THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

Appellate Case No. 2012-213333

The St. Clements Homeowners Association, Inc., Appellant,

v.

BE-MI, Inc., Respondent.

RECORD ON APPEAL
VOLUME II

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HER SHE'S STILL UNDER OATH,
THAT WILL BE FINE WITH ME.
THE COURT: OKAY. MS. BROWN, WE ARE
NOT GOING TO RE-SWEAR YOU
AS YOU WERE SWORN
YESTERDAY. WE'RE JUST
GOING TO REMIND YOU THAT
YOU WERE SWORN AS OF
YESTERDAY.
MS. BROWN: THANK YOU.
DIRECT EXAMINATION
BY MR. BARNETT:
Q: Ms. Brown, of course, you are the president of the association in this case, the plaintiff?
A: Yes.
Q: Okay. Ms. Brown, you were present yesterday, and I believe you heard some testimony given by the defense concerning the parking availability at St. Clements; ---
A: Yes.
Q: --- is that correct? And there was some testimony given, as you may recall, about the change in trash pickup procedures, and Mr. Pistone, I believe, indicated he felt that might have left three or four spaces where people could

park. Could you address that issue, explain what happened with regard to that trash collection procedure and what effect, if any, that had on the parking?

A: All right. There were so many users on that compactor, it was a big problem. So we elected to go with the city compactor three blocks away and then stop using the site; and now that that's empty, it was mentioned maybe cars could park in there. Well, only four feet of that site is on our property. Nine feet is on the adjacent property. The adjacent property owns that, that ---

Q: Okay. When you say that first compactor, that's the one that the St. Clements used until recently?

A: Yes.

Q: And only four feet of that was on your property?

A: Yes.

Q: Was that compactor used exclusively by St. Clements or by any others?

A: Oh, by, originally, three properties, then it expanded to five or six, and it just got way out of hand.

Q: Okay. So go ahead. You decided to quit using

that one that was jointly used?

A: Yes.

Q: And what trash pickup procedures were implemented?

A: Well, we're using one on 73rd, which is a city site, and that's the preferred method. They, they preferred us to use the ones west of Ocean Boulevard, and they had space on the one that was already there, and so we all signed contracts with the city.

Q: Okay. And then how do you handle trash procedures in order to get the trash from St. Clements across the street to this city compactor?

A: Well, now we have to take it there, which is a little farther, and we felt the best solution for the St. Clements was to buy a four-by-11 utility vehicle, because we had space in the access to the pool equipment room, which is ten foot wide, one foot wider than a parking space, and as we said, this was never a parking space. We felt we could put it in there, still have access. The maintenance man has the key. He can move it if he needs to, and, and it's kept there. That's its base, and it's chained down when it's not in

use.

Q: Okay. So trash is collected there and then taken periodically over ---

A: Yes, and collected from other sites on the property.

Q: And you say that's located in that -- Is that that underground section of parking?

A: Lower level, yeah, the one we call the parking garage, the lower level.

Q: And it's in the spot that we've alluded to before that's next to the base of the pool?

A: Yes.

Q: And that's the spot where there's the sign of "No Parking"?

A: That's correct.

Q: And why is parking not allowed in that space there?

A: Because it was always made to be an access space. You've got large pool equipment. You've got a lawn mower. The maintenance man has an office there. He has supplies. You've got pool supplies. So that was always an access area. Like I said, it's not the same width as a parking space, and it was never numbered with the parking spaces. It was never a parking space.

Q: Okay. And the use of this now by this four foot wide utility vehicle, which you can move in and out, does that interfere with being able to get in and out of the pool room?

A: No, it doesn't. And the door opens in in the pool room, equipment room, too, so.

Q: And just to be clear, as a result of moving that original compactor that had been shared, did that leave any room for any additional parking spaces on St. Clements' property?

A: No. That's a very tight property, very tight.

Q: There was also testimony about the need for parking at St. Clements, and I believe one of the witnesses testified that he had seen, in Memorial Day of 2007, that it was not full. I believe he testified that he had pictures taken on May 30th of 2007; is that correct?

A: Yes.

Q: Are you at St. Clements on a regular basis?

A: Yes.

Q: And how long have you been a member there, owner there?

A: Since 1994.

Q: And do you believe parking to be a problem at St. Clements?

A: I do. In the summer and especially on the top deck, it's mostly full there at that time of year.

Q: How many levels of parking are there at St. Clements?

A: Two.

Q: And one is below ground?

A: Yes.

Q: And one is, what you're calling the top deck, is ground level?

A: Street level, uh-huh (affirmative response).

Q: And that's the level where the pool bar's located?

A: Yes.

Q: And let's talk a moment about the underground parking. Is that in any way more or less easily accessible as compared to the ground level parking?

A: It's, it's hard. It's a tight property, and as you go around to go to the parking garage, you go down a ramp. We actually put a carpet, we glued a piece of carpet there because cars kept scraping their sides, which isn't good, and, and we do have more spaces down there. We have 39 plus two handicapped, but, and only 28 plus one

handicapped on the street level, and a lot of people might be new guests, may not realize there is parking down there, even though we have a sign, but the preferred parking seems to be at the street level.

Q: Okay. And from your observation, is the street level often full or not?

A: Yes. It's often full.

Q: Okay. And there was this testimony about the Memorial Day parking in 2007. Have you ever been present on the premises on a Memorial Day weekend?

A: I have, of 2006. So I thought showing pictures of an empty parking garage was not my experience because I was not able to park anywhere on the property in that year. So I looked at a calendar, and Memorial week then that, that was testified by the defendant of taking the pictures at 5/30/07 was actually a Wednesday after the Memorial weekend. Those pictures were not taken on Memorial weekend of 2007.

Q: Do you have --- You say you have a ---

A: Calendar.

Q: --- calendar from 2007?

A: Yes.

Q: And what date did he testify he ---

A: May, May 30th, 2007.

Q: Was the date he took the pictures?

A: That's what, what he said.

MR. BARNETT: WE MOVE TO INTRODUCE A COPY OF THE MAY 2007 CALENDAR INTO EVIDENCE.

MR. NEWBY: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

PLAINTIFF'S EXHIBIT NUMBER 16 ADMITTED INTO EVIDENCE

Q: Ms. Brown, one last question, is there any space at the St. Clements property that could be used for parking other than the 70 spaces originally provided in the condominium plans?

A: No. And that's why it's so important to maintain each space as required, because every, there must be one for every owner, and if we had assigned spaces, two people would not have a space to park.

Q: Okay, thank you. I have no further questions. Mr. Newby may have a question for you.

A: Okay.

THE COURT: MR. NEWBY?

MR. NEWBY: JUST A COUPLE.

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CROSS EXAMINATION

BY MR. NEWBY:

Q: Ms. Brown, ---

A: There was something that, do you have any -- Are you allowed to question me any more on this? Because there's something ---

THE COURT: NO, HE'S NOT.

MS. BROWN: OKAY, OKAY.

THE COURT: I MEAN, HE CAN RE-CROSS.

MS. BROWN: OKAY, ALL RIGHT.

THE COURT: BUT NOW IT'S MR. ---

MS. BROWN: OKAY.

THE COURT: --- NEWBY'S TURN.

MS. BROWN: ALL RIGHT.

THE COURT: BUT YOU CAN EXPLAIN YOUR ANSWER THAT MR. NEWBY ASKS.

MS. BROWN: OKAY.

Q: You said that a contract was signed with the city over the use of this city compactor?

A: Yes.

Q: And who signed that contract?

A: I did.

Q: And what capacity did you sign the contract in?

A: For the association.

Q: As the president?

A: Well, I may or the association manager, anyone has the capacity to do that, to my knowledge.

Q: Anyone has the ---

A: Well, not anyone, certain people, ---

Q: You do, as president, have the right to sign contracts?

A: Yes, I do.

Q: And even the property manager, you say, has the right to bind the POA?

A: Well, I'm not sure what the limits of that is, but on occasion, that happens, when the board is not in town, that maybe they would sign for the board on something like that, maybe not a major contract.

Q: And that's okay with you?

A: Well, if it's allowed, it is okay with me.

Q: Well, is it allowed by you, as the president?

A: Well, I would think, on something major, yes, the board should sign. This is a three year contract.

Q: My question was, do you allow the property manager to sign contracts on behalf of the POA?

A: Well, if it's an annual maintenance contract, say, for the roof or something, you know, something that's not, not that important, yes,

that's part of the routine course of this business.

Q: So some things he can sign for, he or she, and some things you don't think they have authority to sign for?

A: Yes. I would think that's true.

Q: But you, as the president, have the authority to sign any kind of contract, don't you?

A: I don't know if that's beyond the scope of my ability to answer, any kind.

Q: Tell us what you think.

A: Okay. Well, as, as the duly elected officer of this HOA, yes.

Q: Okay. Now, I heard what you said about parking on the top deck, and I think I got it down, wrote it down right. You said people don't always know there's parking downstairs; is that correct?

A: We have a sign, but it's, you know, new guests may not see the sign or know there's additional parking.

Q: Of course, by the way, all owners know there's parking downstairs, don't they?

A: I would think so.

Q: And you said it's difficult to find parking, especially on the top deck; ---

A: Yes.

Q: --- is that right?

A: Yes.

Q: That's because people just don't like to go downstairs because, you said, it's difficult to maneuver down there; is that correct?

A: Some vehicles are too big to get down there, also.

Q: And it's also difficult to maneuver, you said you had to put carpet on the concrete pilings.

A: Yes, we did. We did.

Q: So everybody who wants to park, in fact, I think Mr. Pistone admitted yesterday, everybody wants to park where it's the most convenient and the easiest to park. Would you agree with that?

A: Probably. But that's a 15 minute loading zone that's he's parking in, and it's clearly marked.

Q: But everybody wants to park where it's easy, don't they?

A: Yes.

Q: So while the top deck might be full because everybody wants to park where it's easy, there may be plenty of parking spaces downstairs at the same time; isn't that correct?

A: In the summer, that would be less true, and our

maintenance man often can't find anyplace to park because the whole place is full.

Q: The maintenance man ---

A: Yes.

Q: --- can't often find a place ---

A: Yes.

Q: --- to park? Does he have a designated parking space under either the Master Deed or on the plot plan or anything like that?

A: No, he doesn't. If they are full, then he will either go across the street to the hotel parking or he may park by the pool where cars can still by, at the base of the pool, and park his vehicle there, but he is not to take an assigned space if it's full.

Q: If he can find a space, though, it's not completely full and he can find a space, does he usually park in a parking space?

