrosion of the steel reinforcement. The tops can be sloped to provide positive runoff away from the doors. Flashing and drip edge need to be added to force water away from the next lower structure.

5.5 Concrete Failure:

The concrete beams that support the floor slabs need to be repaired. The existing areas need to be sand blasted and coated with an epoxy bonding agent then filled in with microsilica concrete.

5.6 Expansion Joint Failure:

The carbon steel expansion joints need to be replaced with a new stainless steel joints that provide the corrosion resistance and the slide freedom required.

5.7 Horizontal Surface Failure:

Sealing the top and bottom surfaces with an epoxy like Polymerica Master Shield NEB or equal will prevent this intrusion and stop the corrosion of the steel reinforcement.

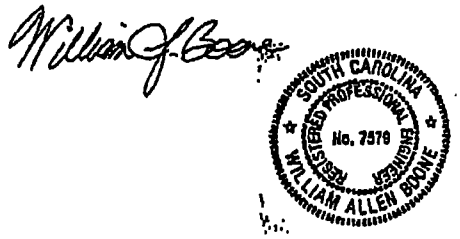
5.8 HVAC Anchorage Failure:

The present roof mounted HVAC units are not securely anchored to the roof. These need to be bolted down using stainless steel hardware and angle.

5.9 Window and Sliding Door Replacement:

The present windows and sliding doors need to be replaced with better system that will resist the high wind loads. The units need to seal better when closed. Enclosed is a quote from Pella Windows who guarantees their windows and doors. Floor to ceiling openings need to have sills and flashing added to decrease water intrusion.

William A. Boone, P. E.



Engineering Services, Inc.
490 Garlington Road • Greenville, South Carolina 29615 • 864-269-0431 • Fax 864-269-0426

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2009-CP-22-01655

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008 and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC;

AFFIDAVIT OF DORIS BRAY

Harry L. Belk and Jan C. Belk; Dennis)
E. Barrett and Wilma J. Barrett; First)
Family Properties, Inc., Cynthia L.)
Jones, Sandra D. Huggins and)
Margaret S. Dover, Thomas Franklin)
Huggins, Frank S. Krouse and Barbara)
T. Krouse, Judith W. Mill, William Mill)
and Susan Mill, Gene R. Riley and)
Patricia C. Riley, Harold LeMaster and)
Patti LeMaster; Joseph P. Heaton and)
Frances H. Heaton; Robert N. Kelly;)
H.S. Keeter and Sandra C. Keeter;)
Linda A. Mendicino; Captains Quarters)
D-24 Association of Owners, Inc.,)
Michael H. Sanders and Rebecca H.)
Sanders, Ruth Gray Wheliss, David B.)
Shivell and Nicki M. Shivell, Debra B.)
Leeke, Joseph Alan Capobianco and)
Lara Serro, Sharon Gibson Daniel, Gary)
C. Andes and Andrea W. Andes, Jay)
Hendler and Laura Hendler, Joy P.)
McConnell, Charles W. Fortner, Judith)
C. Woodson, Warren W. Riggs and)
Charles G. Martin, Riggs Ventures, LLC)
and SGS Beach Partners, LLC; Morgan)
J. Mann and Angela M. Mann; Michael)
Cameron Foster, Sr. and Laura Lee)
Foster; Captains Quarters Unit D-31)
Association of Multiple Ownerships,)
Inc., Evelyn Gail Earnest, Francis G.)
Thomson and Arleen S. Thomson,)
Robert W. Dalton, Red Oak Limited)
Partnership, William R. McKeown and)
Margaret A. McKeown, Norman K.)
Moon and Barbara W. Moon, David T.)
McGill and Carol G. McGill, Rick L.)
Bledsoe and Susan H. Bledsoe,)
Geoffrey A. Wienke and Pamela L.)
Wienke, A. Donald Ross, III and Nancy)
Kay Ross, Dennis J. Straw and)
Roxanne B. Straw, and Resort)
Investments of Litchfield, LLC; Georgia)
M. Pruitt and Howard M. Pruitt, Jr.; Jean)
T. Blaylock; William C. Covington, Jr.)
and Donna C. Covington; Litchfield)
Captain's Quarters, LLC; James A.)

Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame,

Plaintiffs,

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn, deposes and states as follows:

1. My name is Doris Bray. I am over the age of eighteen (18) years and competent to make this Affidavit, which I submit in opposition to Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' Motion"). This Affidavit is sworn under oath and based on my own personal knowledge, except for those matters I state upon information and belief. As to those matters, I believe them to be true.

2. I am familiar with the affairs of the Defendant Shipyard Village Council of Co-Owners, Inc. ("the Council") against whom the Plaintiffs seek partial Summary

Judgment. I have owned Unit 27 in Building B in Shipyard Village since 1983. I have continuously served on the Council's Board of Directors ("Board") for the past five (5) years.

3. I am familiar with and have reviewed the Plaintiffs' Complaints in this case, the Defendant's Answer, and Plaintiffs' Motion.

4. Shipyard Village Horizontal Property Regime ("the Regime") consists of four (4) buildings, A, B, C, and D. The buildings in the Regime were constructed at different times but all Unit Owners are automatically members of the Council of Co-Owners by virtue of the Master Deed (as amended).

5. It is undisputed that Buildings A and B were in serious distress and in need of substantial repair. The Board was at all times mindful of its fiduciary duties when it made decisions as to necessary maintenance, repair and/or replacement of the Buildings.

6. Plaintiffs' Motion contends that the Council (or Board) had a duty to assess directly the Building A and B Co-Owners for their alleged failure to maintain and repair their windows and sliding glass doors in a timely manner. (Plaintiffs' Motion, ¶2 on page 13). I strongly disagree with that assertion.

7. There is no evidence that the windows and/or sliding glass doors were the primary cause or source of the leaks experienced in the A and B Buildings. For example, the windows in my Unit were not leaking. I am aware of additional Unit Owners in both Buildings A and B whose windows and/or doors were not leaking. The Council was advised that the damage was the result of the failure of the building envelope system. Based on my ownership in Building B and my involvement as a

board member, I believe that it is impossible to determine if the water intrusion and leaks in the Buildings were primarily caused by the windows and sliding glass doors or by design and/or construction deficiencies originating with the Common Elements of the Buildings and by the Buildings' constant exposure to salt air and water as oceanfront properties.

8. It would be unfair, unreasonable and contrary to the best interests of the Council to have "individually assessed" the A and B Building Unit Owners for water intrusion that may not have resulted from any lack of maintenance of windows and sliding glass doors by owners, but rather from original design and/or construction defects of the Common Elements and constant exposure to the ocean environment.

9. Plaintiffs' Motion further contends that Plaintiffs are entitled to a $531,679.00 reduction of their assessment to account for the "soft" project costs attributable to the windows and doors that should have exclusively been borne by the Co-Owners in Buildings A and B (Plaintiffs' Motion, ¶2 on page 10; ¶d. on page 14; and ¶e. on page 14). I also strongly disagree with this assertion.

10. Setting aside for the moment the validity of the Windows and Doors Amendment (which Plaintiffs have previously requested, and continue to request, be declared invalid by the Court) Plaintiffs' theory regarding allocation of "soft" project costs is seriously flawed. There was no practical, equitable way to apportion such costs. As previously stated, there is no conclusive evidence that the Building A and B Unit Co-Owners were negligent, nor is there any conclusive evidence that all Building A and B windows and/or doors were leaking. There was however, no question that the building envelope system had to be repaired, the majority of which Plaintiffs agree is a Common

Expense. Considering that the work to the Common Elements was a necessity and the lack of conclusive evidence that leaky windows were the culprit in every Unit, or even any Unit, the Board was faced with uncertainty as to how to treat the costs associated with the windows and doors. Arguably, Building A and B Unit Co-Owners could have been charged the same amount as Building C and D Unit Co-Owners regardless of the validity of the Windows and Doors Amendment. For example, absent Code restrictions, the windows in my personal unit could have been reinstalled after the repairs to the Common Elements were completed (This assumes the removal could have been accomplished without causing damage to the windows, which could not be guaranteed). Under this scenario, I could argue that, whether or not the Windows and Doors Amendments were valid, the removal and reinstallation of the windows was a repair incident to repairs to the Common Elements and I should not be responsible for any costs associated with the window and doors other than my pro-rata share of the Common Expense to be borne equally by all Co-Owners.

11. The per unit allocation was based on efforts by the Board to give full force and effect to all relevant provisions of the Master Deed while preserving practicality and equity. In keeping with this effort, and to avoid litigation expenses associated with Plaintiffs' claims about the validity of the Windows and Doors Amendment, we as a Board decided to put the matter before the ownership for another vote in 2009. This alternative vote on the Amendment was not a "legal position" expressed by the Board; it was an attempt to ratify the amendment and therefore resolve the complaints of the ownership. By their votes, the ownership made clear that the amendment did not enjoy a supermajority of support so we allocated costs of the replacement windows and doors

themselves to the A and B owners. We made our decision based on business judgment, not what might or might not happen in court.

12. Given that the costs of the work to the Common Elements was undisputedly a Common Expense under the governing documents and the uncertainty surrounding the Windows and Doors Amendment, the Board decided the most that could be attributed to Building A and B Unit Owners was the actual costs of the windows and doors. To attribute any more of the repair costs, including the "soft" project costs, to Building A and B Unit Co-Owners, would have been an exercise of bad business judgment and, in my opinion, wrong.

FURTHER AFFIANT SAYETH NOT.

Doris Bray

Greensboro, North Carolina
October 27, 2011

SWORN to before me this 27
day of October, 2011.

SUE HOBBS NOTARY PUBLIC GUILFORD COUNTY, N.C.

Notary Public for North Carolina
My Commission Expires: 1-30-13

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen

(CONTINUED)

DEPOSITION OF:	DON JOHNSTON
DATE:	Monday, April 23, 2012
TIME:	12:16 p.m. through 1:34 p.m.
LOCATION:	McNAIR LAW FIRM 11019 Ocean Highway Pawleys Island, South Carolina
TAKEN BY:	Attorneys for the Plaintiff(s)
COURT REPORTER:	MADONNA M. PERKINS Registered Professional Reporter Certified Livenote Reporter

M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008 and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H.S. Keeter and Sandra C. Keeter; Linda A. Mendicino; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC and SGS Beach Partners, LLC; Morgan

Cameron Foster, Sr. And Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. And Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame,

Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

APPEARANCES OF COUNSEL

REPRESENTING THE PLAINTIFF:

BELLAMY LAW FIRM
BY: HOWELL V. BELLAMY, III, ESQUIRE
AND: HOWELL VAUGHT BELLAMY, JR., ESQUIRE
1000 29th Avenue North
Myrtle Beach, SC 29577
Office: (843) 448-2400
Fax: (843) 448-3022
E-mail: HBellamyiii@bellamylaw.com
E-mail: Cdassoulas@bellamylaw.com

REPRESENTING THE DEFENDANT:

McNAIR LAW FIRM
BY: LEIGH BOAN, ESQUIRE
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Post Office Box 1469
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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

Plaintiff(s) Exhibits

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3	9/18/07 E-mail from Kellie Diehl	66	18

STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

* * * * * * * * * * * * * * * *

(PLF. EXH. 1, Notice of Deposition, was marked for identification.)

DON JOHNSTON, being first duly sworn, testified as follows:

EXAMINATION

BY MR. SKEETS BELLAMY:

Q. We have pre-marked the Notice of the taking of the deposition which was served on you and your counsel and mailed to you.

A. Uh-huh.

Q. Did you get the Notice setting your deposition?

A. Yes, I did, sir.

Q. All right, sir. And did you review the Notice of Deposition and the Subpoena Duces Tecum that was attached to it?

A. Briefly.

Q. Briefly?

made the very clear decision to ensure that the owners in the C and D buildings for the repairs of Buildings A and B were not charged for the cost associated with the windows and sliding glass doors.

Q. All right, sir. And that was your way of reacting to the vote that didn't pass?

A. The association voted.

Q. It was over?

A. It was over.

Q. All right, sir. So what I understand, Don, is at that point, the board went back -- of course, the lawsuit was already in place at this time.

A. That's correct, yes.

Q. The board went back and basically assessed the unit A and B owners for the actual hard costs of the windows.

A. Windows and doors, that is correct.

Q. And so, obviously, they paid some more money, and C and D owners got a deduction for -- if they had already paid it, they got credit, their assessment went down.

A. No one paid anything until the calculations were done based on percent interest --

Q. I understand.

A. -- for C and D, with the cost of the windows and doors taken out.

Q. That's right.

A. Yeah.

Q. Okay. If I screwed that up, I apologize. I'm just trying to be sure we've got it clear.

A. Okay.

Q. Now, at that point and having Jeff King's letter -- was this letter ever made -- discussed in a board meeting?

A. I don't recall that.

Q. Okay. That's fair.

In any case, at the point -- Sutton-Kennerly was not asked or requested, in their assessment of all the damages, to break out what damages, if any, they attributed to the leaks around the windows and doors that may have gotten into the common elements, as to whether unit owners in A and B should be responsible for that collateral damage.

A. That's correct.

Q. They were never asked to do that.

A. That's correct.

Q. All right, sir. Is it because there wasn't any information that the windows had leaked into the common elements, or the board just felt that

was too cumbersome to do?

A. It was because the information provided by Sutton-Kennerly was such that the corrosion throughout the building is not the end result of any one item. It was made clear that from Day One, the buildings absorbed corrosives, and that leaks found throughout -- corrosion found throughout the building could come from anywhere.

Q. Including the windows?

A. Including the windows.

Q. All right, sir. And so what I hear you saying is it was kind of hard to break out?

A. Absolutely, yes.

Q. Okay. And this is the first time we have really got the guy to do it. The board just made the decision, We'll just have a general assessment and won't deal with that situation --

MS. BOAN: Object to the form.

BY MR. SKEETS BELLAMY:

Q. -- what A and B is responsible for.

A. The board made the decision to assess, based on the costs associated with repairing that building, and the repair of that building, the board recognized the cause for those repairs was not necessarily limited to any one problem in the

building. Based on the feedback from the -- from Sutton-Kennerly, that did the investigation, where the corrosives were found, the end result of leaks everywhere --

Q. All right, sir.

A. -- and just not at the windows and doors.

Q. All right, sir. Well, it was -- the more you delved into it, the worse the condition was.

A. That's correct.

Q. And is Building A repaired at this stage of the game? Has it been CO'd?

A. Building A is repaired. It's -- we finished -- substantial completion was on December 30th of 2011. Owners were allowed to occupy their units. We are in the throes of impact testing of windows that were installed in Building A to determine if, in fact, they do meet the code.

So in that sense, in answer to your question, is the repair finished, what's outstanding is the windows, the impact testing of those windows.

Q. Because of some question they were properly installed, or improperly installed?

A. No, they were properly installed. It's the unit itself. Does it -- will it be able to

SHIPYARD VILLAGE
Council of Co-Owners, Inc.

August 11, 2009

Dear Shipyard Village Homeowners,

The Special Members' Meeting was well attended and proved to be productive and informative. We would like to thank all of you who took time out of your busy schedules to attend the meeting.

The special assessment did not pass as it did not reach the affirmative vote of 50% + 1. As reported in the cover letter that accompanied the Special Members' Meeting notice, the extensive repairs that are required for buildings A & B must be completed. The Board of Directors has the fiduciary responsibility to repair and maintain all common areas, and establish payment for such repairs and maintenance. Therefore, the payment of the repairs will be incorporated into the 2010 and 2011 operating budget and be part of the regular monthly assessments. The payment options will remain the same (prepayment in full, prepayment in two (2) equal installments or in 24 equal installments). If a homeowner wishes to prepay in full or in two (2) equal installments there will be no interest charges incurred. If a homeowner pays in 24 equal installments, interest charges will be added to pay the interest on the funds borrowed from the line of credit needed to fund the project. The amount of the assessment per building, not including interest charges, is outlined below for your reference.

The repair project remains on schedule with Building B to commence on September 14, 2009 and conclude on May 28, 2009. The repair schedule for Building A will commence on September 14, 2010 and conclude on May 28, 2011.

At the Special Meeting and in the past week, homeowners expressed their interest in prepaying their share of the assessment in full or half to avoid interest charges. The answer is yes, you can prepay your assessment. Prepayment of the assessment is encouraged and needed so the Association can fund the project on the front end. If you would like to prepay this assessment please make your check payable to Shipyard Village and mail it to: Shipyard Village, c/o Payment Processing Center, P. O. Box 105007, Atlanta, GA 30348-5007. Please be sure to include your account number on the "memo" portion of the check. When the Association receives the prepayment, it will be reflected as a credit on your account. These funds will be deposited into a separate bank account that will be used for all assessments and expenses for the repair project. Each month, a separate financial report will be issued to keep the Board and membership apprised of the project's income/expense activity.

As a reminder, the 2010/2011 operating budgets will include the repair project expenses. The expenses are calculated in the same manner as the monthly and insurance assessments.

11740 Highway 17 Bypass South/Murrells Inlet/SC/29576
(843) 357-9888/(843) 357-9890 (fax)

The allocated expense responsibility for the repair expenses over the two (2) year project period are as follows and identified per unit type:

A & B Units	$88,398
C & D – 3 Bdr.	$64,868
C & D – 4 Bdr.	$68,471

The minutes of the Special Meeting should be completed in the near future and posted on the website.

The Association received seven (7) proposals for this project, and your Board met with three (3) of the top bidders on Monday, August 10, 2009, with the meeting commencing at 8:00 am and concluding at 4:00 pm. The Board should reach a decision on which bidder will be rewarded the contract in the next few days. As soon as a decision is made, the results will be posted on the website.

The Board would like to thank all of you for your continued support. Should you have any questions, please feel free to contact me at (843) 652-2162 or any Board member.

FOR THE BOARD OF DIRECTORS

Sincerely,

Vicki Gallagher, CMCA, AMS
Vice President
K. A. Diehl & Associates, Inc. Managing Agent for Shipyard Village
Email: vicki.gallagher@kadiehl.com

FROM:

JOE W. HILLER JR ARCHITECT
576 Terrapin Crossing Road
Pickens SC 29671-9688

MEMORANDUM

Thursday, April 14, 2005

Architects. Proj. No.: 2413
Telephone: 864-868-3339
Fax: 864-868-0679

TO:

J. Ben Morrow, P.A.
Attorney at Law
312 South Chester Street
Gastonia, NC 28053-0116

RE: Shipyard Village Condominiums

MEMO:

Dear Mr. Morrow,

I have reviewed the photos that were emailed to me by your family. It seems obvious to me that there is water migration though the exterior wall that is not related to the window sill, jamb or header. What I've seen in the photos leads me to recommend that further study needs to be directed at two places on the exterior of the building. First, an examination of the joint between the exterior insulation finish system (EIFS) and the stuccoed masonry "fin" at the corner of the building. If this joint has failed then water could penetrate the wall in a manner consistent with your photographs. Second, an examination of the flashing and roofing in the area of the "fin". Numerous joints occur in this area and if failed could allow water to penetrate the exterior surfaces and run down the structure in a manner consistent with your photographs.

I hope this helps, Please let me know if I can be of any further assistance.

Thank You,
Joe W. Hiller, Jr.

cc: file

EXHIBIT 6.24
637

PROCON
WATERPROOFING, INC.

Corporate Office:
P.O. Box 4518
Wilmington, N.C. 28406
NC & SC
(910) 392-3935

Branch Office:
P.O. Box 20236
Bradenton, FL 34203-0236
(407) 236-9134

August 11, 1994

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

RE: Shipyard A & B
Balcony wall to slab sealants.

Mr. Crocker,

A recent inspection of the balcony "wall to slab" caulking which was installed during the waterproofing project has found that the sealant is performing as intended with no signs of failure.

We suspect that the moisture intrusion that is being observed in the balcony wing walls is a result of the balcony concrete decks which are not sealed and leaking back into the wall through cracks in the slab, unsealed rail stanchion holes or the beam butt joint between precast panels.

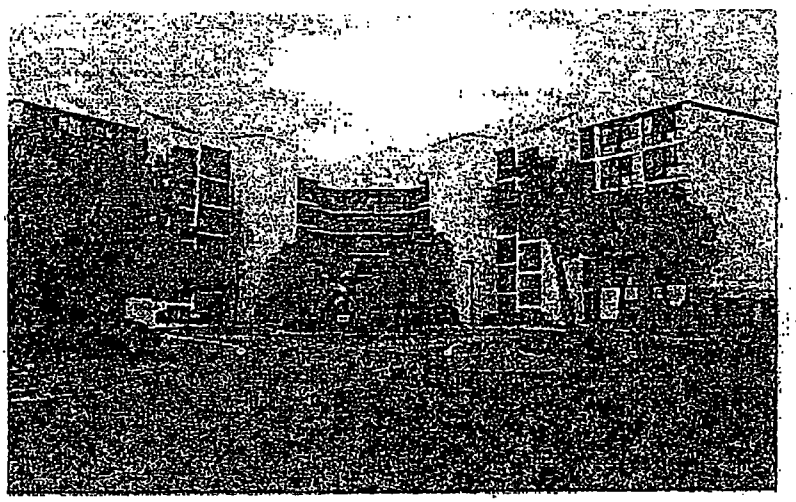
Repair recommendations should include the application of a waterproof deck coating.

Sincerely,

Bob Gallagher
General Manager

BG/sjl

Corrosion Condition Assessment



Shipyard Village

At Litchfield by the Sea
293 South Dunes Drive
Pawleys Island, SC

Report Date:
January 17, 2008

Prepared For:
Mr. Eddie Stokes, PE
MEC Engineering Services, Inc.
Surfside Beach, SC

Prepared By:

TCG
TOURNEY CONSULTING GROUP

5200 East Cork Street
Kalamazoo, MI 49048
(269) 384-9980
WWW.TOURNEYCONSULTING.COM

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Limited Liability Statement

Tourney Consulting Group, L.L.C. is a consulting firm focused on the durability aspects of reinforced concrete exposed to chloride ions. The basis of this analysis is strictly upon the condition of the reinforced concrete materials and corrosion of the reinforcing steel. The condition appraisal and analysis by no regards constitute a structural engineering condition appraisal or analysis. If obvious serious structural concerns are present at the time of field evaluation and are observed, Tourney Consulting Group, L.L.C. will immediately bring these potential issues to the client's attention.

The analysis results and recommendations only reflect the condition of the sites tested and may not be representative of all locations throughout a tested structure.

The value of durability analysis, as used in this report, rest on the client's ability to relationally compare the condition of the studied structure under various maintenance, corrosion protection, and restoration alternatives. Approximate cost are applied to these alternatives and compared on a net present value basis using assumed values of alternative performance and financial considerations.

Recommendations for repairing cracks and waterproofing are based solely on materials performance from manufacturer's publications. There is no implied or expressed TCG warranty of corrosion, crack, or waterproofing performance.

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Project Description

Tourney Consulting Group, L.L.C. was contracted by M E C Engineering Services, Inc. P.E. to perform a preliminary corrosion assessment of Shipyard Village Buildings A and B, at Litchfield by The Sea. Shipyard Village Buildings A and B are 40-unit ocean-front five story condominiums that were built in approximately 1985. The original construction drawings are apparently no longer available. By inspection, the structural system for these buildings appeared to be load bearing concrete masonry with assumed reinforced concrete bond-beams and tie columns. The floors were built using precast/prestressed concrete hollow-core panels with cast-in-place toppings, cantilever beams, and edge-beams. The soffit of the precast panels is exposed on the exterior walkways and balconies and is painted with what appears to be an acrylic latex paint. Inside the units, the precast panel soffits and walls are concealed by gypsum board. Portland cement stucco with a rough texture was applied over the building exterior. An EIFS system was also present in areas with framed walls. The entire exterior was painted with what appeared to be an elastomeric coating.

The condominium association is currently planning repairs and replacement of the patio doors and fixed window systems. In preparation for the repairs, Procon & Associates (waterproofing contractor) recently sounded both buildings to identify locations with cracks and delaminated concrete.



1. Cantilever beam spall – Shipyard Bldg. B



2. Previous Repair - Bldg. A Ground Level

The corrosion assessment by TCG was initiated over concerns caused by the quantity of corroded reinforcing, cracks and delaminated concrete identified on the exterior walkways and balconies.

The objectives for TCG's corrosion assessment were:

1. to define the present condition of the building by visual observation and concrete materials testing by assessment of a few exterior balconies and corridors
2. to identify the probable cause(s) for the observed distress, and
3. to recommend appropriate repair and protection strategies,

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Evaluation Procedures

1. Visual Observations - Observe and document key issues related to the durability of the structure under study. These issues may be related to drainage, cracking, spalls, or leaks. Any conditions that require client attention are noted. Immediate notification of the client occurs when conditions related to safety or potential structural concerns are identified.
2. Chloride Ion Content – Concrete cores and/or concrete powder samples are obtained from representative areas for subsequent laboratory testing. Chloride ion content profiles are critical to determining the cause for reinforcing steel corrosion. This information is important to identify the severity of the corrosion problem.

   In the laboratory, the core samples are sliced into layers, oven-dried, pulverized into a fine powder and then tested for chloride ion contents using the ASTM C1152 test procedure. Potentiometric titration methods are used to accurately determine the chloride contents at various depths into the concrete.

   The chloride ion content data are then plotted against the depth from the surface to illustrate the chloride contamination present at the sampling locations. The chloride contamination profiles are compared against the depth of steel reinforcing and the chloride threshold for corrosion.
3. Compressive Strength - Concrete cores are extracted from the structure for subsequent strength testing in the laboratory. The compressive strength of concrete is often used as an indicator of quality, to compare against specified strength, and for structural analysis by the Engineer responsible for designing concrete repairs.

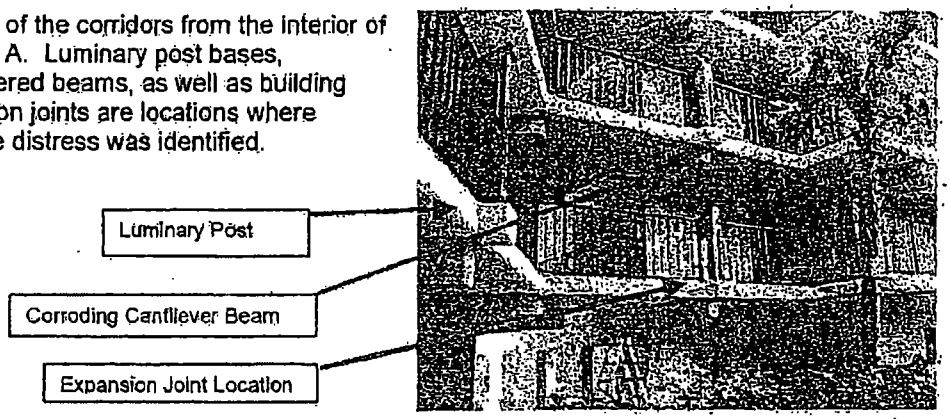
   In the laboratory, the core samples are logged in, measured, trimmed, capped, and tested in accordance with ASTM C42 and ASTM C 617 procedures.
4. Carbonation Depth - Carbonation of concrete is caused by the chemical reaction of calcium ions in the moisture within concrete and carbon monoxide or carbon dioxide gas in the environment. The depth of carbonation can be determined at concrete sampling locations using chemical indicator solutions or by subsequent laboratory tests. Carbonation reduces the pH of the concrete and can reduce the chloride threshold value. The depth of carbonation is used to identify the cause for corrosion activity.
5. Engineering Analysis and Reporting – The visual observations and test data are analyzed by a registered professional engineer to ascertain the cause for the observed distress. The engineer then prepares a final report to communicate the findings along with recommendations for subsequent distress mitigation efforts.

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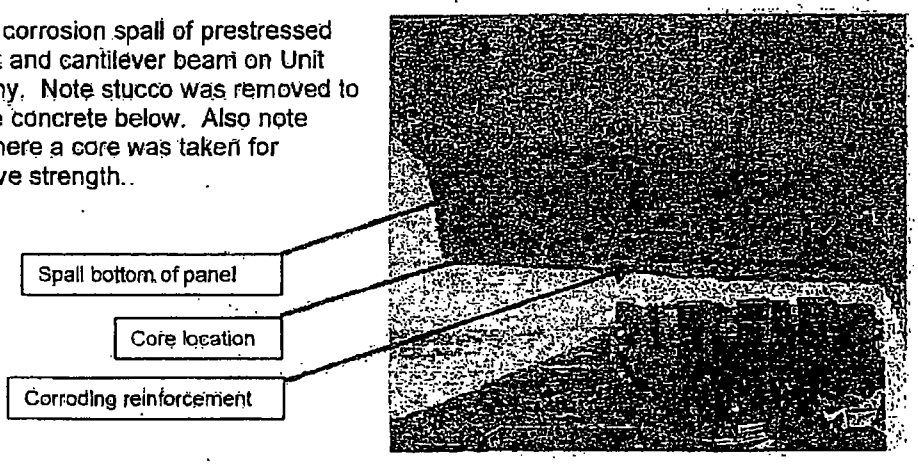
Visual Observations

A preliminary visual examination of the building exterior, corridors, and stairways was performed. Three or four of the worst balconies from each building were chosen for testing. A binocular survey was also performed on several additional balconies on the ocean side. Visual observations are described in the following photographs and notes from the binocular survey.

3. View of the corridors from the interior of Building A. Luminary post bases, cantilevered beams, as well as building expansion joints are locations where concrete distress was identified.

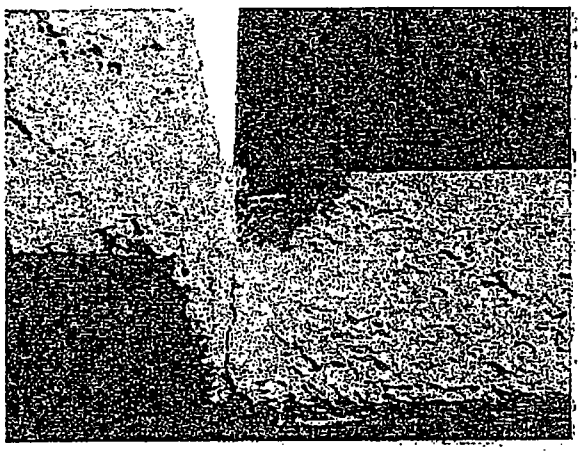


4. Typical corrosion spall of prestressed panel soffit and cantilever beam on Unit A45 balcony. Note stucco was removed to expose the concrete below. Also note location where a core was taken for compressive strength.

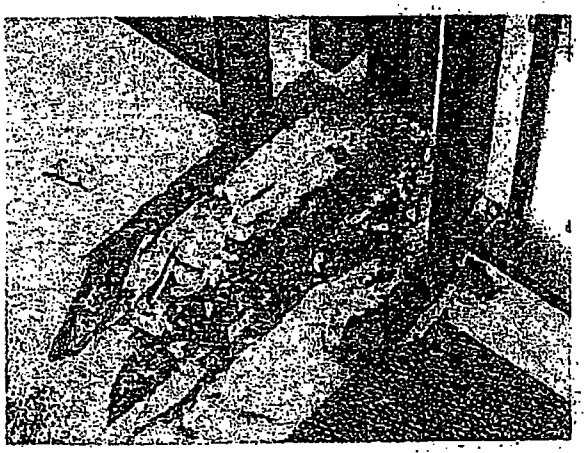


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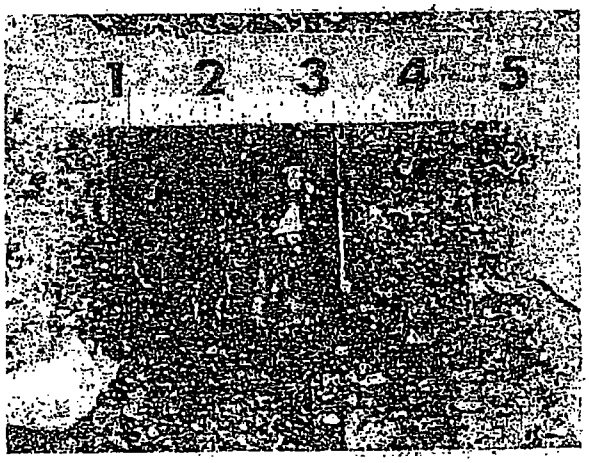
5. View of corridor edge at building expansion joint. Cracking has occurred where building movement is restricted by corrosion of steel nosing angle on joint.



6. Corrosion products from of expansion joint nosing angle have entirely filled the expansion joint space.

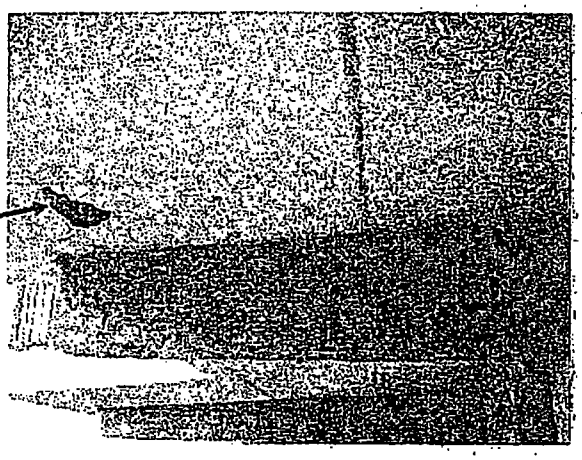


7. Close-up of expansion joint nosings after scraping loose rust off surface. This photo shows that the ¾" wide joint is packed with rust, which does not allow the building to expand and contract with temperature changes.

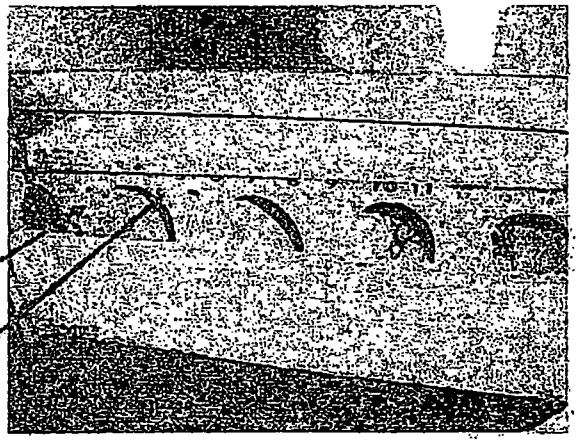


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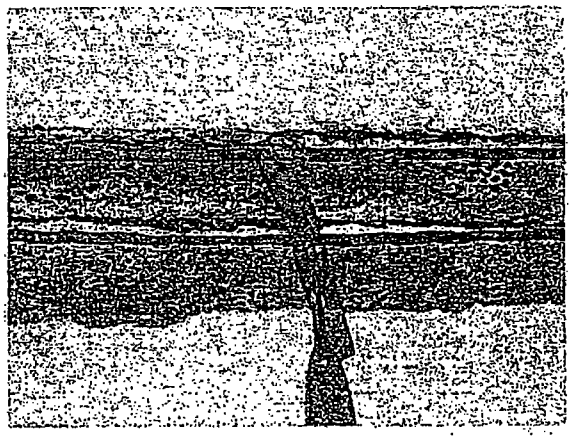
11. Expansion joint beam in corridor with multiple hollow-core panel soffit cracks and spalls from prestressing tendon corrosion. This beam is adjacent to Unit B43, and was covered with an elastomeric stucco-type compound.



12. End view of a hollow core precast/prestressed panel obtained at a roof scuttle in the trash room. Typically panels used to construct the floors were 40" wide, and 6" or 8" thick with 3" thick a cast-in-place concrete topping. The corridors and unit interiors were built with 8" panels, and the balconies were built with 6-in panels

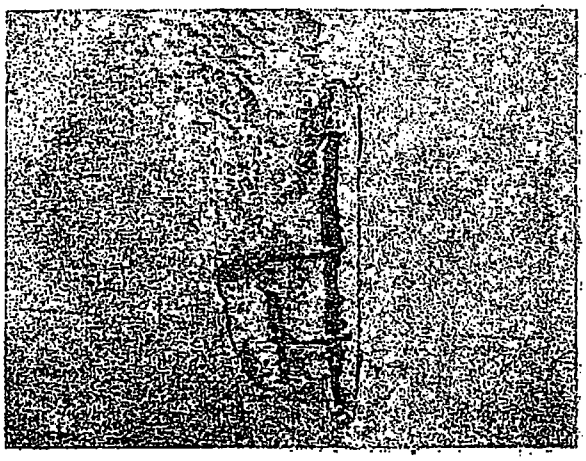


13. Corroded prestressing tendons with no remaining tension. Lack of tension indicates the reinforcement is no longer performing as designed. This photo was taken on the ground level of Building A near Unit 3 showing the level 1 corridor soffit.

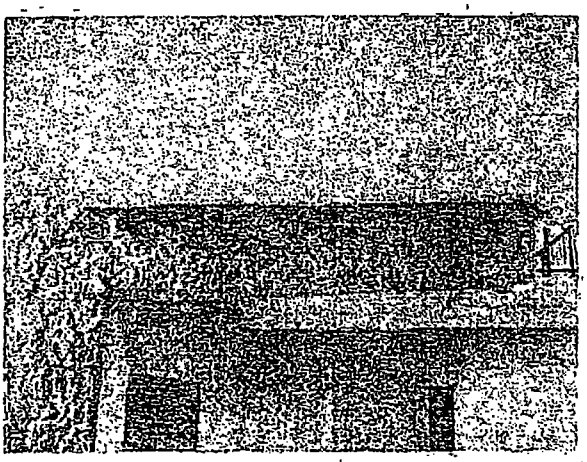


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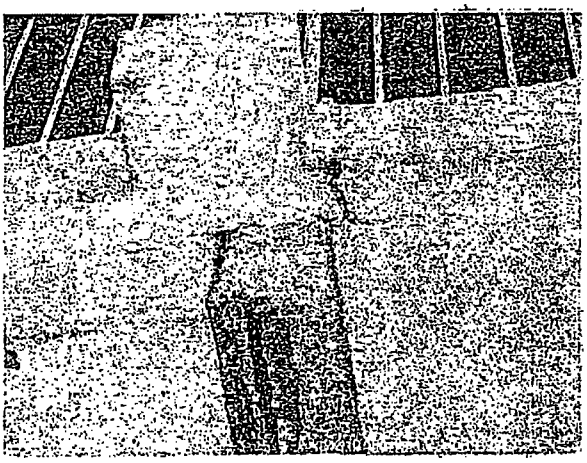
8. Photograph of the cantilever beam below the expansion joint. Note that the reinforcement cage is shifted to the right and is covered only by stucco on the bottom surface. This condition is common.



9. Photograph of cantilever beam supporting the corridor expansion joint adjacent to Unit A16. Note pealing stucco.

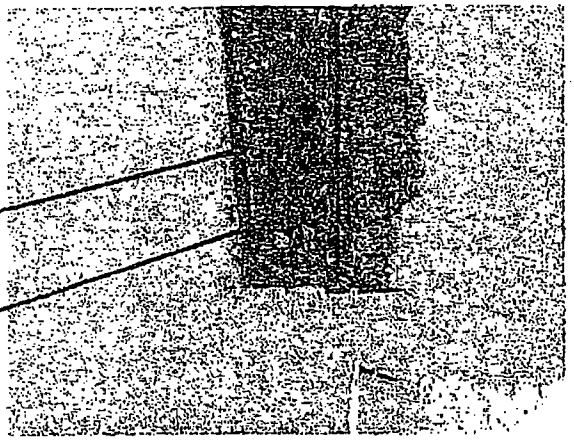


10. Photograph of expansion joint beam soffit with corrosion related spall, cracked luminary pedestal, and cracked prestress panel due to tendon corrosion. Note moisture in cracks and beam reinforcing cage shifted to the right.

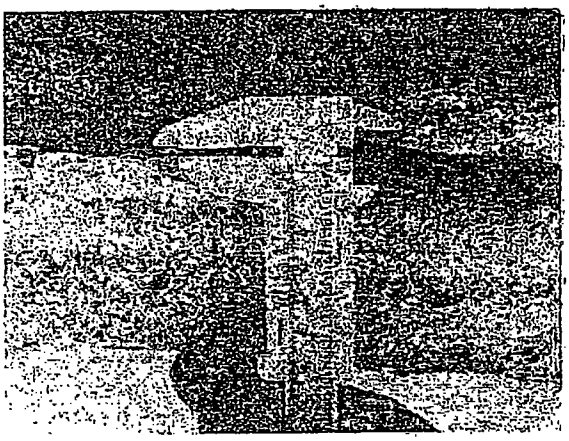


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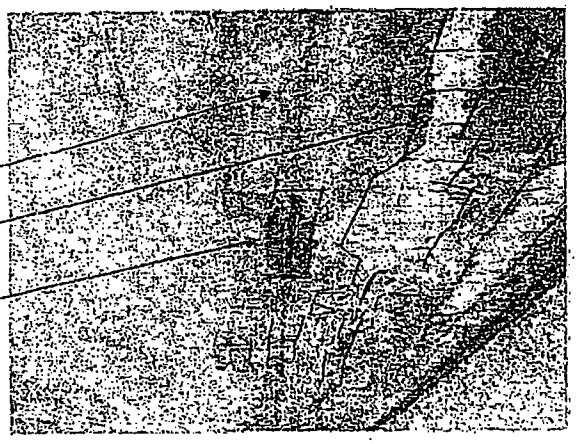
14. Another view of spall location shown in photo No. 9. Note corrosion of prestressing tendons cause cracks to form into the core. Also note reinforcing bar from edge beam protruding into the core.



15. Prestress tendons are comprised of three 0.162-inch diameter wires. The wires in this tendon were severely corroded (0.086-in diameter), which translates to more than 70% section loss.