A: Yes.

Q: All right. Now, if he does that, does he have to do that with your approval?

A: No.

Q: He doesn't? He does it against your approval?

A: No.

Q: Well, how does he do it?

A: Well, he's an employee, and he would naturally want to park there. So if there's a space available that others aren't using, why couldn't he park there?

Q: My question is, does that meet with your approval?

A: There, there have been, there has been no objection to this.

Q: Including no objection by you?

A: That's correct.

Q: Has there been any objection by the board?

A: No.

Q: So when he pulls in a parking space that he finds on a busy day, but he's still got a space, and then an owner or a renter pulls in and finds it to be completely full because the maintenance man's filling up a parking space, that has not caused any complaints from you or the board or anybody else. Is that your testimony?

A: That's true. But if it's full, he will park in that space, the access space. That was where he parks if it is full.

Q: The board could tell him, "We don't want you parking on the deck anywhere. We want you parking across the street"; is that right?

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A: That's true.
Q: Have you chosen not to tell him that?
A: It has not come up.
MR. NEWBY: THAT'S ALL I HAVE, YOUR HONOR.
THE COURT: OKAY. MR. BARNETT?
RE-DIRECT EXAMINATION
BY MR. BARNETT:
Q: Ms. Brown, Mr. Newby asked you about the president signing certain agreements. As the president, are there agreements that you would require board approval before you would sign it?
A: Well, we would have board approval, yes, but may have one signature on it.
Q: And are there agreements that under the terms of your Master Deed and bylaws require a board written consent?
A: Well, one of the duties would be to sign contracts and things like that. So, yes, that is one of our duties.
Q: Okay, thank you.
MR. NEWBY: NOTHING FURTHER.
EXAMINATION
BY THE COURT:
Q: Ms. Brown, I have a couple of questions. Why did

the St. Clements Homeowners Association wait 15 years before suing BE-MI, Inc. concerning the side deck?

A: Well, as I said, I became an owner in 1994, and all through the '90s, there was a lot of construction defects with our building, 12 major areas of construction defects that resulted in a lawsuit with Chancel Construction in 2000 and then remedying those. We had a forensic architect who determined some of the problems that were not so obvious. So, as an owner, when I came on, that's all that was talked about and dealt with, Then, after that, there were other problems with the pool bar area that resulted in a lawsuit, and now ---

Q: I'm sorry. I ---

A: I'm sorry.

Q: I didn't understand that.

A: Oh, after, after the other problems with the building defects and all, then there were problems with the pool bar that, other problems that resulted in a lawsuit, and then that took a couple of years.

Q: Why didn't you, when the St. Clements Homeowners Association brought the other lawsuit against BE-

MI, Inc. concerning the pool bar, why wasn't this issue brought in that lawsuit?

A: Okay.

Q: Because it was known about then, wasn't it?

A: Yes. But -- I was not on the board, but apparently that board felt this, the, those problems affected the owners the most, it was the most egregious at the time, and made the choice to go with the other issues. They had tried to impose rules and regulations that were not being followed, and then it resulted in a lawsuit.

Q: So just to be clear, that board knew about this side porch, the side deck, but decided not to sue BE-MI, Inc. when it brought the other lawsuit about the side deck?

A: It's my understanding that's true, because the other affected more owners, but those are just my words. Let me just, I guess, retract that. I don't know specific. I just know that this was not included.

Q: But you've reviewed all the records ---

A: Yes.

Q: --- before you came into the courtroom yesterday?

A: Yes.

Q: I mean, you've testified to that.

A: Uh-huh (affirmative response).

Q: You're the person that the St. Clements Homeowners Association chose to testify. In fact, you're the only person that the St. Clements Homeowners Association chose to testify.

A: Uh-huh (affirmative response).

Q: You are the only person who's reviewed these records to testify.

A: Uh-huh (affirmative response).

Q: So my question would be, again, in reviewing those records, it's your testimony that St. Clements Homeowners Association, Inc. was aware of the side deck issue in 2003, when it sued BE-MI, Inc. concerning the pool bar, but decided that it wasn't important enough then to sue BE-MI, Inc. concerning the side deck; is that correct?

A: I would not say -- It may not have been important, but they're also separate issues. They were two different issues. One was the operation of the pool bar, and this is an encroachment issue. So they're two different issues.

Q: Well, now, I don't want to put words in your mouth. I mean, it would have been so simple to

have added them both in the lawsuit.

A: After the fact, that seems true, but they were different issues, and I don't know if was advice of an attorney, I don't know what happened, but I just know that this wasn't included.

Q: But you were a homeowner at the time?

A: Yes.

Q: And you were visiting the property fairly regularly at the time?

A: Well, I still lived out of state, but yes, I came, you know, several times a year, probably.

Q: And now that you're on the board, have you asked any of the prior board members why that issue wasn't joined in that prior lawsuit?

A: On the advice of the attorney, it was considered to be two different issues.

Q: No.

A: Okay.

Q: Listen to my question ---

A: Okay.

Q: --- very carefully. Now that you're president of the St. Clements Homeowners Association, have you asked any of the prior board members why that issue wasn't joined with that prior lawsuit?

A: Yes.

Q: And what was the answer given?

A: It was two different issues.

Q: Okay, thank you very much. That's all I have. Thank you.

MR. BARNETT: YOUR HONOR, MAY I ASK HER A QUESTION ON THAT?

THE COURT: CERTAINLY.

RE-DIRECT EXAMINATION

BY MR. BARNETT:

Q: Ms. Brown, in speaking to your former board members about the reason for that, did any issue ever come up about whether or not that was discussed with the attorney who handled that case, in other words, did that board discuss with their attorney ---

A: Yes.

Q: --- the issue whether the side deck should be included in that lawsuit?

A: Yes.

Q: And did any of those board members explain to you or tell you what that attorney may have advised them with regard to whether the side deck should be included?

A: Yes.

MR. NEWBY: YOUR HONOR, HE'S NOT ONLY

LEADING THE WITNESS, HE'S ELICITING HEARSAY EVIDENCE, WHICH I THINK IS INAPPROPRIATE. SHE'S TESTIFIED FULLY ON THIS POINT. I MEAN, THE FACTS ARE PRETTY OBVIOUS ANYWAY, BUT I WOULD OBJECT TO THAT QUESTION OR LINE OF QUESTIONING.

MR. BARNETT: YOUR HONOR, SHE'S JUST TESTIFIED IN REPLY TO YOUR QUESTION ON THIS VERY ISSUE.

THE COURT: I AGREE, BUT YOU ARE LEADING THE WITNESS ---

MR. BARNETT: I'M NOT TRYING TO -- I'M NOT SUGGESTING AN ANSWER. I'M JUST SAYING WAS IT DISCUSSED WITH THE ATTORNEY.

THE COURT: I'M SURE IT WAS DISCUSSED WITH ---

MR. BARNETT: OKAY. AND I'M ASKING ---

Q: Was the issue of whether or not the side deck

should be included, was that discussed with the attorney?

A: Yes.

Q: And do you know what the attorney, did the board members tell you what that attorney said on that issue?

A: Two different issues.

MR. NEWBY: YOUR HONOR, IT'S HEARSAY, WHATEVER THE ATTORNEY SAID. EVEN THOUGH THE ATTORNEY WAS THE AGENT FOR THE POA, AND WHETHER HE OR SHE WAS RIGHT OR WRONG IN THEIR ADVICE, THE BOARD IS BOUND BY IT, AS THEIR AGENT, BUT STILL, HE'S ELICITING HEARSAY.

MR. BARNETT: WELL, I'LL TELL YOU WHY IT'S NOT HEARSAY, YOUR HONOR. IT'S NOT ASSERTED FOR THE TRUTH OF THE MATTER PRESENTED. IT'S NOT ASSERTED AS TO WHETHER THE ATTORNEY WAS RIGHT OR WRONG AS WHAT HE WAS SAYING. THE

QUESTION IS WHY DID THE ASSOCIATION NOT DO SOMETHING, AND THE FACT THAT HE MAY HAVE TOLD THEM SOMETHING, WHETHER THAT'S TRUE OR NOT TRUE, BEARS ON WHY THEY DID OR DIDN'T DO SOMETHING.

THE COURT: AND I THINK SHE'S TESTIFIED THAT, I DON'T KNOW WHETHER THE ATTORNEY TOLD THEM THAT, BUT THE PRIOR BOARD MEMBERS HAVE TOLD HER THE SAME THING, THAT THEY CONSIDERED IT TWO DIFFERENT ISSUES.

Q: Is there any, I'm just asking, is there any other reason, other than it was two different issues, that you garnered from your discussion with them?

A: Two different, but also the one seemed to be the, the most immediate problem at the time.

Q: Thank you.

THE COURT: I BELIEVE YOU SAID YOU MAY HAVE ANOTHER REPLY WITNESS, MR. BARNETT?

MR. BARNETT: I DO, ONE.
THE COURT: ALL RIGHT, THANK YOU VERY MUCH. YOU MAY CALL THAT PERSON.
MR. BARNETT: THE PLAINTIFF CALLS LEON BECHTEL TO THE STAND.
LEON BECHTEL, AFTER HAVING BEEN CALLED TO THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:
DIRECT EXAMINATION
BY MR. BARNETT:
Q: Mr. Bechtel, are you an owner at St. Clements?
A: Yes, I am.
Q: And when did you purchase your unit at St. Clements?
A: December of '87.
Q: All right, sir. So you were one of the very first owners; is ---
A: Correct.
Q: You've owned a unit there continuously, at all times since then?
A: Correct.
Q: And have you ever served on the board of directors for the association, the plaintiff in this case?
A: Yes, I have.

Q: When were you first elected to the board?
A: I was elected at the first elected board, and that was in 1988.
Q: All right. And ---
A: November of 1988.
Q: And between the time of the filing of the Master Deed in December of '87 and your election in November of '88, who served on the board during almost that one year?
A: That was an appointed board, and that was Dwight Cox, Guy Collins, and Charlotte Collins.
Q: And did you attend the annual meetings of the members in November of '88, '89, and 1990?
A: Yes, I did.
Q: Hand you what has been marked Plaintiff's Exhibits 3, 3A, and 4 and ask you if you recognize those as the minutes of those three annual homeowners meetings.
A: (Pauses while reviewing documents.)
Q: Are those the minutes of those meetings?
A: Yes, they are.
MR. BARNETT: MOVE TO INTRODUCE THESE INTO EVIDENCE, PLEASE.
MR. NEWBY: MR. NEWBY, ANY OBJECTION TO 3, 3A, AND 4?

MR. NEWBY: I DON'T HAVE ANY OBJECTION, YOUR HONOR.

THE COURT: SO ADMITTED.

PLAINTIFF'S EXHIBIT NUMBER 3

PLAINTIFF'S EXHIBIT NUMBER 3A

PLAINTIFF'S EXHIBIT NUMBER 4

ADMITTED INTO EVIDENCE

Q: And how many board members does the St. Clements have or did it have during these early years?

A: Three.

Q: And who was elected along with yourself at the 1988 meeting?

A: Marshall Melton and Randolf Morgan.

Q: And the three of you served a two year term?

A: Correct.

Q: So those were the three directors from November of 1988 until November of 1990, when the next annual meeting was held?

A: That's correct.

Q: I'm sorry. That's not when the next annual meeting was held, the next election of directors?

A: Elected directors.

Q: All right, sir. And during your term on the board, and I'll just talk about that first term because that's when the issues in this case were

involved; during that term, your election, between 1988 and November 1990, did you attend all the board meetings that were held during that two years?

A: Yes, I did.

Q: All right, sir. And were board meetings held from time to time, either in person or by telephone?

A: Yes.

Q: And what sort of things were discussed at those board meetings?

A: Late fees, delinquent homeowners on their association dues, financial concerns, onsite issues that were just kind of normal.

Q: All right, sir. And Hurricane Hugo, I think we all remember, was in September 1989. After that, were any issues hurricane related discussed at the board meeting?

A: Lots of, lots of -- Everything was in the air when Hugo hit, so the board and property managing company, and we were all scrambling to, to reconnect the pieces.

Q: All right, sir. And at any time during any of the board meetings between your election in November of 1988 through November of 1990, did

the board ever vote to approve the construction of the side deck by the defendant in the parking lot?

A: No.

Q: At any time during any of those meetings, was there ever any discussion of the construction of such a side deck?

A: No.

Q: At any time at any of those meetings, was there ever any mention of any kind of that side deck?

A: No.

Q: Or of any request by the defendant to construct it?

A: No.

Q: When did you first become aware that a side deck was being proposed or constructed, this side deck, the side deck at issue in this case?

A: The first time I heard anything about it was in the middle to the latter end of July of 1990, when friends of ours, actually I sold them a unit in St. Clements, they were vacationing down here, and they came back and informed me that, they said, "What's Luke built on to his shed?" They used the word "shed."

And I said, "I don't know what you're

talking about," and then they described it to me, and I said, "Well, we're going to be going down for two weeks. Our August, that's when we go on our vacation, and so I'll take a look and see what's going on."

Q: And did you come down in August of 1990?

A: Yes, I did.

Q: And what did you observe at that time?

A: I observed a completed awning and deck.

Q: Were there any board meetings between August of 1990 and the annual election in November of 1990?

A: Yes. I believe there were.

Q: And do you recall whether or not this deck issue came up at any of those board meetings?

A: This deck issue did not come up.

Q: Okay. Did it concern you or not concern you that the deck had been constructed?

A: It did, and we were in, we were in a sequence there of needing to find, secure another property management company. We just came through the Hugo dilemma, and so on the priority list of pursuing the actual cause of it, it was not on the, on the first priority.

Q: And did you discuss the deck issue with any board member or prospective board members that might

have been running at that time?

A: Yes.

Q: Who did you discuss it with?

A: Well, actually, Dr. Clements approached me and wanted to know what I knew was going ---

MR. NEWBY: YOUR HONOR, I'M GOING TO OBJECT TO ANY HEARSAY FROM SOMEBODY NOT IN THE COURTROOM AND NOT HAVING TESTIFIED.

MR. BARNETT: YOUR HONOR, THE ISSUE, I THINK, IS, WAS THE BOARD CONCERNED ABOUT IT AND HOW WAS IT BROUGHT TO THEIR ATTENTION.

THE COURT: MR. BECHTEL, PLEASE DON'T TESTIFY AS TO WHAT DR. CLEMENTS SAID TO YOU.

MR. BECHTEL: OKAY.

THE COURT: AS A RESULT OF WHAT DR. CLEMENTS SAID TO YOU, YOU CAN TESTIFY AS TO WHAT ACTIONS YOU TOOK.

Q: Let me just follow-up then, Mr. Bechtel. The next election after you served that two years was

held in November of 1990 at the annual meeting?

A: Correct.

Q: And who were the three directors elected in November of 1990?

A: Myself and Dr. Clements and Marshall Melton.

Q: And following Dr. Clements' election to the board, did the board obtain any further information about this, did anyone else bring it to the attention of the board that this had been constructed?

A: There was, there were a number of concerns voiced to the board.

Q: Let me show you what's been marked Plaintiff's Exhibit Number 5, which was the November 21, 1991, letter from the property manager to the board and ask you if you recognize that.

A: (Pauses while reviewing document.) Yes, I do.

Q: And did you receive your copy of that letter?

A: Yes, I did.

Q: And is that the letter where -- Would you publish, starting with the third line in the last full paragraph?

A: "Does Luke have specific written approval from the Homeowners Association or the developer which gave him permission to occupy two parking spaces?

Further, was this approved by the City of Myrtle Beach since normal and certain numbers of parking spaces are required based upon the size of the condominium development?"

Q: And as a result of that letter to the board members, did the board receive any information that indicated that the defendant, in fact, had permission to build the side deck?

A: No.

Q: And I'll show you then what's been marked as Plaintiff's Exhibit Number 6, which was a letter from your property manager to Mr. Goude, and ask you if you received your copy -- and it shows a carbon copy going to the board members, and ask you if you received your copy of that letter at the time?

A: Yes, I did.

Q: And would you read the next to the last paragraph, publish the next to the last paragraph there on page one?

A: "On another issue, several homeowners have questioned your authority to utilize two parking spaces. Have you received written approval from the Association or the developer for said permission? As limited as parking spaces are, we

would like to resolve this matter as soon as possible."

Q: And as a result of that letter, did the board receive anything in writing from anyone as to whether or not he had such permission?

A: No.

Q: All right. Did any of the board members respond to either of these two letters, to the rest of the board, as to whether or not they had knowledge of this?

A: No.

Q: And I'll show you then what's been marked as Plaintiff's Exhibit Number 7, which is a letter from your property manager to the defendant, March 27, 1991, and ask you if you received, and it was carbon copied to the board members, and ask you if you received your copy of that letter at the time that it went out.

A: Yes.

Q: And would you publish the sentence starting in the middle of the next to the last paragraph, beginning on the right with the word "Even"?

A: "Even though you have assured me verbally that you have written permission for the parking spaces and the vending rights, would you please

help us update the Homeowners Association's files by supplying us with these written documents? Do you have" -- "Do you also have the same for the storage area in the basement?"

Q: And as a result of that letter, did the board receive any written documents from anyone indicating that the defendant had permission to occupy those two parking spaces where the side deck's located?

A: No.

Q: And as a result of any of these three letters, did any of the board members bring to the board's attention any knowledge that they may claim to have had as to whether or not the defendant had any permission to use those spaces where the pool deck was constructed?

A: No, not to my knowledge.

Q: And was Marshall Melton one of the board members at the same time all three of those letters went out?

A: Yes.

MR. BARNETT: NO FURTHER QUESTIONS.

THE COURT: MR. NEWBY?

CROSS EXAMINATION

BY MR. NEWBY:

Q: Good morning.

A: Good morning.

Q: Do you pronounce it Bechtel or Bechtel?

A: Bechtel, but I'm flexible.

Q: What's that?

A: I'm flexible.

Q: That's good. It pays to be flexible, I've learned. Mr. Bechtel, how many times have you served on the board?

A: Six years, two -- three, three two-year terms.

Q: What offices have you held during your ownership period at St. Clements?

A: Vice-president and secretary/treasurer.

Q: Have you held either one of those positions more than once?

A: I don't recall.

Q: Are you on the board now?

A: No.

Q: When was the last time you were on it?

A: '87 and '88, 2087 and -- 2007 and 2008.

Q: So just last year, you were on the board?

A: Correct.

Q: That means you were on the board during the period of time that included the previous lawsuit, were you not? At least before the last

lawsuit ended, were you elected to the board? Do you recall?

A: I don't recall that.

Q: Did you testify at the previous ---

A: No.

Q: --- trial?

A: No, I did not.

Q: All right. Now, there have been questions asked this morning about the Plaintiff's Exhibits 5, 6, and 7, which you were shown. I'm not sure where they are now. Here they are. And you were asked to read certain portions that relate to the side deck.

A: Uh-huh (affirmative response).

Q: You're familiar with those letters, are you not?

A: Yes.

Q: So would you agree with me that there's absolutely no question that you and other members of the board knew of the existence of this side deck at least as early as 1991?

A: Could you restate that?

Q: You and other members of the board knew of the existence of this side deck at least as early as February of 1991?

A: Yes.

Q: And, in fact, you testified that you actually had learned of it as early as July of 1990?

A: Correct.

Q: When some friends told you about ---

A: Verbal, correct.

Q: And then you came down a few weeks later or a month later or whatever and saw it yourself?

A: Correct.

Q: Now, during the period that followed Hugo, am I correct that there was damage to the St. Clements?

A: Yes. There certainly was.

Q: And there were issues relating to insurance coverage, right?

A: Correct.

Q: You weren't sure whether you were going to get the insurance payment that you hoped to get and there was a big dispute with the carrier, things about the elevation certificates and all of that; am I right?

A: Correct.

Q: And then you had further disputes about who was going to fix it and how it was going to be fixed and how much it was going to cost to fix it?

A: Correct.

Q: Do you remember that Bill Benik, with Scottish Insurance, was your insurance agent at the time?

A: That's my recollection.

Q: All right. Do you remember that he and Dwight Cox personally went to Washington to meet with FEMA about the insurance?

A: They reported that.

Q: All right. You have no reason to disagree with that, do you, ---

A: No.

Q: --- not disbelief? In the minutes that you brought today, do you see anything that authorizes them to go to Washington and discuss your insurance coverage issues?

A: No.

Q: Did they do it without it being in your minutes?

A: They reported that they went.

Q: All right. The board didn't object to that, did they?

A: No.

Q: They let them do it and negotiate on behalf of the board, didn't they?

A: I don't know that they negotiated on behalf of the board.

Q: Were they trying to get more insurance money?

A: Not -- I wasn't there. I don't know what their goals were.

Q: You don't?

A: No.