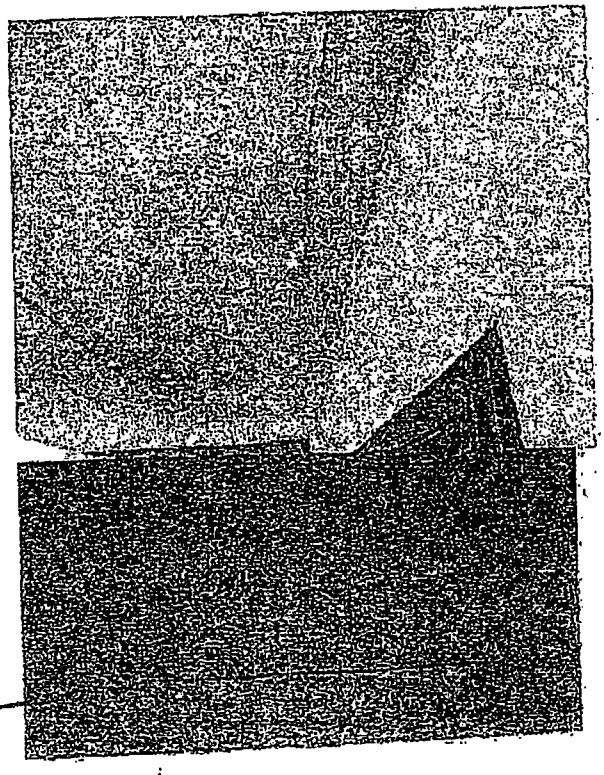


16. Unit A14 balcony soffit with paint removed, exposing corrosion cracking and spalling. Note previous concrete patch attempts.



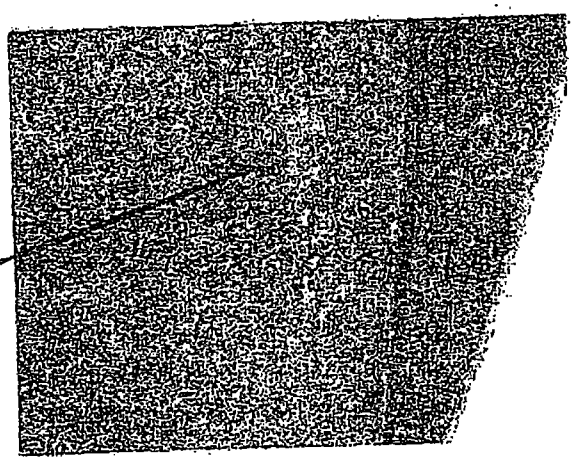
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17. Unit B24 balcony soffit with full-length panel crack from corroded prestressing tendon. The reinforcement provided by this tendon is questionable. Several other panels were observed with multiple longitudinal cracks.



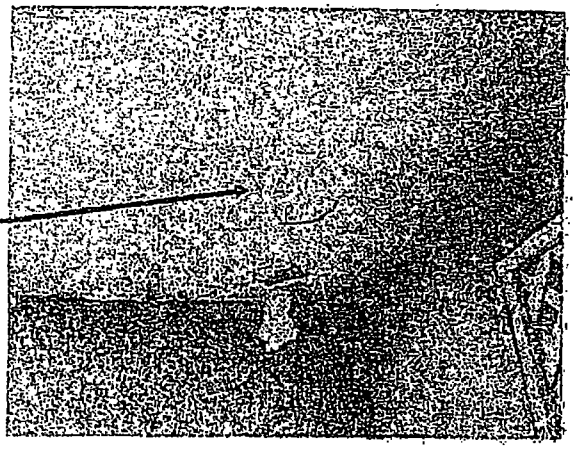
18. Typical soffit spall and cracking observed due to corrosion of prestressing tendons on balconies and exterior corridors.

19. Water that penetrates through cracks in the topping can pool inside the hollow cores and escape through the bottom of the precast panel. Evaporation of moisture leaves behind mineral deposits in the form of stalactites.

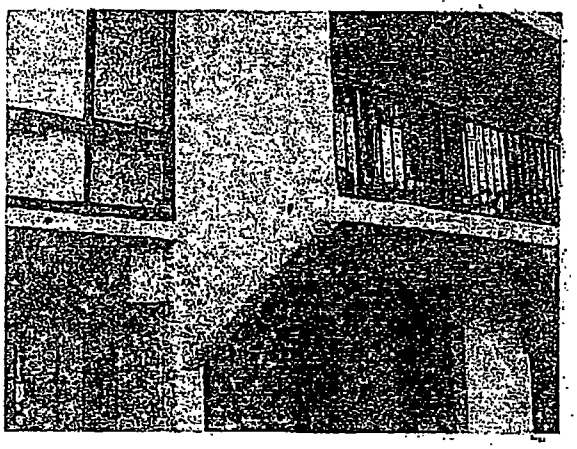


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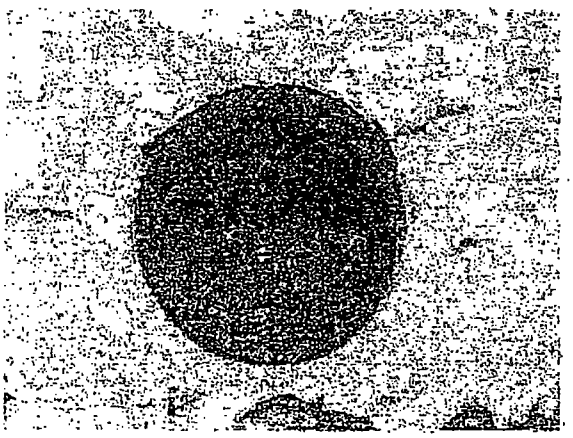
20. Moisture penetrating the precast panels causes coating blisters.



21. Ground level view of sampling locations on balcony of Unit A11 and fixed window of Unit A12.

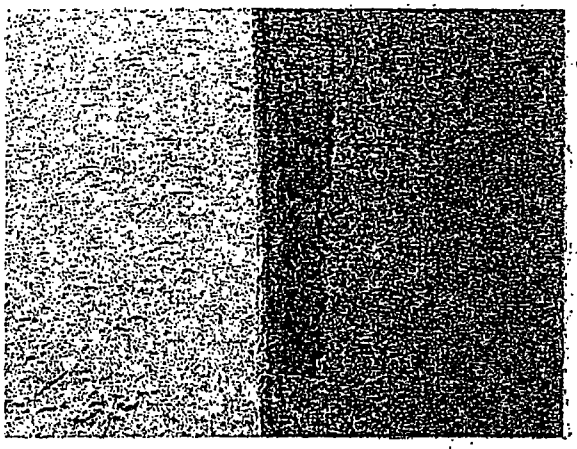


22. Corroded reinforcing was observed inside the concrete sampling locations of Unit A11 and A12 edge beams where no outward sign of corrosion damage exists. This finding indicates corrosion activity has started throughout the building in the exposed areas.

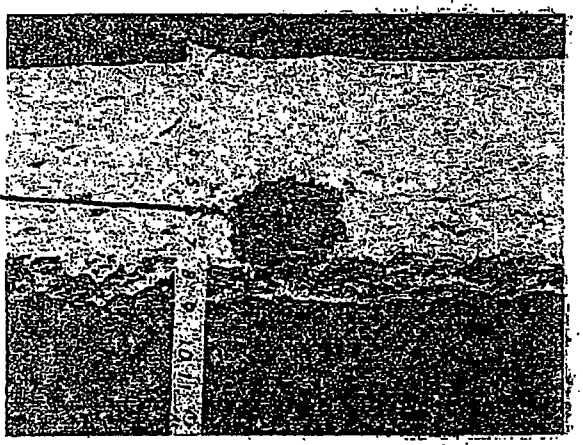


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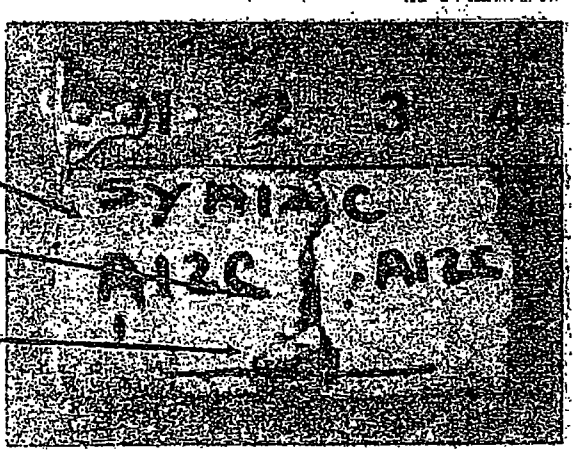
23. Typical spall of edge beam reinforcing under Unit A12 window. Edge beams are tied into the cast-in-place toppings over the ends of the precast panels. Note corrosion of reinforcing with less than ¾" concrete cover



24. Close-up of Unit A11 balcony cast-in-place edge beam. Reinforcing steel with 1.5-inch concrete was corroded.

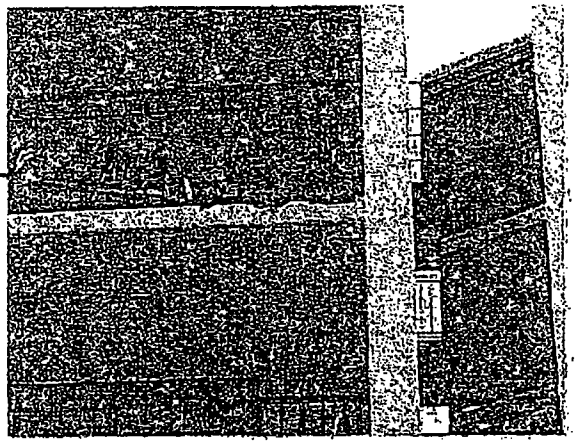


25. Horizontal core from slab edge under the window of Unit A12.

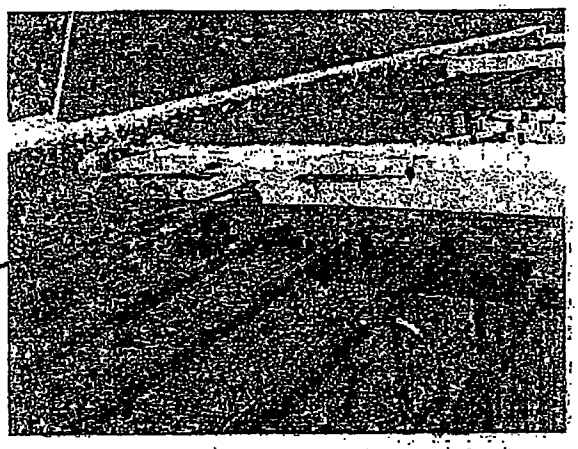


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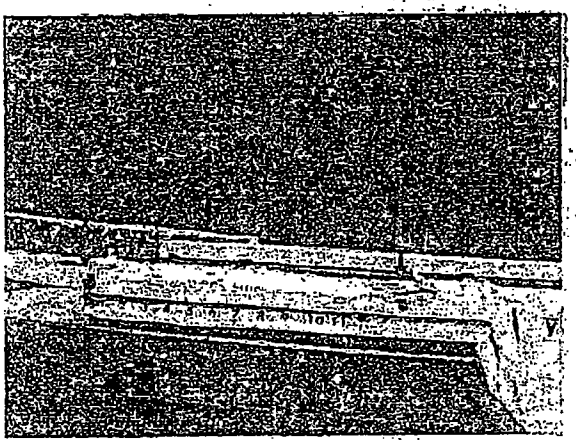
26. Ground level view of balcony edge beam spall of Unit A36. The concrete cover was less than ½" in the spalled area.



27. View from top of spalled edge beam for Unit A36 balcony. Corrosion of edge beam reinforcement is typical in areas with shallow concrete cover. Edge beams appear to have 3 No. 4 horizontal bars with No. 4 vertical bars at 12 to 16 inches on center.

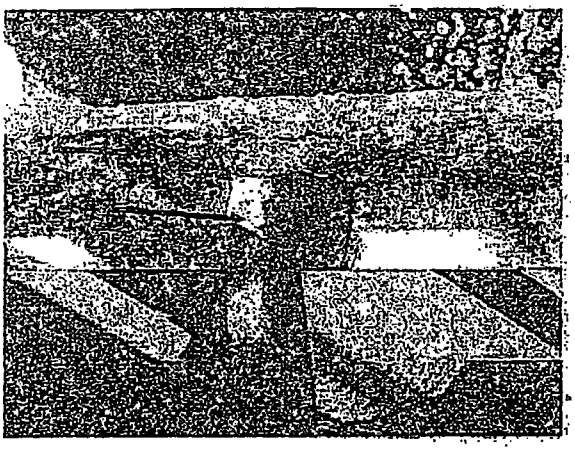


28. Photograph of vertical reinforcing spacing at Unit A36 edge beam. Note concrete cover to edge beam vertical reinforcing is minimal at locations where spalls are present. Also note the railing balusters are spaced 6-inches apart, which exceeds the current building code requirement of 4 inches.

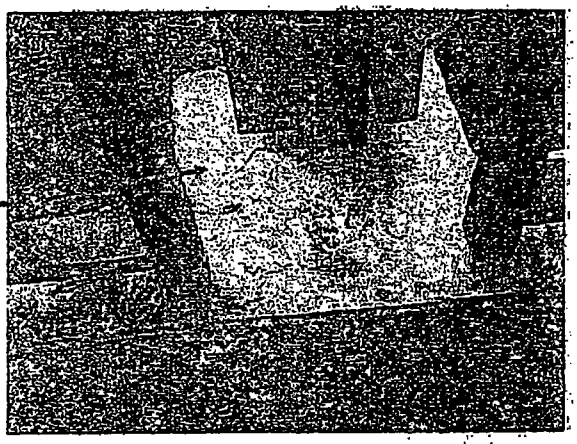


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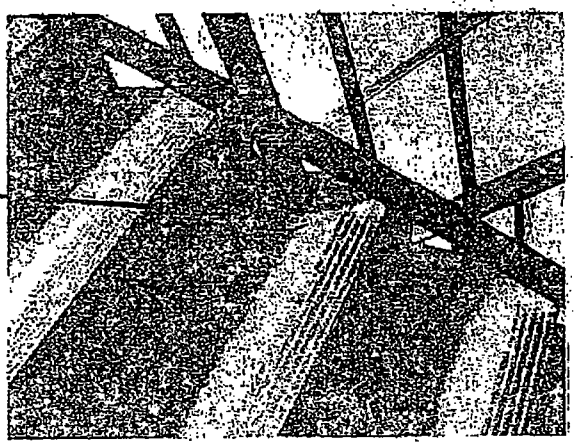
29. Typical condition observed on balconies with railing post holes not fully filled. Cracking damage shown was observed in many locations. The handrail posts appear to have been anchored into the pockets with expansive grout. Water pools on top of the grout, which can cause expansion.



30. Cracking of concrete supports for luminary bases overhanging the located along interior corridor.

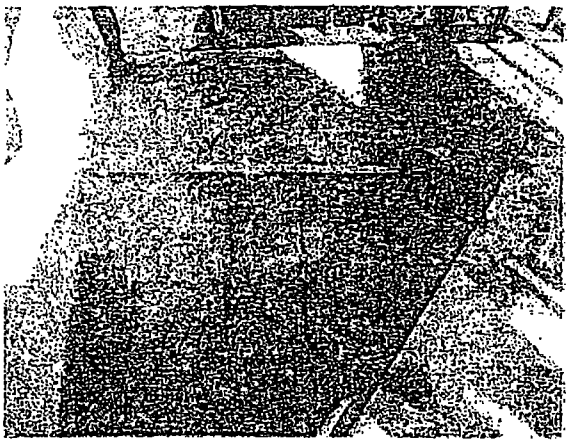


31. Stairs for both buildings were observed to be in good condition. Some minor cracking was observed at handrail post pockets. There is no concrete remediation required for the stairs at this time.

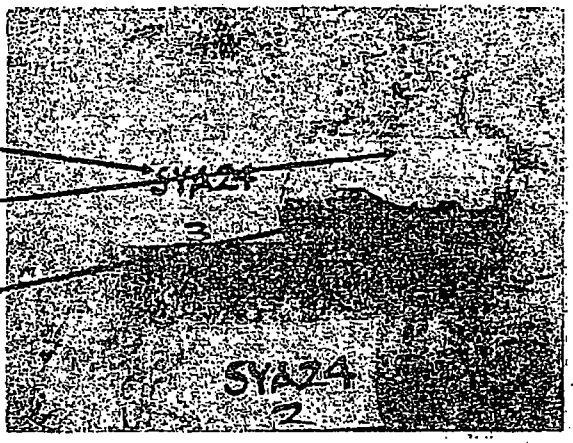


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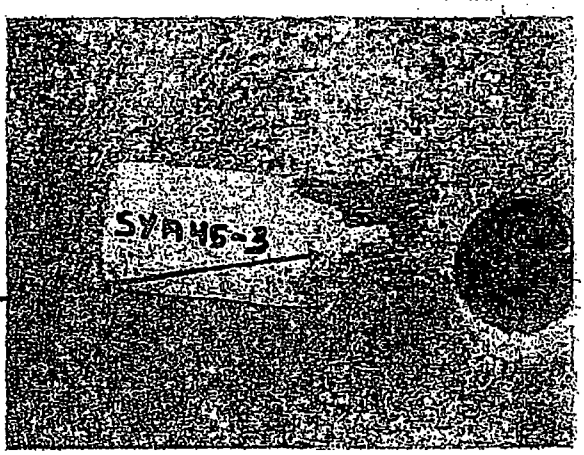
32. Sampling location of cores extracted from the balconies. Two cores were extracted from each balcony through the topping and into the stem of the panels below. Prestressing tendons in the top of the panel were intentionally cut for observation on some balconies.



33. Core from balcony at the joint between two precast panels

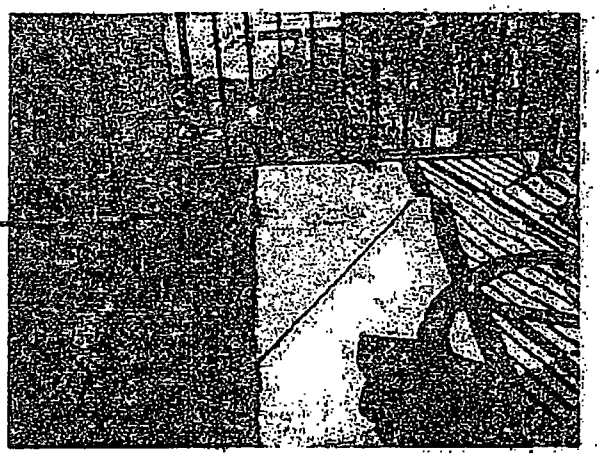


34. Core from balcony at the joint between two precast panels

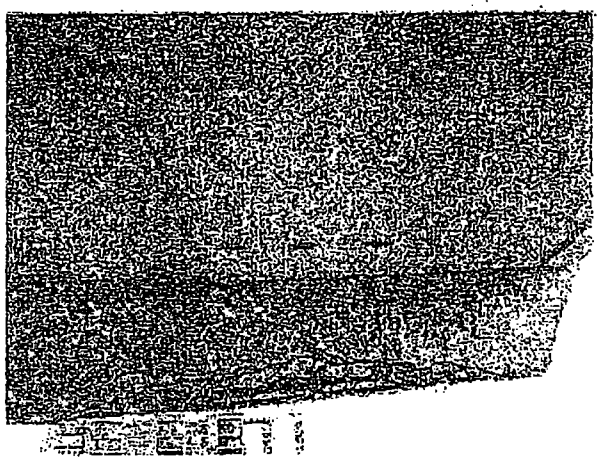


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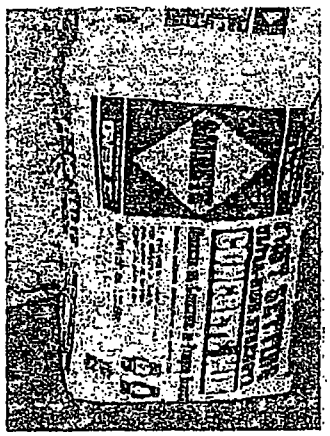
35. Typical patching with wet curing of concrete used to patch core sample holes.



36. Precast panel soffits were drilled to collect concrete powder for chloride contamination of the corridor and balcony soffits. At each location sets of three holes were drilled in ½-inch increments to collect sufficient powder for testing. Sample holes were then vacuumed and then filled with polyurethane caulk.



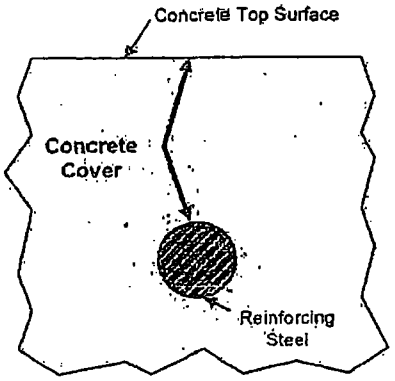
37. Prepackaged concrete used to patch core sample holes.



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Concrete Cover Measurements

Concrete cover over steel reinforcement is the first line of defense for contamination and corrosion. Corrosive contaminants must permeate through the concrete cover to reach the reinforcing, so the thicker the concrete cover and the higher the concrete quality, the longer time it will take for contaminants to reach the reinforcing in sufficient concentration to initiate corrosion.



Concrete Cover Diagram

Often this important and valuable corrosion protection system receives little attention during construction, and concrete cover varies dramatically. Fortunately, it is easy to determine the as-build concrete covers if the proper equipment is used. It is recommended that a Pulse-Induction Eddy-Current Conductivity technique be used to determine the accurate concrete cover. These systems, like those manufactured by Protovale, allow relatively easy assessment of existing as-built cover values.



Protovale, CM-9 in use.

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Concrete cover measurements were determined at all sampling locations and at random locations on the balcony soffits, corridors, cantilever beams and at intervals along the edges.

The cast-in-place concrete cover measured was significantly less than required; especially at areas where distress is evident. Shallow cover was identified throughout the building. The cover ranged from 0" to 1", with ½" to 1" being very common. The precast slab cover was more consistent with ¾-inch to 1-inch of concrete cover.

The cantilever beam reinforcing cages were often shifted to one side, or resting on the bottom beam form when cast. In most of the distressed beams investigated, only the stucco covered the reinforcing. Also, the cantilever beam reinforcing appeared to be installed incorrectly. Normally, cantilever beams have large diameter bars located near the top of the beams and smaller diameter bars on the bottom because there is more tension on the top of a cantilever beam. However, in the cantilever beams supporting the balconies and walkways, the larger bars were located on the bottom. The structural engineer for the assessment, Kyzer & Timmerman, was notified of this observation during the week of November 26, 2007.

ACI 318 building code requirement for concrete cover of atmospherically exposed concrete is as follows:

Table 1 – ACI 318-02 Concrete Cover Requirements

Element	Required, in.	Tolerance, in.	Min. Acceptable, in.
Cast-in-place concrete	2	-3/8	1-5/8
Precast slab soffits	1-1/4	-1/4	3/4

ACI 318 Section 7.7.5 also notes that:

> *"In corrosive environments or other severe exposure conditions, amount of concrete protection shall be suitably increased and denseness and porosity of protecting concrete shall be considered, or other protection shall be provided."*

These requirements are from the 2002 building code, so they are not strictly applicable to 1980's construction. However, the information is pertinent as a benchmark to assess the protection provided by the existing concrete cover, especially the requirements of Section 7.7.5.

Ocean-front buildings are located in a severe corrosion environment, so additional corrosion protection is necessary. This additional corrosion protection could have been accomplished during initial construction by techniques such as increased concrete cover, higher quality concrete, epoxy-coated reinforcing, corrosion-inhibiting admixtures, or barrier coatings. However, once the structure is built and contaminated with chloride the most reliable method to provide additional protection is cathodic protection.

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Carbonation

Carbonation is a process that begins from the very first day the concrete is exposed to the environment. Concrete is very high in alkalinity with a typical pH of 12.5 –13. This high pH normally protects steel reinforcement unless the chloride ion content exceeds about 1.2 to 2 pounds per cubic yard of concrete (300 to 500 ppm). Any concrete exposed to the environment is exposed to carbon dioxide and carbon monoxide. These gasses slowly penetrate through the concrete and react with water to reduce the pH. As the pH lowers to approximately 11, so does the amount of chloride required to initiate corrosion. Carbonation will eventually reduce the pH to values less than 9.0 on the pH scale. If this low pH front reaches the reinforcing steel, the steel is no longer protected by concrete and begins to corrode in a similar fashion as bare steel exposed to a moist atmosphere.

Several conditions will slow the ingress of the carbonation front. If the concrete is constantly wet, or extremely dry, the rate of carbonation will slow. If the concrete is very high quality (i.e., low water-to-cement ratio, contains pozzolans, etc.) it will carbonate very slowly. A membrane or impermeable coating can also act as a barrier to stop passage of carbon dioxide and monoxide, thus halting the carbonation processes.

To determine the degree of carbonation, TCG conducted a pH indicator test. A special "rainbow" color indicator solution was sprayed on freshly cut concrete surfaces. High pH is indicated by dark purple and blue colors, while green, red, and yellow colors indicate lower pH than the 9.0.The powder samples from the ceilings were tested with a pH meter.

The depth of carbonation found on core samples ranged from 1/4" to 5/8" in depth with only one sample at 1". The underside of the precast panels showed signs of carbonation to depths of 1 ½". With the prestressing wire located approximately 1 inch deep, carbonation is a contributing factor for corrosion of the hollow-core precast panel reinforcement.

Carbonation depth test results are combined with the chloride results in Table 2.

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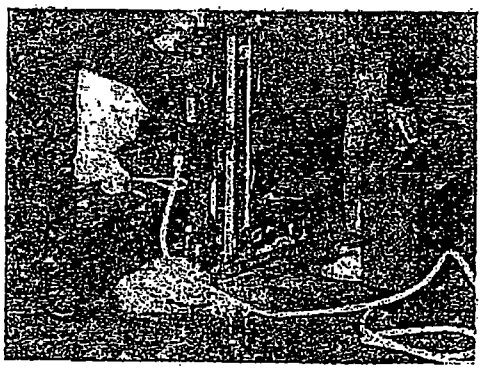
Chloride Ion Sampling

The primary contributor to the corrosion of reinforced concrete is the ingress of aggressive chloride ions. The Shipyard Village condominiums are ocean-front structures that are exposed to airborne chloride ions on all exposed surfaces. In this environment, the wind, rain, and evaporation combine to deposit chloride ion unevenly across the structure. Generally, chloride tends to concentrate on leeward surfaces and at locations where rain water collects and later evaporates such as cracks, puddles, drip edges, and soffits that receive little exposure to wash-off from rain.

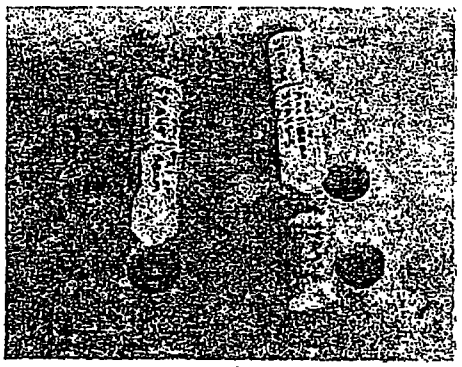
Common barrier systems used for waterproofing concrete or masonry structures will also reduce the build-up of airborne chlorides inside the concrete. However, if the structure is exposed to chlorides before the membrane or coating is applied, the membrane can actually accelerate the corrosion process by trapping moisture inside the concrete along with the chloride ion.

TCG extracted sixteen core samples from the cantilever beams, balconies and corridors and seven sets of concrete powder samples from the precast panel soffits to evaluate the chloride ion content of the concrete. Representative sampling areas were identified and coordinated with the building superintendent to minimize disturbing residents. The concrete samples were labeled and then transported to our laboratory for chemical analysis.

The following two photos represent the coring process and an example a typical concrete core extracted.



Concrete Coring



Sample Concrete Core

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Chloride Ion Content Analysis

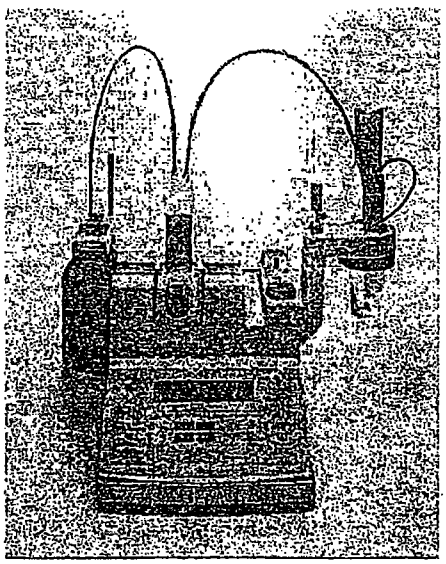
The collected field samples were tested at the Tourney Consulting Group, L.L.C. Laboratory in Kalamazoo, Michigan. The method to determine the chloride content follows the procedures outlined in ASTM C1152.

In summary, the analysis procedure involves the following steps:

- each core is marked in uniform increments and sliced into thin discs,
- the disks are dried in an oven,
- the dry discs are ground into a fine powder passing a No. 20 sieve, and bagged
- A sample of the powder is accurately weighed and then digested with nitric acid while heating to the boiling point.
- The mixture is then filtered through quantitative filter paper to separate the solids from the filtrate solution.
- The chloride ion content of the filtrate is determined by potentiometric titration. The chloride content is expressed in parts per million, (ppm) (mass ratio of chloride to concrete).
- The chloride content data of each depth increment from each core are then graphed to generate the chloride contamination profiles for each location.
- For each location, the chloride concentration at the reinforcing depth is compared against the commonly accepted chloride threshold range for corrosion initiation.



Filtering samples after digestion.



Mettler-Toledo DL50 Titrator

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Table 2 contains the results from the chloride ion content analysis. Acid-soluble chloride content determinations indicate the total chloride ion content of the powder sample. Some aggregates contain background chloride ion that is bound within the mineral and is not available for corrosion, but is liberated when pulverized into a fine powder. It is best practice to consider the background chloride value in the analysis. The contamination levels of the topping obscured determination of the background chloride value, but the background value for the precast panels is 40 ppm.

Figures 1 through 4 illustrate the chloride content profiles at the sampling locations. The horizontal shaded block identified as the "Corrosion Threshold Range" represents the industry-accepted range from 350 ppm to 500 ppm. When chloride contents exceed the threshold at the reinforcing depth, corrosion is likely. The vertical shaded blocks identify the reinforcing depth range and the arrows identify the reinforcing depth at the location tested.

Comparison of Fig. 1 with Fig. 2 indicates that Buildings A and B had very similar chloride profiles. This was expected as both buildings had very similar levels of visual corrosion distress.

The balconies were constructed with a 2 ¾ to 3 inches deep cast-in-place topping over 6-inch thick hollow-core precast planks. The topping slab is reinforced with 6 gauge wire mesh with approximately 2-½ inches of concrete cover. Generally, the chloride content of the topping was under 500 ppm at the reinforcement depth, with the wire reinforcement in good condition. In one location, Unit A24, the balcony topping slab chloride contents exceeded 1500 ppm. Corroded wire reinforcement was observed in this location.

The balcony topping slab was also used to encapsulate the ends of the hollow core planks. Along the balcony edge, the topping concrete forms an edge beam reinforced with three No. 5 horizontal reinforcing bars and No. 4 vertical bars located 12 to 15 inches on center. Fig. 1 contains one data series labeled "A-11 Balcony Face". Photographs 21, 22 and 24 also show this core location along with the corroded reinforcing. The chloride data confirms that the cause for corrosion is chloride contamination. Currently, the concrete in this location is sound, but the corroding reinforcement inside indicates that concrete spalling of balcony edges is expected in the future.

On the short ends, the topping concrete was used to plug the plank's cores and to bond the planks to the cantilever beam on one side and a concrete masonry wall on the other. No reinforcement was found along the short sides, but the wire mesh probably overhangs the end of the panel.

It should be noted that the corridors and balconies are exposed to chloride on both surfaces, so powder samples were intentionally extracted from the soffits of Unit B14 and B24 balconies directly below the location where cores were extracted to create combined profiles. The combined profiles are shown in Fig. 2.

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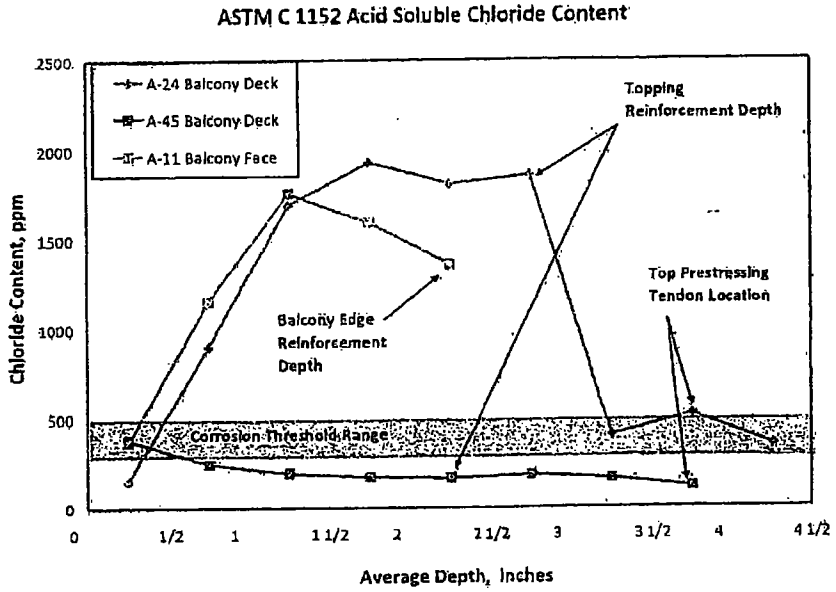


Fig. 1 Chloride contamination profiles from Building A balconies

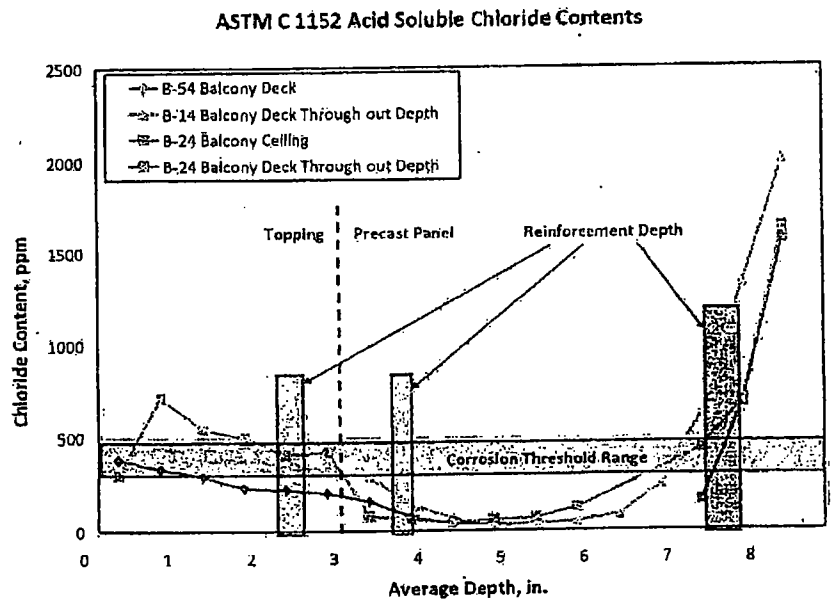


Fig. 2 Chloride contamination profiles from Building B balconies

Only one location in the corridors was tested for chloride content. This location was adjacent to the entrance to Unit A45. Fig. 3 shows that the corridor chloride contamination follows a classic profile with higher concentration at the exposed surface and decreasing concentration with depth. Over time the chloride contamination levels increase, essentially shifting the curve to the right. Fortunately, the topping slab reinforcement for the corridors and balconies has sufficient concrete cover to protect the topping reinforcing from corrosion initiation at this point in time.

Fig. 3 also shows chloride contents of two cantilever beams showing elevated chloride levels at the reinforcing depth and one edge beam with relatively low chloride levels at the reinforcing depth. Corroded reinforcing was found at the base of the cores labeled "B-24 Balcony Beam" and "A-16 Ground Level Beam", but not at "A-12 Edge Beam Face".

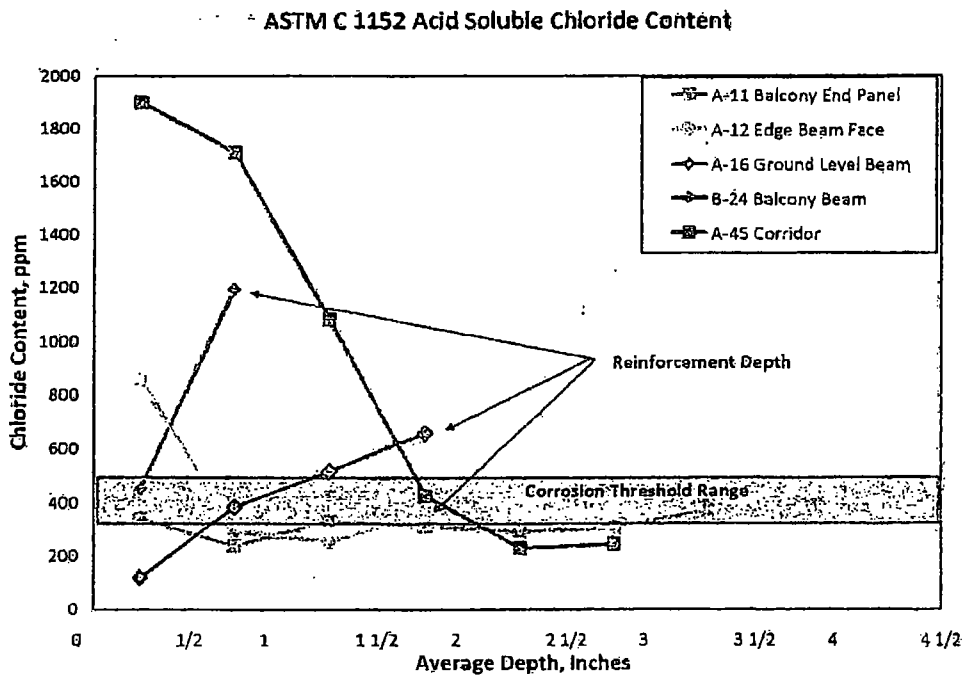


Fig. 3 – Chloride contamination profiles for various locations

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Fig. 4 and Fig. 2 illustrate that the chloride contamination of the prestressed panel soffits exceeds the corrosion threshold at the reinforcing in all locations tested. This presents a very serious condition because this reinforcement is the primary structural reinforcement for the corridors and balconies.

Longitudinal panel cracks along the prestressing tendons indicate that some or all of the prestressing force for the tendon has been lost due to corrosion. Numerous cracks have been identified throughout both buildings. Structural engineering analysis of the floor system is strongly recommended to determine how many strands can be lost before safety is compromised. Fortunately, cathodic protection of the panels can minimize further corrosion damage, and common repair procedures are available to strengthen the corrosion-damaged panels.

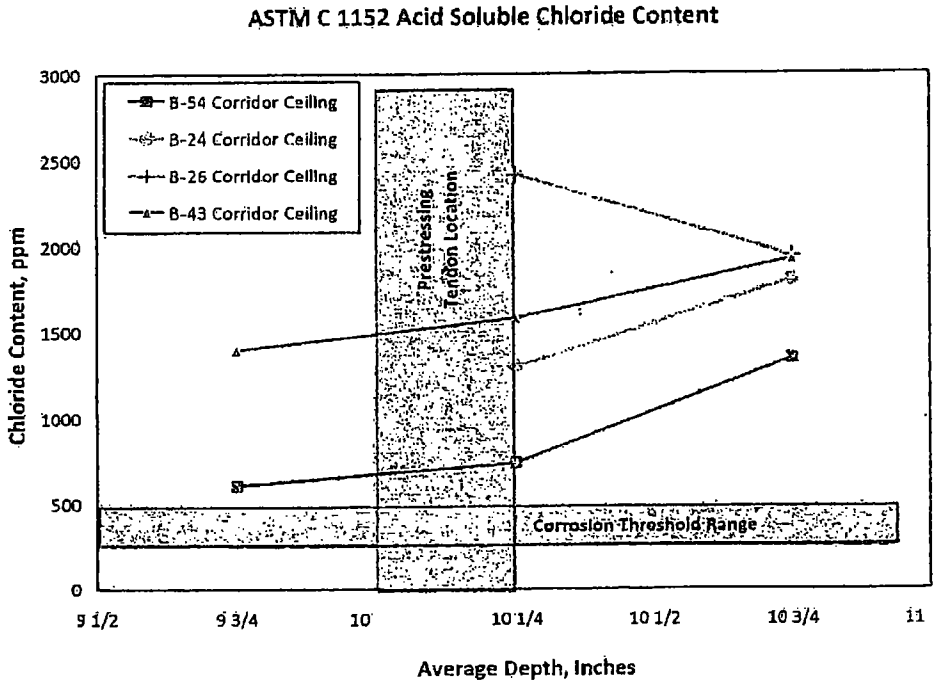


Fig. 4 Chloride contamination levels of the corridor soffits in Building B

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BOB GALLAGHER'S AFFIDAVIT

Table 2 - Carbonation and Acid-Soluble Chloride Content Test Results

TCG Project No. 0793.