Q: You have no idea why they went up there?

A: Well, there was a dispute, and, and they were trying to figure out, there was elevation issues. There was a whole lot of things, and so I really can't tell you that I know what their ---

Q: You don't know that they were up there trying to get more insurance money to fix the St. Clements?

A: I don't know if it was just St. Clements. They were -- Was it just the St. Clements they were representing? I don't know that. I don't know who they were representing, if it was just St. Clements or if it was in an official capacity. I can't tell you that I know that.

Q: Well, even if it wasn't just St. Clements, they were also trying to get money for St. Clements, weren't they?

A: That could have been. I can't tell you that I know that.

Q: So you know all about this deck in 1990, 1991, but you just can't remember if Bill Benik and Dwight Cox were trying to get money to repair the

building after Hugo?

A: Well, I thought we had insurance coverage. So I'm not quite sure why, I don't, I'm not an insurance expert.

Q: Hugo was a pretty big deal, wasn't it?

A: What was a big deal?

Q: The damage to the building.

A: Yes. It was a big deal.

Q: A lot bigger and more expensive deal than this side deck, wasn't it?

A: It certainly was.

Q: But you remember all about the side deck, don't remember anything about the Hugo insurance claim?

A: As, on the board, different of us took different aspects of it. That was not one of the things that I specifically held onto.

Q: I see. Well, let me ask you this. Did you object to Dwight Cox -- By the way, Dwight Cox was no longer on the board at that point, was he?

A: No.

Q: Did you object to him going up there and trying to get more money for the POA?

A: No.

Q: You've testified that you don't recall there being any formal board meetings where this side

deck was approved.

A: Correct.

Q: And I think you even testified you don't recall any formal board meetings where it was discussed?

A: Correct.

Q: All right. Have you ever heard the term "apparent authority"?

A: Can't tell you that I did.

Q: Have you ever signed a contract with a company, with the president of a company?

A: Yeah.

Q: Ever had a verbal agreement with somebody who works for a company?

A: Yes.

Q: What business are you in?

A: Real estate business.

Q: And how long have you been in that business?

A: 25 plus years.

Q: I'll bet you've had a lot of verbal agreements that you relied on in 25 years. Would you agree with that?

A: Not without following up in writing.

Q: Never have?

A: I don't recall.

Q: Don't recall ever doing it. Every agreement

you've reached in your 25 years has been reduced to writing. Is that what you're ---

A: No, no, no. That's not what I'm saying.

Q: If you reached an agreement with a company, with the president of a company you do business with, would you expect that that president would have the apparent authority to ---

MR. BARNETT: YOUR HONOR, I MUST OBJECT. THE ISSUE IS THIS LAWSUIT, THIS ASSOCIATION. WHATEVER HE MAY OR MAY NOT HAVE DONE IN HIS BUSINESS IN THE PAST IS NOT RELEVANT TO THIS LAWSUIT. THE LAW IS WHAT THE LAW IS. HE'S TRYING TO GET INTO SOME LEGAL MATTERS BY TALKING ABOUT HIS BUSINESS OVER THE YEARS AND OTHER MATTERS. IT'S IRRELEVANT.

THE COURT: OVERRULED. IT'S CROSS EXAMINATION.

Q: Would you expect that if you entered into a verbal agreement with the president of a company that he would have the authority to agree with

you?

A: Yes.

Q: And that's a normal and reasonable expectation, is it not?

A: In some cases, not in all cases.

Q: Have you noticed that the policies of your board of directors of this POA have changed from year to year as the membership changes?

A: Sure.

Q: And that, too, is normal, isn't it?

A: Yeah.

Q: No two people think exactly alike, would you agree?

A: I would agree with that.

Q: And no two groups of people would then think exactly alike, would they?

A: Correct.

Q: So from year to year, some boards might be a little more relaxed in their procedures and some boards may be more formal in their procedures. Would you agree with that?

A: Correct.

Q: And that's true with this homeowners association, isn't it?

A: Yes.

Q: So the fact that one group tends to be less formal and one group tends to be more formal does not take away from their authority, does it?

A: No.

Q: Have you followed the rental history at St. Clements?

A: No.

Q: Do you rent your unit?

A: Yes.

Q: Do you have more than one unit?

A: No.

Q: And how have the rentals been in the last few years? Has there been a trend up or down?

A: What years are you referring to?

Q: Well, let's start with this year, 2009.

A: I had a good year this year.

Q: You did?

A: Yeah.

Q: Do you think the entire property did?

A: Say that again.

Q: Did the entire property, the entire St. Clements have a good year ---

A: I don't know what they did.

Q: --- for 2009? How about 2008?

A: Not a good year.

Q: Less traffic?

A: Less traffic.

Q: So, this year, despite the recession, has actually been up in your personal experience?

A: Well, actually, we made a rental property managing decision. It's no longer with the Caravelle. So there can be reasons other than the economy, because we made a rental change.

Q: And my question was, not withstanding the recession, you personally have had a good year this year?

A: Yeah.

Q: How about '07?

A: Are you talking rental history?

Q: Right.

A: I don't recall.

Q: It varies from year to year, does it not?

A: Yes.

Q: And your traffic and the occupancy rate and all that depends on lots of factors, like competition, the weather, how many people are in town, terrorism, all kinds of things affect that, don't they?

A: Gas prices.

Q: Gas prices. So there's no way to know from year

to year whether the top deck is going to be full of cars or the bottom deck is going to be full of cars, is there?

A: No way of knowing.

Q: When you were a board member and an owner, did you keep a car covered up in storage in the basement?

A: Yes.

Q: How long did you keep your car there?

A: Three, four years.

Q: Three or four years?

A: That's a guess.

Q: Could it be more?

A: Could be.

Q: And during the time that your car was being stored in the basement, that parking space was unavailable to renters or people who wanted to go to the pool bar or anybody else that needed a parking space; would you agree?

A: That's correct.

Q: And how many other cars were like that, being kept out there by owners or renters or whatever?

A: It varied. I'm, I'm going to guess, the most at any one time, in my recollection, would be four or five, at the most.

Q: Does that include the one that's there now?
A: I don't think it includes that one, no. It may. It may. I don't recall that.
Q: Okay, four or five or six, if we add that one?
A: It's a guess.
Q: So would you agree that for a period of years, the board, as it fluctuated in membership from time to time, chose not to enforce any rule or regulation or policy to require those people to move their vehicles?
A: Correct.
Q: And at the same time, they chose not to file any action or lawsuit against BE-MI over the deck; is that correct?
A: That's correct.
Q: And, in fact, from 1990 until this case was filed, the POA has brought no lawsuit against BE-MI over the side deck, has it?
A: No.
Q: Do you remember there being a camper stored in the basement for a time?
A: I don't recall a camper. I remember, you know, a trailer.
Q: Okay. And how long did that stay there?
A: I can't tell you that I know how long that was.

Q: Did the board sue anybody to move that, to your knowledge?

A: Not to my knowledge.

Q: Can you recognize that picture?

A: Yes.

Q: Is that the ---

A: That's what I was referring to.

MR. NEWBY: YOUR HONOR, WE'LL OFFER THIS PICTURE INTO EVIDENCE.

HE'S IDENTIFIED IT.

MR. BARNETT: NO OBJECTION.

THE COURT: ALL RIGHT. IT WILL BE DEFENDANT'S EXHIBIT 17, WITHOUT OBJECTION.

DEFENDANT'S EXHIBIT NUMBER 17 ADMITTED INTO EVIDENCE

Q: Mr. Bechtel, do you know who owned this, whether it's a camper or a trailer, and frankly, I can't tell, do you know who owned that?

A: No, I don't.

Q: Is it your assumption that it was a homeowner?

A: I can't assume that either. I don't know.

Q: So, over the years, the board, in its various make-ups, chose not to sue anybody over the four, five, or six cars that were stored down there and

it chose not to sue anybody over the trailer or camper that was stored down there; is that accurate?

A: In my recollection, I'm not aware.

Q: And they chose not to sue Mr. Goude and his company over the side deck during that same period; is that right?

A: That's correct.

Q: And to this date, they've not sued anybody over parking issues, other than Mr. Goude, have they?

A: Over parking?

Q: Yes.

A: Not over parking.

Q: You either were, have been, or still are a patron of the pool bar, are you not?

A: Yes.

Q: And have you sat on that deck, the side deck?

A: No.

Q: You never have?

A: Not to my recollection.

Q: Any reason why you haven't?

A: It's just not a very pleasant place to be. Of all the places I can sit at, that wouldn't be where I would choose to sit.

Q: Do other people disagree with you and sit there?

A: Oh, I'm sure they do.
Q: Have you seen people sit there?
A: I've seen a lot of people sitting there.
Q: So a lot of people do like it, they do find it not to be too unpleasant; would you agree?
A: Sure.
Q: And some of those people are owners, are they not?
A: They could be. I don't remember seeing owners there, but they could be.
Q: How about renters?
A: I'm sure there's renters.
Q: Is there any other place to sit outside at the St. Clements when the weather is inclement, that you can get out of the weather, other than on that covered deck?
A: Just around the pool.
Q: Is it covered?
A: No.
Q: Okay. So you can sit out in the rain at the pool, but you can't find anyplace to get out of the rain other than this covered deck, right?
A: Under the, under the overhang going into the lobby, you could.
Q: So you could sit there in the loading zone, I

guess?

A: Yeah.

Q: Okay.

MR. NEWBY: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: MR. BARNETT?

MR. BARNETT: YES, YOUR HONOR.

RE-DIRECT EXAMINATION

BY MR. BARNETT:

Q: Mr. Bechtel, Mr. Newby asked you about whether or not there had been any action taken against people who were parking for long periods of time in the parking lot in the past years, and I show you what's been marked Plaintiff's Exhibit Number 12, which was a parking policy adopted in 2006.

A: Okay.

Q: And I believe the policy is the next to the last paragraph there.

A: "If an owner has a car parked at the St. Clements and rents/lets others use his condo, he will have to remove his car from the property from Memorial Day through Labor Day so that the required number of parking places are available.

"Owners will be notified of this new policy."

Q: And prior to the enactment of that parking policy in 2006, to your knowledge has there ever been a parking policy adopted by the board that would have prevented people from parking in spaces for an extended period of time?

A: Not that I'm aware of.

MR. BARNETT: NO FURTHER QUESTIONS.

RE-CROSS EXAMINATION

BY MR. NEWBY:

Q: Mr. Bechtel, it now been three years since that policy has been adopted. Has that fellow who continues to park his car down there been sued over it?