Project Name: Shipyard Village at Litchfield by the Sea

Location: Litchfield South Carolina

Report Date: 12/12/07

Building A

Sample ID	Description	Depth	Cl																						
SYA24-1	Balcony Deck thru the 3" cast in place topping into the Hollow Core Precast Panel.	2.75	0.53	150	902	1693	1931	1810	1862	400	521	346													
SYA45-1	Balcony Deck thru the 3" cast in place topping into the Hollow Core Precast Panel 1" off center of the web.		0.13	379	245	194	171	168	183	161	113														
SYA15-5	Corridor/Hall Deck @ Corner thru 2 1/4" cast in place topping slightly into the precast hollow core panel.	1.75	0.25	1897	1710	1082	427	230	245																
SYA11-A	Balcony Face- Cast in place 6" thick face of Deck	2.50	0.63	387	1153	1757	1594	1358																	
SYA11-B	Balcony End of the deck panel, cored from the outside, thru the cast in place wall and into end of the precast hollow core panel.			341	298	392	813	292	338	375															
SYA12-C	Deck Face- Face edge of deck slab under bedroom window into the cast in place edge beam.	0.50	0.25	857	298	253	369	324	289																
SYA16-1	Beam - Ground level cast in place Cantilever Beam @ corner of the building.	1.75	0.63	118	365	518	660																		

Building B

Sample ID	Description	Depth	Cl																						
SYB24-2	Balcony Deck thru the 2 3/4" cast in place topping into the Hollow Core Precast Panel.	2.75	1	380	532	292	228	218	204	157	71	97	38												
SYB24-C	Corridor/Hall Ceiling into the precast hollow core panel outside unit 824.		1.5 Bot																			811	742	1246
SYB14-2 & SYB14-S	Balcony Deck thru the 3 5/8" cast in place topping into the web of the Hollow Core Precast Panel thruout the full depth.			297	464	372	378	350	328	289	133	85	31	34	47	85	245	827	1328	2005				
SYB24-C	Balcony Ceiling into the precast hollow core panel.		1 Bot															160	683	1572				
SYB24-1& SYB14-C	Balcony Deck B-24 thru the cast in place topping into the Hollow Core Precast Panel thruout its depth.		.25 Top 1.5 Bot	302	712	541	498	406	423	78	57	44	66	64	121			438	668	1635				
SYB24-HC	Corridor/Hall Ceiling into the precast hollow core panel outside unit 824 next to beam	1																					1299	1606
SYB24BM-1	Beam Balcony			453	1193																			
SYB25-HC	Corridor/Hall Ceiling into the precast hollow core panel outside unit 825 next to beam	1																					2418	1945
SYB43HC	Corridor/Hall Ceiling into the precast hollow core panel outside unit 843 next to beam																					1398	1576	1928

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SYV_002460

2298

76

Compressive Strength

The compressive strength of the concrete topping and cantilever beams was determined from selected core samples. The concrete strength appeared to vary considerably from location to location, with some locations being extremely porous and soft. For example, the concrete in the expansion joint cantilever beam adjacent to the entrance to Unit A23 shown in the photograph below crumbled in your hand when the stocco was removed. This particular beam also had advanced corrosion distress, so it is a candidate for removal and replacement. Based on the compressive test results, the concrete design strength for structural analysis purposes should be 3000 psi.

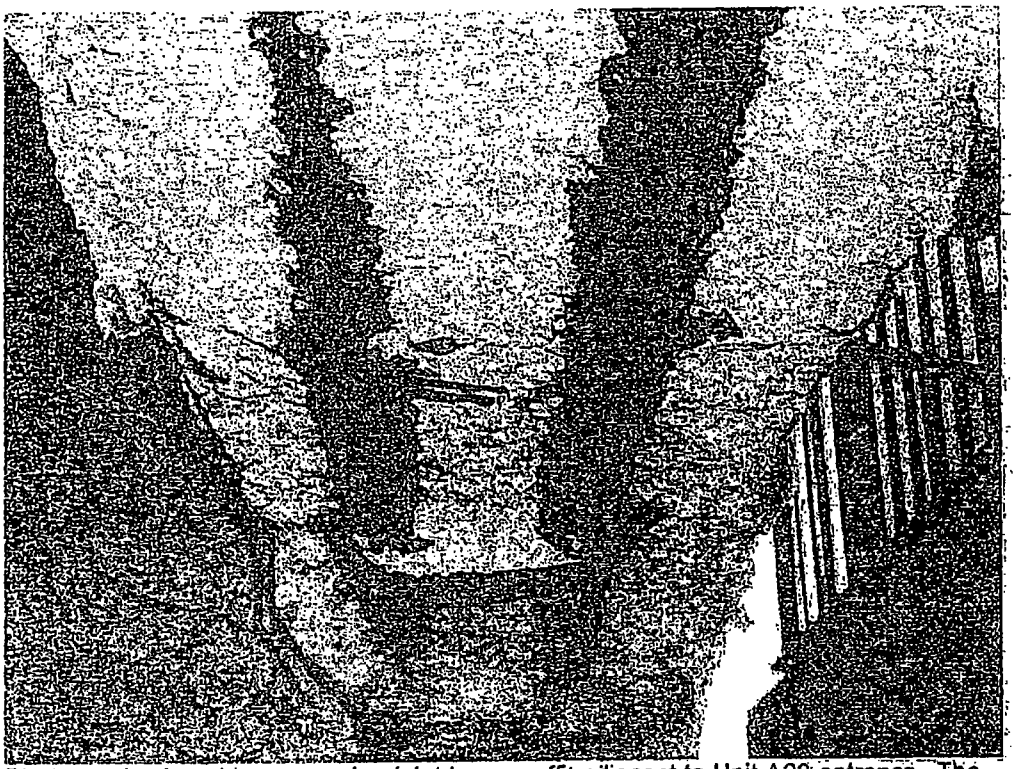
Toppings

Core Label	Description	Test Result
SYA-45-5	Corridor - Cast-in-place panel (Used to fill between precast panels)	4350 psi
SYA-24-2	Unit A24 Balcony Deck Topping.	2870 psi
SYA-45-2	Unit A45 Balcony Deck Topping .	5900 psi
SYA-45-4	Corridor Topping conc.	6520 psi
SYB-14-1	Unit B14 Balcony Deck Topping	3720 psi
SYB-54-1	Balcony Deck Topping	5260 psi
	Average Topping Strength	**4755 psi**

Beams

Core Label	Description	Test Result
SYA-16-1	Ground level cantilever beam @ building expansion joint	4210 psi
SYB-24-BM-2	Balcony cantilever beam	3100 psi
SYA-45-BM	Balcony cantilever beam	3910 psi
	Average Beam Strength	**3740 psi**

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Photograph of corridor expansion joint beam soffit adjacent to Unit A23 entrance. The concrete of this beam was very soft and porous. Note corroded-off stirrup.

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Summary of Findings and Recommendations

Shipyard Village condominium buildings A and B are exhibiting corrosion distress on the exposed edge beams and precast panel soffits of the balconies and corridors. Test results indicate that the corrosion distress is most likely caused by the combination of chloride contamination and low concrete cover. In addition, poor construction details contribute to the distress.

Key elements to consider in design of repairs are:

1. **Corridor expansion joints:** The expansion joints are fully locked with corrosion products. This condition creates a hump in the corridor at all locations observed. This hump can be considered a trip hazard. Efforts were made to smooth over the expansion joint with mortar to create a smooth transition, but the underlying problem is that the steel nosing angles are severely corroded. Replacement of the expansion joint nosing angles with galvanized or stainless steel is warranted.
2. **Expansion Joint Beams:** The cantilever beams supporting the expansion joints are in poor condition. Numerous beams had cracks or spalls indicative of corrosion damage. A few beams were witnessed with severe corrosion damage to the shear reinforcement. All cantilever beams where loose corrosion spalls were removed had the larger (No. 8) flexural reinforcement incorrectly located on the bottom. Chloride ion penetrating the expansion joint is most-likely contributing to the corrosion problem. Determination of structural capacity is warranted, especially for the beams with severe corrosion distress. Some beams may need to be replaced. Cathodic protection of any repaired beam is recommended.
3. **Balconies:** Corrosion distress was common on the observed balconies. Corrosion of the cantilever beam and prestressed panel reinforcement are the primary concern. Most balconies exhibited one or more longitudinal prestress panel cracks indicating that damage has already begun. The balconies are an important living space for the condominium residents, so a consistent long-term corrosion mitigation solution is warranted throughout the complex. Cathodic protection is recommended for the hollow-core planks, the edge beams and cantilever support beams. Cathodic protection will minimize further damage, and can be designed to last in excess of 20 years. Without cathodic protection, replacement, or strengthening, of the hollow-core panels will be required within the next 20 years.
4. **Corridors:** The exterior corridors are in a similar condition as the balconies. Numerous cantilever support beams were observed to have outward signs of corrosion distress; and many of the hollow-core planks had longitudinal cracks. The most distressed areas observed were the lower floors near the 4 and 5 stack. This area is the most exposed to wind and rain water dripping from the upper levels. Cathodic protection of all exterior corridor precast panels is recommended. Cathodic protection is also recommended for the cantilever beams that require repair.

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5. **Window Slab Edge:** The slab edge under the existing fixed windows is exposed to a similar environment as the balcony edge. Minor corrosion damage was observed at a few locations, most-likely caused by low concrete cover. This slab edge may have been better protected that the balcony by coatings, but numerous stucco and coating repairs were also observed. It is understood that the fixed windows will be replaced soon. It is recommended to take advantage of this opportunity to protect the slab edge reinforcing with cathodic protection installed along the edge. The rationale is to prevent future water intrusion through the cracks caused by corrosion spalls.
6. **Luminary Posts:** Numerous luminary posts are supported on cracked corbels that protrude from the expansion joint area. Repair or replacement of the corbels is recommended as part of expansion joint replacement.
7. **Balcony Railings:** The balcony railings are installed in edge beam pockets that have cracked in several locations. The railing balusters are spaced 6-inches apart and do not meet the current "4-inch sphere" building code requirement for ballusters. If an edge beam needs to be repaired, the railing will most-likely need to be replaced with a railing that meets current building code requirements.
8. **Hidden Flaws:** It is very common during any repair process to identify hidden flaws that should be addressed as a minor change in scope. The exterior of this structure, stucco covered with an elastomeric coating, can conceal a lot of cracking damage. One thing that the condominium owners should consider is establishing a contingency budget to handle minor changes in scope due to unforeseen conditions on a case-by-case basis.

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This report was developed and written by:



Matthew Miltenberger, P.E.
Vice President
Tourney Consulting Group, L.L.C.

Date: January 16, 2008

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About Cathodic Protection

Cathodic protection is the most commonly used electrochemical process used to combat corrosion of metals. The most prevalent form of cathodic protection employs a sacrificial thin layer of zinc metal that corrodes to prevent corrosion of the underlying steel. This process is commonly known as galvanizing. Galvanizing works well in an atmospheric exposure, but does not work as well in media such as concrete, soil, or water. In these situations, the sacrificial corrosion process consumes much more zinc metal, so blocks of reactive metals such as zinc, aluminum, or magnesium called anodes are electrically connected to the steel and are placed along side the structure. These anodes corrode and provide a small electrical current that polarizes the steel and significantly slows or stops the corrosion reaction. The choice of anode depends on the environment, and the duration of protection depends on supplying the proper mass and distribution of the anodes.

Another cathodic protection technique applicable for concrete is impressed current cathodic protection. This technique employs a power supply to deliver a small current through inert anodes embedded in the media where the metal is located. Impressed current systems are commonly employed to protect buried steel tanks and pipelines. The benefit of impressed current systems is that they allow the user to adjust the level of current applied to the system to compensate for changes in the system. When properly designed, installed, and maintained, impressed current systems can theoretically control corrosion indefinitely. The key to long duration is proper system design, installation and maintenance.

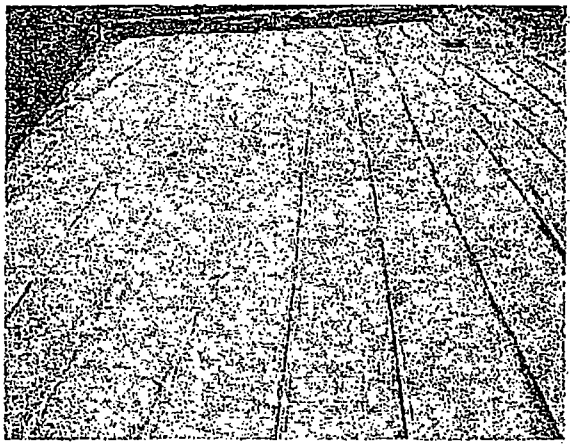
Cathodic protection of reinforcing steel in concrete requires specially designed anode systems. The first applications of cathodic protection systems for concrete used impressed current technology directly from oil and gas pipeline protection. These systems typically were used in transportation structures, but failed to be durable because the applications were not maintained regularly, were vandalized, or not designed properly for use in concrete. Proper design required an in-depth knowledge of concrete materials which the initial system designers did not possess.

Advances in cathodic protection anode systems improved installation reliability, but the need for annual maintenance and the remote location of many transportation installations lead to galvanic cathodic protection systems becoming the system of choice. Galvanic systems are essentially self-contained and self-regulating within the concrete, but have the disadvantage of a limited life and that the current output can not be adjusted after installation.

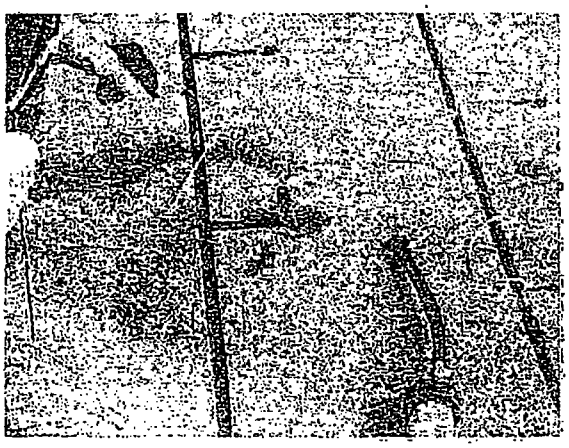
The choice of metal for galvanic protection of steel in concrete is limited to zinc that is activated to prevent zinc passivation in the alkaline environment inside the concrete. Other typical anode metals such as aluminum and magnesium produce

Warner Gymnasium Washington and Lee University – Lexington, VA
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Distributed Galvanode DAS strip anodes used in an overlay application to protect the entire surface of a reinforced concrete slab. Similar anodes are recommended for use in the ceiling of the Pool Filter room.



Discrete impressed current anodes being installed into a floor application. These anodes are the most efficient and durable anodes available for use in concrete today. In this application, the wiring that connects the anodes to the power supply is routed through the slots cut in the surface and is then covered with cement-based grout. Wiring for wall installations can be run in surface mounted conduit.



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Repair & Protection



Sika is considered to be the industry leader on a worldwide basis in concrete repair and protection. Many years of research and development plus decades of practical experience has enabled Sika to provide systems to restore and rehabilitate concrete and masonry structures that have deteriorated due to corrosion, structural damage, water infiltration, freeze/thaw, seismic activity, reactive aggregates, and others.

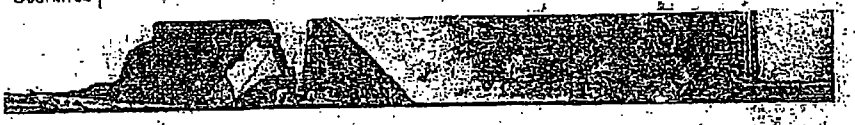
Among the products and systems available from Sika are:

- Concrete repair mortars
- Machine applied mortars
- Leveling and re-profiling mortars
- Concrete corrosion inhibitors
- Protective coatings
- Sealers
- Bonding agents
- Structural adhesives
- Injection resins
- Epoxy mortars
- Overlay systems

One of the keys to making repairs durable and long lasting is to identify the root cause of the deterioration from a proper diagnosis. Sika has always promoted the concept of Repair and Protect to accomplish this goal. The repairs fix the obvious, immediate damage and the protection takes care of the unseen, latent damages.

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Sealing and Bonding

Over the years, Sika's experience has grown to a leadership position, not in the Construction Sealant Market alone, but in Automotive, Industry and OEM Adhesive and Sealant markets around the world. Operating in this range of industries has created a base of knowledge that incorporates different perspectives and ideas from numerous fields of application.

At Sika, it is about choice and creating greater benefit for our customers. Having a combination of technologies available to the market.

Sikaflex Polyurethane Sealants
Proven over the years, Sikaflex Polyurethane is the product of choice in a wide range of construction applications. Polyurethanes exhibit many characteristics that offer advantages in certain applications.

These characteristics are:

Adhesion:

Sikaflex sealants will bond to more surfaces, particularly porous substrates such as concrete and masonry, without the use of primer. It is an accepted fact that Sikaflex polyurethanes have superior wetting action in achieving a bond to various substrates under jobsite conditions.

Dirt resistance:

Because of their exclusive chemical design, Sikaflex sealants exhibit far less dust and dirt pick-up during cure and over the lifetime of the building.

Substrate staining:

Sikaflex sealants possess an extremely stable consistency and will not stain or discolor virtually on any common substrate.

Paintability:

Sikaflex sealants can be treated with most coatings and paints without the risk of delamination.

SikaSil Silicone Sealants
SikaSil silicone is the product of choice when specific characteristics are desired in a sealant. Typical conditions favoring selection of SikaSil silicone sealants occur in glass to glass and glass to metal interface in glazing systems.

Important characteristics include:

Adhesion:

Excellent adhesion to glass including conditions subjecting sealant to reflected UV radiation at the bond line.

Color retention:

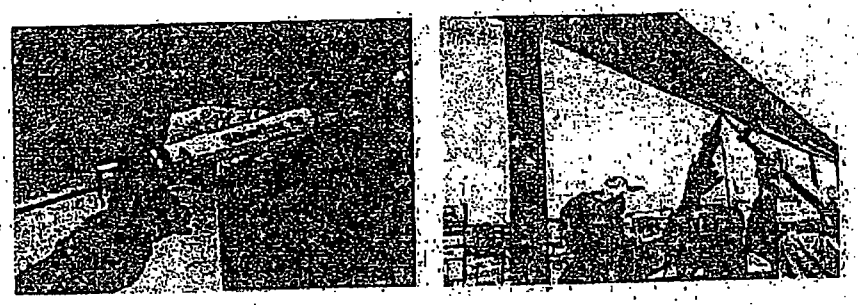
White and other light colors will not yellow with age. Therefore white remains white.

Heat resistance:

Applications subjecting sealant to unusually high temperatures can often be sealed with SikaSil silicone sealant.

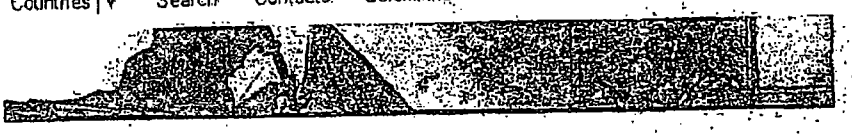
Water immersion:

Many Sikaflex sealants can be placed in totally immersed environments without being affected by the action of the water.

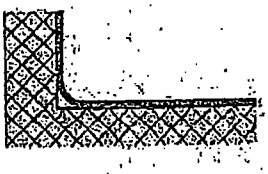


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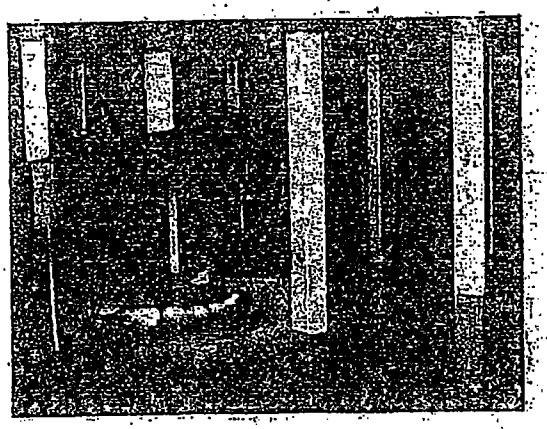


Waterproofing

Sika has a wide range of products designed to make concrete and masonry impermeable to water. This is important for liquid containing structures, such as reservoirs, for keeping the water in and for other structures, such as foundations and basements, for keeping the water out. In addition, Sika offers special sealing systems to waterproof the critical areas, such as joints and cracks, where water can penetrate if not addressed.

Some of the products and systems offered by Sika include:

- Waterproofing admixtures
- Waterproofing renderings
- Joint sealing systems
- Crack injection resins
- Protective coatings
- Sikadur Combiflex for repairing difficult joints
- SikaSwell for new construction joints



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Structural Strengthening

Fiber reinforced polymers (FRP) are a proven technology for upgrading and strengthening concrete, masonry, timber and steel structures. These advanced composite materials have exceptionally high strengths, yet are very lightweight and easy to work with. They are used for increasing the capacity of existing buildings and bridges, seismically upgrading structures; correcting design or construction errors, and allowing modifications or changes in use. In addition, the FRP materials offer the following advantages:

- Economy and durability
- Ease of application
- Extremely high tensile strength
- Outstanding fatigue behavior
- Absolute corrosion resistance
- Ability to upgrade structure while in use
- Upgrades possible even with limited access

Sika CarboDur plates and SikaWrap fabrics have been used successfully on thousands of projects worldwide. The most common uses have been for flexural strengthening, shear upgrades and column confinement. However, they have many other uses, including strengthening for cut-outs, blast hardening, fire and structural damage, and upgrading structures damaged by corrosion.



top

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REPAIR MORTARS, GROUTS & CONCRETE
Application Use Guide

SikaTop® *Plus*. • Specialty repair mortars for demanding civil environments • Two component, polymer modified, with a penetrating corrosion inhibitor • Polymer modified for enhanced physical properties • Sika FerroGard 901 penetrating corrosion inhibitor for embedded reinforcement • Prepackaged unit 1 gal + 1 bag • Potable water approved	**SikaTop 111 Plus** - 2,500 psi, 1 day - 7,000 psi, 28 day - Form & pour applications - Screed mortar: ¼" to 1" neat as a mortar - 1" to 6" when extended with aggregate as concrete	**SikaTop 122 Plus** - 3,000 psi, 1 day - 7,000 psi, 28 day - Trowel grade - ¼" to 1" neat as a mortar - 1" to 4" when extended with aggregate as concrete		**SikaTop 123 Plus** - 3,500 psi, 1 day - 7,000 psi, 28 day - Vertical or overhead - ¼" to 1½" neat
SikaQuick® • Rapid hardening repair mortars • Very low shrinkage • Very low permeability • Easy to mix / flowable or trowelable • Conforms to ASTM C-928	**SikaQuick 1000** - 1,000 psi, 3 hours - 9,000 psi, 28 day (neat) - 5,500 psi, 28 day (extended) - ¼" to 1" (neat) - 1" to 6" when extended with aggregate as concrete - 6 hour epoxy recoat time		**SikaQuick 2500** - 2,500 psi, 1 hour - 8,500 psi, 28 day (neat) - 5,500 psi, 28 day (extended) - ¼" to 1" (neat) - 1" to 6" when extended with aggregate as concrete - 4 hour epoxy recoat time	
Sika MonoTop® • One component • Polymer modified • Silica fume enhanced • Very low permeability	**Sika MonoTop 611** - Form and pour, neat and extended - Form and pump, neat and extended - 6,500 psi, 28 day - ¼" to 1" neat - 1" to 6" when extended with aggregate as concrete			**Sika MonoTop 615** - Multi purpose mortar - Trowel applied - Spray applied (wet) - Normal - 4,000 psi, 28 day - ¼" to 1 ½" neat
SikaRepair® • One component, cementitious • Add water or SikaLatex R for improved modified properties • General purpose mortar repair • Economical	**SikaRepair 222** - Trowel grade - 5,000 psi, 28 day (water) - 5,500 psi, 28 day (Latex R) - ¼" to 1" neat (water) - ¼" to 1" (Latex R) - 1" to 6" when extended with aggregate as concrete	**SikaRepair 223** - Vertical or Overhead - 7,000 psi, 28 day (water) - 7,500 psi, 28 day (Latex R) - ¼" to 1½" lift (water) - ¼" to 1½" lift (Latex R)	**SikaRepair SHB** - Normal set - Superior high build Vertical or Overhead - 5,000 psi, 28 day (water & Latex R) - ¼" to 3" lift (water) - ¼" to 3" lift (Latex R)	**SikaRepair SHA** - Superior high build Vertical or Overhead - Accelerated set - 4,500 psi, 28 day (water) - 5,000 psi, 28 day (Latex R) - ¼" to 3" lift (water) - ¼" to 3" lift (Latex R)
Sikacrete® • Prepackaged concrete mix. Extended with coarse aggregate. • Fluid, pourable, pumpable • Full depth repairs • Non-accelerated	**Sikacrete 211** - 6,000 psi, 28 day - Low shrinkage - Low permeability - 1" minimum, 6" maximum - Normal setting concrete			
SikaRepair® & SikaCem Machine Applied Mortar • Contains dust inhibitors • Less rebound • Silica fume enhanced • Products for either wet/dry process	**Sikacem 133** - Polymer modified - 4,000 psi, 28 day - ½" to 2" minimum* (Large Areas) - 2" to 6" maximum* (Local Applications) - wet or dry * Thickness in one lift depending on size	**Sikacem 103** - General purpose - Silica fume enhanced - 5,000 psi, 28 day - ½" to 2" minimum* (Large Areas) - 2" to 6" maximum* (Local Applications) - wet or dry * Thickness in one lift depending on size	**SikaRepair 224** - Wet spray - 10,000 psi/28 day - Silica fume enhanced - Fiber reinforced - Normal set times - Can be hand applied	**Sikacem 103 F** - Fiber reinforced - Silica fume enhanced - 8,000 psi, 28 day - ½" to 2" minimum* (Large Areas) - 2" to 6" maximum* (Local Applications) - wet or dry * Thickness in one lift depending on size
SikaGrout® • CRD C-621 Corps of Engineers compliant • ASTM C-1107 compliant	**SikaGrout 300 PT** - PT duct grout - Sand-free - Vertical/horizontal - Tight clearances		**SikaGrout 328** - Precision structural grout - Non-shrink, cementitious - 7,000 psi, 28 day, fluid consistency - 10,000 psi, 28 day, dry pack	**SikaGrout 212** - Non-shrink, nonmetallic - General purposes grout - 5,800 psi, 28 day, fluid consistency

SYV_002473

SEALANTS
APPLICATION USE GUIDE

	SIKAFLEX 1a	SIKAFLEX 15LM	SIKAFLEX 15LM SL	SIKAFLEX 2c NS	SIKAFLEX 2c SL	SIKAFLEX 2c NS/TG	SIKAFLEX 1C SL	SIKAFLEX 11FC	COMBI FLEX	SIKADUR 51 NS/SL	SIKADUR CJR or CJR-LPL	SIKADUR 23 LO-MOD GEL	SIKADUR 31 HI-MOD GEL
Movement Capability:	+25%/ -25%	+100%/ -50%	+100%/ -50%	+50%/ -50%	+50%/ -50%	+25%/ -25%	+25%/ -25%	+12.5%/ -12.5%					
Meets ASTM C920	▲	▲		▲	▲	△	▲						
Meets Fed Spec TT-S-00230C	▲	▲					▲						
Meets Fed Spec TT-S-00227E				▲	▲	▲							
Passes Fed Spec TT-S-001543A		▲											
UL Fire Rated 2 HR With Ultra Block® (request approved designs from Sika)		▲											
SWRI Validation	▲												
Passes ANSI/Standard 61 for potable water	▲			▲					▲				
USDA	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲
Expansion Joints in Precast Concrete	▲	▲		▲									
Expansion Joints in Brickwork and Masonry Block	▲	▲		▲									
Expansion Joints in EIFS and Stucco		▲		▲									
Expansion Joints in Cast-In-Place Concrete	▲	▲		▲									
Expansion Joints in Horiz. Concrete Pavement	▲				▲	▲	▲						
Expansion Joints in Park Deck					▲	▲	▲		▲				
Expansion Joints in Highways (Pavement)		▲	▲		▲								
Expansion Joints in Runways (Pavement)		▲	▲		▲								
Expansion Joints in Tilt-up Walls		▲		▲									
Window and Door Perimeters	▲	▲		▲									
Paver Joints in Plaza Decking	▲				▲	▲	▲						
Control Joints in Horiz. Concrete (Exterior)	▲				▲	▲	▲						
Coping Joints	▲	▲		▲									
Reglet Joints	▲	▲		▲									
Joints and Cracks in Immersion Service	▲			▲	▲				▲				
Concrete Canal Joints	▲			▲	▲				▲				
Subfloor Adhesive								▲					
General Adhesive	▲							▲					
Pick-proof/Tamper Resistant Security Sealant						▲		▲		▲	▲	▲	▲
Warehouse Floor Control Joints										▲	▲		

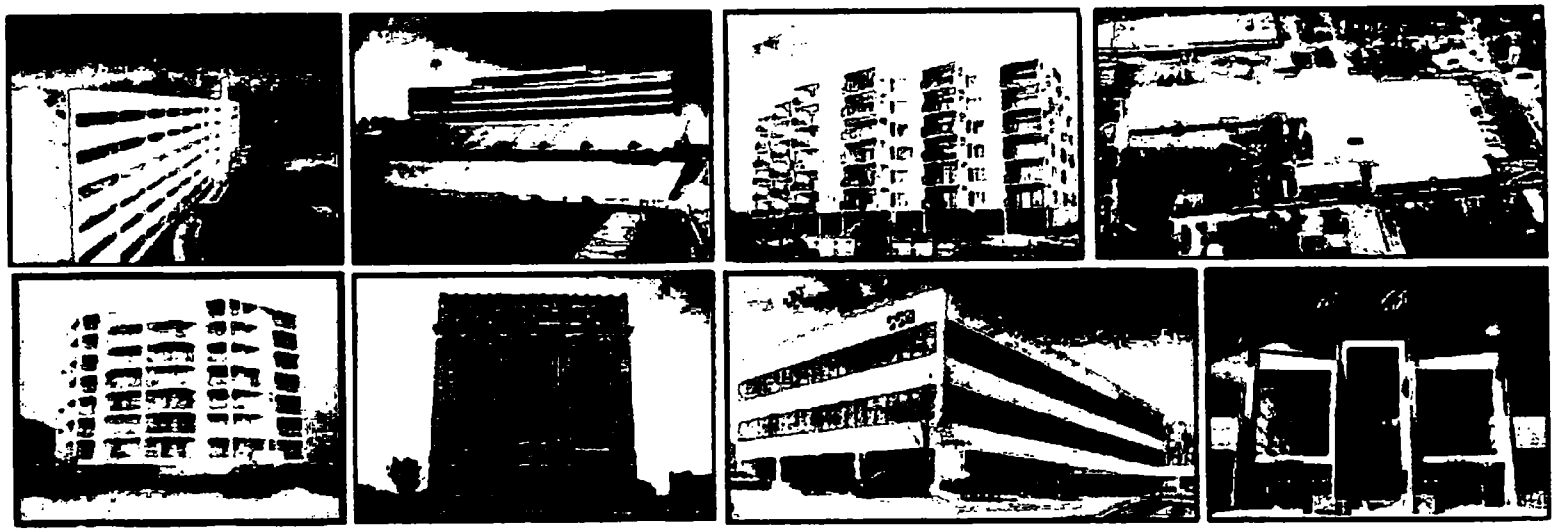


Where to use Sikadur® Epoxies:

	Crack Repair			Patching						Overlay			Bonding Adhesive		Anchor Bolts		Base Plate Grouts	USDA Appr.	Potable Water Appr.	ASTM C-881		
				Interior		Exterior				Int.	Exterior									Type	Grade	Class
Sikadur 32, Hi-Mod		●											●	●	●		●	●	● (NSF)	I & II	2	C
Sikadur 32, Hi-Mod LPL		●											●	●	●		●			I & II	2	C
Sikadur 35, Hi-Mod LV	●	●		●						●		●		●	●			●	●	I,II,IV	1	C
Sikadur 35, Hi-Mod LV LPL	●	●		●						●		●		●	●							B
Sikadur 31, Hi-Mod Gel			●		●									●		●		●	●	I & II	3	B&C
Sikadur 31, Hi-Mod Gel LPL			●		●													●				
Sikadur 22, Lo-Mod				●			●			●		●						●		III	2	C
Sikadur 21, Lo-Mod LV				●			●			●		●						●		III	1	C
Sikadur 23, Lo-Mod Gel					●				●									●		III	3	C
Sikadur 52	●	●																●				
Sikadur Injection Gel	●		●		●									●	●	●		●	● (NSF)	I	3	B&C
Sikadur 33			●											●	●	●						
Sikadur 42, Grout-Pak																	●	●	●			
Sikadur 43, Patch-Pak				●						●								●	●			
Sikadur CJR*		●	●	●																		
Sikadur 55 SLV	●	●	●																	I,II	1	B

*Control Joint Resin
LPL = Long Pot Life
NSF = National Sanitation Foundation





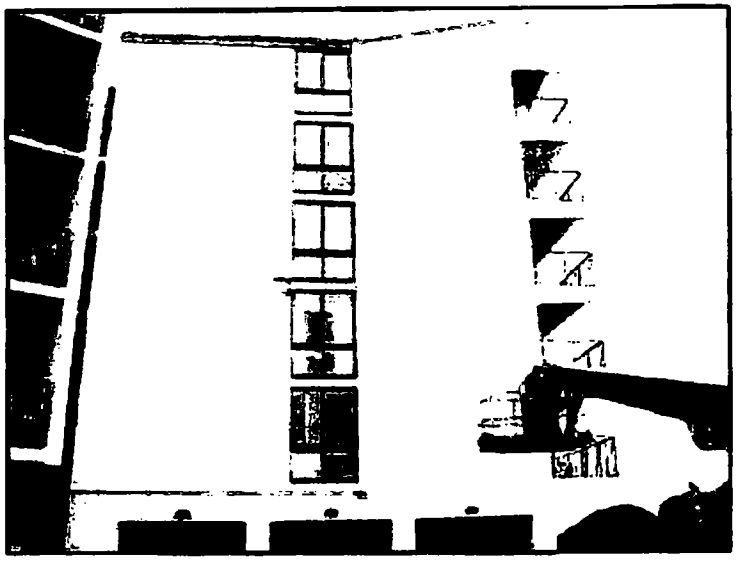
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Leaks at Windows/Doors and Decayed Wood



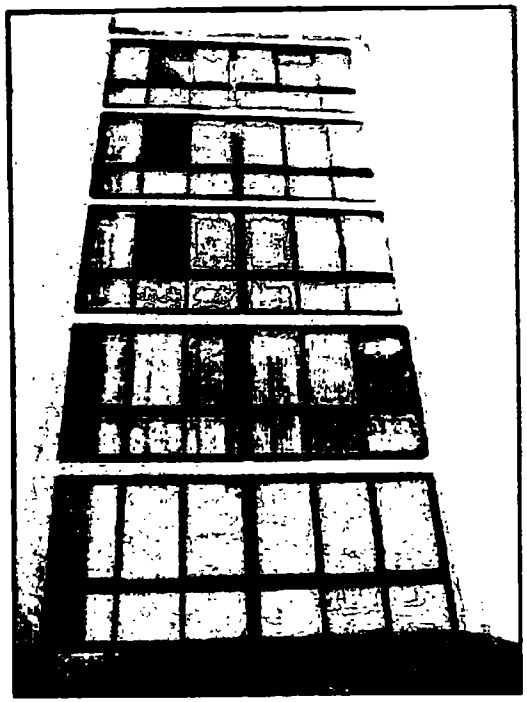


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Replacement of Windows and Doors





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Existing Balconies

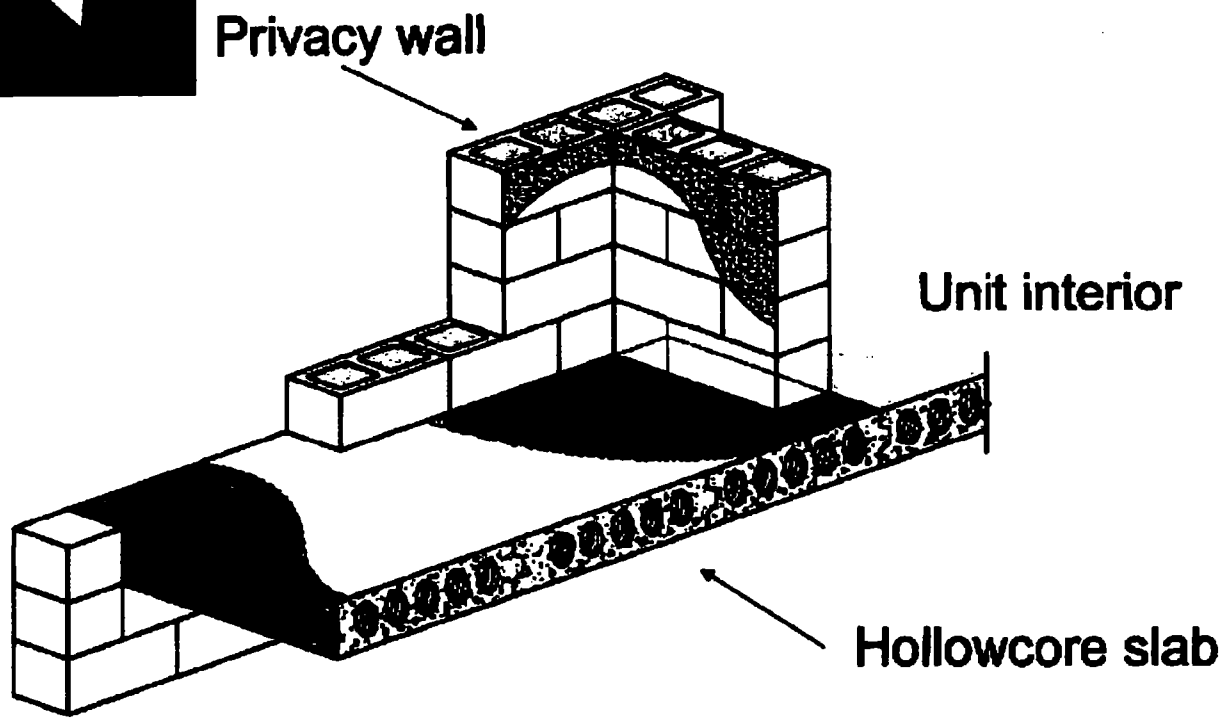
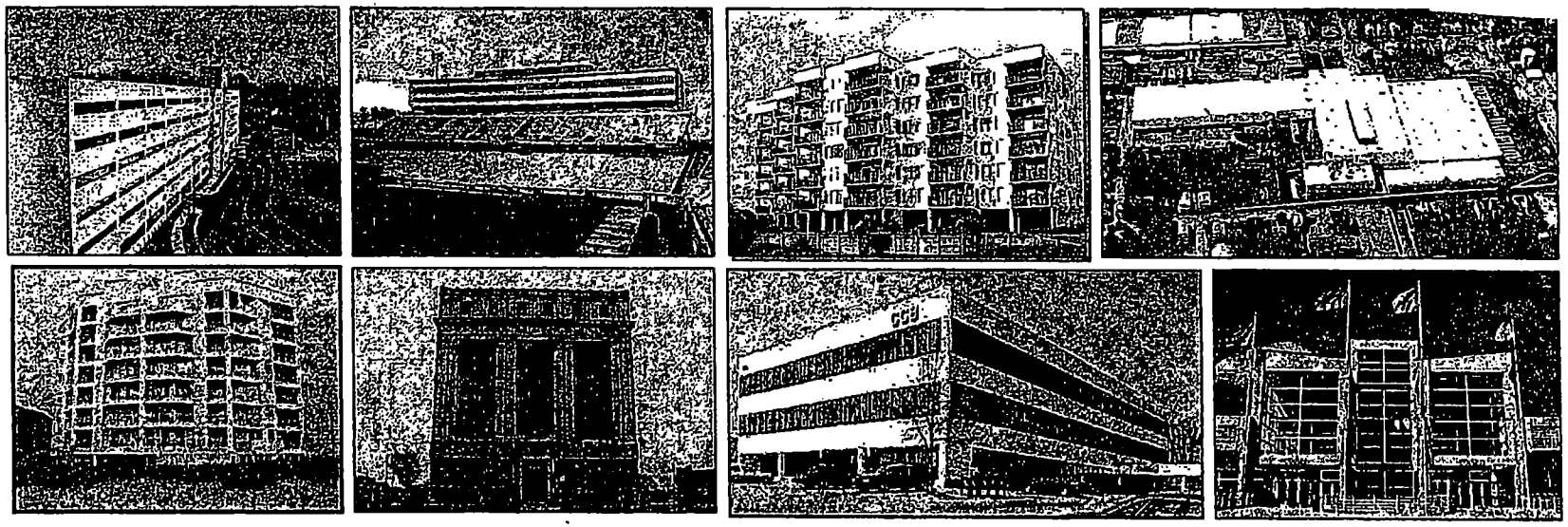


EXHIBIT 6.16



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Shipyard Village Buildings A & B Repair and Preservation

Stephen Robinson, P.E.
David Tepke
Timothy Norton

Presentation Outline

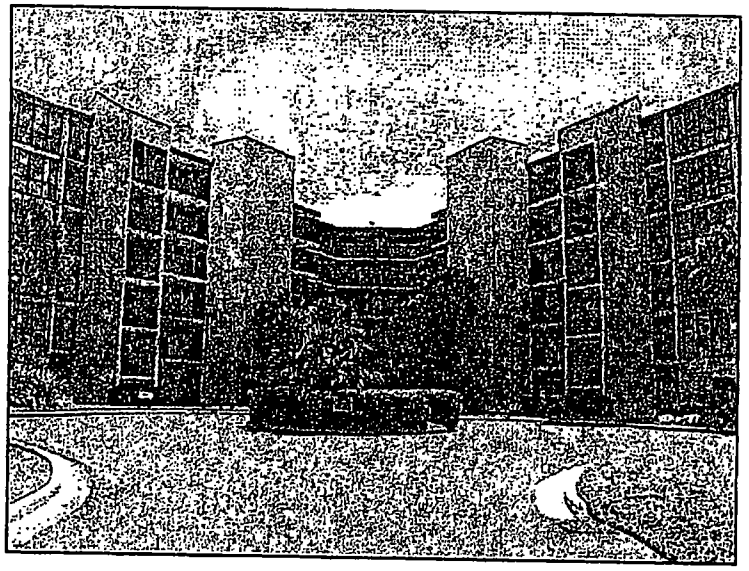
- Background and terminology
- The problem
- Our solution
- Budget

Presentation Outline

- Schedule and phasing
- SKA's role
- What to expect during construction
- Question and answer session