A: Not to my knowledge.

MR. NEWBY: THAT'S ALL.

EXAMINATION

BY THE COURT:

Q: I have some questions, Mr. Bechtel. You said you didn't testify in the prior lawsuit; is that correct?

A: That's correct.

Q: But you did sign an affidavit. Do you recall that?

A: I don't recall that.

Q: You and your wife both signed affidavits.

A: Okay.

Q: You don't recall either one of those?

A: I don't, but -- What's the date, what's the year on that again?

Q: Well, the affidavits were signed September 16th, 2003.

A: 2000?

Q: 2003.

A: 2003.

Q: Yes, sir.

A: That was, that was probably, our son passed away in 2002, and so there was, there was a space of time there where we were pretty disconnected, and I believe that falls into that, into that trial.

Q: It looks as if you both signed them here in Horry County.

A: Okay.

Q: Your affidavit says that, "He and his wife are unit owners at the St. Clements," that, "The St. Clements Beach Bar & Grill hours of operation past midnight are a problem due to the noise related issues," that, "Bar patrons and/or guests sit on the railing at the beach access, making ingress and egress difficult," and that he is not in favor of closing this access to the beach, and

your affidavit, your wife's affidavit, the affidavit of Nancy M. Landis, for Ruth Ann Moyer, of Rand Burgee, Sheila Benton, James Moyer, a Mary Ann Craig were all attached to the summons and complaint in that lawsuit. Are any of those people I just mentioned in this courtroom today ---

A: Yes.

Q: --- besides you and your wife?

A: Yes.

Q: Who else is in the courtroom today?

A: Nancy Landis. Did you say James Moyer?

Q: Yes, sir.

A: He's here. I think that's all that I can recall.

Q: Can you tell me, in your opinion, why this lawsuit was not brought for 15 years?

A: As I think of the Hugo, I think, in, when it all happened, when it started, we're just like a new family, we were all new owners and we were excited and we were friends and we wanted to make it all work, and Luke was a part of that happy family in the beginning. And when Hugo hit, no more than we got out of the ground, Hugo hit, and we were devastated, and so it pulled us together, and so we were trying to work things out.

We weren't trying to, to create issues and legal things right as soon as we got started, and that was disappointing to us, that we needed -- and put in the position right after Hugo, that we were put into a position we had to take legal action against what we felt was our friend.

And so the board changes every two years, and it was a lot of work, and there was a lot of, it's, it's tough being on a board at a distance. And so the revolving boards had just, as I talked to different board members, with the legal system and how long it takes, and we just didn't want to go there if we didn't have to. So we tried to resolve things otherwise and hoping time would fix it, but it didn't seem to work that way.

Q: Did you ever talk to Marshall Melton about his position, that he has given permission to Luke Goude, BE-MI, to actually build this side deck?

A: I did not personally, but Dr. Clements said he did.

Q: Did you or anyone else on the board try to stop BE-MI when it actually made improvements to the side deck subsequent to the original side deck construction?

A: Would you say that again?

Q: Yes, sir. That was kind of ---

A: I'm sorry, but ---

Q: --- discombobulated. It's my understanding that BE-MI actually made some improvements to the side deck.

A: Correct.

Q: I'm not sure exactly when. Do you know if you or any of the other board members actually tried to stop BE-MI when it made those improvements to the side deck?

A: No.

Q: That's all I have. Thank you.

A: Okay. Thank you.

THE COURT: ANYBODY HAVE ANY FOLLOW-UP QUESTIONS?

MR. NEWBY: NO, THANK YOU.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

MR. BARNETT: YOUR HONOR, I HAVE JUST ONE FOLLOW-UP QUESTION.

RE-DIRECT EXAMINATION

BY MR. BARNETT:

Q: Did you or any of the board members observe those improvements being constructed before they were finished?

A: I'm not aware of that. I wasn't.
MR. BARNETT: THAT'S ALL FOR ME.
THE COURT: YOU DON'T RESIDE HERE IN HORRY ---
MR. BECHTEL: NO. THAT'S CORRECT.
THE COURT: THANK YOU, MR. BECHTEL.
*****OFF THE RECORD*****
(ON THE RECORD)
THE COURT: DID Y'ALL WANT TO MAKE ANY KIND OF CLOSING ARGUMENT?
YOU DON'T HAVE TO IF YOU DON'T WANT TO.
MR. BARNETT: YOUR HONOR, WE VERY MUCH WOULD LIKE TO MAKE FULL USE OF OUR CLOSING ARGUMENT OPPORTUNITY.
THE COURT: OKAY, VERY WELL.
MR. BARNETT: AND WE HAVE NO FURTHER WITNESSES. THAT'S OUR CASE. THANK YOU.
THE COURT: ALL RIGHT. GO AHEAD, MR. BARNETT.
MR. BARNETT: THANK YOU, MA'AM.
THE COURT: IT MAY ACTUALLY HELP ME.
MR. BARNETT: I'M SORRY?

THE COURT: I SAID IT MAY ACTUALLY HELP ME.

MR. BARNETT: I HOPE SO, YOUR HONOR. THAT'S MY INTENTION.

THE COURT: ALL RIGHT.

Mr. Barnett: Your Honor, as you well know, the facts in this case are pretty straightforward. The defendant constructed the side deck in the paved parking lot, in a Common area of this condominium, in 1990. He claims to have had the consent of Mr. Cox and/or Mr. Melton to do that, but there's no evidence anywhere to indicate that there was ever any written consent given by the board of directors of this association for the construction of that side deck.

He built the side deck for the sole and exclusive purpose of conducting -- of expanding his pool bar business on the premises. It's clear he used it for commercial activities. He had a bartender there. His customers sat down and ate there. His staff cleaned it from time to time. He said it's an important part of his business. So there's no question about that.

It's also clear that it took out of use, for parking purposes, two parking spaces. Now, there's been some quibbling by Mr. Goude that it's one and a half spaces. It may only cover one and a half spaces, but obviously, by doing so, it took out of use two full parking spaces. A half car can't park, can't park a car in half a parking space. So, it effectively took two of the condominium's 70 parking spaces.

It's also clear that the Myrtle Beach zoning ordinances, in effect at the time the condominium was built, required 70 parking spaces and that, if anything, that requirement has been increased over the years, but of course, if it has been increased, and it has been, that this St. Clements property is grandfathered so that the city cannot come in and try to close them down because they can no longer meet the later requirements, but only, and this is key, only if they maintain and keep the 70 spaces they had to begin with. That's an important issue here I'll come back to.

Multiple times, multiple times over a period of years, the association repeatedly

asked Mr. Goude to provide them with some evidence of the approval that he kept telling them he had from the association to build this deck. If we talk about coming into court and clean hands, he's telling them he has something, that he has this written permission, but he doesn't have it, and he repeatedly tells them he had it, but he never, and he admits on the stand, he's never had any written consent of the board for this, and the board, again, repeatedly asked for it, and so the plaintiff, of course, denies that any such consent was given.

What we have is the testimony of two people, two witnesses. We have the testimony of the defendant, who of course went out and built it, and let me say, it was built in a very short period of time. It's not something that the board had advance notice of, that took time, that they could observe, they could have come out and stopped. It was put up very quickly. It was a wooden deck and then they put some awning on it, and of course, he has much to gain by saying, "Yes, I had consent." And we have the testimony of Mr. Melton, who

said, "I gave consent," but even Mr. Melton didn't say that the board ever approved it. And we've got the direct testimony of one of the three board members, who was on the board at the time in 1990 when the consent was alleged to have been obtained, who says he attended every board meeting, that he participated, and that this issue of the side deck not only was never approved, it was never brought up by anyone at the board meeting, including Mr. Melton, who testified that he gave the consent. And I would point out also, Your Honor, and I think it's quite telling, that if you recall, from the three letters that are Plaintiff's Exhibits 5 through 7, that we've alluded to several times, at which the question, and these are February and March of 1991, the issue came up of whether or not there was in fact any written consent, or any consent, by the association or by the board to Mr. Goude constructing this side deck, that all three of those letters, February 21, February 26, March 27, 1991, all three of those letters went to Mr. Melton, who was one of the board members at the time, who does not deny, when I

asked him on the stand did he receive them, Mr. Bechtel, who was on the board, says he did receive them. Mr. Melton doesn't deny he received them, the letters say they were sent to the board members, and they're all asking, "Show us some proof. How did you get permission? Where did the permission come from? What permission" ---

THE COURT: THOSE WERE ASKING FOR WRITTEN PERMISSION.

MR. BARNETT: WELL, THEY'RE ASKING -- THE FIRST QUESTION -- LET ME JUST READ IT. YOU'RE CORRECT, YOUR HONOR. THEY ALL ASK FOR WRITTEN PERMISSION,

Mr. Barnett: And they all ask for written permission, and at no time, at no time, according to the testimony of the director who served during that entire term, did Mr. Melton ever step forward and say, "Look, Guys, I gave him permission," you know, "Don't y'all remember the board voted on it? I gave him permission. It's something we voted." At no time did he ever do that. He never, he never

-- And the letters kept going out. Even as he was aware of it, they kept asking him, and if he had given such permission, I submit to you that he would have said something at that time. And I would remind Your Honor that this is the same witness who admits that he is under an injunction by the Securities and Exchange commission issued in the 1990's to not violate anti-fraud provisions or to have any dealings with any brokers or agents.

THE COURT: THAT'S A CONSENT INJUNCTION

Mr. Barnett: Absolutely. And I submit to you that they don't issue those things, whether by consent or otherwise, unless there's a question of someone's integrity, and I think that applies here, as to his believability as a witness. He couldn't even remember, he doesn't remember when he was elected, he didn't remember who the board members were. He has excellent recollection about, you know, "I gave him this permission," but ---

THE COURT: MR. BARNETT, IF YOU'LL RECALL, YOUR OWN WITNESS

COULD NOT RECALL EVEN

SIGNING AN AFFIDAVIT IN
SUPPORT OF A LAWSUIT THAT
WAS BROUGHT IN 2003.
MR. BARNETT: HE DOESN'T DENY ---
THE COURT: HE DOES NOT RECALL EVEN
SIGNING THE AFFIDAVIT.
MR. BARNETT: I UNDERSTAND, YOUR HONOR.
THE COURT: MY POINT IS, YOU KNOW, THAT
PEOPLE FORGET THINGS, AND

MR. BARNETT: GRANTED, YOUR HONOR,
GRANTED, GRANTED.
Mr. Barnett: That doesn't change what I was saying earlier, however, about when all this came up and these letters were going out and he was receiving them, that he never brought it to anybody's attention. It wasn't a question of forgetting that. That was occurring over a period of months. He never raised it to the board, that, "I'm the one that gave the consent."
THE COURT: I UNDERSTAND.
Mr. Barnett: Now, the key issue in this case really is the very clear law involved, and that's why I want to take the full opportunity to make

this argument to you, if I may, Your Honor, is that the law involved with these facts cannot be clearer. And the law is, and I will tell you some of it, I won't restate all my brief, Your Honor, but I would refer to certain specific portions of it.