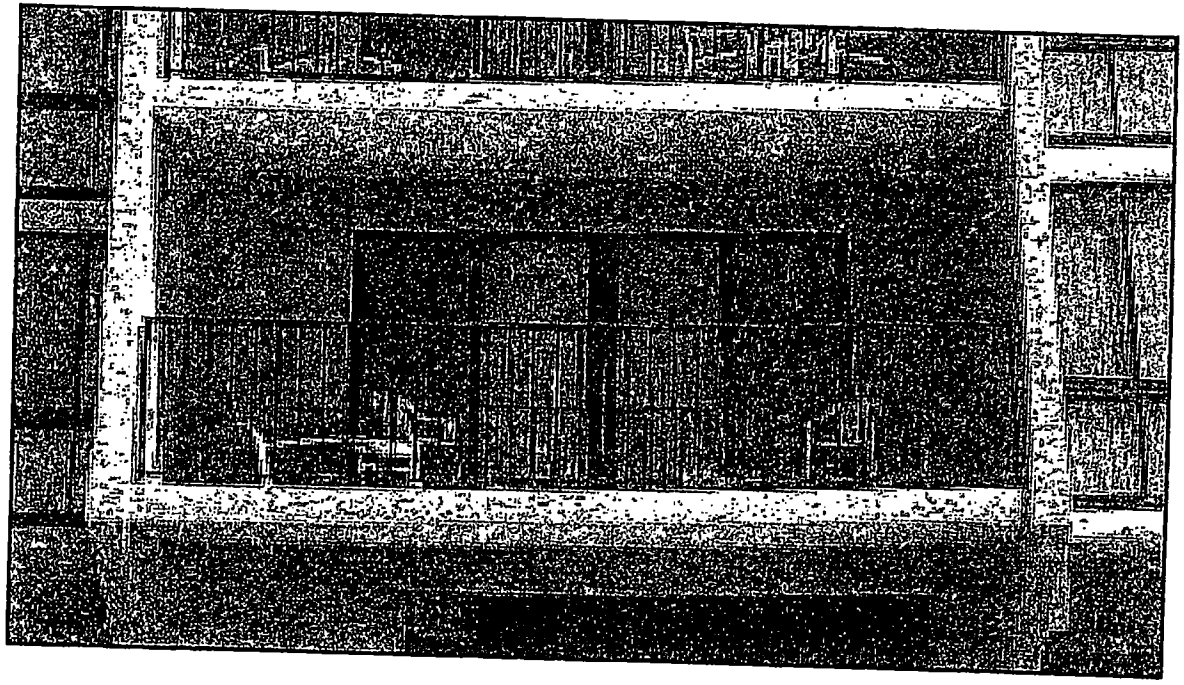
Background and Terminology

- Balcony
- Walkway
- Reinforced concrete beam
- Prestressed hollowcore slab

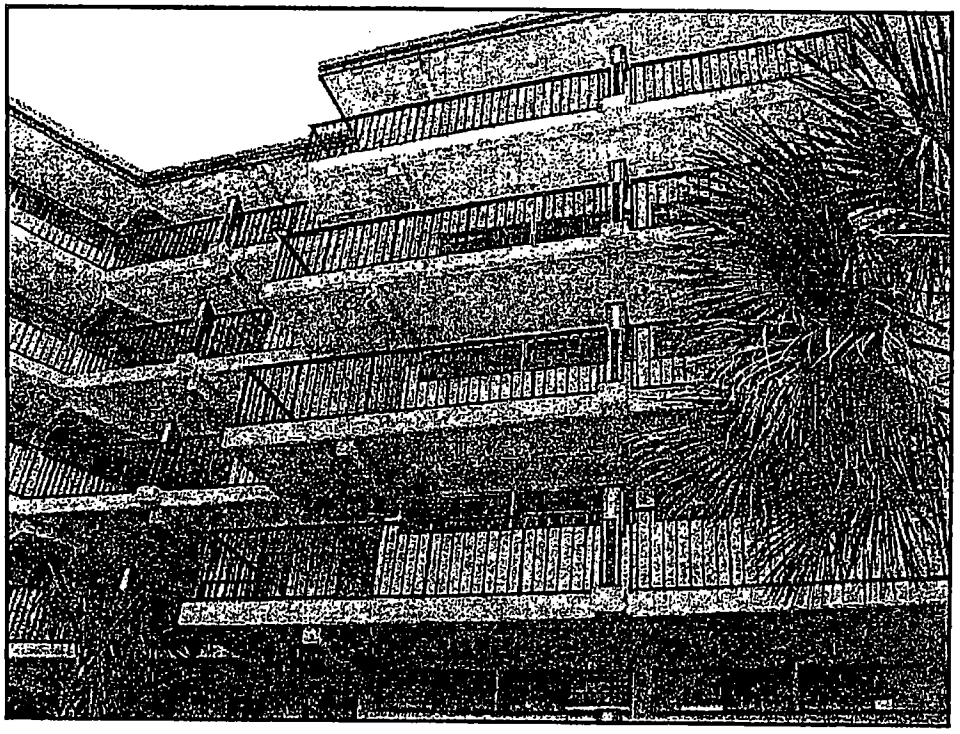


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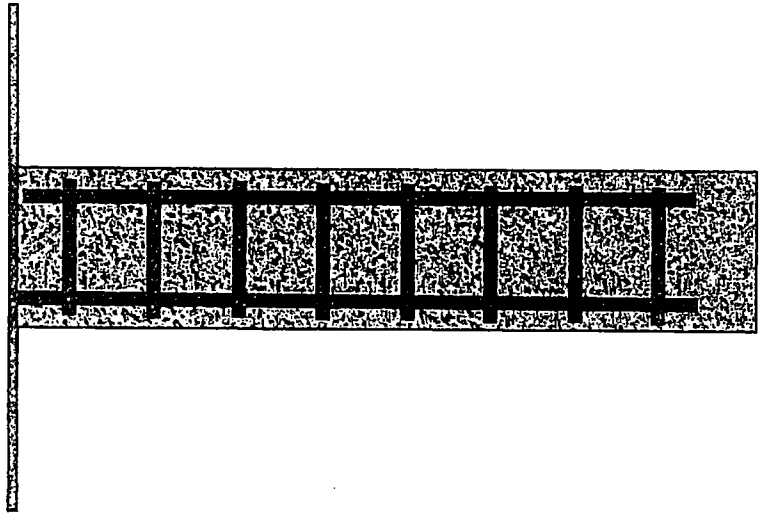
Balcony

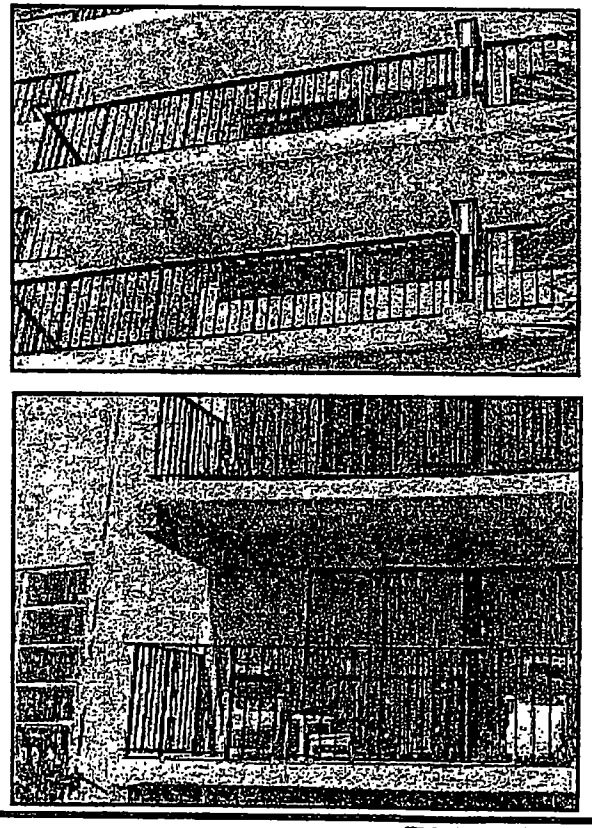


Walkway



Reinforced Concrete Beam

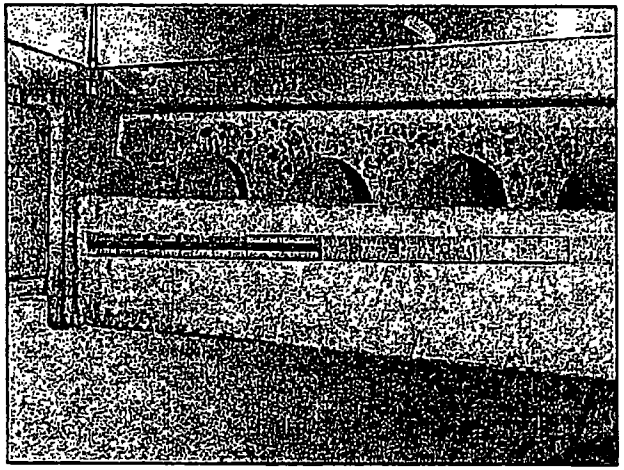


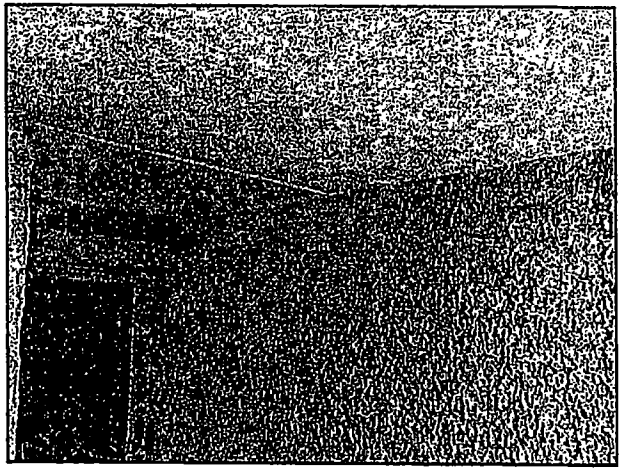


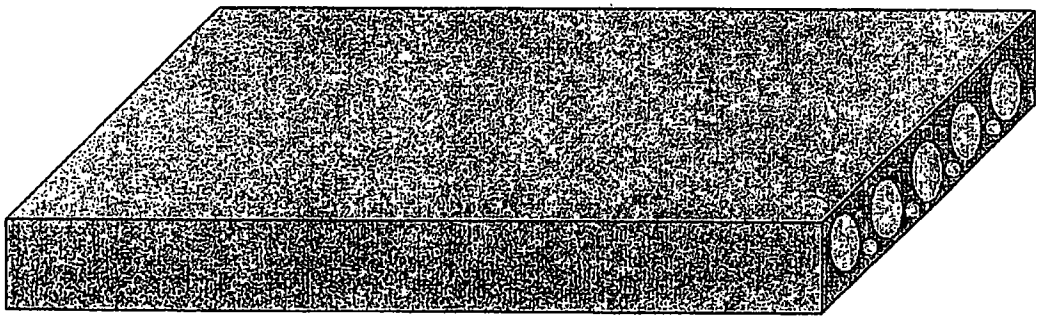
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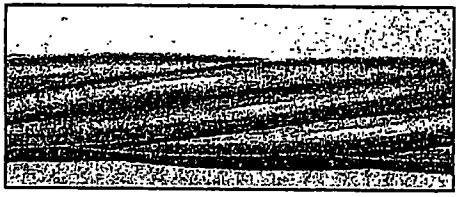
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Prestressed Hollowcore Slab







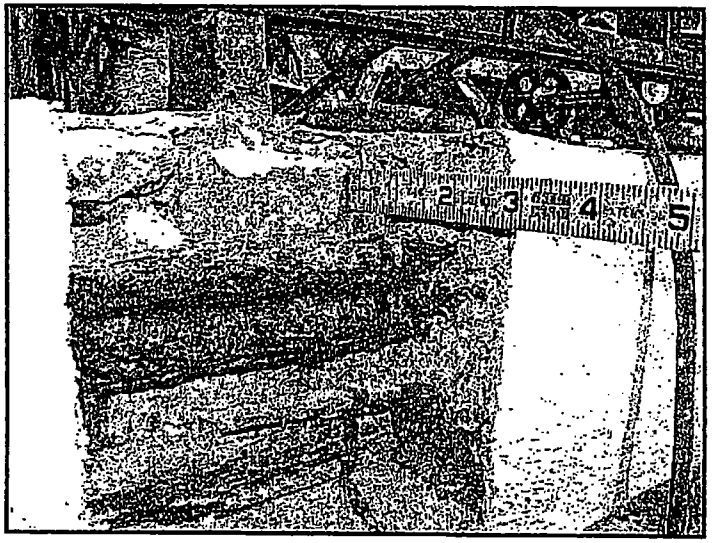


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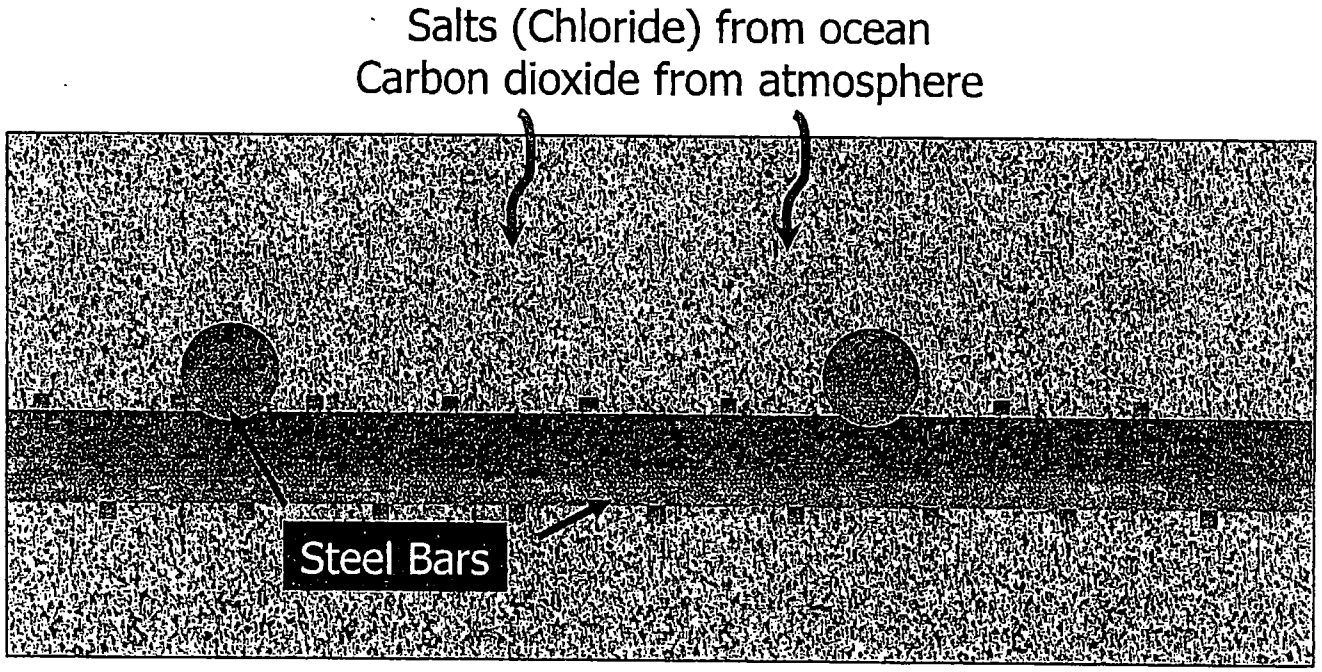
Beauty (oceanfront occupancy) and the Beast (corrosion)





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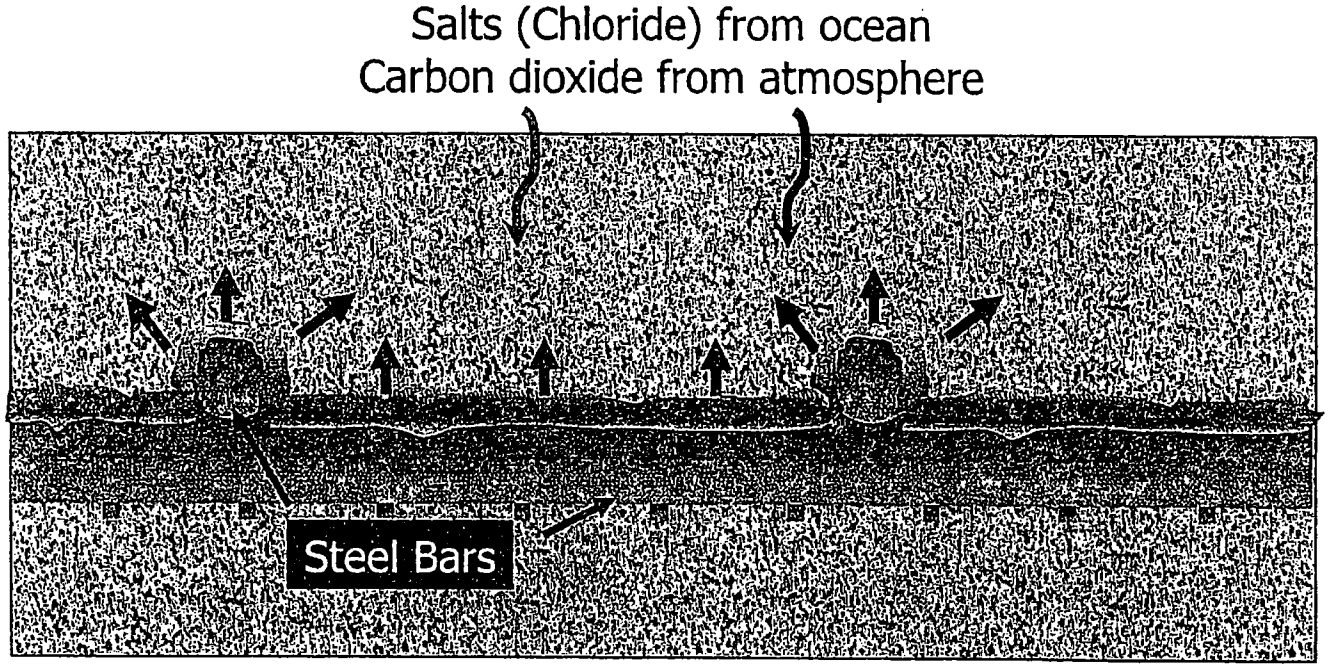
Steel Corrosion in Concrete



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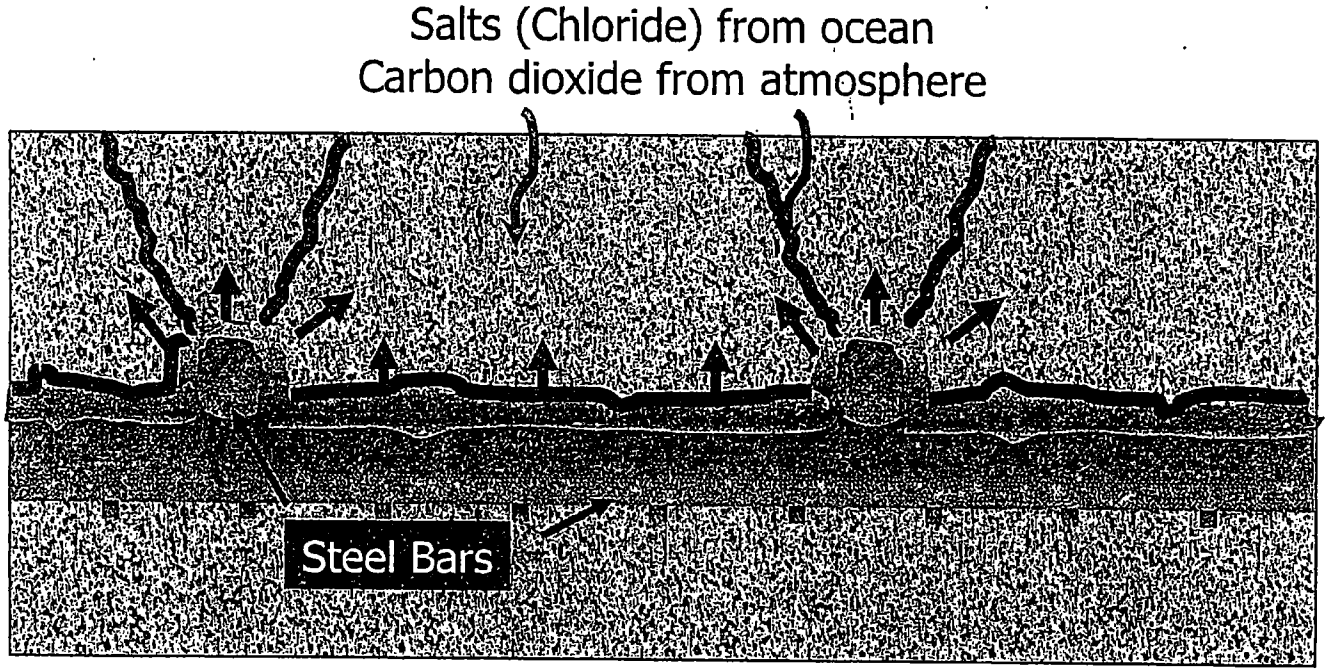
Steel Corrosion in Concrete



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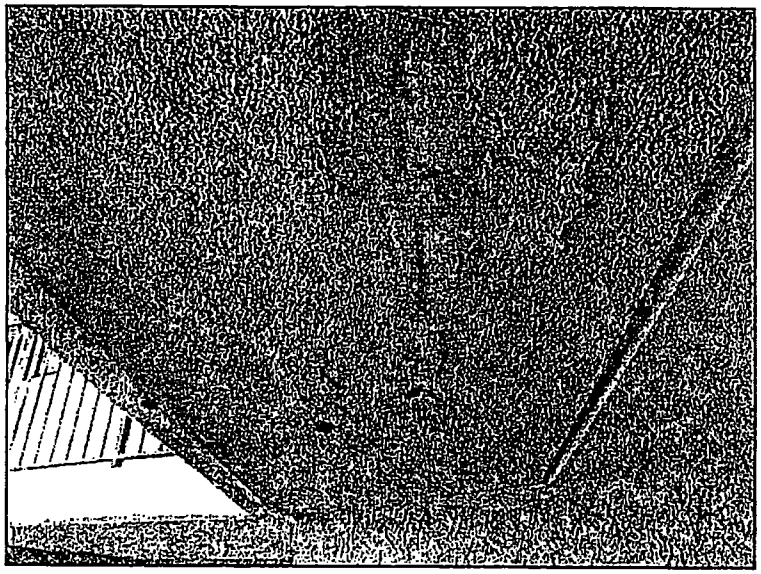
Steel Corrosion in Concrete

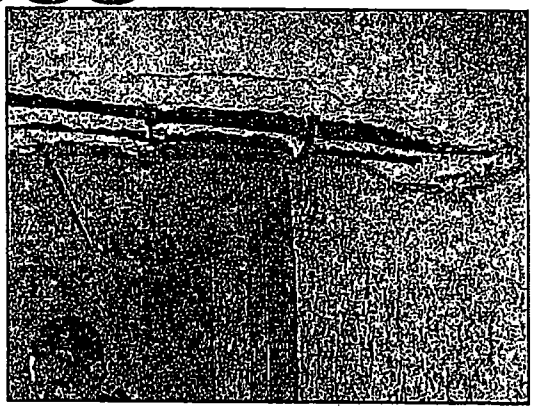


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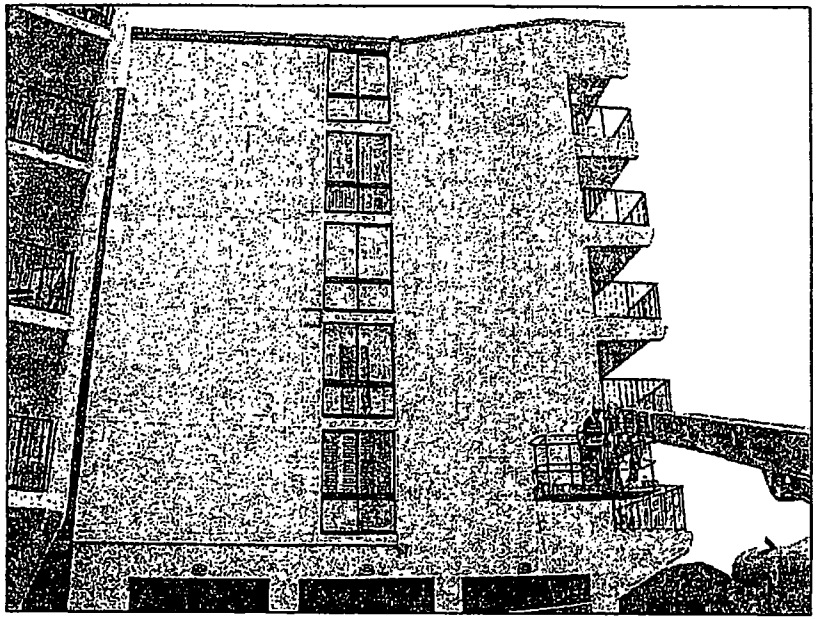
Corrosion-Related Distress

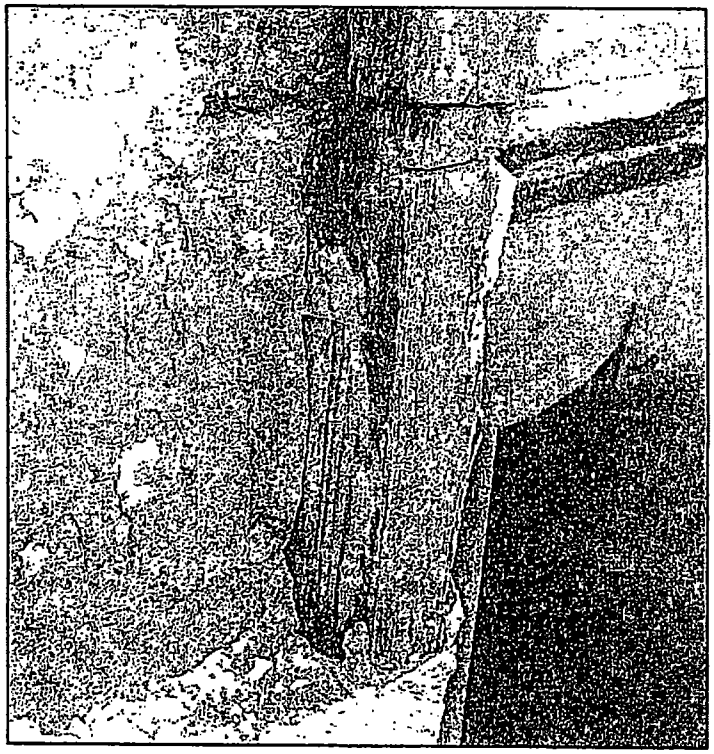






Leaks at Windows/Doors and Decayed Wood





Sutton-Kennerly & Associates, Inc
March 21, 2009 Shipyard Village Condominiums Informational Meeting

SKA CONSULTING ENGINEERS

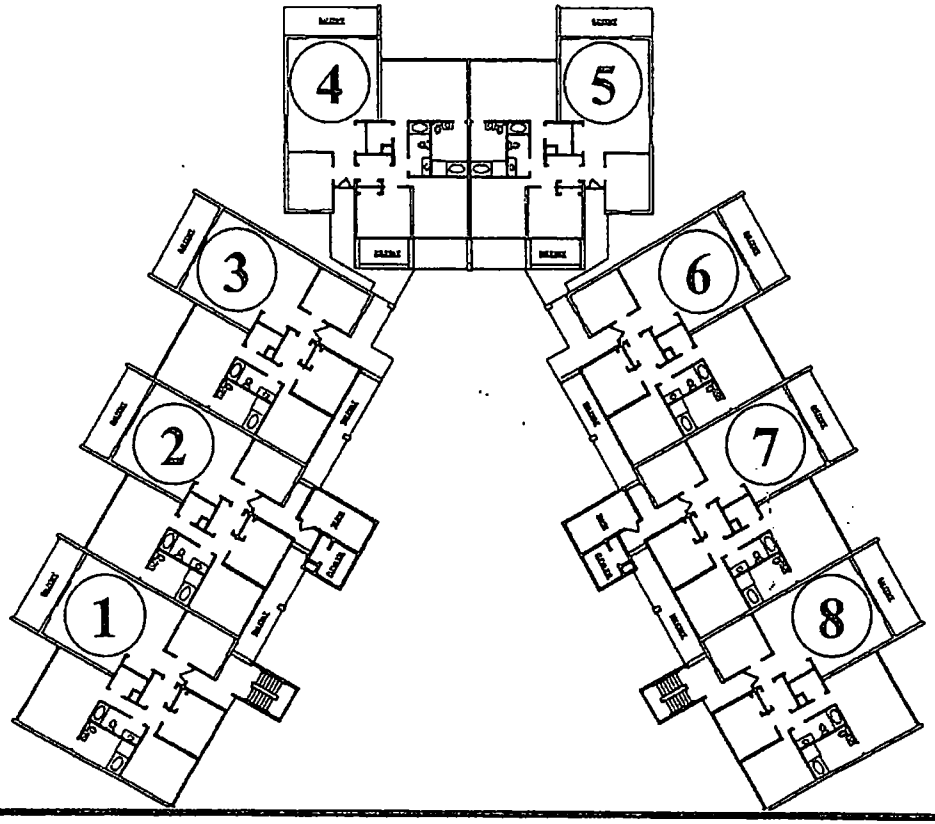
Objectives

- Economical
- Effective
- Simple

Conceptual Solutions

- Replace or protect beams and slabs
- Replace windows and doors
- Waterproofing system
- Miscellaneous concrete repairs and reinstallations

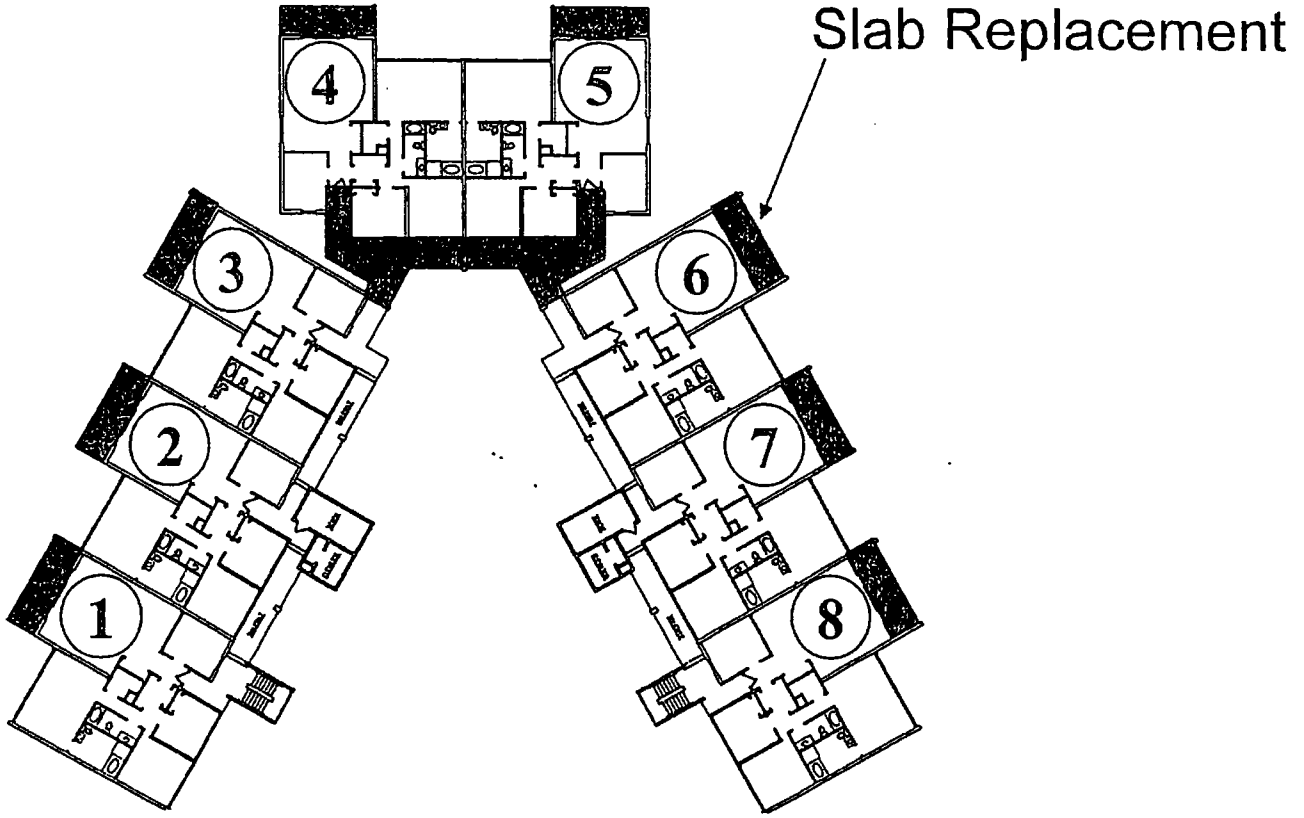
Building Layout



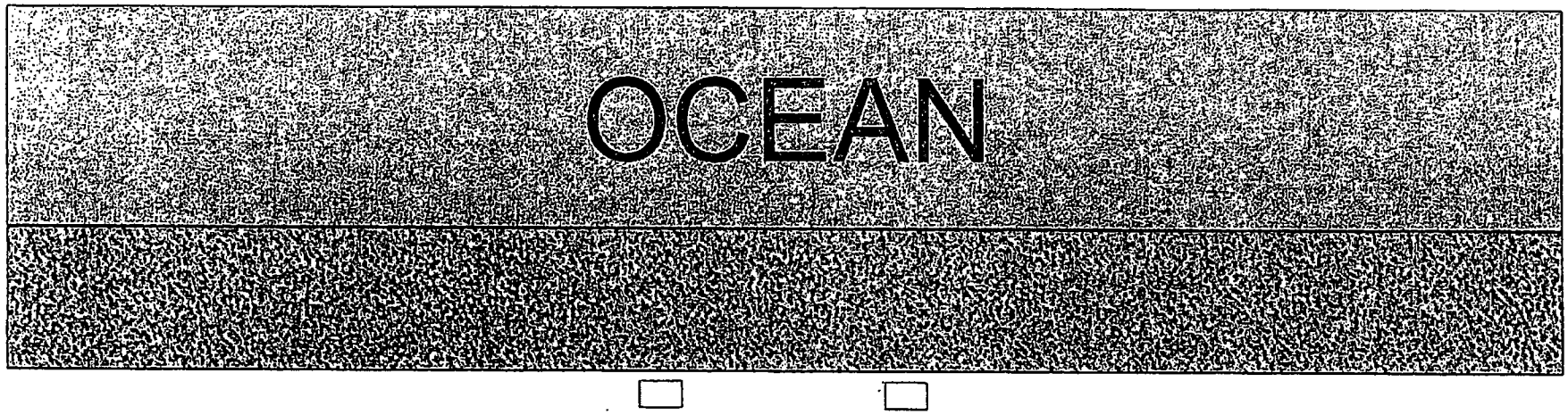
Sutton-Kennerly & Associates, Inc
March 21, 2009 Shipyard Village Condominiums Informational Meeting

SKA CONSULTING ENGINEERS

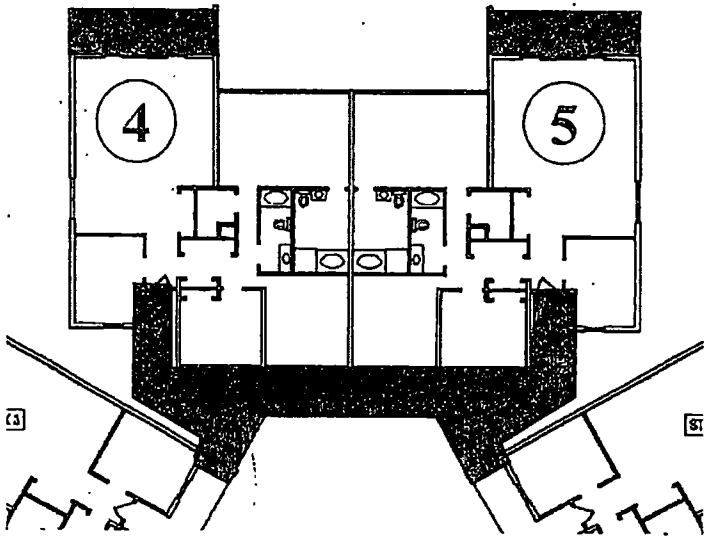
OCEAN



Slab Replacement Floors 1-5



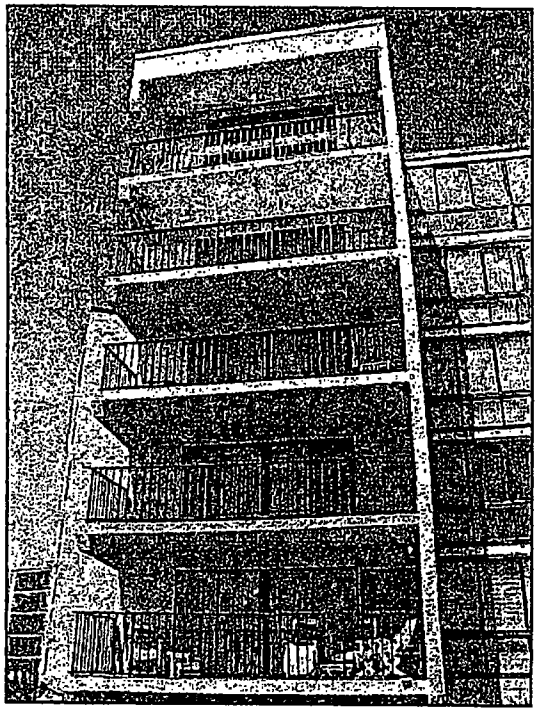
Roof Slab Replacement

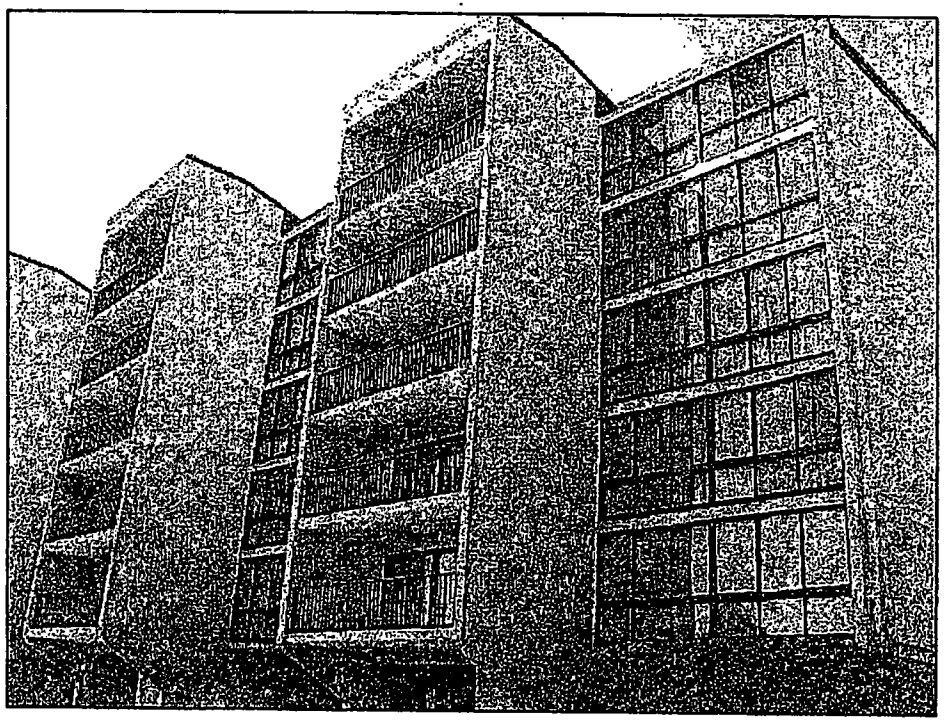


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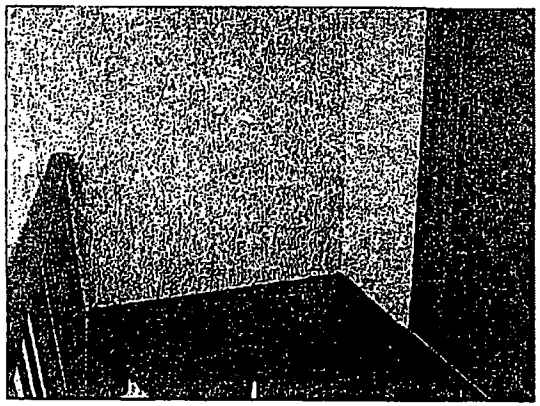
Balcony Slab Replacement



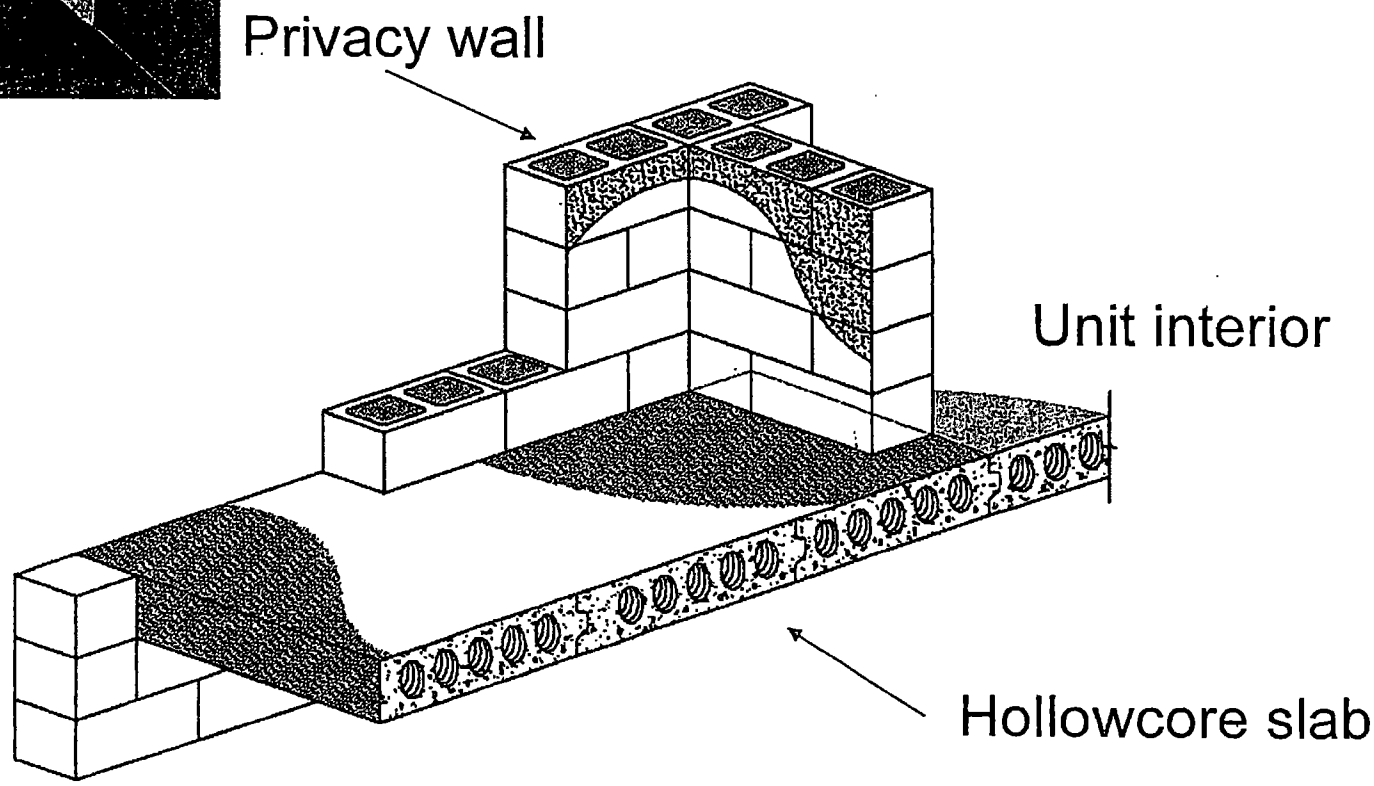


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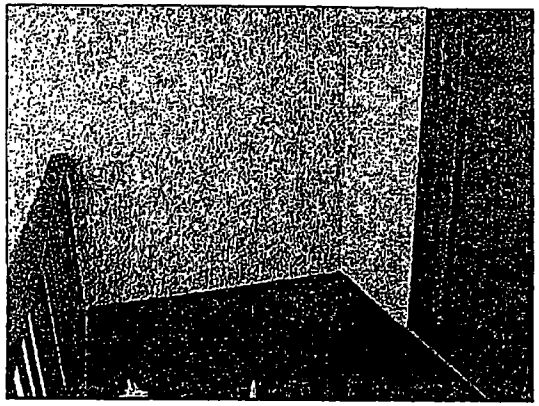
SKA CONSULTING ENGINEERS



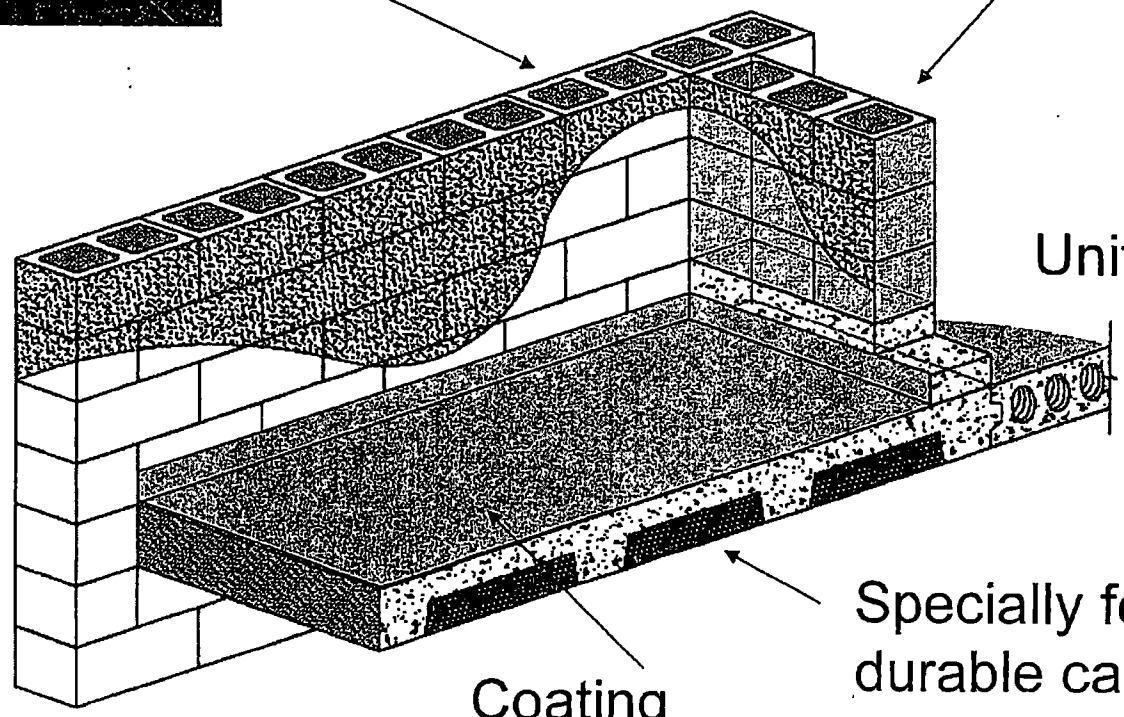
Existing Balconies



SKA CONSULTING ENGINEERS

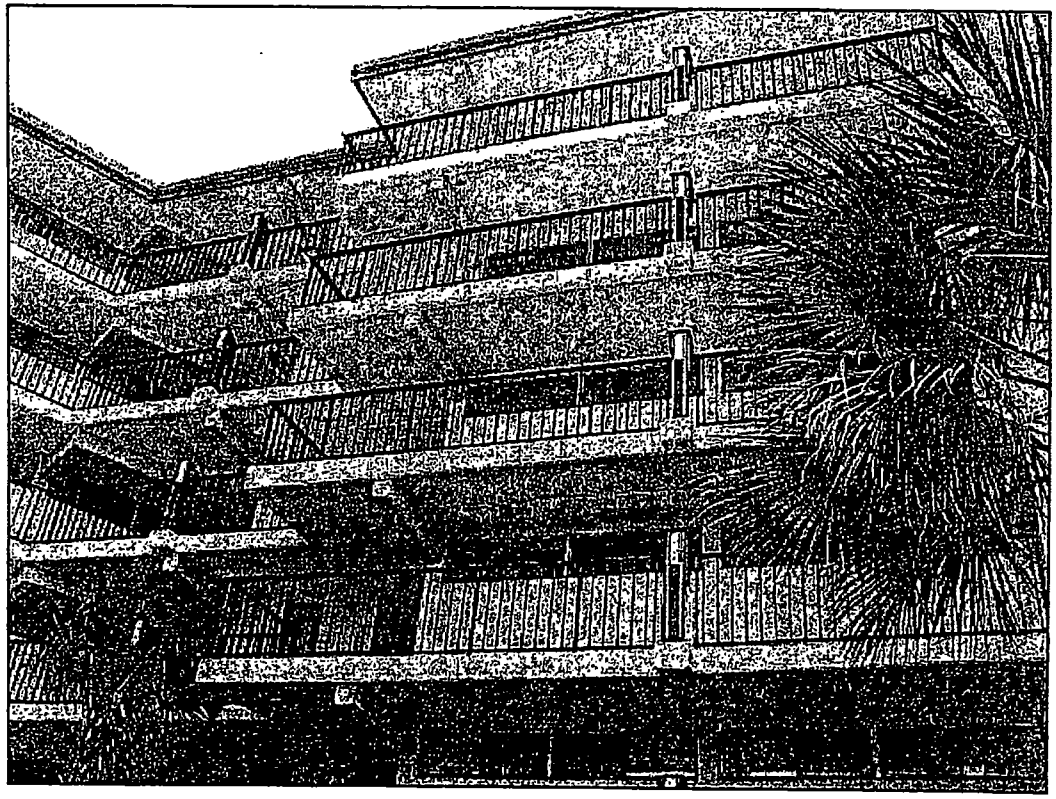


Balcony and Wall Replacement



SKA CONSULTING ENGINEERS

Walkway Slab Replacement



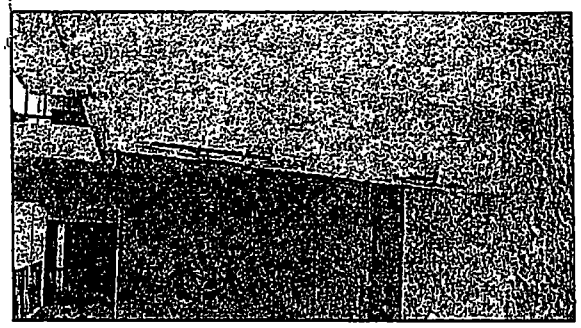
Sutton-Kennerly & Associates, Inc
March 21, 2009 Shipyard Village Condominiums Informational Meeting

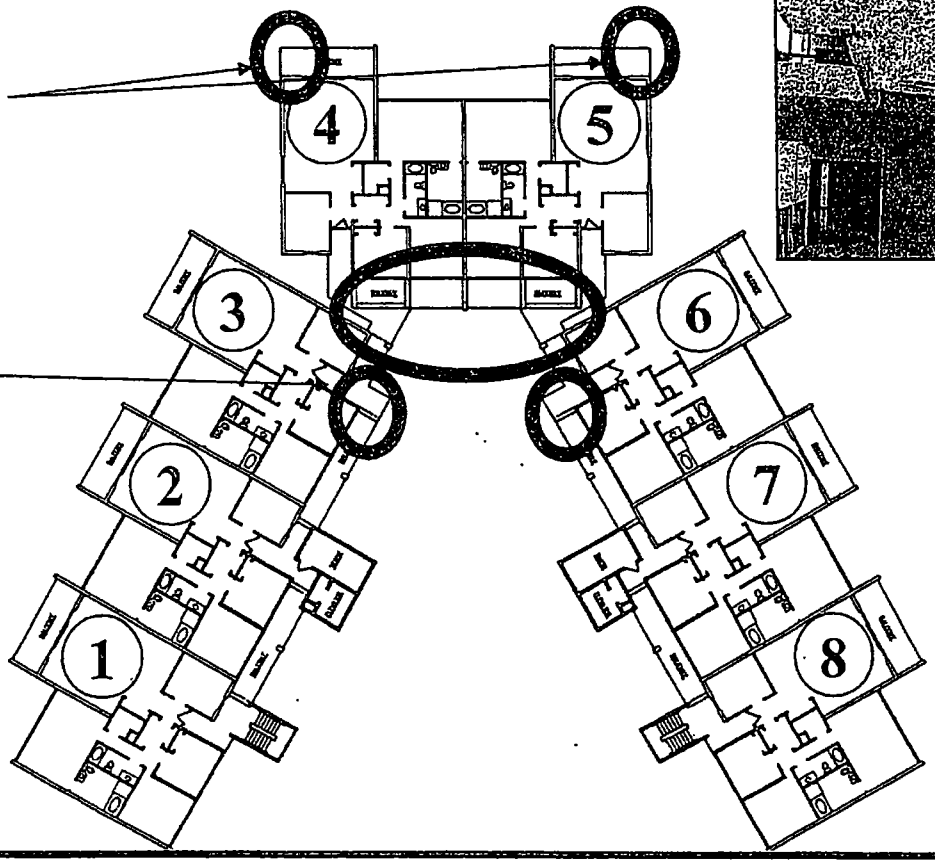
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Beam Replacement

Beam Replacement at Balconies Level 2-5

Beam Replacement at Walkways Level 1-5

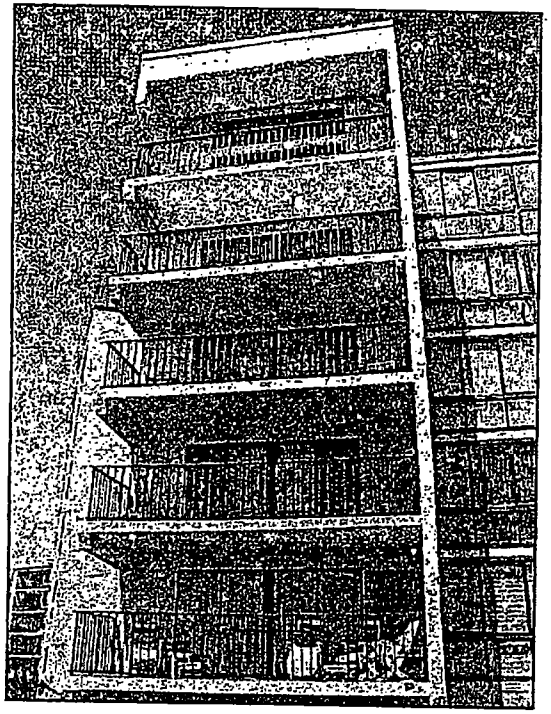


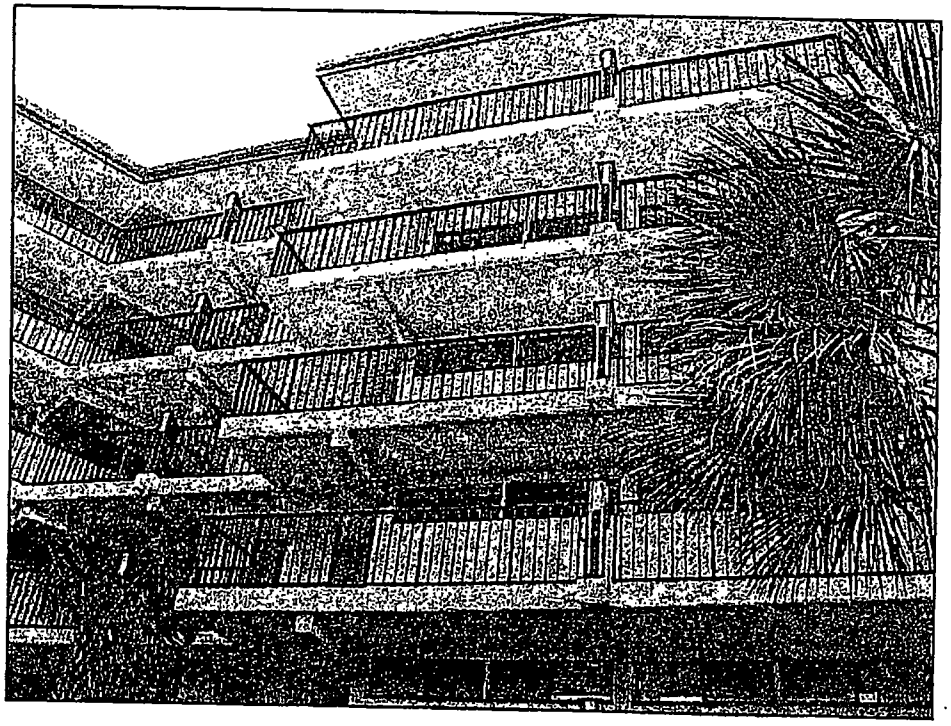


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Beam Replacement



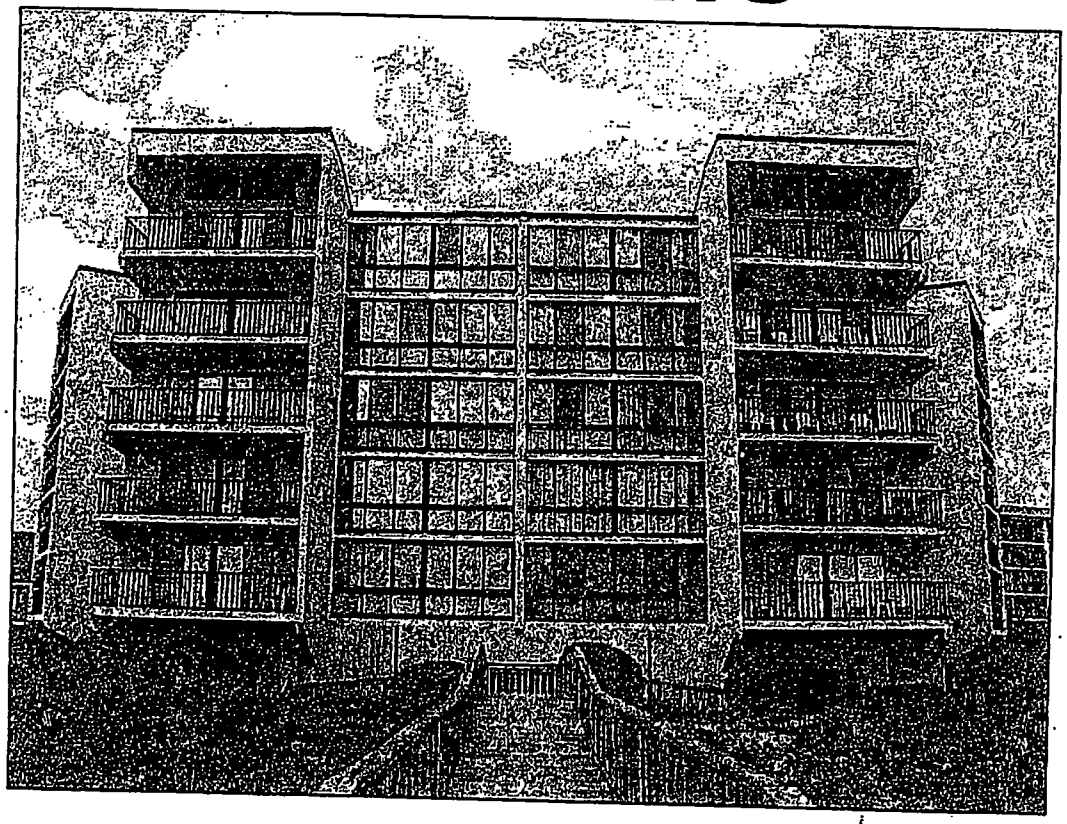


Protection of remaining beams

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Edge Replacement at Windows

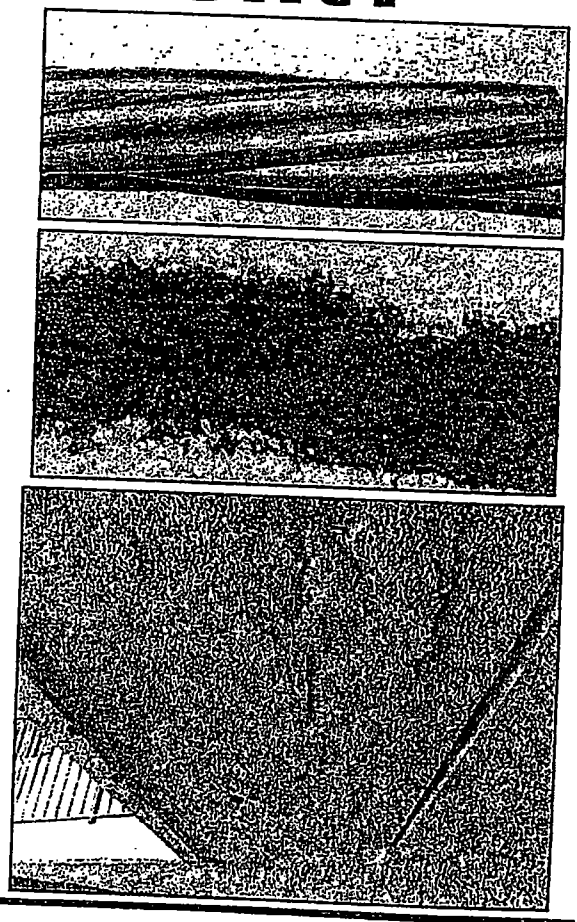


Sutton-Kennerly & Associates, Inc
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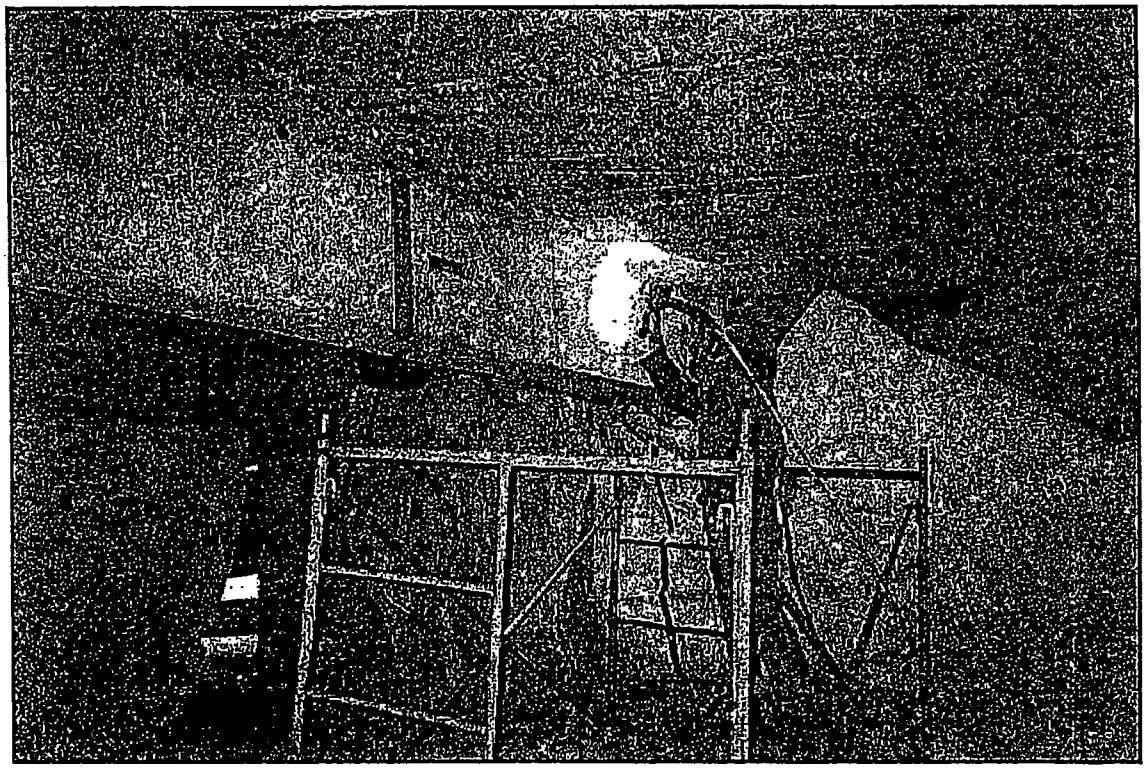
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Why Replacement?

- Corrosion more critical prestressed concrete slabs
  - Distressed elements
  - Delicate and specialized repairs
  - Repair will not restore original capacity
  - Distress can be hidden
- Cost



Remaining Walkways Zinc-Alloy Spray

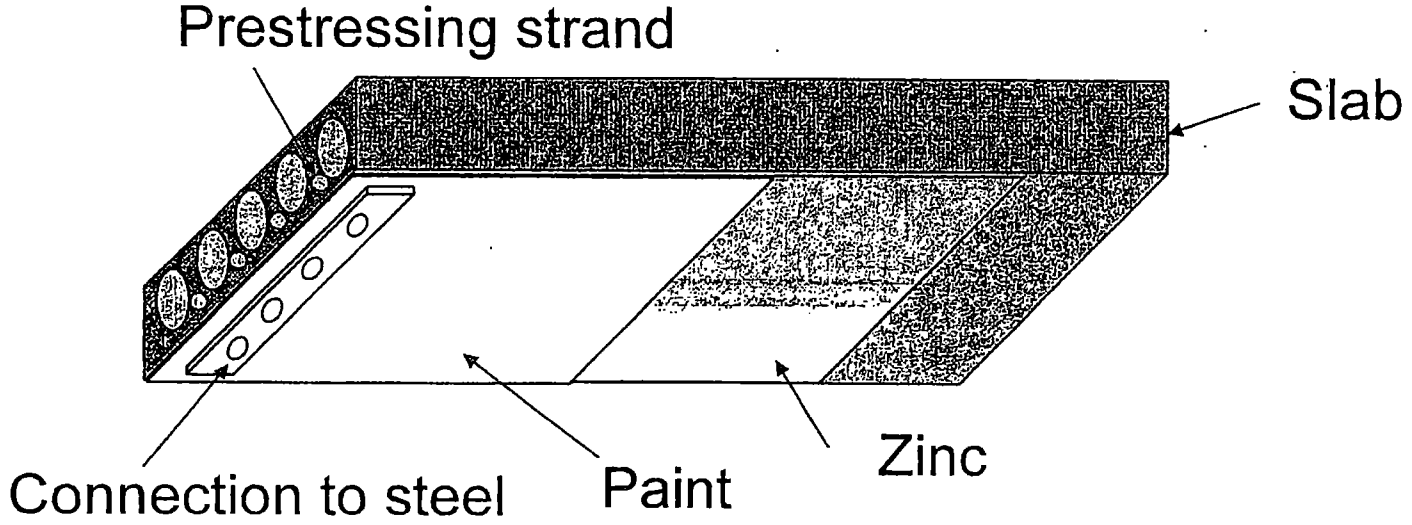


Sutton-Kennerly & Associates, Inc
March 21, 2009 Shipyard Village Condominiums Informational Meeting

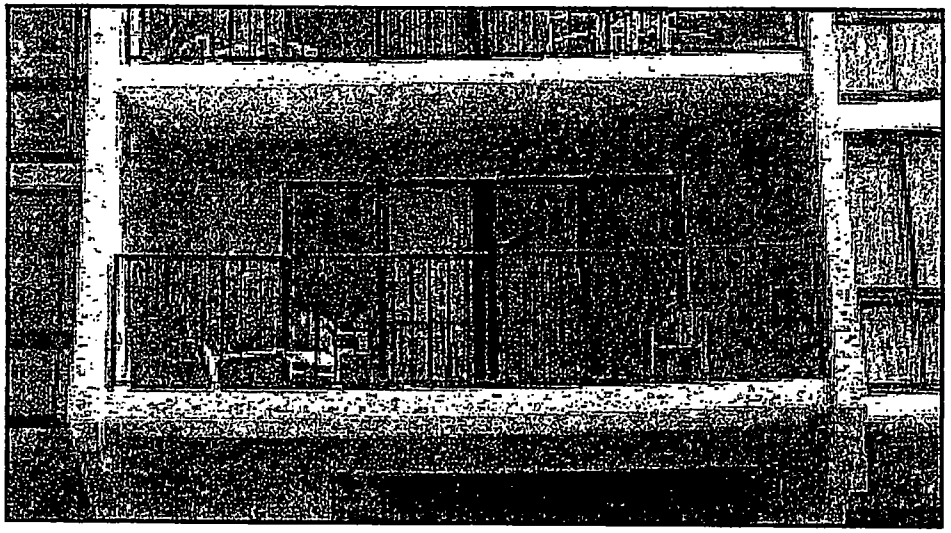
SKA CONSULTING ENGINEERS

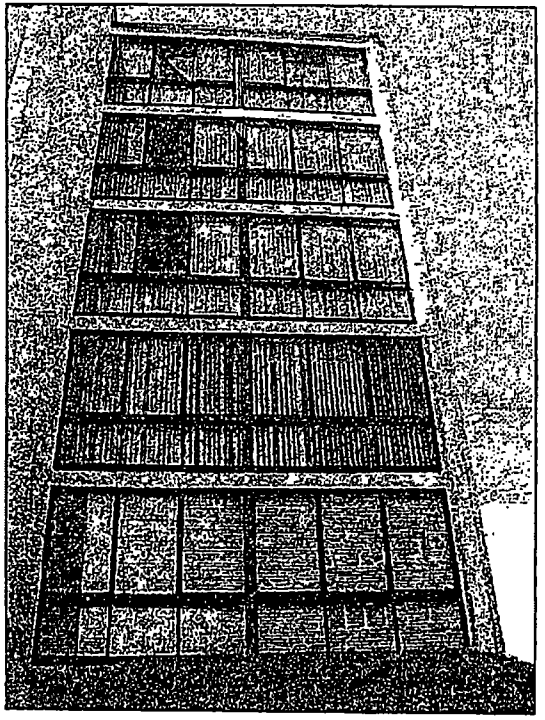
Zinc-Alloy Spray Cathodic Protection

- Zinc connected to steel preferentially corrodes
- 10-20+ year life, renewable at lower cost



Replacement of Windows and Doors





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Summary of Scope

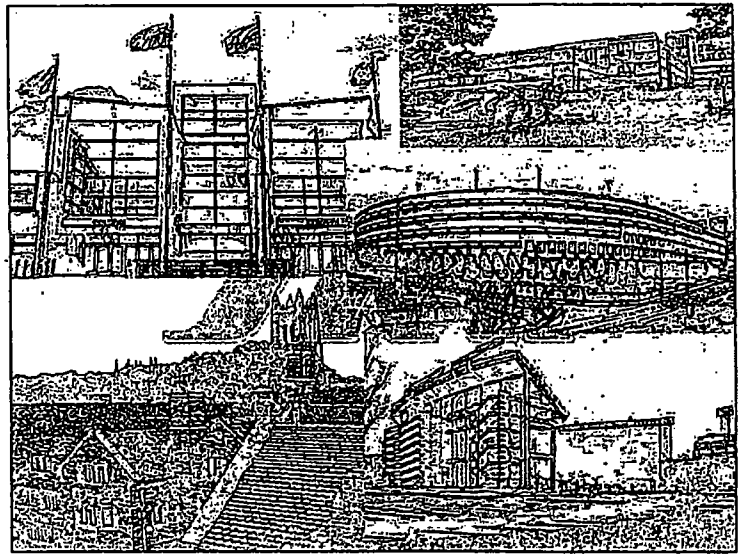
- Prestressed concrete slabs
  - Replace distressed slabs with CIP concrete
  - Protect contaminated slabs
- Replace distressed beams and slab edges
- Protect contaminated beams to remain
- Replace windows and doors

Summary of Scope

- Replace exterior walls at balconies
- Install new rails at balconies and walkways
- Install new waterproofing system
- Apply new coatings
- Miscellaneous repairs as encountered

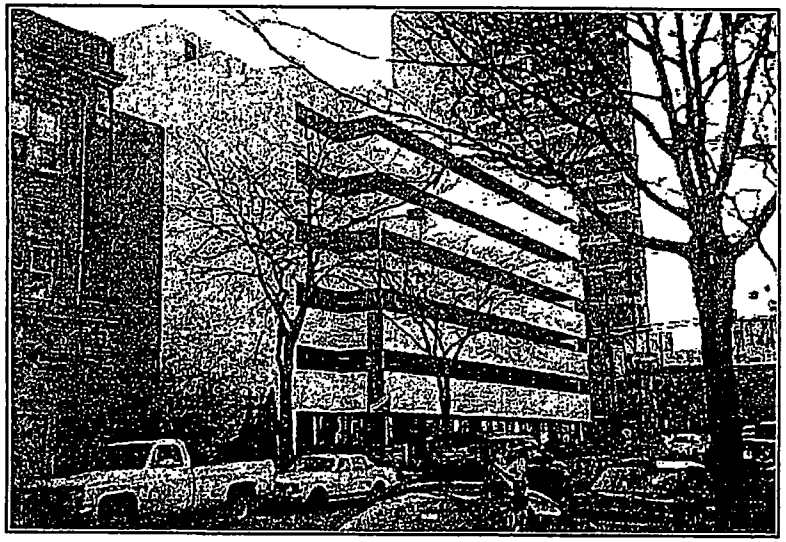
Sutton-Kennerly & Associates, Inc.

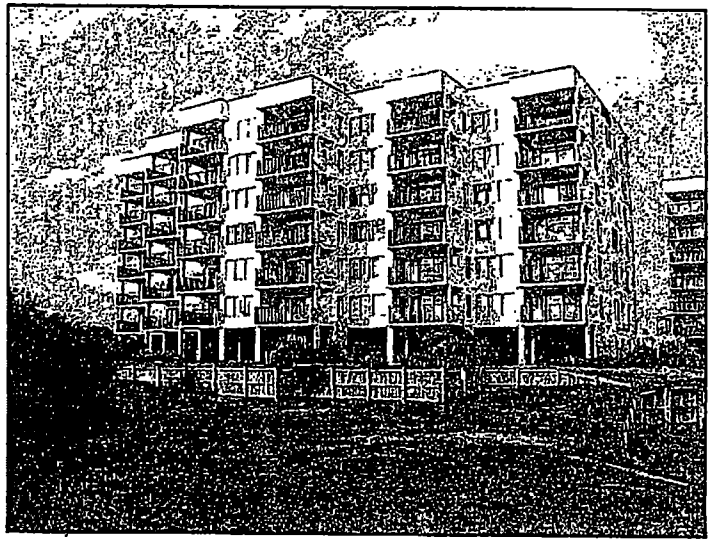
- Investigation & Diagnostics
- Structural
- Mechanical



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Cathodic Protection of Concrete Components

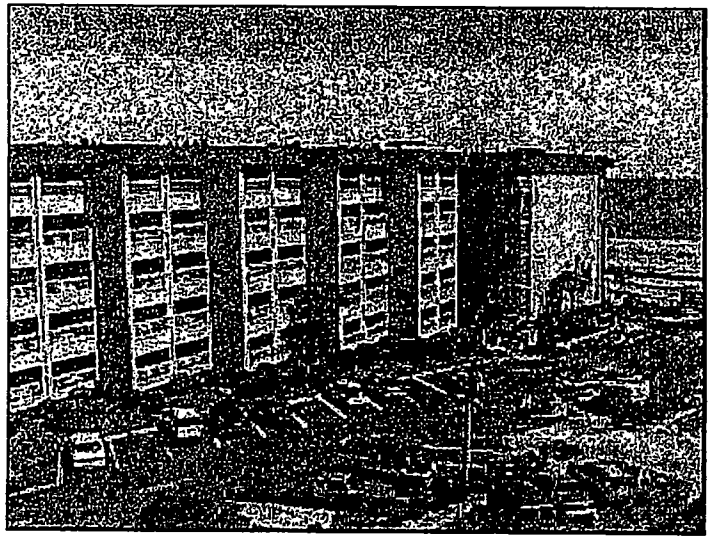


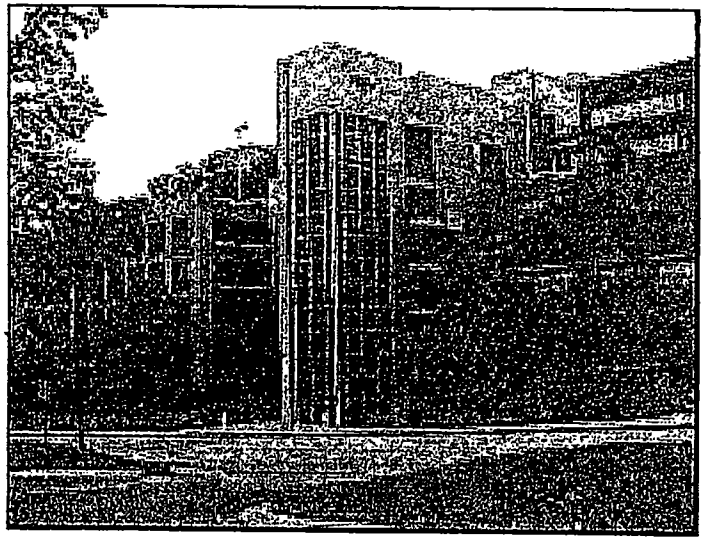


Sutton-Kennerly & Associates, Inc
March 21, 2009 Shipyard Village Condominiums Informational Meeting

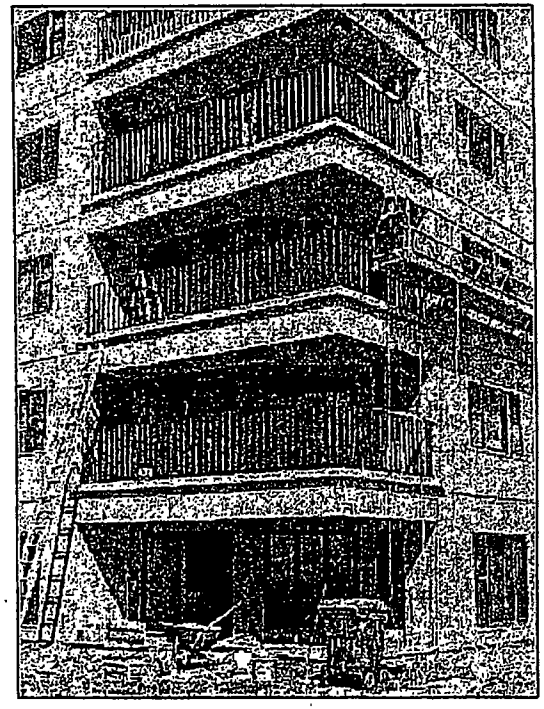
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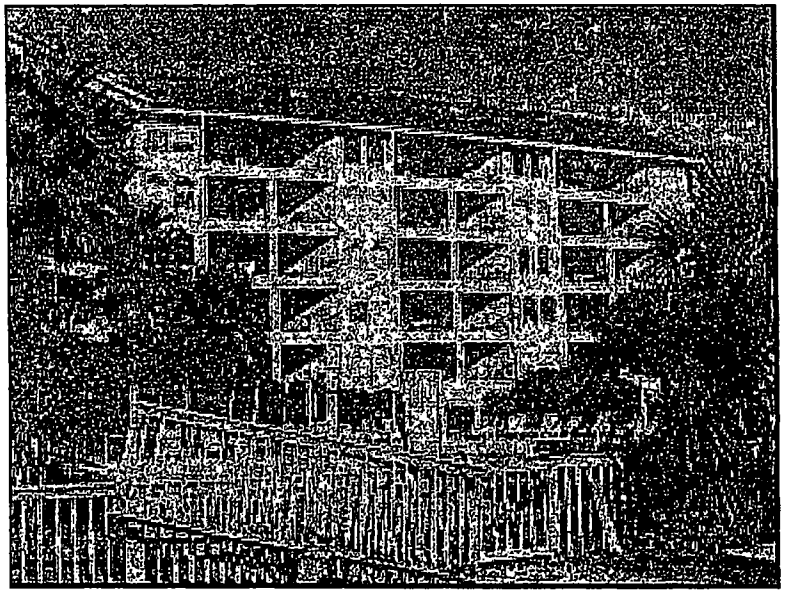
Structural Component Replacement





Window and Door Replacement





Partial List of Projects

Coastal Condominium Projects

Summerhouse – Isle of Palms, SC
Seascape Villas – Isle of Palms, SC
Surfmaster – Garden City, SC
Myrtle Beach Resort: Building A – Myrtle Beach, SC
Summerwinds Condominiums – Salter Path, NC
Windemere Condominiums – Myrtle Beach, SC
The Palms – Myrtle Beach, SC
Pinnacle Condominiums – Myrtle Beach, SC
Hyperion Towers - Myrtle Beach, SC
Sound of the Sea II – Emerald Isle, SC
Maisons ser Mer - Myrtle Beach, SC

Other Corrosion and Concrete Repair Projects

St. Joseph's Hospital Parking Deck – Asheville, NC
Park and Lock South Parking Deck – Wilkes-Barre, PA
BB&T Stadium at Wake Forest University
Carter-Finley Stadium at North Carolina State University
Dowdy-Ficklen Stadium at East Carolina University
Baptist Hospital at Wake Forest University

Other Waterproofing / Window / Roofing Repairs

University Tower Apartments at Emory University
Biltmore House and Gardens – Asheville, NC
RJ Reynolds Headquarters Building – Winston-Salem, NC
Moses Cone Hospital System – Greensboro, NC
Lincoln Financial Headquarters - Greensboro, NC
Bank of America – Charlotte, NC
Bryant-Denny Stadium at University of Alabama

SKA's Role: Design and Bidding

- Design documents
  - Specifications
  - Drawings
  - Alternates
- Bidding
  - Pre-bid meeting
  - Bid evaluation
  - Bid selection assistance

SKA's Role: Contract Administration

- Assistance in contract preparation
- Pre-installation meetings
- Testing
- Submittal review
- Site visits
- Field reports
- Review pay apps and change orders
- Meetings with the board
- Final inspections
- Project close-out

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Schedule and Phasing

- Design complete by July 1, 2009
- Receive bids by August 1, 2009
- Off-season construction
- One contract for both buildings
  - One building each phase
  - Phase I: September 2009 – May 2010
  - Phase II: September 2010 – May 2011

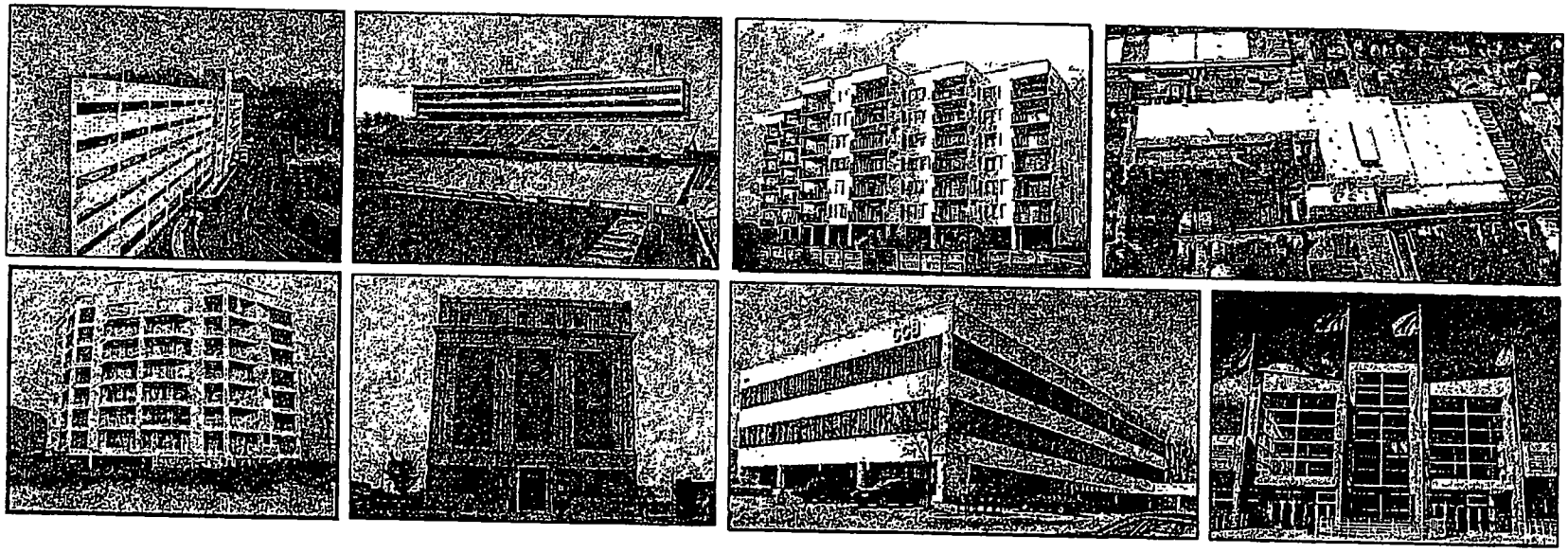
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Opinion of Cost

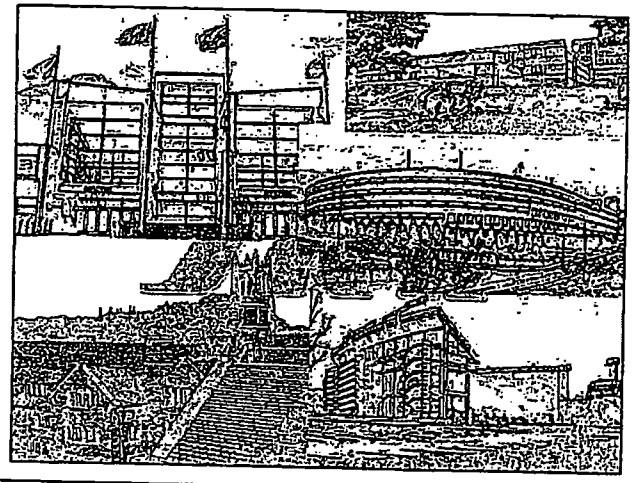
Slab and Beam Repairs	$1,865,520
New Windows and Doors	$2,459,000
Wall Systems	$156,000
Stucco and Flashings	$100,000
Waterproofing and Coatings	$497,000
New Handrails	$352,500
Other Concrete Repairs	$379,000
Interior Finishes and Temporary Walls	$326,000
Misc. Repairs	$82,500
General Conditions	$1,365,500
Overhead and Profit (~10%)	$758,302
Total Estimated Cost:	**$8,341,322**
Engineering Design Fees	$124,000
Engineering Contract Admin. Estimate	$415,000
Total Estimated Cost:	**$8,880,322**
Contingency (10% Including Alternates)	**$834,132**
Total Estimated Cost with Contingency	**$9,714,454**

What to Expect

- No access to each building and parking lot during construction
- Temporary walls
- Remove valuables from units
- Interior preparation
- Interior finishing
- Noise and dust
- Scaffolding
- One month schedule buffer
- Warranty



Questions???