There are at least three laws that are being violated by what's happened here. The first is the Horizontal Property Act, which is a statute, of course, peculiar to condominiums; and it says in section 27-31-80. "Each co-owner may use the elements held in common in accordance for the purpose for which they are intended, without hindering or encroachment upon the lawful acts of the other co-owners." So, by statute, by statute, and also, of course, it goes, just so you'll know, in article 5.0d of the master deed, the general common elements include all parking and drive areas. There is no question that under the terms of the master deed, the place where this side deck encroaches is an encroachment upon a common element which, by statute, must be maintained without encroachment for use of all the co-owners. That's statutory, Your Honor,

and I submit to you that the association, regardless of who may or may not have given consent, cannot change that statutory obligation that the Horizontal Property Act requires.

The next section that I would point out in the Horizontal Property Act is that, "each co-owner shall strictly comply with the covenants and conditions and restrictions of the master deed, and failure to comply shall be grounds for recovery of an injunction or other relief by the board administration."

You go further into the master deed, now, we have the statutory prohibition that takes priority. As Your Honor knows, there's sort of a chain of priority in condominium documents. You start with the Horizontal Property Act, which takes priority if there's a conflict with the others, you go to the master deed, which takes priority, and then you go to the bylaws if there are conflicts. In this case, I don't think there are conflicts. They're just supplemental.

The master deed also provides, in article 6.2, "Common elements, the general

common elements and facilities shall be, and the same are herby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners for all proper and normal purposes." Again, that's a perpetual easement. You have a parking lot, a striped parking space, from the very day it opened, it was a parking space, and all the owners have a perpetual non-exclusive easement to use that for that purpose.

7.0, "Restrictions on use," "All laws and zoning ordinances shall be observed. No unlawful use may be made of the common area, and all laws and zoning ordinances shall be observed." I submit to you that when the defendant came in and encroached upon the city approved and required parking, he violated the zoning laws by doing so.

The next applicable section, which I think is, again, one of the big ones, there are many big ones, but in 7.0, subparagraph d, "No owner shall cause any improvements or changes to be made to the exterior of the condominium," et cetera, "or the appearance of the exterior of any building without the written consent of

the board of the association first had and obtained. No unit owner shall cause any object to be affixed to common areas or in any manner change the appearance of the common areas without the written consent of the board of the association first being obtained." There is no evidence of record that the written consent of the board of this association was at any time ever given for this encroachment, and it's required to be given by the master deed. And both the master deed and the Horizontal Property Act require that all owners comply with the master deed.

The next applicable provision of the master deed that is violated here is 7.0, subparagraph E, "No business activity of any kind whatever shall be conducted on any portion of the property not designated as a commercial area." And as Your Honor is aware, in this condominium, there are only two commercial areas. There is the pool bar, which consists of that stand-alone building with the common area deck atop of it, and a storage room, which is a commercial area. Those are the only commercial areas anywhere in this St. Clements

horizontal property regime. By constructing the side deck in violation of the master deed, the Horizontal Property Act, the zoning ordinances, and then in addition, the sole purpose and use to which it is being put is to be used as a commercial area is a further specific violation of the restrictions on the use for that property in the master deed, and these are all binding on all owners, including the defendant.

And here's another very important one, Your Honor, is article 7.2 in the master deed, and it's actually in the master deed twice, in 7.2 and in article 14.d. The wording's slightly different, but in 7.2, "The failure to enforce any right, reservation or conditions contained in this master deed, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement."

There's similar language in 14.0, sub d, "The failure of the association or any unit owner to enforce any right, provision,

covenant, or condition which may be contained in this master deed or any of the above mentioned documents, shall not constitute a waiver of the right of the association or to enforce such right, provision, covenant, or condition in the future." And I submit to you, Your Honor, there's a very good reason why this is in this master deed and in most master deeds, and it's been talked about to some extent on the stand, and that is the nature of the beast.

What we have is, in condominiums, is an association which is a non-profit corporation, with unpaid directors who come and go, and in the wisdom of people in drafting these master deeds, and I can't speak for all of them, but certainly in this one, which, by the way, was drafted by the defendant's attorney, they provided for this and provided that if you do fail to act, it's not going to waive your right to do so later. And, in fact, you'll notice that in one of the exhibits, in 1992, Exhibit 10, where the property manager wrote in November of 1992 and sent to the defendant a resolution adopted by the board,

that that resolution adopted by the board in 1992 stated that the side deck was in violation of the master deed, that it altered the exterior portion, it was not with the written consent of the directors, and the last sentence basically quotes or paraphrases those same provisions I'm citing from the master deed, that the failure to enforce any right, reservation, condition shall not be deemed a waiver and shall not bar or affect its enforcement thereafter.

So, as Mr. Bechtel testified, in the '90s, after Hugo, they were, and also as Ms. Brown testified, they were tied up to a large extent, initially, by Hugo and then by this construction litigation, which you may recall, in the '90s, was pretty common anyway along the beach with condominium defects, and they basically sent him a resolution saying, "We know it's illegal, and if we don't act on it now, the law says we can act on it later," and they set it aside for a time.

THE COURT: FOR 15 YEARS.

Mr. Barnett: For a long time, for a long time.

THE COURT: WHAT ABOUT ESTOPPEL? IS THERE ANYTHING THAT SAYS THAT THE ---

Mr. Barnett: Be glad to talk about estoppel.

THE COURT: --- HOMEOWNERS ASSOCIATION CANNOT BE ESTOPPED FROM NOW BRINGING THIS LAWSUIT AND ASKING MR. GOUDE TO REMOVE THIS STRUCTURE, AND I'M NOT SURE THIS STRUCTURE WOULD BE CONSIDERED A TEMPORARY STRUCTURE.

Mr. Barnett: After 20 years, I don't think it's temporary either, Your Honor.

THE COURT: WELL, I JUST POINT THAT OUT BECAUSE YOU QUOTED 7.0(I), "NO STRUCTURE OF A TEMPORARY CHARACTER SHALL BE PLACED ON THE PROPERTY AT ANY TIME."

Mr. Barnett: I cited it in my brief. I didn't quote it in my argument today. I mean, that's just one of, you know, ignore it if you want to. That's not a significant. Let me talk about estoppel in response.

THE COURT: ALL RIGHT.
Mr. Barnett: The law on estoppel is that the claim of estoppel includes elements for the party asserting estoppel and the party estopped. And let's look at the elements that are required to be established, and of course it's the defense's obligation to prove these elements, as to the estopped party. One is a misrepresentation or non-disclosure. There has never been any misrepresentation or non-disclosure by this association. That's number one, there is no such thing.
Number two, the intent to induce the other party to act, ---
THE COURT: WELL, WHAT ABOUT THE FACT THAT MARSHALL MELTON TOLD MR. GOUDE THAT IT WAS OKAY?
Mr. Barnett: He said, "I approved it." He said, "I approved it."
THE COURT: "I APPROVED IT AS A BOARD MEMBER, AS THE PRESIDENT,"

Mr. Barnett: Well, he was the president, and he said, "I approved it." Here's my response to that, Your Honor. Let me find it here. That's

in part of the requirements of the other party, and let me just get to that, and I'll address that. And that's a good question I can respond to it. First of all, our point is no misrepresentation, no intent to induce, and then, this comes to respond to yours, as to the party claiming estoppel, he has to prove three things, and the first one addresses your issue, your question. Lack of knowledge or means of acquiring knowledge of the true facts, well, he's a member of the association, he's bound by the terms of the master deed, and in this case, not only that, he's intimately familiar with it. He was the director of sales when this whole project went up. He said he helped design the thing. He's intimately involved with it, and he's charged, whether he is or not, with knowledge of the master deed. And he either knew or should have known that the master deed requires the written consent of the board of directors. Mr. Melton testified, "I approved it." The master deed does not give to the president of this association the authority to bind the association. It requires the written consent of the board of directors, and

there was never any representation to him that there was ever any written consent of the board of directors to construct something on a common area. So estoppel is not a valid defense for that reason.

THE COURT: OKAY, FOR WHAT REASON?

Mr. Barnett: For the reason that the party claiming estoppel must prove three elements. One is reasonable reliance, three is presidential change of position. But number one, what we're talking about, is that he had lack of knowledge or means of acquiring knowledge of the true facts.

THE COURT: SO YOU'RE SAYING MR. GOUDE SHOULD HAVE GONE TO THE BYLAWS TO DETERMINE WHAT KIND OF AUTHORITY THE PRESIDENT OF THE HOA HAD TO GIVE HIM THE CONSENT ---

Mr. Barnett: I'm saying two things. One is Mr. Melton never told him that the board approved it, he said, "I approved it." And number two ---

THE COURT: BUT SAID, "I APPROVED IT AS THE PRESIDENT OF" ---

Mr. Barnett: Correct. But he never said ---
THE COURT: I MEAN, HE'S NOT JUST ANY JOE BLOW CITIZEN. HE IS THE PRESIDENT OF THE BOARD OF DIRECTORS OF ST. CLEMENTS.
Mr. Barnett: I understand. But what he didn't say is the board approved it. He said, "I approved it." That was his testimony.
THE COURT: BUT HE WAS THE PRESIDENT ---
Mr. Barnett: He was the president. And if this were ---
THE COURT: THAT'S NOT LIKE ME SAYING, "I APPROVED IT."
Mr. Barnett: I understand, and let me distinguish it this way. If this were a situation in which they were asking, "Is it okay if we start selling beach balls on the beach, in front of the beach," or something that was not of such importance that the master deed very explicitly places a high level of requirement of consent, then absolutely, he would've had the right to rely upon what the president told him. If it was something that was within the president's

purview, the normal purview, I agree with it. This is a special case, made special by the terms of the master deed in explicit, explicit terms.

THE COURT: AND YOU'RE SAYING THAT BECAUSE MR. GOUDE WAS A HOMEOWNER, HE SHOULD HAVE KNOWN THAT?