SKA

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Consultants to the Building Industry since 1957

www.suttonkennerly.com

EXHIBIT 476
6.14

Stantec Consulting Services Inc.
990 Morrison Drive
Charleston SC 29403
Tel: (843) 577-4926 Fax: (843) 723-0440
stantec.com

Stantec

July 25, 2007
File: 170670000

Tel: 843-577-4926
Fax: 843-723-0440
aporcher@stantec.com

Schneider & Associates, Inc.
3690 Bohicket Road, Suite 1D
Johns Island, SC 29455

Attention: **Mr. Ken Schneider, AIA**

Dear Ken:

Reference: **Shipyard "A"**
Isolated Concrete Repairs
Litchfield Beach, South Carolina

In accordance with our Agreement dated March 15, 2007, please find enclosed Stantec Drawings S1 through S3 dated July 25, 2007 for repair of isolated concrete deficiencies and deteriorated precast slabs at balconies A14, A24, and A45. The Owner is advised that Stantec's scope of work has been limited to emergency repairs at balconies A14, A24, and A45. No other portions of the existing complex have been investigated or analyzed by Stantec. Stantec accepts no liability for the existing facility in its current condition or for any portions of the existing facility beyond Stantec's specific scope of work. The existing complex must be continually monitored and maintained by the Owner, as required to protect Homeowners and the General Public from exposed reinforcing steel, spalled concrete, and falling debris.

By copy of this letter and by copy of the enclosed repair drawings, we request that Western Waterproofing Company of Charlotte, NC provide a lump sum price for repair of Balconies A14, A24, and A45 as noted on the drawings. In addition, we request the following unit prices for any additional repairs which may be authorized by the Owner during the repair work:

1) Repair TYPE 1 as per detail 1/S1

a).....$_____ each for each repair 4 SF or less
b).....$_____ per SF for each repair greater than 4 SF

2) Repair TYPE 2 as per detail 2/S1

a).....$_____each for each repair 4 SF or less
b).....$_____per SF for each repair greater than 4 SF

3) Repair TYPE 3 as per detail 3/S1.....$ _____each

Attached Photographs No. 1 through No. 51 reflect the majority of deficiencies noted within the current scope of work. However, during Balcony A14, A24, and A45 investigations, the following additional concrete deficiencies were observed that are beyond the current scope of work:

1) Numerous guardrail post pockets are unsealed and allow water infiltration into supporting precast slabs as shown in example photographs No. 47 through No. 49,

2) Isolated slab edges are cracked and spalled as shown in example photographs No. 50, No. 51 and No. 58 through No. 65,

3) Isolated corridor slabs are cracked and spalled as shown in example photographs No. 52 through No. 54,

4) Isolated girders are cracked and spalled as shown in example photographs No. 55 through No. 57, No. 66, and No. 67, and

5) Isolated exterior stairs are cracked and spalled as shown in example photograph No. 68.

All exterior concrete on the subject structure should be surveyed by a Registered Structural Engineer in the State of SC for deficiencies. If possible, the survey should be coordinated with exterior carpet replacements in order to review top surfaces of all exterior concrete slabs. Upon completion of the exterior survey, concrete repair documents should be completed for the entire structure and all exterior cracked, spalled, delaminated, or otherwise deteriorated concrete should be repaired as required to restore deteriorated exterior concrete to its original structural integrity.

Until all exterior concrete repairs are complete, all exterior concrete shall be continually monitored by the Owner as required to protect Homeowners and the General Public from falling debris. Any severe spalls in danger of falling should be removed, and the exposed reinforcing steel wire-brushed clean and coated with one coat of Ospho plus two coats of zinc chromate until permanent repairs can be implemented.

Stantec

Please feel free to call with any comments or questions.

Sincerely,

STANTEC CONSULTING SERVICES INC.

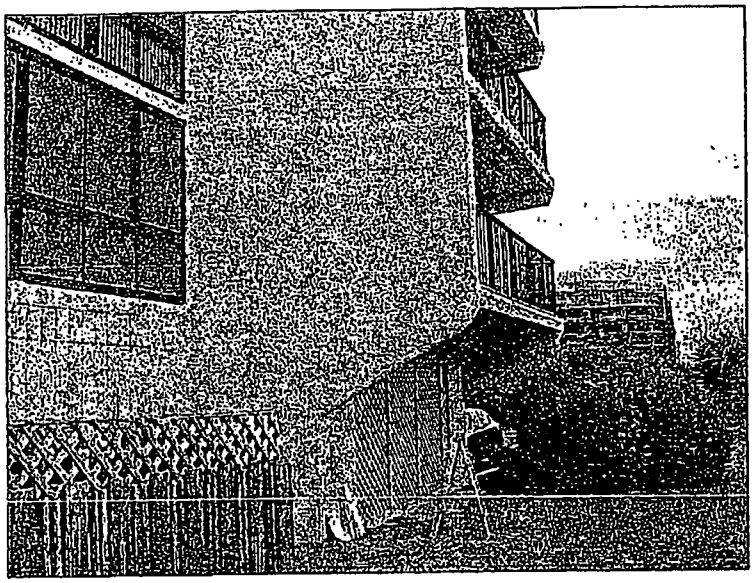
Edward C. Porcher, PE
Senior Associate, Structural

c. Kellie Diehl of Shipyard Village (3 sets)
Dave Sturdevant of Western Waterproofing (2 sets)
Mike Ross

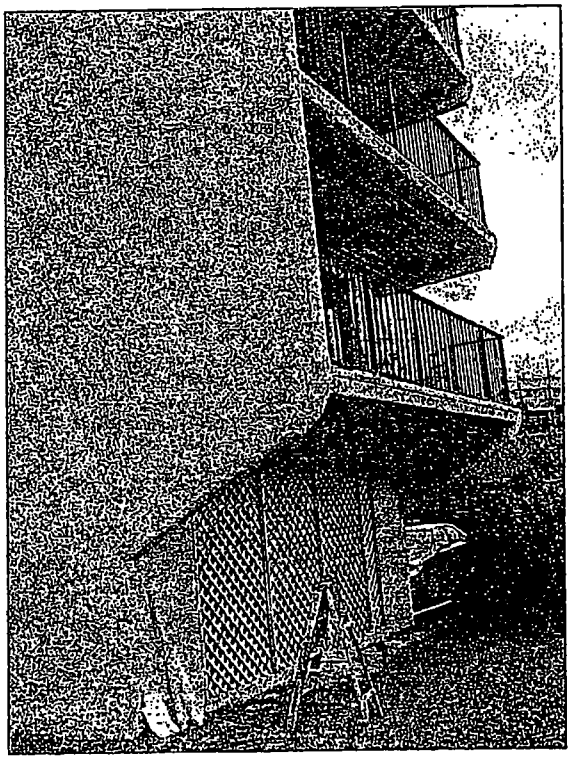
SOUTH CAROLINA
STANTEC CONSULTING SERVICES, INC. No. C02310
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
No. 11186
EDWARD C. PORCHER

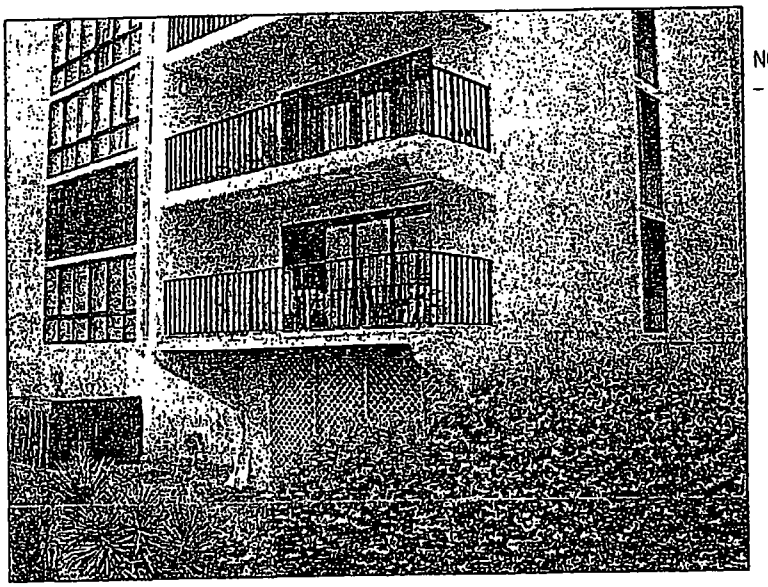
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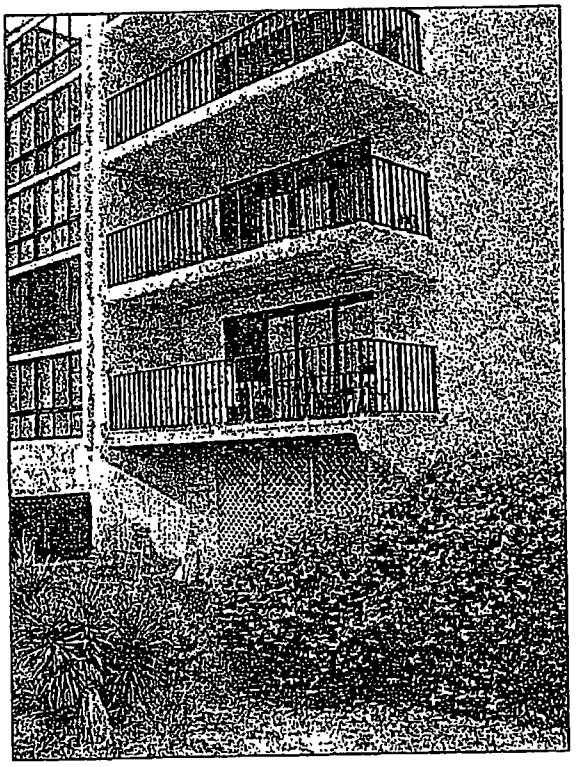
NO. 1 – BALCONIES A14 AND A24 – SOUTHEAST ELEVATION



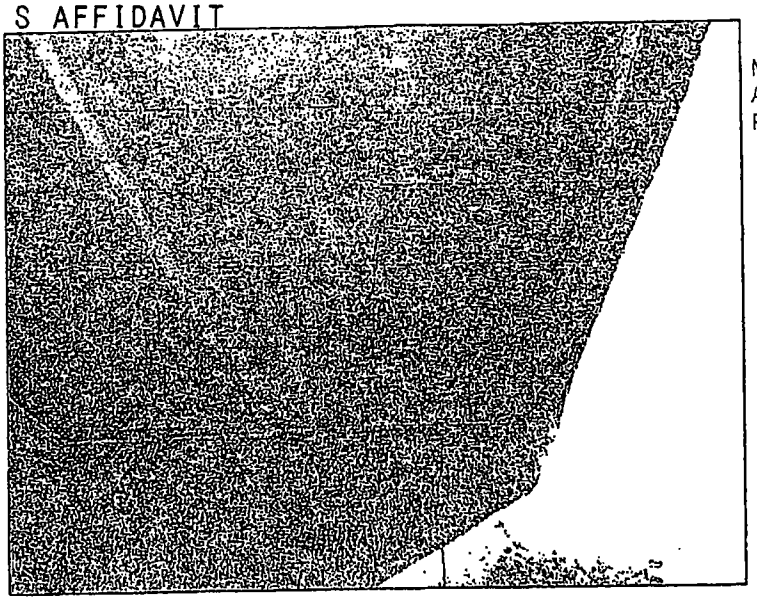
NO. 2 – BALCONIES A14 AND A24 – SOUTHEAST ELEVATION



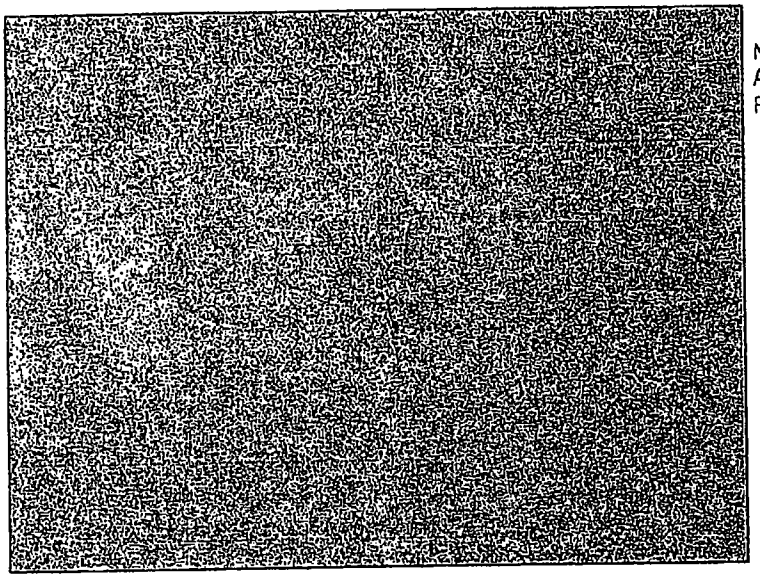
NO. 3 – BALCONIES A14 AND A24 – NORTHEAST ELEVATION



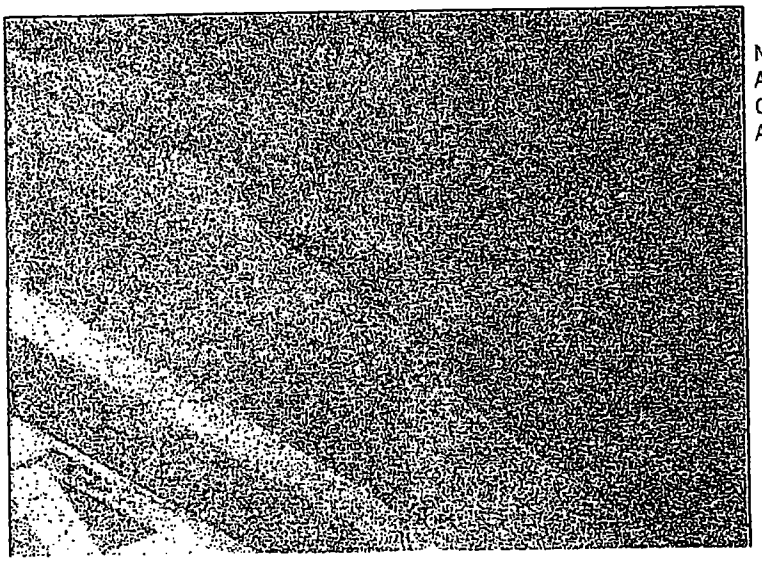
NO. 4 – BALCONIES A14 AND A24 – NORTHEAST ELEVATION



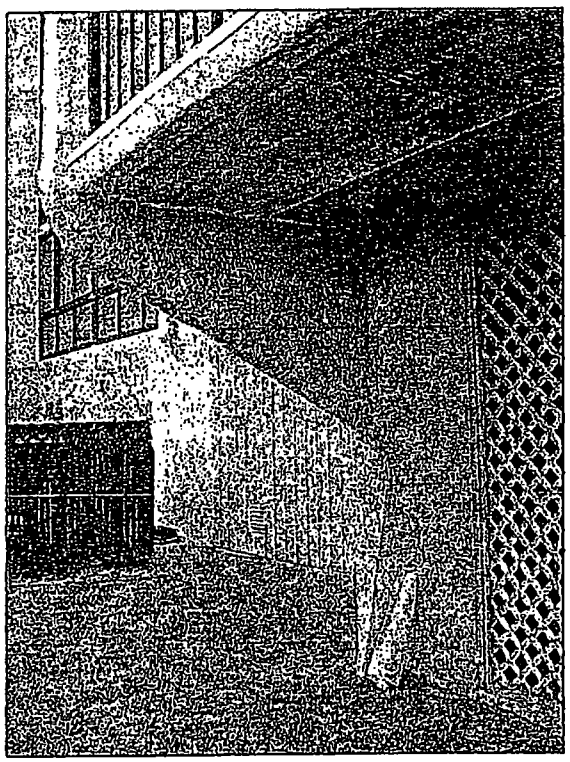
NO. 5 – UNDERSIDE OF BALCONY
A14 – SIGNIFICANT CRACKS AT
PRESTRESSED TENDONS



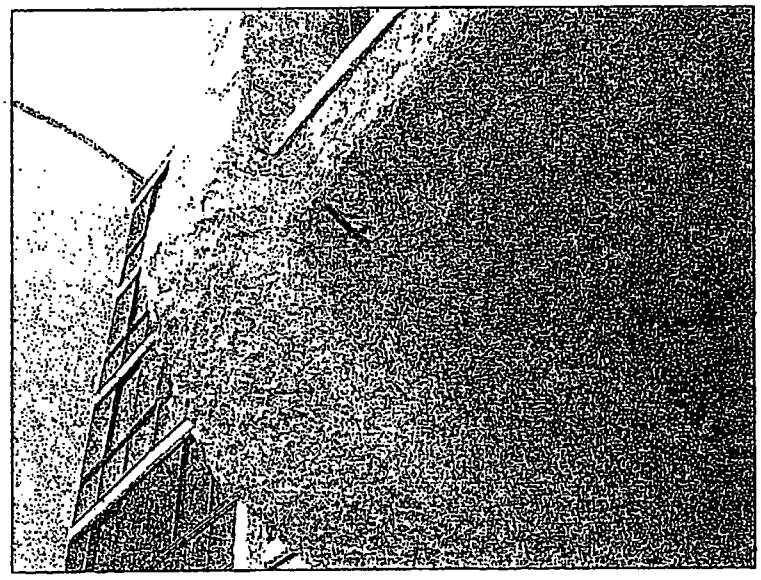
NO. 6 – UNDERSIDE OF BALCONY
A14 – SIGNIFICANT CRACKS AT
PRESTRESSED TENDONS



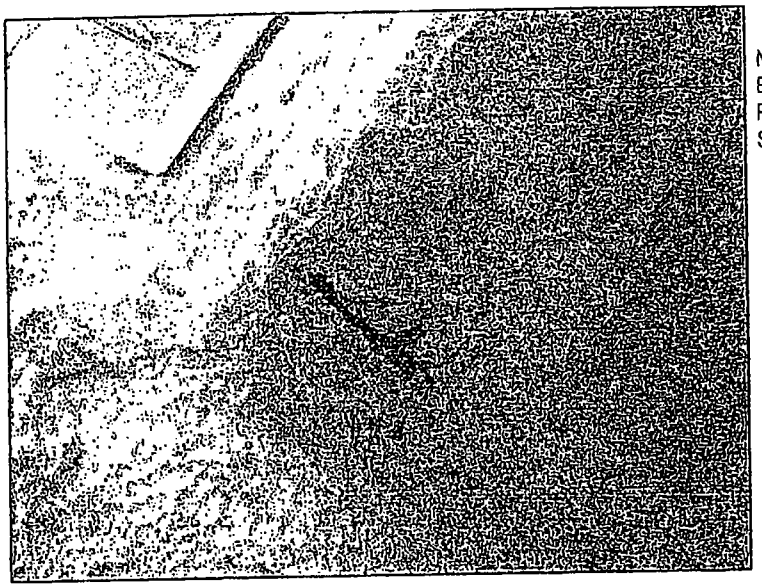
NO. 7 – UNDERSIDE OF BALCONY
A14 – SIGNIFICANT CRACK AT
CONSTRUCTION JOINT BETWEEN
ADJACENT PRECAST SLABS



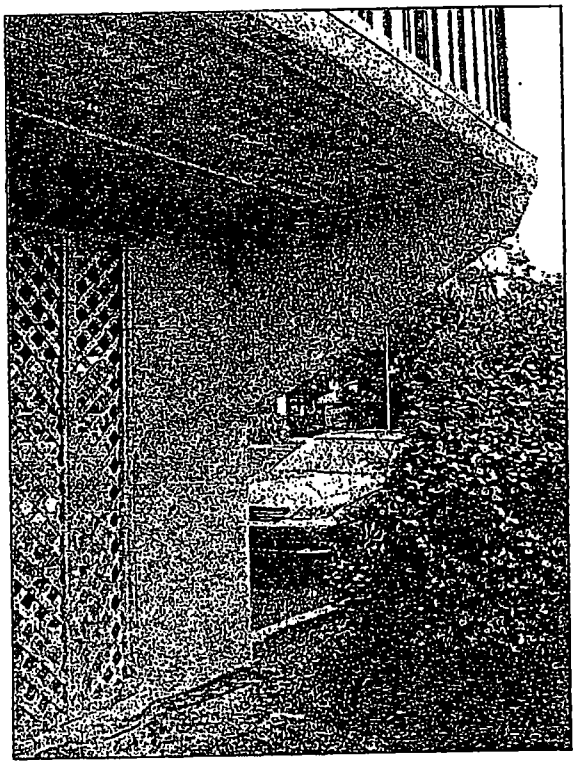
NO. 8 – UNDERSIDE OF BALCONY A14 – SOUTH END OF PRECAST SLABS



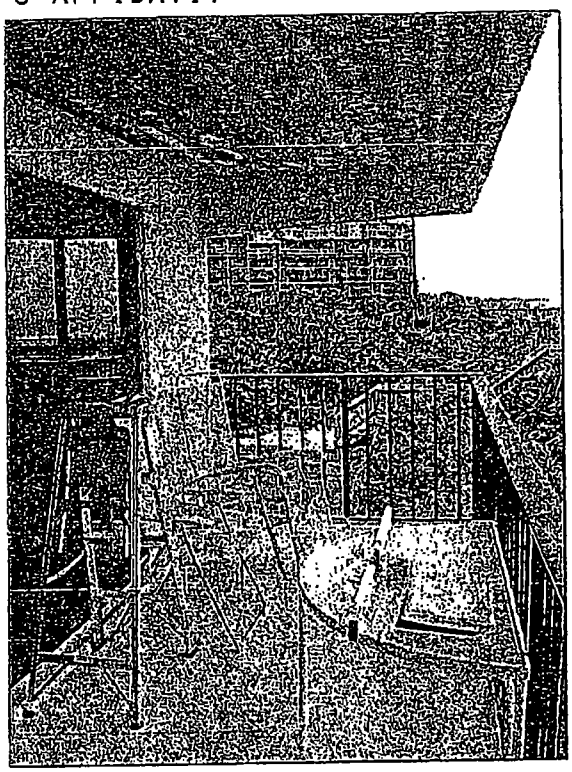
NO. 9 – UNDERSIDE OF BALCONY A14 – EXPOSED REINFORCING STEEL AT SOUTHEAST CORNER



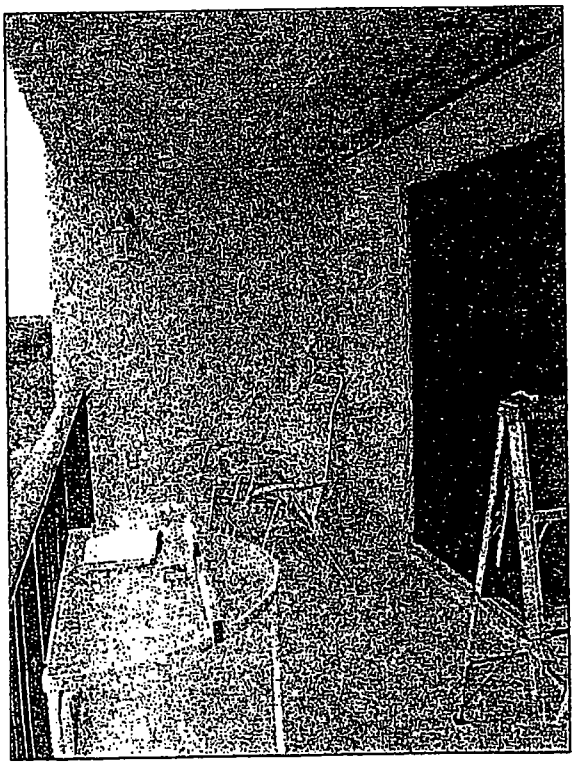
NO. 10 – UNDERSIDE OF BALCONY A14 – EXPOSED REINFORCING STEEL AT SOUTHEAST CORNER



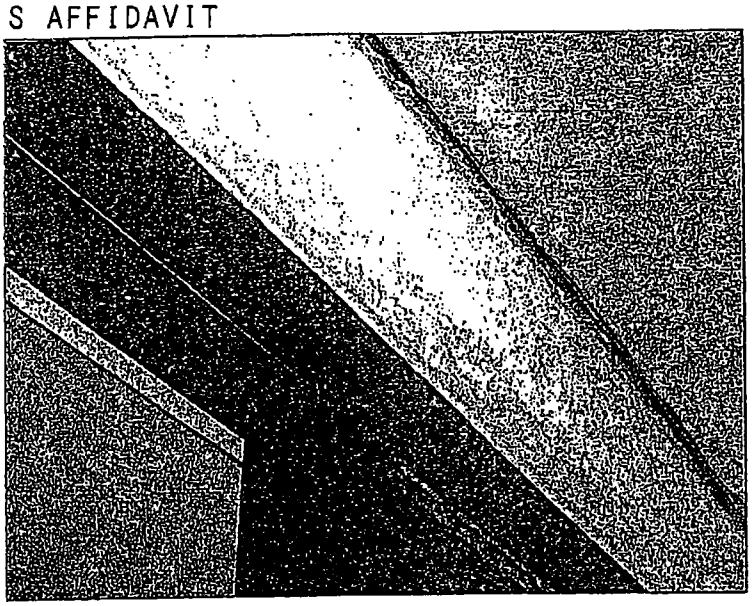
NO. 11 – UNDERSIDE OF BALCONY A14 – NORTH END OF PRECAST SLABS



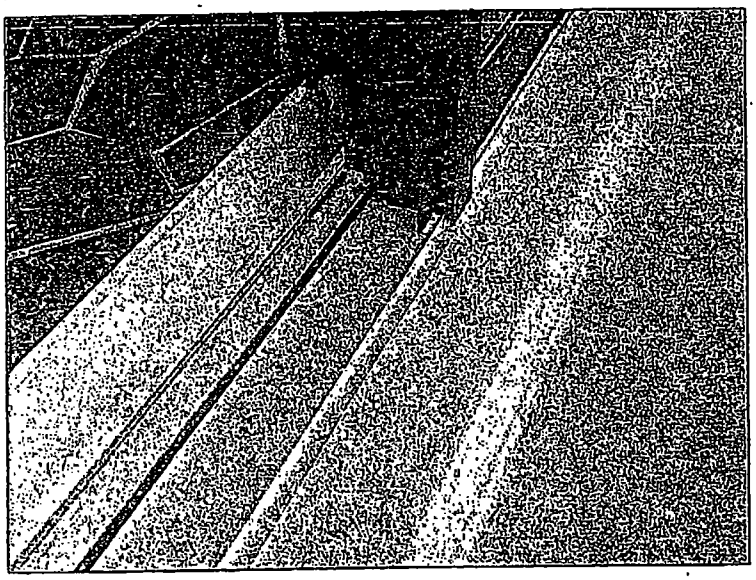
NO. 12 – BALCONY A14 – NORTH VIEW



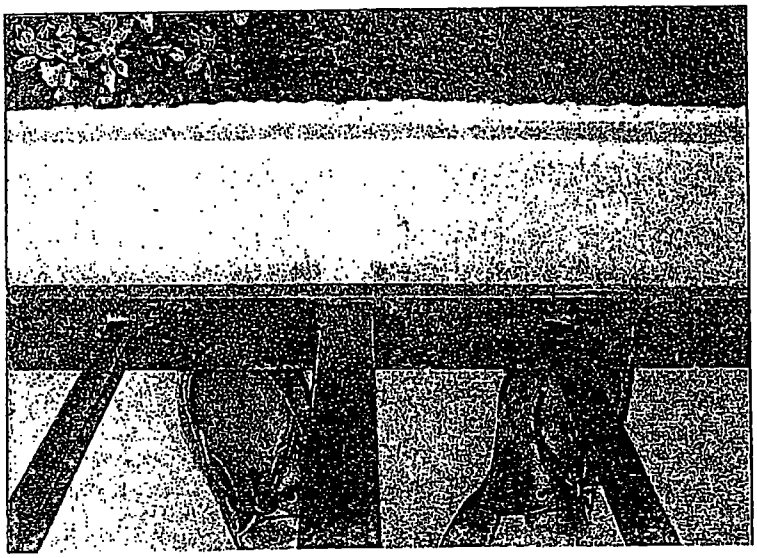
NO. 13 – BALCONY A14 – SOUTH VIEW



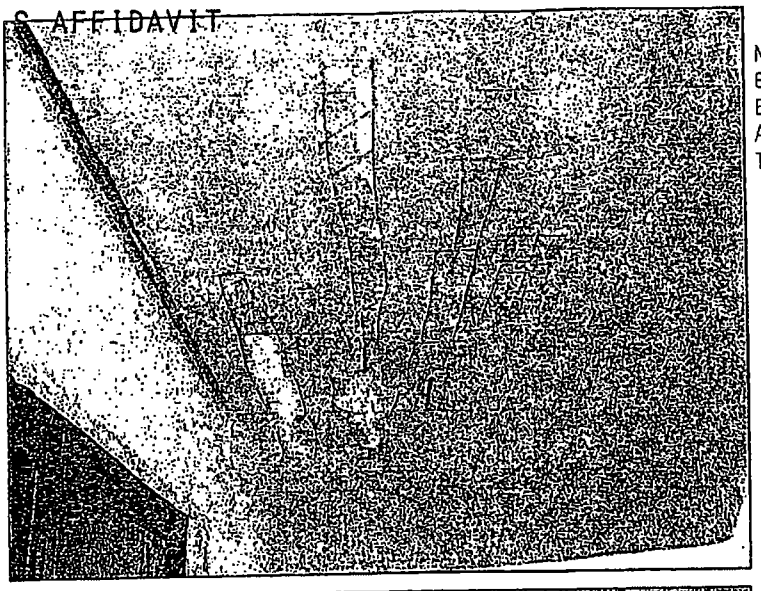
NO. 14 – BALCONY A14 – NEW HEAD FLASHING, STUCCO FINISHES, AND SLIDING GLASS DOOR



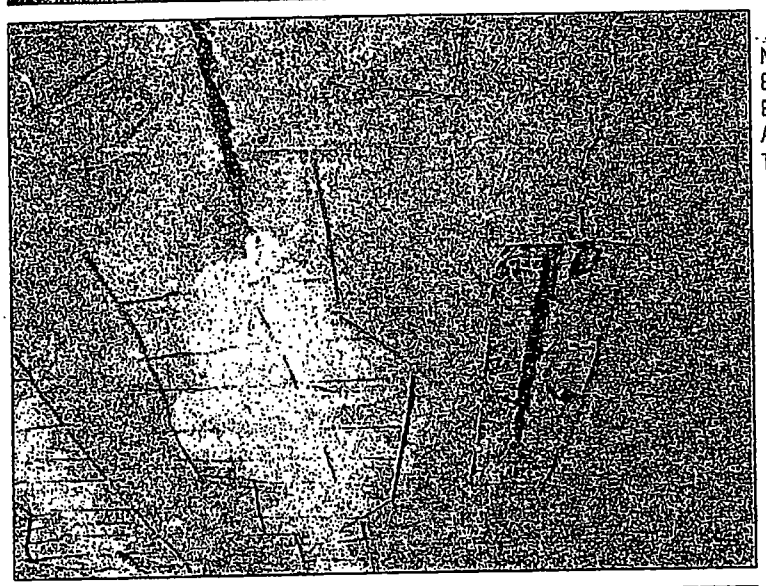
NO. 15 – BALCONY A14 – NEW SLIDING GLASS DOOR AND DECK COATING



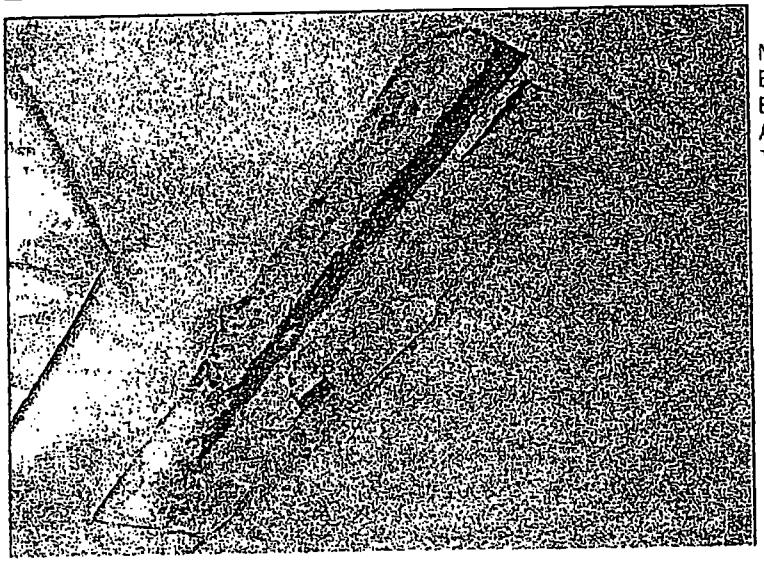
NO. 16 – BALCONY A14 – NEW DECK COATING



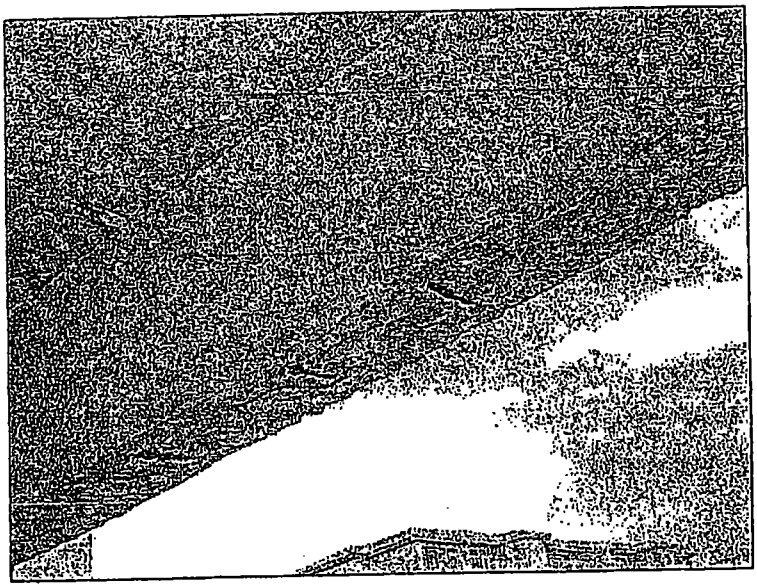
NO. 17 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SEVERE CRACKS AND SPALLS AT PRESTRESSED TENDONS



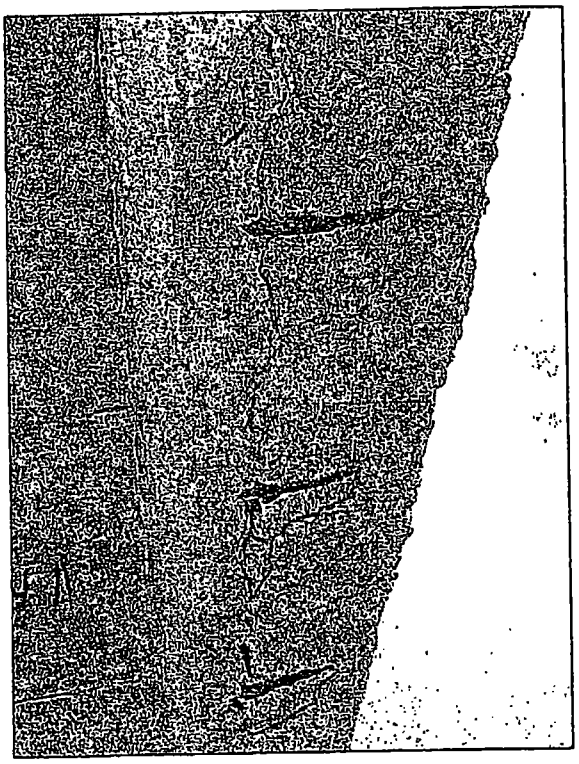
NO. 18 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SEVERE CRACKS AND SPALLS AT PRESTRESSED TENDONS



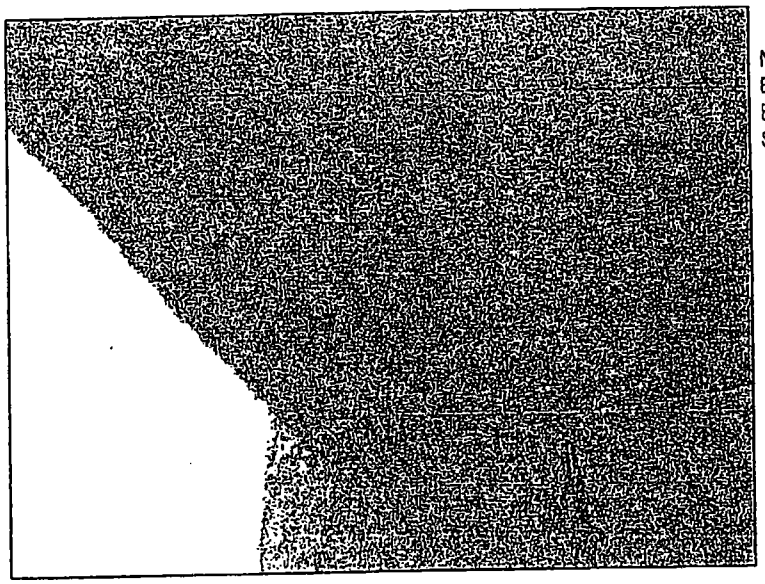
NO. 19 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SEVERE CRACKS AND SPALLS AT PRESTRESSED TENDONS



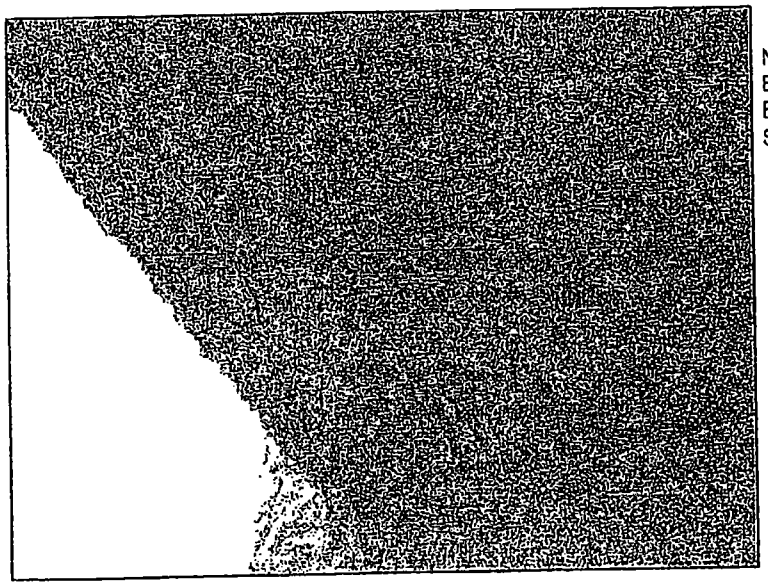
NO. 20 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SIGNIFICANT CRACKS AND SPALLS AT DROPPED GIRDER