Mr. Barnett: He is charged with knowledge that he either knew or had the means of acquiring knowledge of the true facts. And in addition to that, in this case, he's not just any homeowner, he's the former director of sales for the project, so, and he said he was familiar with the master deed.

So, in any event, whether he was or not, he's charged with knowledge and certainly had, and this is the test, he either lacked the knowledge, which I would submit he didn't lack, he knew it, or, most importantly, or had the means of acquiring knowledge of the true facts. He could very easily have acquired, he certainly, absolutely, no question, had the means of acquiring knowledge of the true facts, and the true facts are the president can't say,

"I approved it." The written consent of the board of directors must be obtained or it's not a valid approval. So estoppel, in this case, cannot apply because of that special provision in the master deed that requires for encumbrances to be placed on the common elements be written consent of the board. And I'm going to go even further than that in a few minutes, but to address that issue, that's the reason why I would argue that estoppel would not apply.

THE COURT: I UNDERSTAND YOUR ARGUMENT.

Mr. Barnett: And then let me go further in the documents that talk about failure to act would not -- and then, in the easements section of the master deed, in 8.0, sub D, "Ingress and egress is reserved for vehicular traffic, for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved or intended for such purposes, for all unit owners of the units at St. Clements," et cetera. Again, here is, by contract, a reservation of record, a perpetual easement granted to all members of the association, all unit owners, for ingress

and egress for vehicular traffic over, through and across the common areas that are paved or intended for such purposes. There's no question that this was a paved common area and that it is subject to a perpetual easement for ingress and egress, and again, I'll get into that a little further in a moment.

In article -- Let me go to the bylaws now and hit another important point about this board. In the bylaws for this association, which are attached to and a part of the master deed, it says, in article VI, subparagraph J,

---

THE COURT: I'M CONCERNED ABOUT INGRESS AND EGRESS. ARE YOU TALKING ABOUT INGRESS AND EGRESS -- EXPLAIN THAT TO ME HERE.

Mr. Barnett: Well, ingress and egress means to come and go, and so the right to come and go for vehicular traffic is reserved across the portions of the common areas and facilities as from time to time may be paved, and in this case, it's not only paved, it was a parking lot, and you'd have to be able to drive in and

out of parking spaces and parking lots to use a parking lot. So, as it applies to this instance, it is clearly an easement reserved to all the owners to be able to drive in to the parking lot, drive in to a parking space, drive out of a parking space and drive out of the parking lot.

And then in the bylaws, article VI, (IV) subsection J. and this again is a very important additional element as to why legally this could not have occurred, "The board of directors shall manage and direct the affairs of the association and subject to any restrictions imposed by law, by the master deed, or these by-laws, may exercise all of the powers of the association."

It is clear from the bylaws that the directors in this association do not have unlimited authority. They can't make any decision for this association and it be binding. Their powers must be exercised subject to the restrictions imposed by the master deed and the bylaws and by the statutes. And I've already cited a statute and the master deed which state that there are restrictions on

how consent may be given for the placement of anything in a common area, that there are easements that are perpetual, that the parking areas are common areas, that the laws must be complied with. You know, this is a very serious, very serious, the potentiality that we have here is that we've got a major oceanfront condominium that slid in in 1987 with what now would be considered very minimal parking requirements, with 70 parking spaces for 66 units, and now two of these have been taken. unless, if the city comes -- and I submit to you, Your Honor, if the city comes in at some point and looks at this and says, "Folks, you no longer have" -- "you're no longer grandfathered because we see now that two of your spaces have been taken."

THE COURT: MR. BARNETT, I DON'T BELIEVE THIS HOMEOWNERS ASSOCIATION OUGHT TO BE FUSSING ABOUT THE TWO SPOTS WHEN THEY ALLOW PEOPLE TO PARK THERE FOR FOUR YEARS AT A TIME. I MEAN, I DON'T BELIEVE THE CITY'S GOING TO

COME IN AND FUSS ABOUT THAT
WHEN THE HOMEOWNERS
ASSOCIATION ALLOWS
HOMEOWNERS TO PARK,
BASICALLY STORE THEIR CARS
THERE FOR FOUR YEARS AT A
TIME.
Mr. Barnett: Your Honor, if I may, respectfully, there's this distinction with the city. That's a valid use of a parking space from the city's standpoint. A car is parked in that parking space. The city is not going to object to that. It's a parking space.
THE COURT: WELL, IT MAY WHEN THOSE
HOMEOWNERS ARE NOT THERE,
WHEN THOSE HOMEOWNERS ARE
IN NEW YORK OR PENNSYLVANIA
OR SOMEWHERE ELSE. I MEAN,
IT MAY ---
Mr. Barnett: I don't know what the city's going to do. I mean, it's certainly use of a parking space by a car, as opposed to the taking of a parking space by the building or structure upon it. There's a distinction. I don't know how the city would treat that, but certainly

there's a distinction. One of them is used as a parking space, where a car is parked, and the other is it's no longer available to park a car. And certainly, in that latter instance, there's that risk. And it's a serious risk because what the city can come in and do is say, "Look, not only are you no longer grandfathered, but now you have these X number of spaces, so you're going to have to shut down X number of units so you can comply with our current parking spaces." We don't want to have to fight that battle, and we shouldn't have to fight that battle.

There's also a section in the bylaws that talks about the bindings and contracts authorized by boards are binding so long as they are within the scope of the powers and in accordance with the applicable condominium documents, which is sort of a restatement of what I said before. Again, we deny there was ever any undertaking or agreement by this association to allow this to begin with, certainly not by the board, which was required by the master deed and the only entity that was authorized and allowed to give it.

And that brings us to this other point I want to make in all this, is that even if, and this is, you know, this is critical, Your Honor, even if, for the sake of argument or discussion, we said that there had been a board meeting and that Mr. Goude had come to the board and presented plans and specifications and said, "Folks, I'd like to build a side deck next to my pool bar where I can expand my business, and I want to build it in these two parking spaces. Will y'all let me do it?" And they said, not being attorneys, "Sure. It sounds fine with us. Give us a piece of paper. We're going to sign it," and they signed it, it would have been beyond their authority to do that as a matter of law. They had no authority. They could not have had authority to do that. They have to comply with the terms of the master deed in taking any action, and if it's ultra vires, it's not binding. That's not what happened, but I'm just pointing out to you that there are certain things that association boards cannot do, and this is one of them, even if they'd been so inclined. You know, Your Honor, think about ---

THE COURT: SO EVEN IF THEY HAD DONE THAT AND EVEN IF THEY HAD GIVEN HIM WRITTEN PERMISSION, SAY, IN '91, AND A NEW BOARD HAD COME IN LATER, WE MAY STILL BE RIGHT WHERE WE ARE.

Mr. Barnett: Exactly, Your Honor, exactly. And one of the reasons being, number one, it's ultra vires, and the other reason is Mr. Goude is a party to this contract. This master deed is contract of which he's a bound party under the law, not to mention the statute. The Condominium Act says he's bound by it. And so he is charged with knowledge of what the terms of that master deed are. He's certainly bound by the terms of it, and the terms of it would not allow a board to do what he was asking them to do. You know, let me ask you this rhetorically. What would happened if, it's a rhetorical question, if tomorrow the board went out and met and somebody came in and said, "You know, I think Mr. Goude needs some competition out there, and I run great pools bars. How about y'all let me have the two spaces next to

his in the parking lot? Let me put up a pool bar. I'll being the prices down. I'll make things better," you know, "Y'all just let me occupy two little spaces in the pool bar, and I'll use it for commercial purposes." And they say, "Well, you know, that makes sense to us. Where do we sign?" all of them sign off on it; do you think Mr. Goude would be in court the next day saying, "This violates the master deed. It's a commercial use. You don't have the authority to do that." And he would be right. They didn't have the authority, no more than they had the, than they would have had the authority had they given it, which they didn't give.

And, also, think about practical, Your Honor, what's being requested here by this defendant. What he claims to have and wants a declaratory judgment to state, is that he has a permanent easement to use those one and a half parking spaces for commercial purposes, and he got it because, if you believe him, and the plaintiff denies it, but if you believe, the then president at that time said, "I approved it," as a result of that, no money going to the

association, no consideration, that he can now have over a hundred square feet of oceanfront property to use, and that's valuable property, Your Honor, perpetually, and it's better than owning it, because he can use it, but the association has to maintain, the parking under it is something you have to, the association members all pay the taxes on it. He only pays not much of the taxes on the common area, that the other 65 members are paying all the taxes on it. He's getting all the benefits, and this is supposed to go on forever. It's totally inequitable, in addition to being illegal, you know. I would submit to Your Honor, if he spent $10,000 on this thing, over the period he had it, he's more than gotten his money's worth out of it in the time he's been there. And it's not inequitable at this time to do what the law and equity requires, and that is to put it right, and he's required to comply with the master deed, he's required to comply with the Horizontal Property Act, he's required to comply with the zoning ordinance. He's met none of those. He's not obtained the consent that was given, the master deed says that you

can enforce this at any time. He's not been prejudiced by this delay, he's been helped by the delay because he's had 17 years, 18 years, whatever it's been at this point, of garnering profit while the association's paying his taxes and maintenance on it. So I submit to you for all those reasons that as a matter of law and equity, both, that it is clear that the association is entitled at this point to have that removed. And I'll reserve any further in closing to respond to anything that he may bring up.

THE COURT: LET ME JUST ASK YOU ONE THING.

Mr. Barnett: Sure.

THE COURT: I'M HAVING TROUBLE WITH ONE THING YOU JUST SAID, AND THAT IS, YOU SAID, "IF YOU CAN BELIEVE MR. MELTON." WHY WOULDN'T YOU BELIEVE MR. MELTON? WHAT DOES HE HAVE TO GAIN BY COMING INTO THE COURTROOM AND NOT TELLING THE TRUTH? I DON'T UNDERSTAND WHY MR. MELTON

WOULDN'T COME IN HERE AND
TELL THE TRUTH.
Mr. Barnett: The only thing to point out, Your Honor, is, two things, one is -- Three things. One is he and this defendant and Mr. Cox, the three of them, according to their testimonies, were the primary developers or salesmen for this condominium. They worked together. They were buddies. They were all trying to sell units.
THE COURT: BACK IN THE EARLY '90S.
Mr. Barnett: in the late '80s.
THE COURT: THE LATE ---
Mr. Barnett: Late '80s. Mr. melton said he was, his work resulting in the sale of about a third of them, ---
THE COURT: IN FACT, HE SAID HE SOLD SOME UNITS TO SOME OF THE PEOPLE SITTING IN THE ---
Mr. Barnett: Right.
THE COURT: --- COURTROOM TODAY.
Mr. Barnett: He was involved. Mr. Goude was the director of sales. Mr. Cox was ---
THE COURT: WAS THE DEVELOPER, BUILDER.
Mr. Barnett: And so, you know, they had this

interconnected relationship, and so that could be some reason why he might say something now. But the second reason is, ---

THE COURT: I CAN UNDERSTAND THAT MAY BE WHY HE GAVE HIM PERMISSION, BUT I DON'T UNDERSTAND WHY THAT WOULD BE WHY HE WOULD COME IN THE COURTROOM AND NOT TELL THE TRUTH.