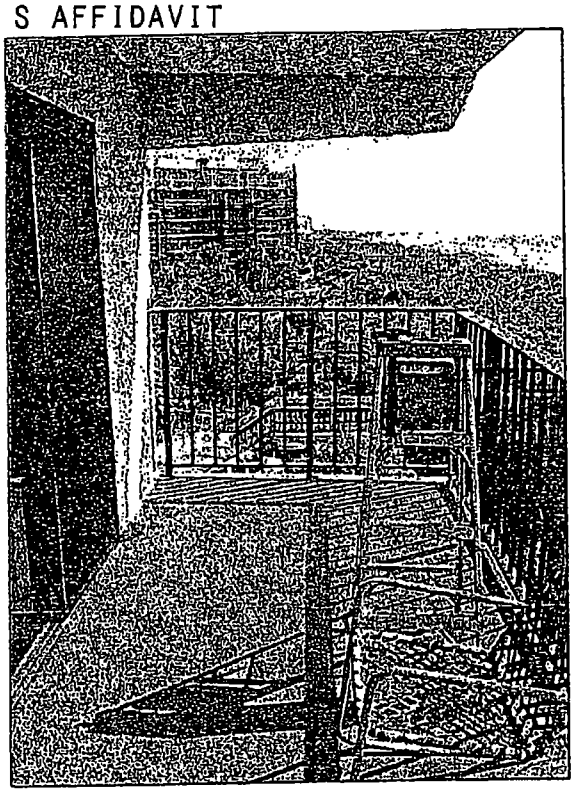
NO. 21 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SIGNIFICANT CRACKS AND SPALLS AT DROPPED GIRDER



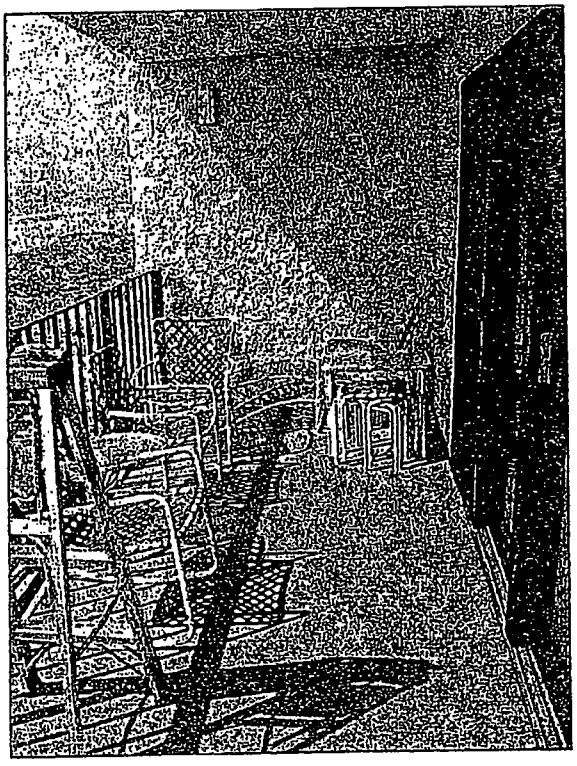
NO. 22 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SPALL AT SOUTHEAST CORNER



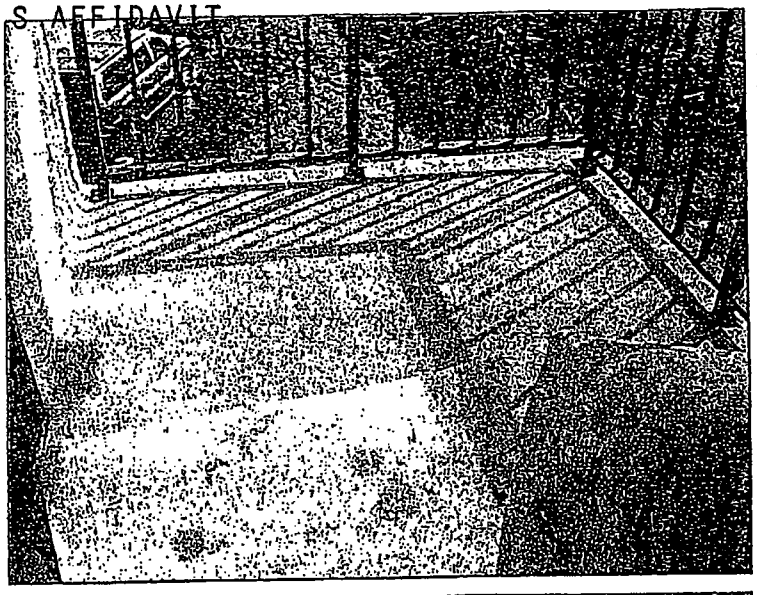
NO. 23 – UNDERSIDE OF BALCONY A24 AND CEILING OF BALCONY A14 – SPALL AT SOUTHEAST CORNER



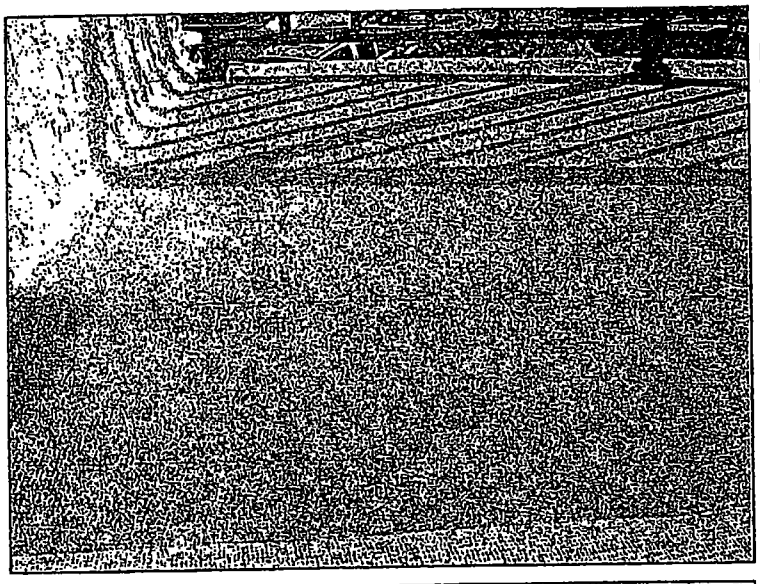
NO. 24 – BALCONY A24 – NORTH VIEW



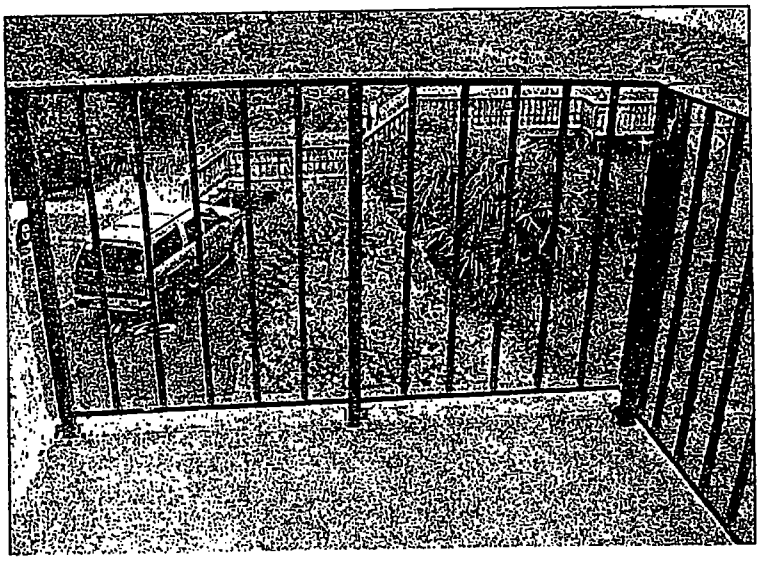
NO. 25 – BALCONY A24 – SOUTH VIEW



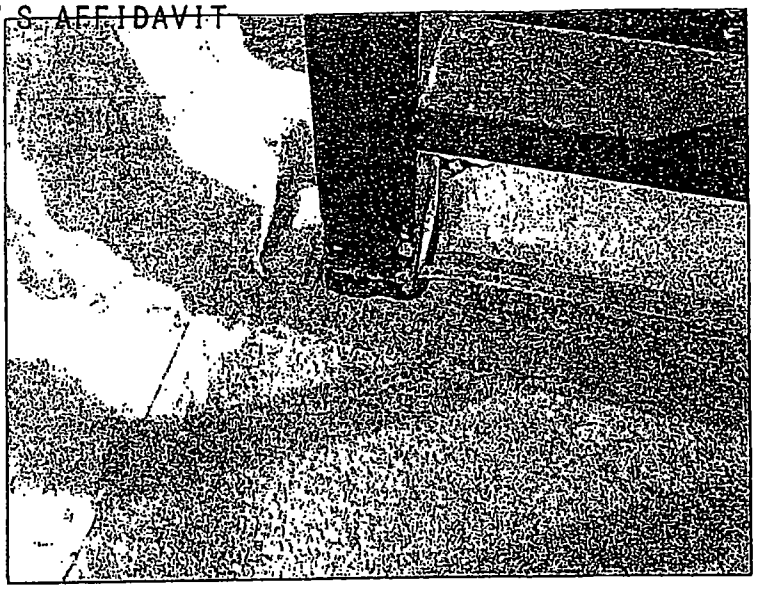
NO. 26 – BALCONY A24 – NO SIGNIFICANT CRACKS IN NORTH END OF DECK



NO. 27 – BALCONY A24 – NO SIGNIFICANT CRACKS IN NORTH END OF DECK

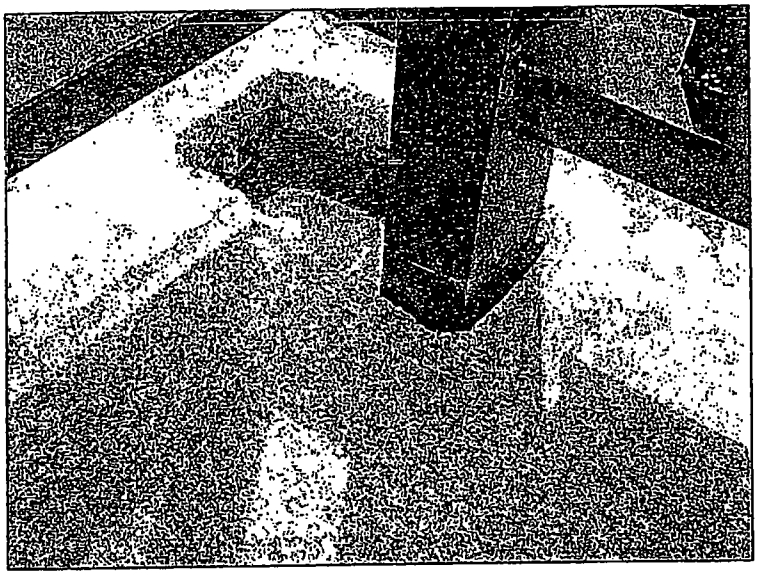


NO. 28 – BALCONY A24 – NO SIGNIFICANT CRACKS IN NORTH END OF DECK PLUS UNSEALED GUARDRAIL POST POCKETS

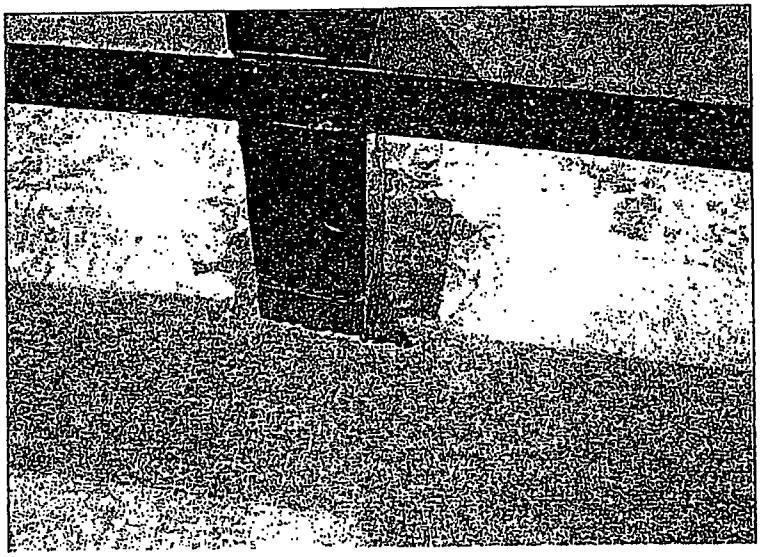


NO. 29 – BALCONY A24 – UNSEALED GUARDRAIL POST POCKETS

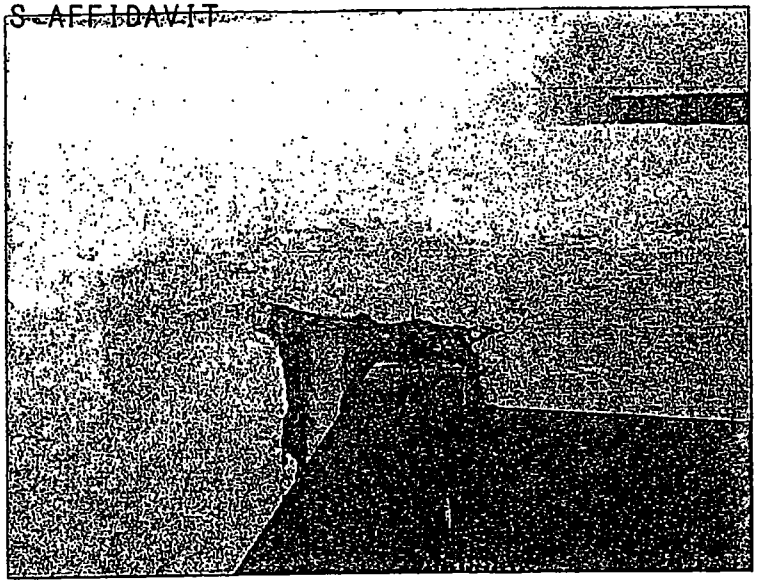
491



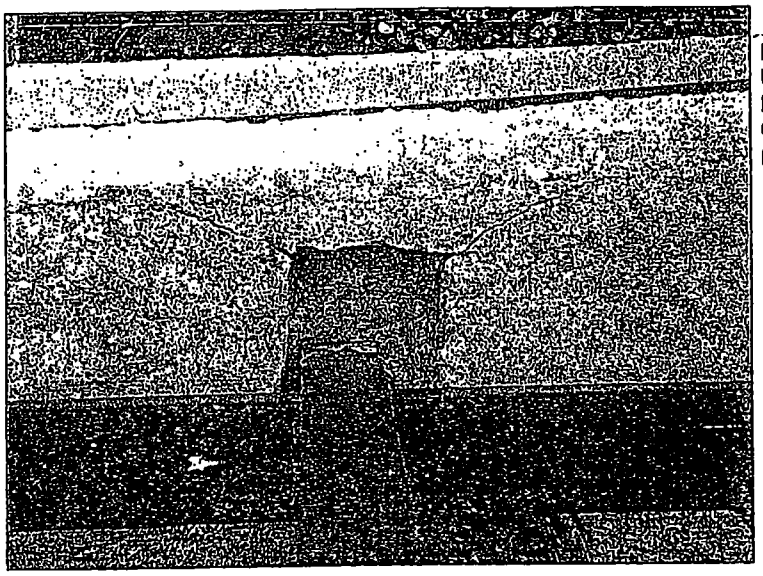
NO. 30 – BALCONY A24 – UNSEALED GUARDRAIL POST POCKETS



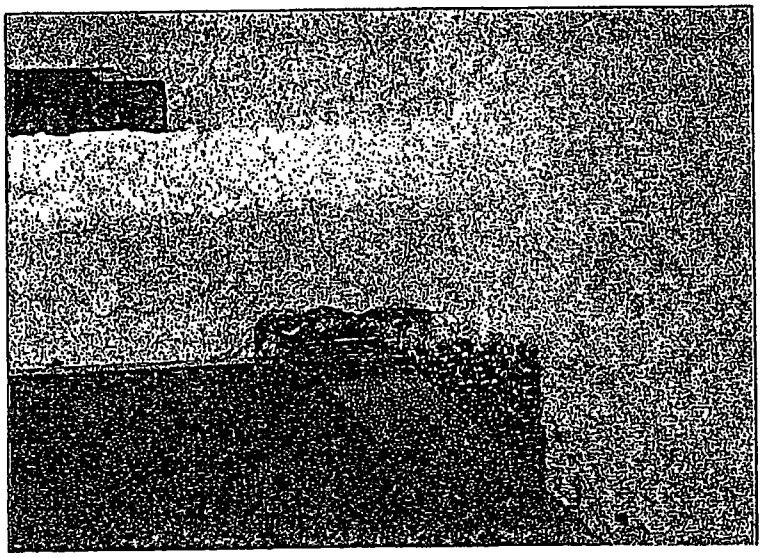
NO. 31 – BALCONY A24 – UNSEALED GUARDRAIL POST POCKETS



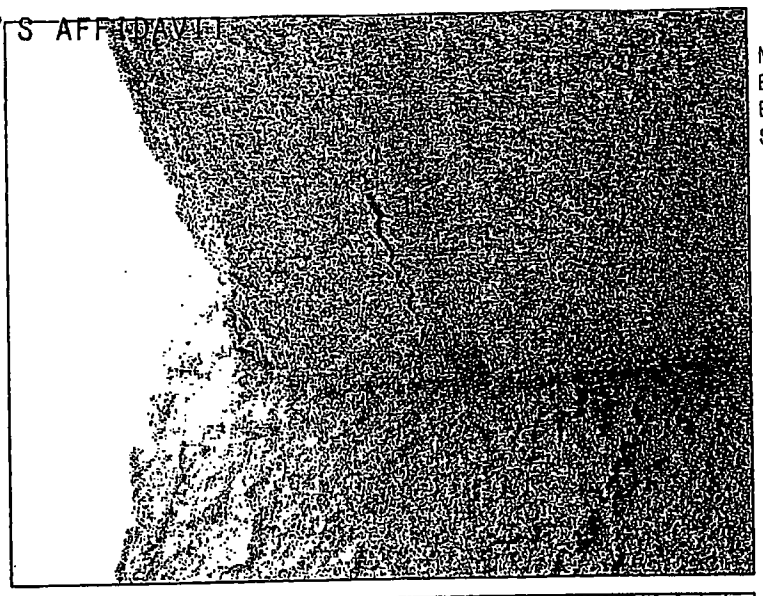
NO. 32 – BALCONY A24 – 492
UNSEALED GUARDRAIL POST POCKET PLUS SMALL SPALL AT OUTBOARD FACE OF POST POCKET



NO. 33 – BALCONY A24 – UNSEALED GUARDRAIL POST POCKET PLUS SMALL SPALL AT OUTBOARD FACE OF POST POCKET



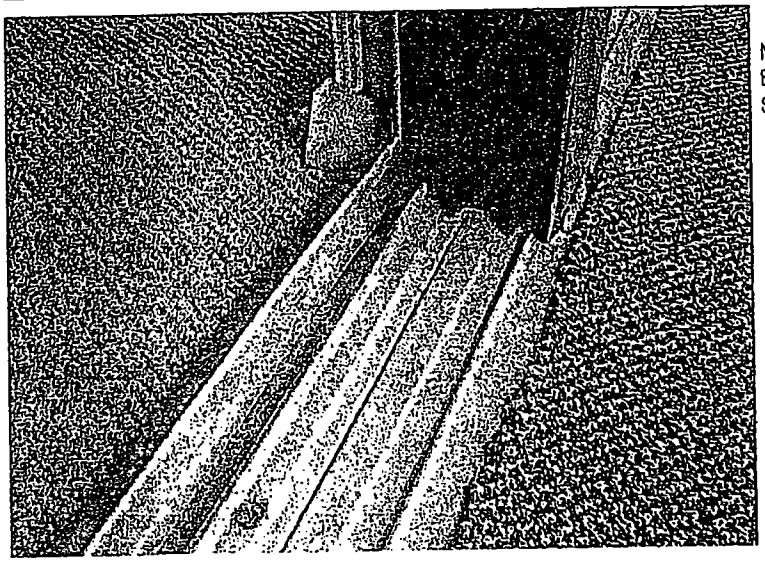
NO. 34 – BALCONY A24 – UNSEALED GUARDRAIL POST POCKET PLUS SMALL SPALL AT OUTBOARD FACE OF POST POCKET



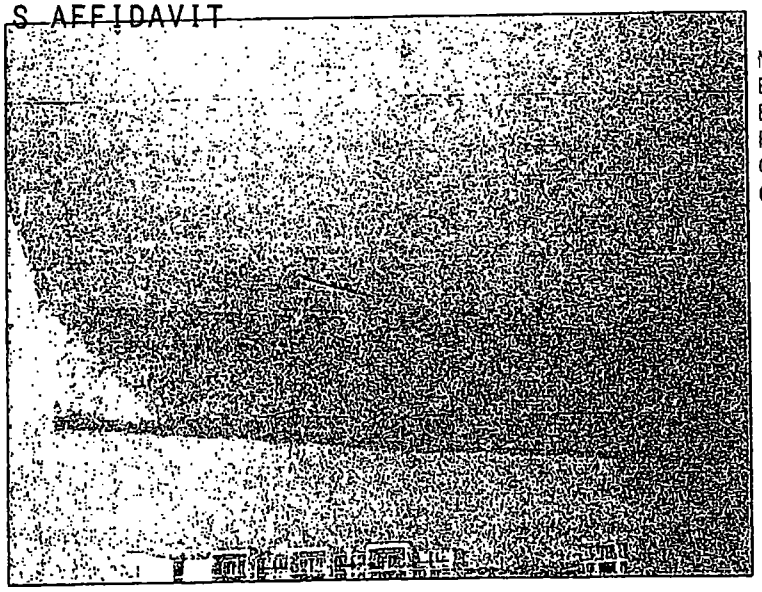
NO. 35 – UNDERSIDE OF BALCONY A34 AND CEILING OF BALCONY A24 – SPALL IN SOUTHEAST CORNER



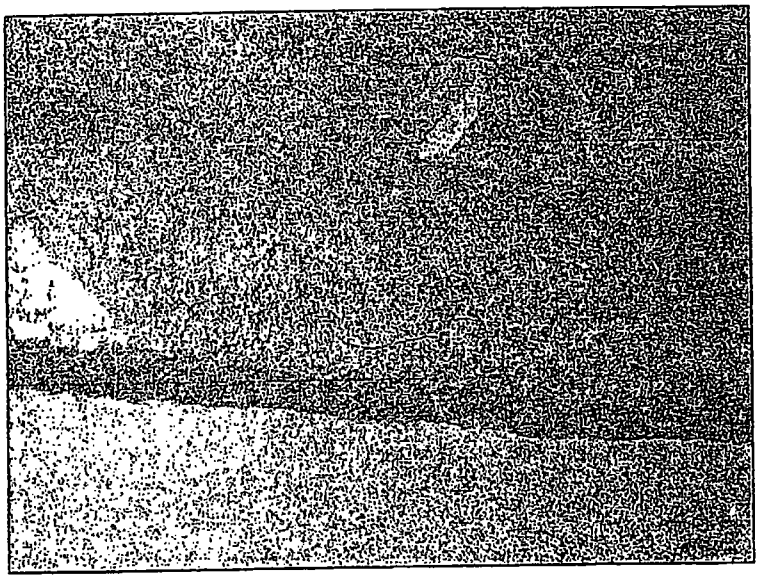
NO. 36 – BALCONY A24 – EXISTING HEAD OVER SLIDING GLASS DOOR



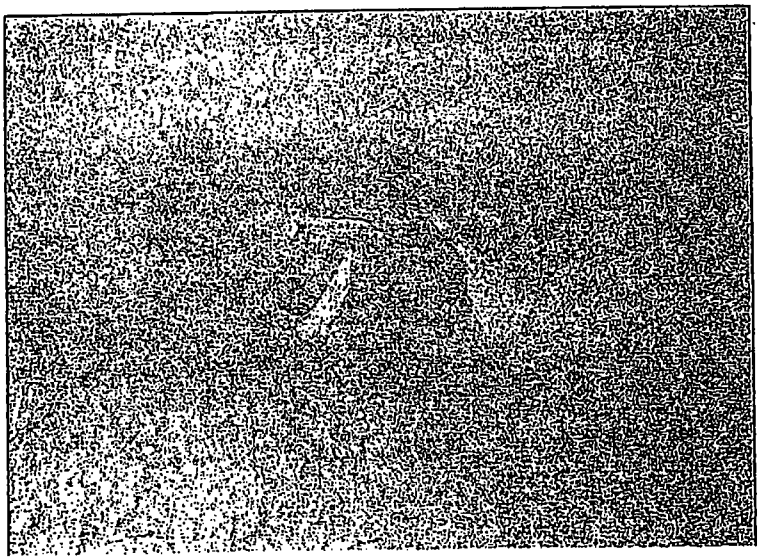
NO. 37 – BALCONY A24 – EXISTING THRESHOLD AT SLIDING GLASS DOOR



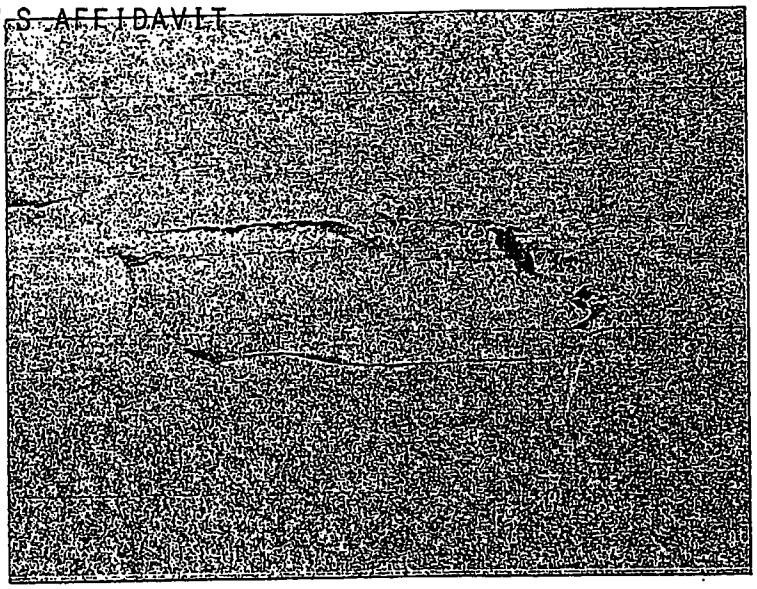
NO. 38 – UNDERSIDE OF 494
BALCONY A55 AND CEILING OF
BALCONY A45 – SPALLED
PRECAST SLAB AND SEVERELY
CRACKED CANTILEVERED
GIRDER



NO. 39 – UNDERSIDE OF
BALCONY A55 AND CEILING OF
BALCONY A45 – SPALLED
PRECAST SLAB AND SEVERELY
CRACKED CANTILEVERED
GIRDER

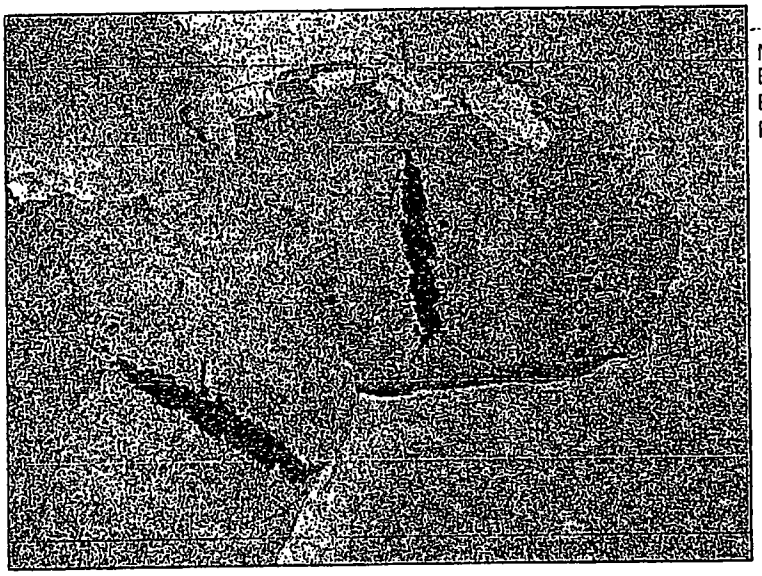


NO. 40 – UNDERSIDE OF
BALCONY A55 AND CEILING OF
BALCONY A45 – SPALLED
PRECAST SLAB AND SEVERELY
CRACKED CANTILEVERED
GIRDER

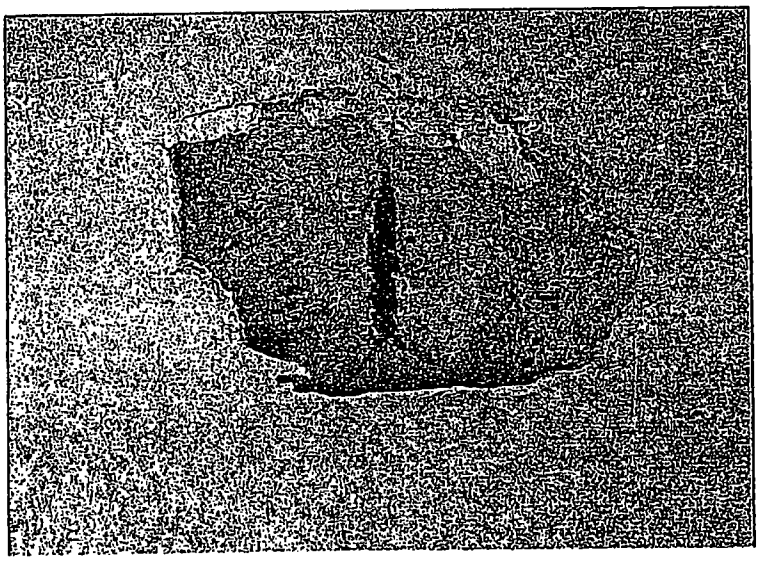


NO. 41 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SPALLED PRECAST SLAB

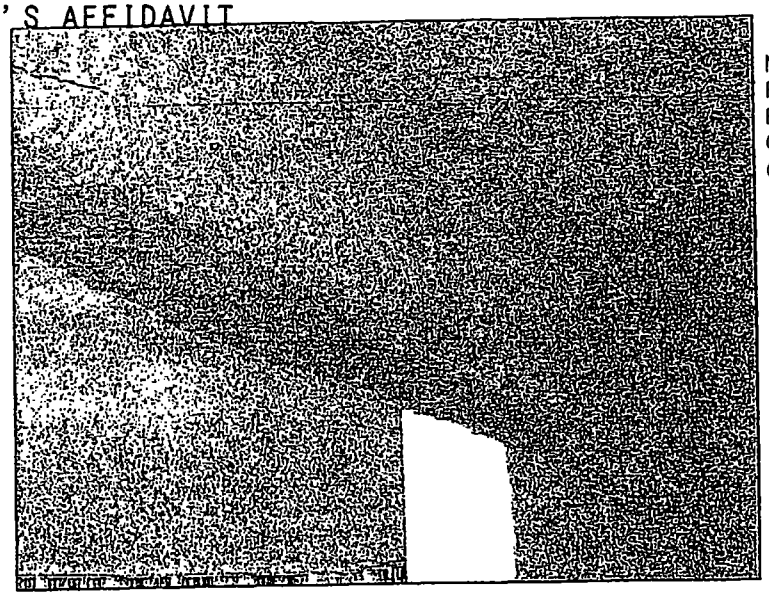
495



NO. 42 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SPALLED PRECAST SLAB



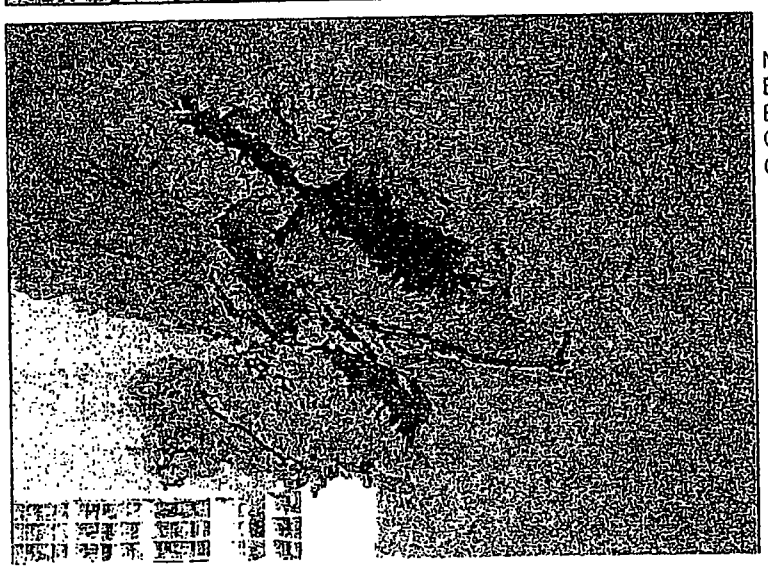
NO. 43 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SPALLED PRECAST SLAB



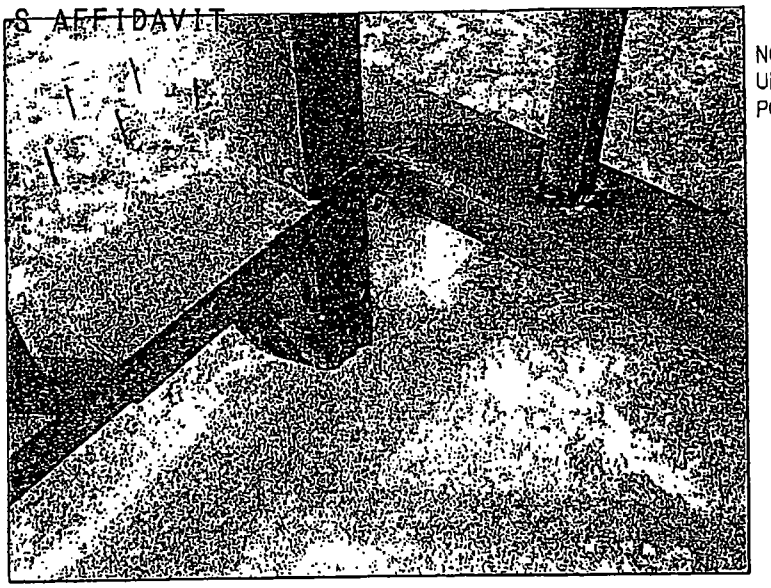
NO. 44 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SEVERELY CRACKED AND SPALLED CANTILEVERED GIRDER



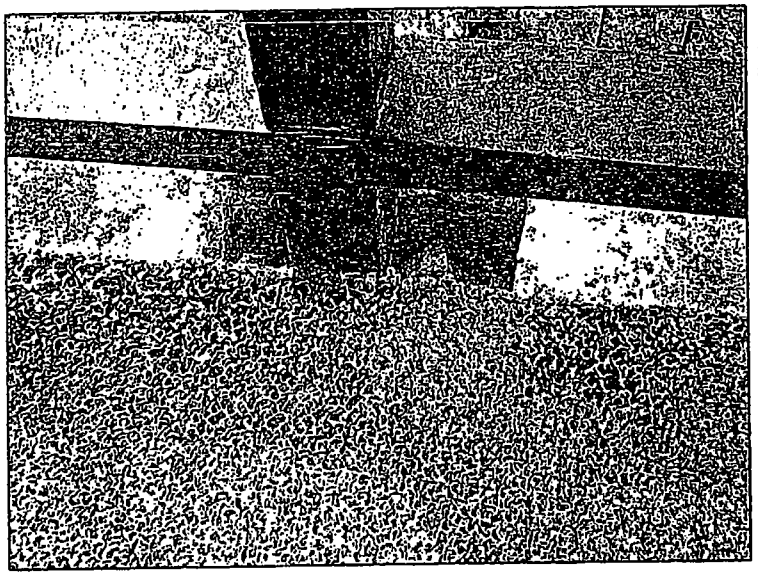
NO. 45 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SEVERELY CRACKED AND SPALLED CANTILEVERED GIRDER



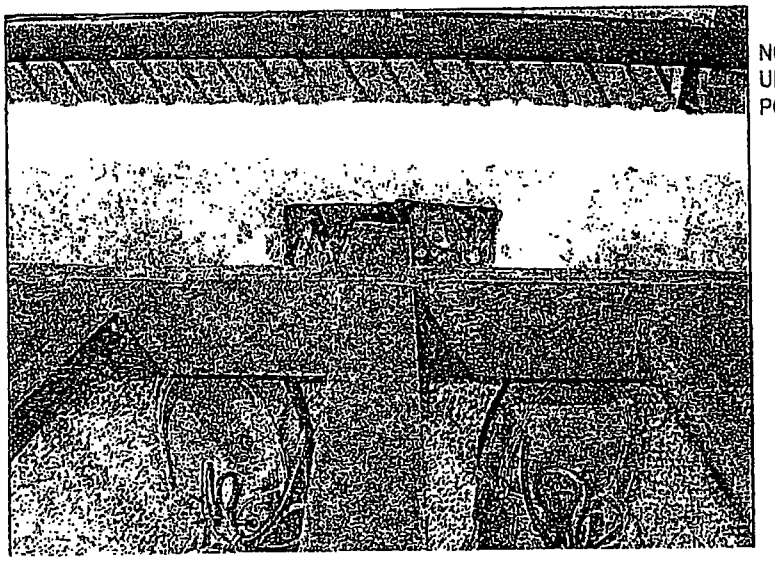
NO. 46 – UNDERSIDE OF BALCONY A55 AND CEILING OF BALCONY A45 – SEVERELY CRACKED AND SPALLED CANTILEVERED GIRDER



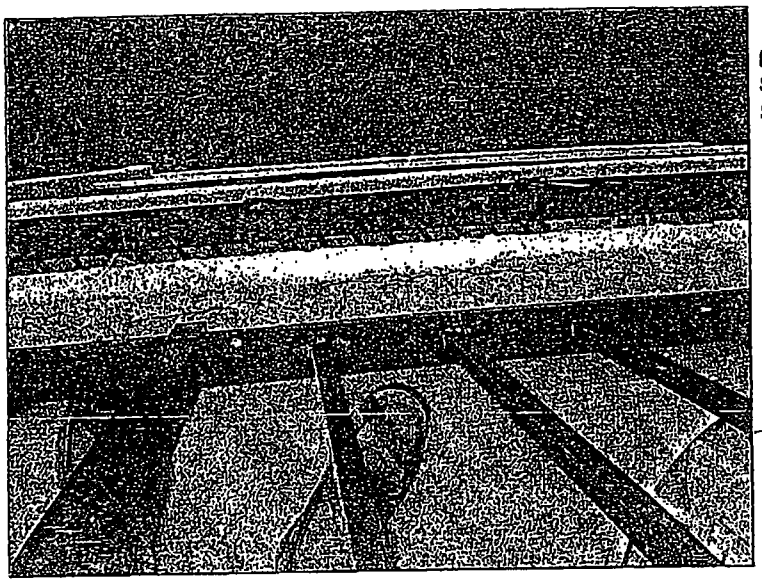
NO. 47 – BALCONY A45 – UNSEALED GUARDRAIL POST POCKETS 497



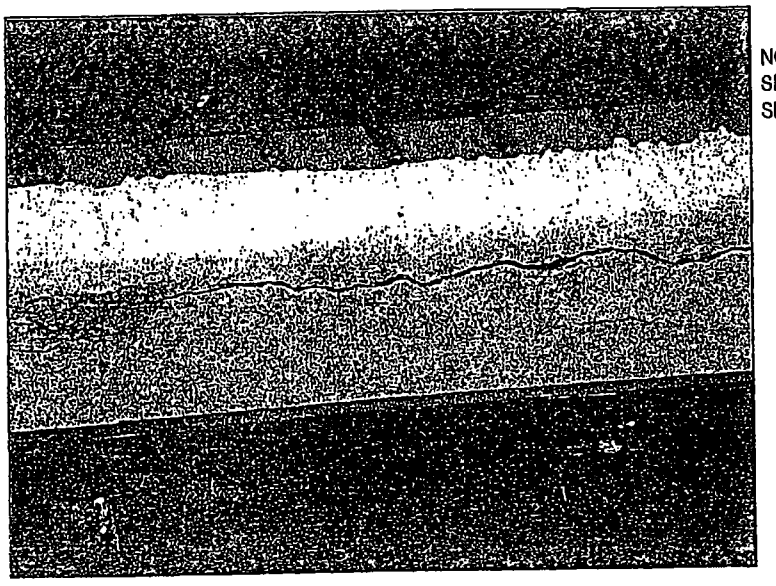
NO. 48 – BALCONY A45 – UNSEALED GUARDRAIL POST POCKETS



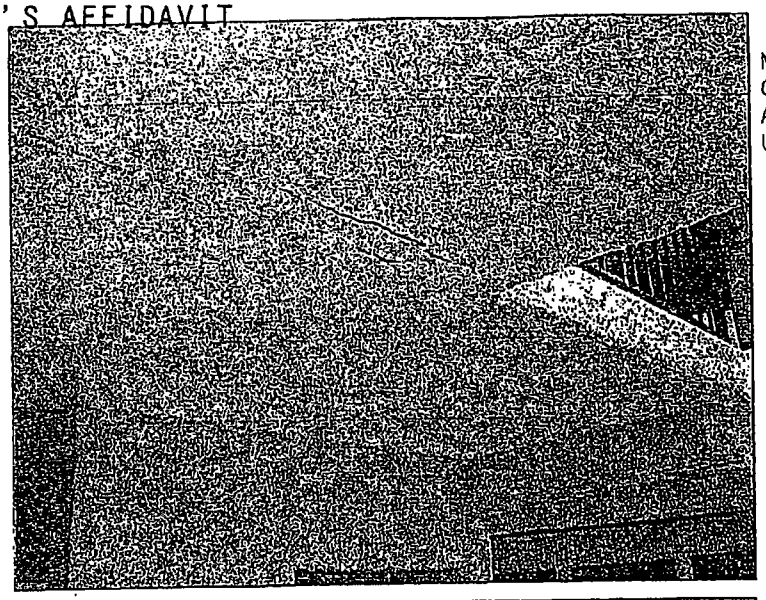
NO. 49 – BALCONY A45 – UNSEALED GUARDRAIL POST POCKETS



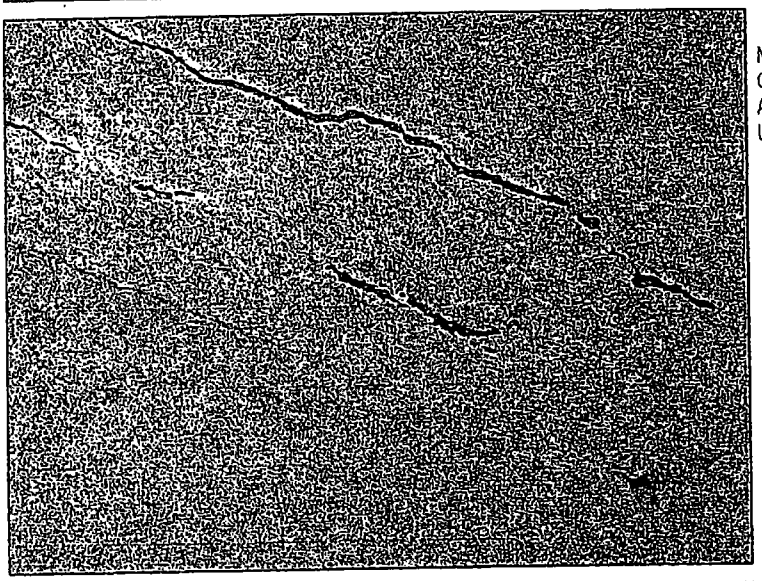
NO. 50 – BALCONY A45 – SIGNIFICANT SPALL AT FACE OF SLAB



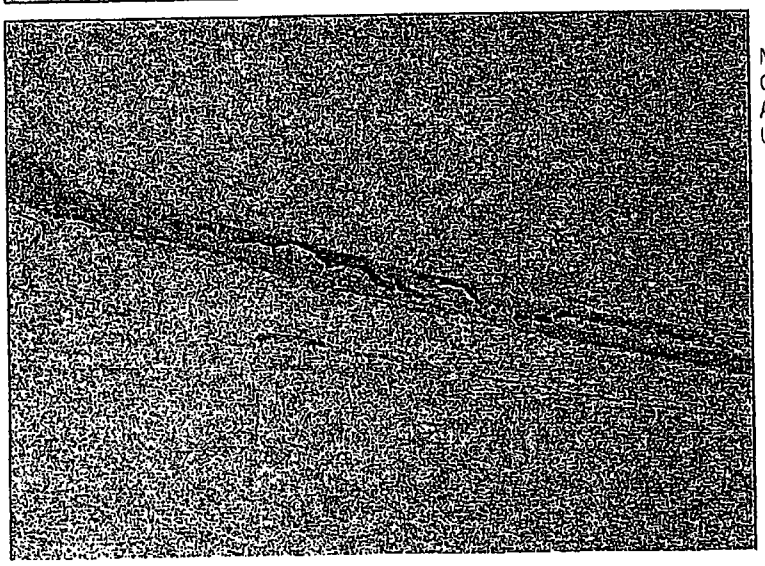
NO. 51 – BALCONY A45 – SIGNIFICANT SPALL AT FACE OF SLAB



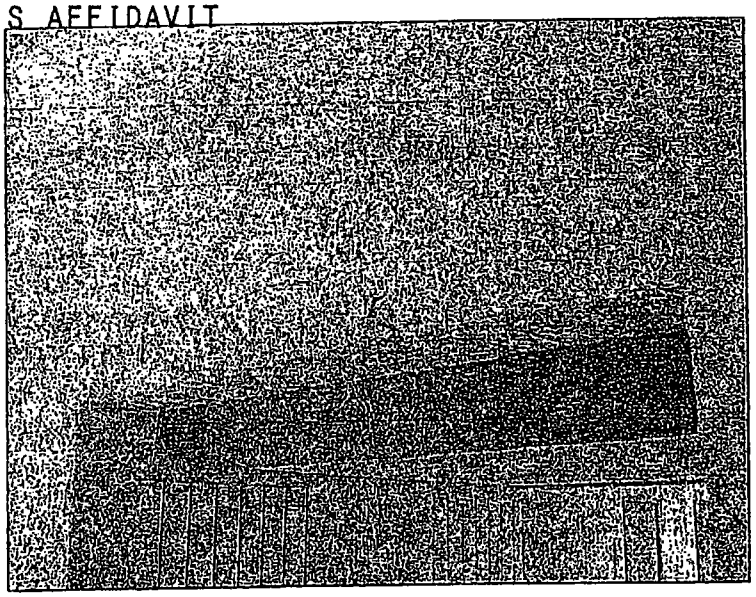
NO. 52 – UNDERSIDE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT UNDERSIDE OF SLAB



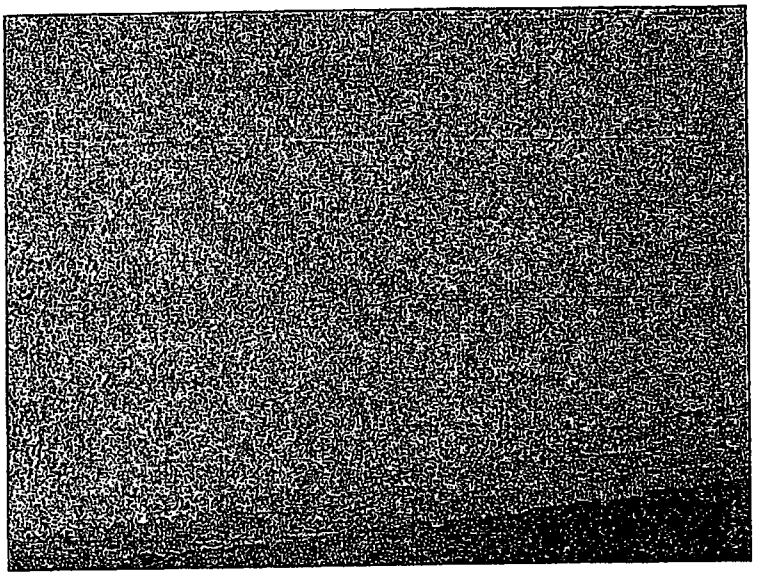
NO. 53 – UNDERSIDE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT UNDERSIDE OF SLAB



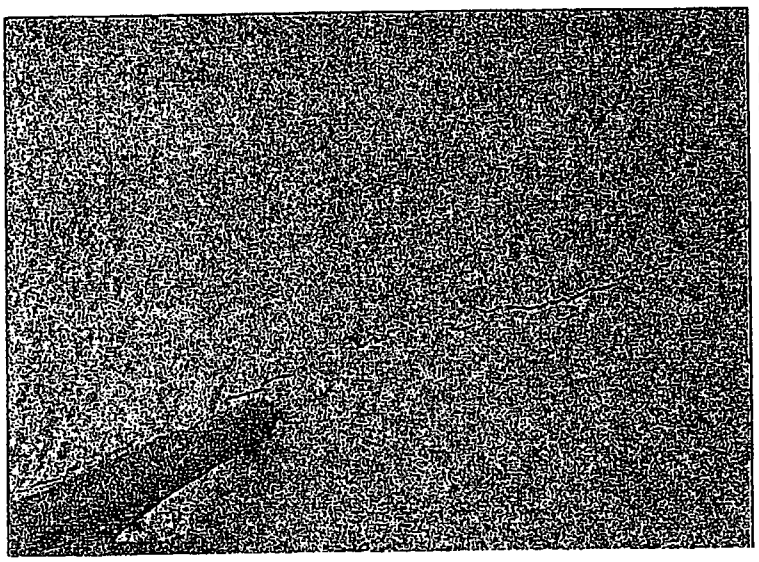
NO. 54 – UNDERSIDE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT UNDERSIDE OF SLAB



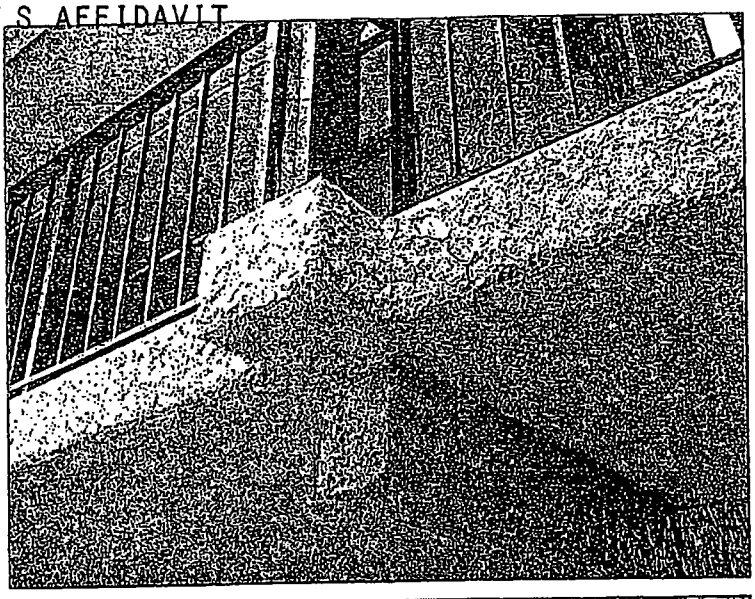
NO. 55 – CORRIDOR GIRDER UNDER UNIT A13 – SIGNIFICANT CRACK IN GIRDER



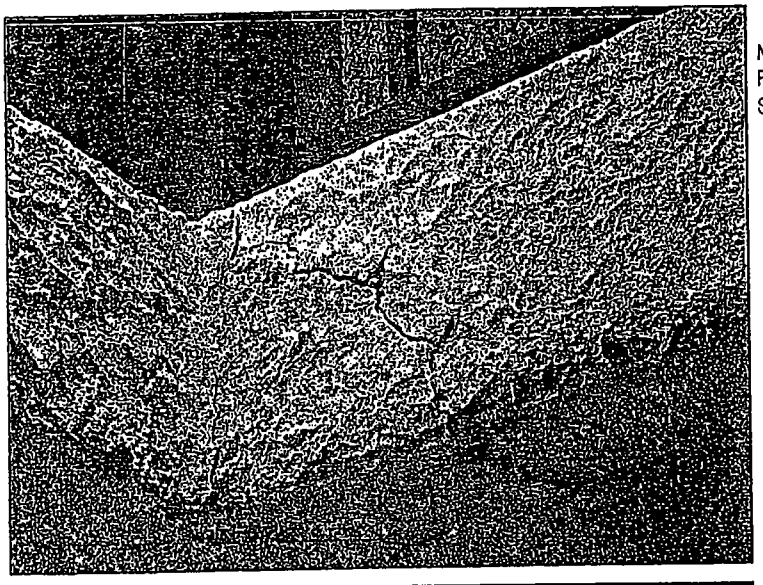
NO. 56 – CORRIDOR GIRDER UNDER UNIT A13 – SIGNIFICANT CRACK IN GIRDER



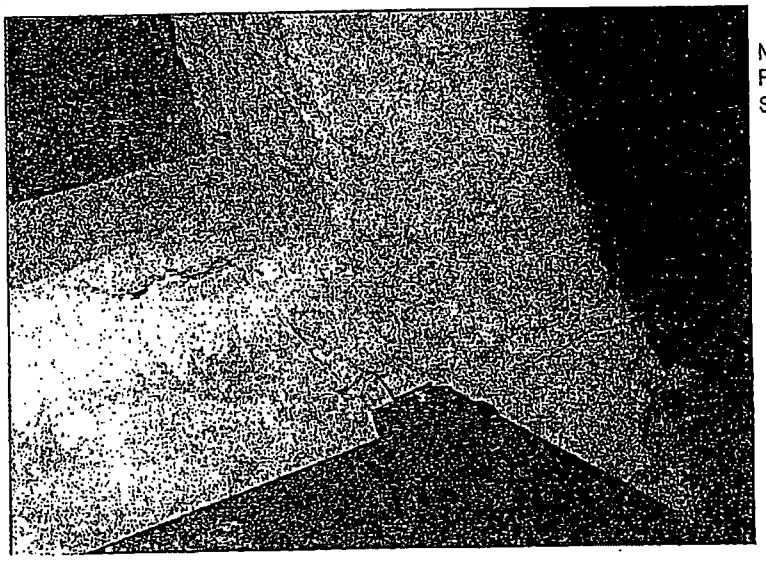
NO. 57 – CORRIDOR GIRDER UNDER UNIT A13 – SIGNIFICANT CRACK IN GIRDER



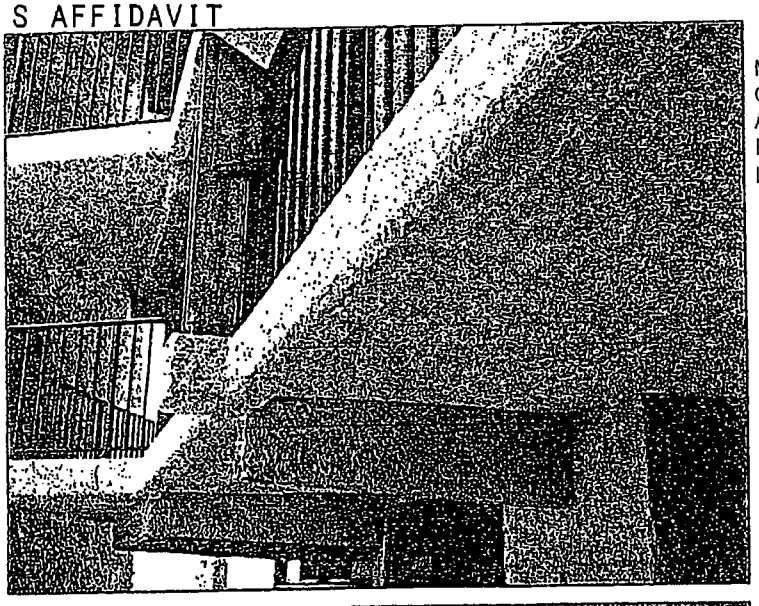
NO. 58 – FACE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT FACE OF SLAB



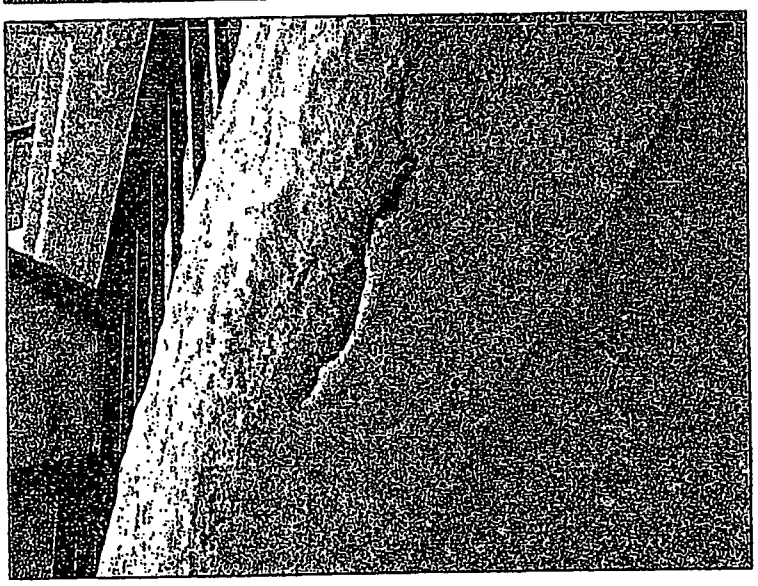
NO. 59 – FACE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT FACE OF SLAB



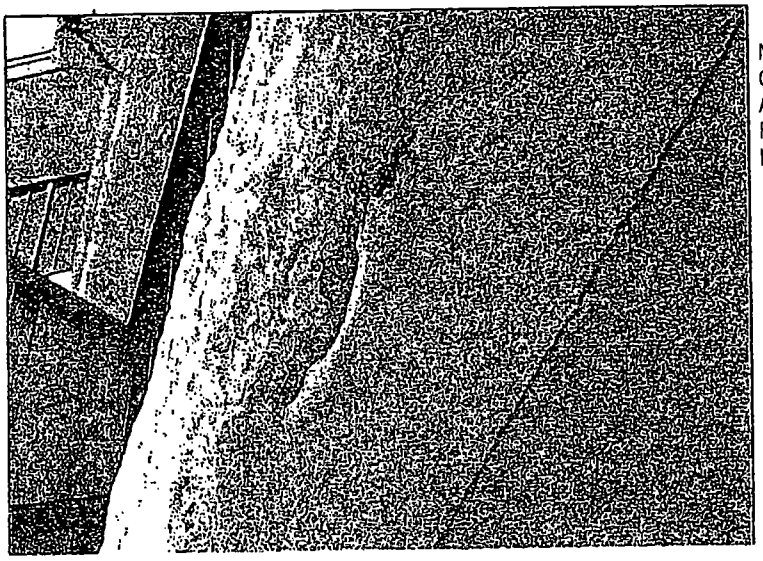
NO. 60 – FACE OF CORRIDOR IN FRONT OF UNIT A13 – SEVERE SPALL AT FACE OF SLAB



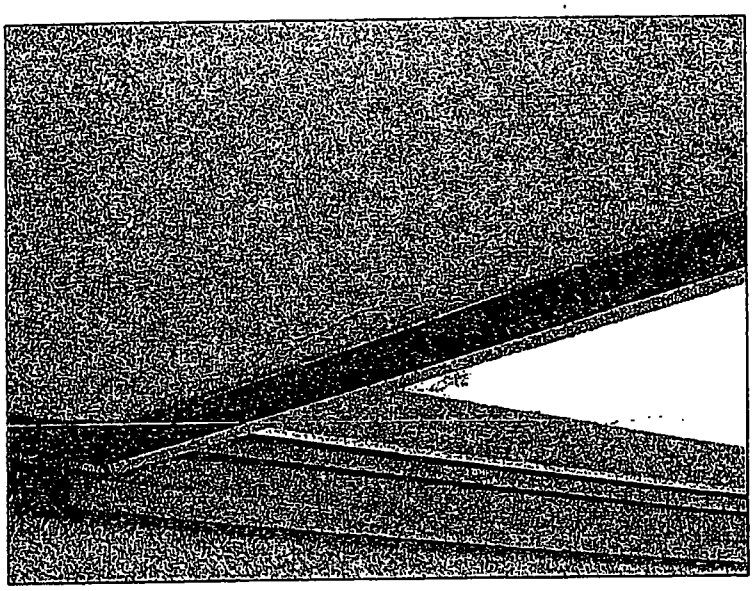
NO. 61 – SECOND FLOOR CORRIDOR BETWEEN UNITS A24 AND A25 – POTENTIAL SPALL AT FACE OF SLAB TO BE FURTHER INVESTIGATED



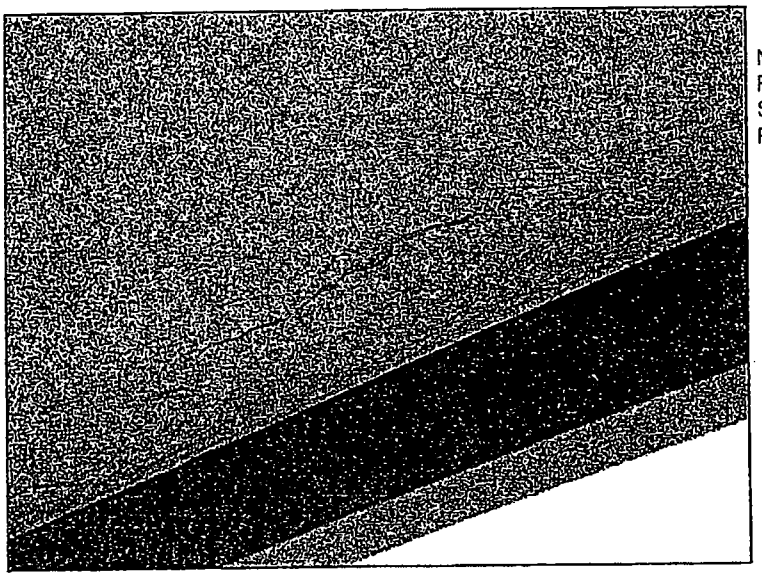
NO. 62 – SECOND FLOOR CORRIDOR BETWEEN UNITS A24 AND A25 – POTENTIAL SPALL AT FACE OF SLAB TO BE FURTHER INVESTIGATED



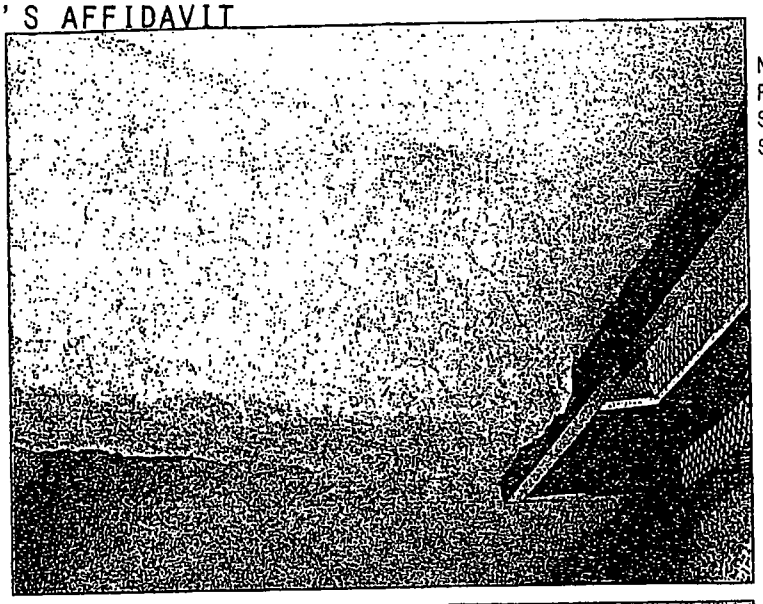
NO. 63 – SECOND FLOOR CORRIDOR BETWEEN UNITS A24 AND A25 – POTENTIAL SPALL AT FACE OF SLAB TO BE FURTHER INVESTIGATED



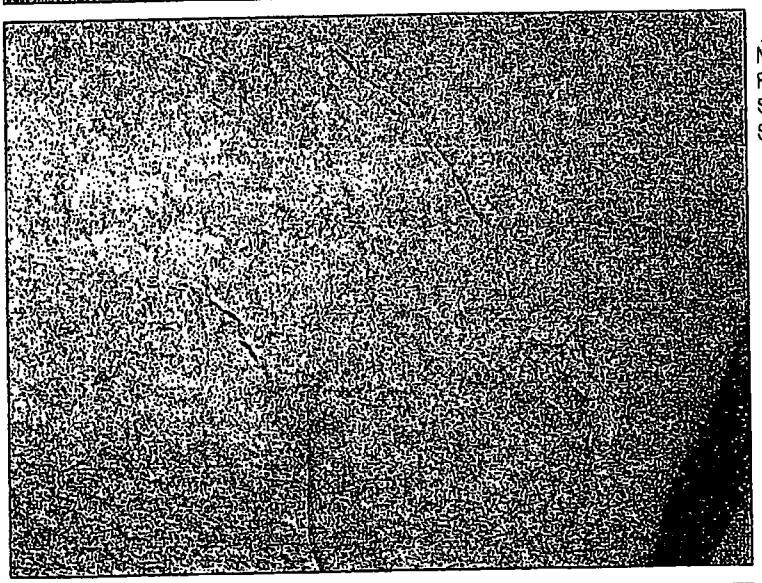
NO. 64 – CORRIDOR CEILING IN FRONT OF UNIT A54 – SIGNIFICANT CRACK AT FACE OF ROOF SLAB



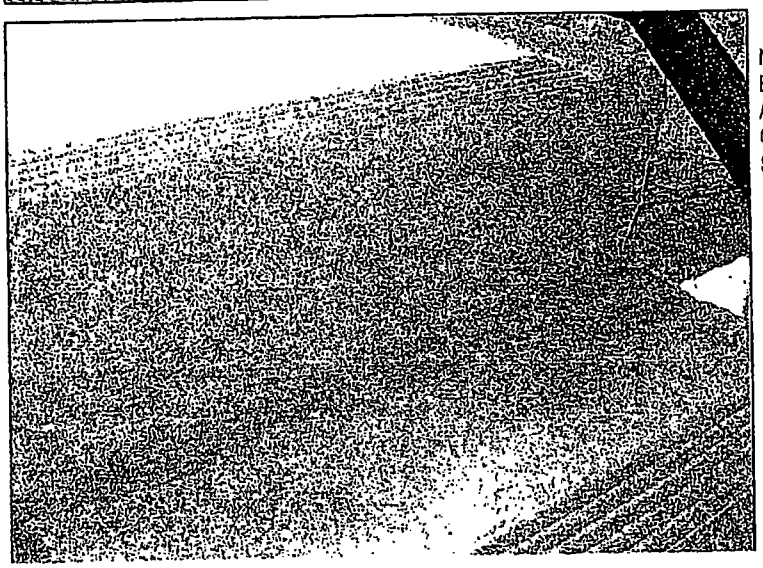
NO. 65 – CORRIDOR CEILING IN FRONT OF UNIT A54 – SIGNIFICANT CRACK AT FACE OF ROOF SLAB



NO. 66 – CORRIDOR GIRDER IN FRONT OF UNIT A54 – SIGNIFICANT CRACKS AND SPALLS



NO. 67 – CORRIDOR GIRDER IN FRONT OF UNIT A54 – SIGNIFICANT CRACKS AND SPALLS



NO. 68 – NORTHWEST STAIRWELL BETWEEN THE GROUND LEVEL AND FIRST FLOOR – SIGNIFICANT CRACK AND SPALL AT FACE OF STAIRS

SHIPYARD VILLAGE
Council of Co-Owners, Inc.

July 8, 2002

TO: Shipyard Village Building A & B Owners

FROM: Kellie A. Diehl, PCAM, President
K. A. Diehl & Associates, Inc.

RE: Window Problems

As many of you are aware, according to the Shipyard Village Master Deed, the window glass, frames and casings are described as part of the unit and thus, the owners' responsibility.

Since we took over management responsibilities in March 2002, we have received many calls regarding window leaks. Again, the windows are not the association's responsibility and thus, owners are left trying to deal with repairing or replacing windows in a high-rise building.

We are offering to organize a window repair/replacement program – to assist those owners who need to do something but don't know where to begin. Enclosed is a form to fill out and return to the management office if you are having any problems with your windows and wish us to assist you. Please describe your window problems in as much detail as possible.

Once we have gathered this preliminary information, we will inspect the windows, determine repair or replacement needs and then get back to you with a description of work needed and a price. One of the problems is that some of the windows need work down on the outside frames, which in some cases, can only be reached with a lift. If multiple owners are having window work done, the cost of the lift can be shared and thus, more economical.

It is our goal to assist those owners in need by providing a quality fix at the most economical cost. Some costs will depend on the number of owners who decide to participate.

Please return the enclosed form as soon as possible – by August 1 at the latest. We will then organize the responses, inspect, get a plan/price proposal together and get back to you. We would anticipate doing this work after the summer season and would schedule with you accordingly.

Please don't hesitate to contact me if you have any questions.

POST OFFICE BOX 2537 • MURRELLS INLET, SOUTH CAROLINA 29576
TELEPHONE (843) 357-9888 • FAX: (843) 357-9890

SHIPYARD VILLAGE
Council of Co-Owners, Inc.

April 8, 2003

Dear Co-Owners:

In October and November you were notified of current and potential window problems in SYV buildings A and B. Since that time, several unit owners have inspected their windows and taken advantage of bulk pricing arranged by our Property Supervisor to re-caulk and repair their windows with excellent resolution of leakage problems. Questions remain, however, regarding installation of the ocean front windows, some of which appear to have been improperly sized and negligently installed. A lawsuit against the developer and contractors had been suggested, but the Board of Directors (BOD) did not endorse a suit on behalf of the Association since the Master Deed clearly states that windows, including frames, are part of the unit and, therefore, the responsibility of the individual owner. In addition, the Finkel & Altman law firm did not believe it economically feasible for it to undertake the representation of the Association in the matter. Minimum legal and expert witness expenses were anticipated to be in excess of $50,000 over two years and could easily be 2-3 times that amount since every window in A and B would need evaluation and testing. The Finkel & Altman law firm is presently focusing on the current litigation involving the construction of buildings C and D.

Within the past two weeks, documents have been found which confirm that the oceanfront windows in A and B were replaced after Hurricane Hugo with funds received from insurance. The actual completion date of replacement is not clear and the 13 year statute of repose may have run by now. Some of the contractors and installers are unknown and no longer in business. Owners wishing to view the documents may obtain copies from K. A. Diehl & Associates, Inc., managing agent.

The Finkel & Altman firm is still not interested in representing the Association or individual owners in litigation regarding the windows but will supply names of attorneys who might be available to file a suit if requested by a group of owners.

The BOD will alert you to any additional information we receive which affects individual owners.

For the Board of Directors

C. Leon Jennings, Jr.

C. Leon Jennings, Jr., President

PLAINTIFF'S EXHIBIT NO. 7 FOR IDENTIFICATION DATE: 12/7/05

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SHIPYARD VILLAGE
Council of Co-Owners, Inc.

October 1, 2004

TO: All Shipyard Village Owners

RE: Storms
Window Caulking A & B

The recent storms not only have inflicted damage to our property, they have exposed some problems with communication. A few owners have been upset at the failure or delay of notification about potential damage to their units. In spite of the prompt response by our on-site crew to assessment of obvious or suspected damage, some owners felt too little was done or it was too late. Some important facts may help to clarify the situation and improve the notification process in the future.

Our on-site staff is responsible for maintenance of the **common elements** of the association, **not** individual condo units. The staff, however, particularly Bobby Warner, wants to assist the owners whenever possible and attempts to identify potential damage in areas other than the common elements. It is impossible for the staff to attend to the common elements and thoroughly inspect our 140 units in a timely manner. Bobby has 10 buildings and 350 units in Shipyard and Somerset under his supervision. He is due to give us 40% of his time and can't begin to respond immediately to every request for information about individual units. In addition to limitations on the staff, there is no control over the timing of the storms. Charley struck on a Saturday and even a letter to the owners could not have gone out before Monday evening or Tuesday at the earliest. Certainly we don't have staff to make 140 phone calls. So, how do we improve communications?

1. Each unit must have a designated responsible party, either an owner, a managing agent, a rental agent, a maintenance person, friend, etc. know to the association's management company and on-site manager. It is the responsibility of the designee to inspect and notify the owner/owners of any damage to the unit.
2. The on-site staff will assess damage to the common elements and assist, when possible; to assess any obvious hazardous condition in individual units or any suspected damage secondary to common element disruption.
3. The management company will be asked to send a generic letter to owners stating that a storm has caused damage at SYV and requesting inspection of their units by the designated responsible person.

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TELEPHONE (843) 357-9888 • FAX: (843) 357-9890

4. Please do not call Bobby Warner until your unit has been examined and damage identified. In case of major wind damage, he will coordinate repair efforts and help with insurance adjustments.
5. Please complete the enclosed form and return ASAP to K. A. Diehl & Associates, Inc.

The weather and roof repairs have delayed the painting of the window frames in the A and B buildings. Many units experienced window leaks during the storms and need to be caulked. Caulking was not included in the price you received. Since the need for caulking varies from unit to unit, it will be done on an individual basis at an additional fee from the contractor. Ed from Absolute Painting and Waterproofing is doing the painting and will give a reduced bulk rate for caulking if the demand is sufficient. Since lifts will already be on-site for the painting, considerable savings over individual contracts should be realized. Please note that painting the sliding door frame is included in the original painting price you received. We anticipate that the painting of the window frames will begin in mid-October. If you need caulking done, contact Ed at 843-650-1564 (office) or 843-333-1386 (cell).

Thanks in advance for your understanding and cooperation as we attempt to clarify responsibility and improve communication.

Sincerely,

For the Board of Directors

C. Leon Jennings

C. Leon Jennings, President

SHIPYARD VILLAGE
Council of Co-Owners, Inc.

October 28, 2005

Timothy & Marie Cassidy
29 Searles Rd.
Darien, CT 06820

RE: A 55

Dear Mr. & Mrs. Cassidy:

I am writing to inform you of a problem we need you to correct. The unit below yours, A45, is experiencing leaks which have been thoroughly investigated. It has been determined that your sliding door has a problem which is allowing water to penetrate to the unit below.

The sliding door is the responsibility of the unit owner per the Shipyard master deed. The Shipyard Maintenance Supervisor, Richard Bennett (843-385-1643) is very familiar with the problems and what needs to be done. He would be happy to explain this to you in more detail.

We need your cooperation in solving this problem so the unit below does not continue to get water penetration. Please contact Richard at your earliest convenience.

Thank you for your cooperation.

Sincerely,

FOR THE BOARD OF DIRECTORS

Kellie A Diehl

Kellie A. Diehl, PCAM
Managing Agent

CC: Board
Richard Bennett

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SCHNEIDER AND ASSOCIATES
ARCHITECTS
CHARLESTON, SOUTH CAROLINA

26 July 2006

Shipyard Village Council of Co-Owners
c/o Mr. Richard Bennett
K. A. Diehl & Associates, Inc.
P. O. Box 2537
Murrells Inlet, South Carolina 29576

Re: Shipyard Village, Buildings "A" and "B"
Litchfield-By-The-Sea, South Carolina

Dear ~~Mr. Bennett:~~ RICHARD

Pursuant to your request and based upon our brief inspection with you of Shipyard Village, on 25 July 2006, this letter will make matter of record our Proposal relating to the above-referenced Project. At this time, I recommend a further, more thorough visual "Building Assessment" in order to evaluate the condition of not only the building envelope, but, most importantly, the fire safety of both the Buildings and the resident's and tenants' use of the Buildings. It is now time to identify problems and create a long-range Planned Maintenance Program in order to maintain the Property at its market value.

RESULTS OF THE INSPECTION

Notes – Shipyard, Litchfield, Captains Quarters, Building "B" ?
Date: 7/25/06
Time: 9:04 A.M.
Temp: 79 degrees Fahrenheit
Wind: Calm
Construction type: pre-stressed concrete structure, metal lath-stucco exterior. 4 story buildings, 8 "stacks" of 4stories each ?
Persons Present: Ken Schneider and Mike Ross, Schneider & Associates
Richard Bennett, Property representative

Mr. Bennett explained the reason for asking for an inspection and evaluation of building "A". Mr. Bennett wishes to present to the Regime Board a proposal with standardized specifications for the replacement of the windows, sliding doors and repair of the exterior finishes of building "A" that would abate the infiltration of water into the buildings.

3690 Bohicket Road, Suite 1-D • John's Island, South Carolina 29455 • (843)768-1333 • (800)522-7683 • FAX (843)768-1716

RESULTS OF THE INITIAL INSPECTION

EXTERIOR:

Numerous windows/sliding doors are leaking rain water into the interior areas of the building. Water is migrating from the upper story down through the intermediate stories to ground level, causing water damage to the floor/ceiling assemblies, the exterior finishes and interiors of the outside units of buildings A and B. Damage appears to occur more severely on the corner "stacks". The water infiltration appears to be the result of a combination of corrosion of the frame of the window/sliding door assemblies, the age of the window/door assemblies, the breaching of the continuity of the "sill" assembly (screws penetrating), separation of caulking from the "sill" and separation of caulking from the expansion joint between the exterior floor/ceiling assemblies and the interior floor ceiling assemblies.

Numerous cracks in the exterior finishes of the underside (ceiling) portion of the floor/ceiling assemblies were observed. These cracks were located approximately 12"-18" from the intersection of the exterior wall and the floor/ceiling assembly and again at approximately 12"-18"" from the outside edge of the floor ceiling assembly. It was also noted that the re-bar located near the outside edge of the floor/ceiling assemblies was not placed to provide sufficient cover with concrete. A minimum of three (3) inches of concrete is required to protect the re-bar from moisture/corrosion. As a result of the incorrect placement the re-bar has been exposed to moisture and salt. This has caused the re-bar to corrode and has spalled the concrete along the outer edges of the floor/ceiling assemblies. This condition has also occurred at points where the guardrails are fastened to the exterior floor/ceiling assemblies.

Possible differential settling of the buildings has occurred at the point of the walkways that connect the stacks. This could possibly be due to the differences in the planes of the tube slabs.

ELECTRICAL/LIFE SAFETY:

Mr. Bennett indicated that the trash chute in building "B" had become energized with electricity. Possible cause was electrical conduits located in a position that allowed trash to come in contact with conduits at the termination of the trash chute. This has been corrected.

Mr. Bennett made mention of loose lugs in the meter bases of several electrical service entry locations. This condition has been or is being corrected. Over-heating/failure of over-current protection devices (breakers) has occurred resulting in fires that as of yet have not caused major damage or bodily harm.

SCHNEIDER AND ASSOCIATES
ARCHITECTS
CHARLESTON SOUTH CAROLINA

October 25, 2006

RECEIVED
OCT 31 2006
BY:

Mr. Richard Bennett
Shipyard Village Council of Co-Owners
PO Box 2537
Murrells Inlet, SC 29576

Re: Shipyard A and B
Murrells Inlet, South Carolina

Dear Richard,

This will confirm our rather lengthy telephone conversation late this afternoon regarding the conditions, progress and proposed solutions at Shipyard A and B. Recently, members of my staff and I disassembled parts of the building at the outside deck of Unit A14. At our instruction, Dwight Perkins drilled a series of holes into the bottoms of the deck's tube slabs that are directly outside of A14. The holes produced an abundance of water that ran from the bottom of the slabs, reportedly, for about 15 minutes. Subsequently, Mike Ross, from our office, and I made both visual and destructive investigations and used probes to determine the cause of the water infiltration. Due to the possible severity of this condition, we have extended our efforts by way of some additional research in an attempt to determine the structural integrity of these slabs. In my opinion, it would be foolish to do any permanent repair work at this area until we determine the structural integrity of the slabs. Due to the nature of the structure, we must be certain this problem is localized and not pervasive. Pending its outcome, we can create a plan.

The plan as of this date is to replace the two sliding glass doors from the Living Area out onto the deck with a single sliding glass door that would have two panels fixed, then a single slider, then the fourth panel would be a fixed panel. This configuration resembles the two sliders that are now side-by-side with the exception that only one of the sliders would be operable. This would be the one on the Living Room side of the center line. We propose that the door would be raised approximately 1 ½"-to-2" above the existing deck so that the flashing could be installed between the deck coating and the bottom of the slider. This will necessitate raising the header by the same amount.

2800 Palmetto Road, Suite 1-D • Isle of Palms, South Carolina 29455 • (843)768-1333 • (800)922-7663 • FAX (843)768-1716

At the same time, we would propose that the header be reinforced in order to meet the wind codes. The sliding glass door manufacturer that furnished the doors for both Windswept Villas and Shipwatch Villas at Kiawah Island is Plaza Door Company, Inc. Recently we rejected the use of Starline Doors because of their inability to provide the stainless steel hardware necessary for oceanfront exposure. Last week, Starline advised me that hardware is now available and will conform to our specifications. We are currently investigating the use of the Starline Door, since it is less expensive than the Plaza Door. Starline advises us that the door can be installed in one piece. This means that there will be fewer perimeters to contend with, as far as leakage, sealants and flashings are concerned. They are to verify all of these specifications with us as soon as possible. My guess would be the middle of next week when we should have this information in hand and can make the decision whether or not to allow them to furnish these doors as an equal to the Plaza Doors. Once this is resolved, we shall prepare details for the installations and furnish them to the Contractor, Pro-Tec Finishes, for installation. There is a three-week lead time on the doors and the total in place cost is approximately, $10,000, per unit, for the complete installation.

Generally, the Scope of Work for each Unit will be determined by the Mock-up at A14, and will continue throughout the entire Regime as each Unit is considered for renovation. The Scope includes removal of the existing door, removal of the header, reconstruction of the header, repair of the joint between the deck slabs and the interior of the Unit, installation of a curb at that location, preparation of the deck slabs by repairing the concrete, as necessary, to receive a fiberglass coating, installation of the fiberglass coating, turning the fiberglass up and over the curb and to the inside of the Unit under the threshold and up the jambs, so as to form a pan similar to a shower pan, installation of the new door by wrapping the jambs, sill, and heads with Bituthene, installation of16 oz. copper pan flashing at the sill and setting the sill track in 3M 5200. The header reconstruction shall comply with the 2003 wind codes. All of the surface areas inside would be refinished from wall-to-wall, and floor-to-ceiling. Likewise, the exterior would be refinished, as well. The color would match the existing interior and the color of the exterior would match the exterior. That material shall be Sto Silco or Dow AllGuard. The fiberglass deck coating will cost approximately $11.00/sq. ft., in place. This cost is not included in the above and will vary as the size of the deck varies.

Of great concern at this point in our development of the final solution is the joint between the deck slabs and the slabs that support the interior of the Unit. There is obvious current leakage in several of the Units at this location. We must determine why this is happening in order to design a one-time repair.

As you know, I will be in Beaufort for the next three weeks. Perhaps we can arrange for me to attend the Board meeting on November 3rd via conference call. At this point, Shipyard's repair protocol depends on two things: one, the discovery of the cause of the

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2009-CP-22-01655

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

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

v.

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

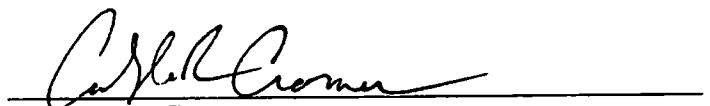
Shipyard Village Council of Co-Owners, Inc., ... Third-Party Plaintiff,

v.

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

APPELLANT'S RULE 210(G) CERTIFICATION

The undersigned, attorney for Appellant Shipyard Village Council of Co-Owners, Inc., certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellant and Respondent and not any other material.



Carlyle R. Cromer
Attorney for Appellant