Mr. Barnett: Well, I can get -- two other things. One is, I submit to you that the evidence, his credibility is somewhat tainted by what the SEC did, but the third and most important one is, one I pointed out earlier is, that three times in 1991, this was built in 1990. Mr. Bechtel saw it in August when he came in, in a few months, they had an election, they had a new board. The new board was Mr. Bechtel, Mr. Melton was re-elected, and this doctor, I can't recall his name.

THE COURT: DR. CLEMENTS.

Mr. Barnett: Dr. Clements, thank you. And then in early '91, now they started addressing this thing, and they're sending letters saying,

"Where is your written permission? Where is your written permission?" And at no time, here was the opportunity, if he had said, "Let him go ahead and build it," here's the time when he would step forward and say, "Look, guys, I told him it was all right to build it."

THE COURT: DR. CLEMENTS KNEW THAT APPARENTLY.

Mr. Barnett: How did Dr. Clements know?

THE COURT: I THINK THERE WAS SOME TESTIMONY TO THAT, WASN'T THERE?

Mr. Barnett: Not that I'm aware of. Mr. Bechtel says he knew nothing. He was on the board the whole time. It was never ---

THE COURT: WELL, I DIDN'T SAY MR. BECHTEL ---

Mr. Barnett: I don't recall any testimony that Dr. Clements knew it, none. So that's my point, is if he actually had done it, why wouldn't he have stepped forward during those months when letters with copies going to him are questioning it?

THE COURT: BECAUSE THE LETTERS DIDN'T SAY, "WHERE'S YOUR

PERMISSION?" THE LETTERS SAID, "WHERE'S THE WRITTEN PERMISSION?"

Mr. Barnett: Well, I submit to you in this argument, Your Honor, that if he had been given permission, that he would've stepped forward to the board and explained to them. Mr. Bechtel said he didn't do that, so that's . . . And, again, the point is, let's assume for the sake of argument that he gave it. If he gave it, it is not binding. He didn't have the authority to give it. There was no vote by the board to give it. And most importantly, the explicit terms of the master deed require for this type of encroachment on a common area, the written consent of the board.

THE COURT: I TEND TO BELIEVE HIM. I THINK YOU'RE STUCK WITH MR. MELTON GAVE ----

Mr. Barnett: Believe him. Believe him. That's fine. You know, I don't concede for the sake of law, but for the sake of argument, I'll conceded for the sake of argument that he gave it. I submit to you it makes not one whit, not one iota difference as to the legal outcome for

the reasons I've stated, that he has no authority as the president to approve this; and the master deed says otherwise, and the Horizontal Property Act says otherwise, and Mr. Goude had the means to determine that.

THE COURT: ALL RIGHT. THANK YOU.

Mr. Barnett: Thank you.

THE COURT: MR. NEWBY? THAT WAS MORE OF A GIVE AND TAKE THAN A CLOSING ARGUMENT, BUT I APPRECIATE ---

Mr. Newby: I took lots of notes.

THE COURT: I APPRECIATE MR. BARNETT ---

MR. BARNETT: FELT LIKE AN APPELLATE COURT APPEARANCE, YOUR HONOR.

Mr. Newby: Your Honor, I'll try to be somewhat short. First and foremost, as the court knows, the plaintiff comes in here in this proceeding seeking to invoke the equity jurisdiction of The Court. It is not seeking damages. It is seeking an injunction. And only if it succeeds in getting an injunction would it then be entitled to attorneys' fees,

which is the second portion of its claim under the master deed.

THE COURT: $29,652 FOR ATTORNEYS' FEES.

Mr. Newby: But the language they rely on in the master deed says that the association must prevail in order to recover attorneys' fees. So the fundamental issue before The Court today is one of equity, and I hesitate to quote the law of equity to the Master in Equity, but ---

THE COURT: PLEASE DO.

Mr. Newby: I think we all know that the courts have, as long as injunctions have been before the courts, have taken the position that they are an extraordinary remedy, and they're only to be issued in extraordinary circumstances. When you invoke the jurisdiction of equity, you subject yourself to equitable defenses. We have raised a number of equitable defenses. Aside from the fact that we think that the facts do not support the plaintiff's position as a matter of law and as a matter of fact, most of the facts are really not contested. We all agree that the deck was built in 1990, even the plaintiff. We all

agree that it has been there continuously for 17 years before the POA decided to bring this action. I think we all agree that it was built solely with Mr. Goude's money, and I certainly think that the weight of the evidence is that he built it after being told by the president of the association that he could, and after having it being suggested to him by the developer after Hugo, when they were doing the repair work.

There was some testimony that they even helped him build the deck. And for 17 years the association, through all of its various iterations of its board membership and make-up, chose not to bring an action to remove it. So the courts, and I cited a case in my opening, and I'm happy to submit a memorandum if the court allows that afterwards, but the courts have said in cases like this that in looking at whether to grant an injunction and invoke the powers of equity, that the courts are going to look at a balancing of the equities between the parties, which means simply this, what would be the benefit to the various parties if we granted the injunction

versus what would be the detriment if we granted the injunction. And on the converse side of that argument, what would be the detriment if we don't grant it versus the benefit if we don't grant it?

I would submit that the plaintiff has presented, for practical purposes, no evidence of any detriment that would be suffered by them if The Court failed to grant the injunction. They've lived perfectly happily for 20 years with this deck now, 20 years next spring, and all of a sudden, now, the world is going to come to an end if the deck continues for another minute.

They've alluded on many occasions to the city zoning issue of parking, but they've not presented one person from the City of Myrtle Beach to say it's a problem. They've had this case going on for two or three years. there's no shortage of time to find a witness with the city who, if they thought it was problem, and I can tell you, from my 35 years of experience, it isn't too hard to find a bureaucrat who will say that there's some violation somewhere, if they thought there was

one, and they have yet to bring one to court to say there's a problem.

So this issue of parking, they can't even, they can hardly sit here with a straight face and talk about any time when they can't find adequate parking. There may be a day or two during the summer it's hard to find -- they still let their maintenance man park there. The top deck gets full because people don't want to drive downstairs where it's inconvenient to park. That's the extent of their detriment. But what would be the detriment to the defendant in granting the injunction? He's got 20 years tied up in this business. Everybody else has this for a vacation home or a rental property, nobody lives there. He's the only one who is there every day, all year, when the weather's permitting, and makes a living from this property.

But it goes beyond that, Your Honor. He actually provides a benefit to the members of this plaintiff association and to the renters and to the owners who stay there. He not only has the covered area, which is the

only place people can get out of the sun on a hot day or get out of the rain on a rainy day, homeowners haven't provided any such location. He's provided it at his cost. It's the only place where the crowd can sit at tables and chairs and eat, according to the testimony, without having to go sit on the pool deck around the children and the families and block their path to the beach.

And speaking of the path to the beach, if this was such a big deal, why did the POA spend money to build a wooden deck adjoining his and the walkway to the beach that adjoins his deck, and they even painted yellow paint where the walkway was through this other half of the second parking lot showing that it's, "This is the way to go to the beach. You walk right through here, you go across the deck of the pool bar and then onto the adjoining deck, through the shower," past the shower that he built at his expense, and on down to the beach, which wasn't there before. He has provided more benefit in this area than the homeowners association has provided.

Now, to argue that he's getting some

windfall over a hundred square feet that the POA may be paying taxes on, actually, the POA doesn't pay taxes, all the owners pay taxes, and I guess a little teeny bit of that would be for common area, he has paid $11,000 in 1989 and '90, dollars to build this thing. He's paid additional monies out of his own pocket to improve it. There's been no POA money to maintain it. All of this has been provided by Mr. Goude.

So, if we weigh the equities, the benefit versus the detriment, there's really no contest. And that's what this court has to do in deciding whether to grant an injunction. I contend that the plaintiff has failed to meet that burden.

The question of whether he had authority is a factual question that the court's going to have to determine, but certainly logic would say that aside from the fact that the president of the association said, "I told him it was okay," and Mr. Goude said he and the builder said it was okay and helped him build it, you have the fact that he spent his own money to do it. How logical is

it?

The Court is required to make logical conclusions based on the testimony. How logical is it that Mr. Goude would have done that and would have just jumped out there on the parking lot and built a deck with no consent, with no approval? It makes no sense. So I think the weight of the evidence is that he had authority, he relied, to his detriment if he's required to remove it, and spent his money and built it, he has operated with this to the benefit of everybody, and now they come in 17, 18, 20 years later and say, "Please tear it down." Again, we don't think they've met their burden to require that.

The plaintiff relies on the master deed, the Horizontal Property Act, and the bylaws in the master deed itself; but we all know that there are plenty of cases in this state in which even where city governments have zoning laws prohibiting a certain action, that if the city grants the building permit and allows someone to build in violation of those ordinances, the courts have said they can't then come back later and make them tear it

down. They're estopped. There is some point where the courts say common sense has to prevail here, "You can't tell these people to do something or that it's okay to do it, let them spend their money, and then come back later and just say, "Oops, guess we were wrong. Tear it down."

They've admitted that the board has gone through numerous changes over the years and people's attitudes change, and it's going to continue to be that way. It always will be. It always has been, and it always will be. But it's the job of the courts in cases like this to protect people against the whims and the changing winds of the various boards as they're elected from year to year.

The policies and the contractual obligations, I would submit, don't last just 365 days, until the next election. They can't expect people to do business with them if every time there's an election and somebody gets all excited about an issue, they just change everything that they did in the past and say, "We're going to forget what we told you before, and this is what you've got to do now. But, of

course, if there's another election next year, maybe you'll have to do something else," and every year, according to their theory, every year, the rules change.

Additionally, I will point out that the books are replete with cases about the enforcement of restrictions and the fact that selective enforcement is not allowed. i've been on the wrong side of some of those cases, where I represented property owners associations trying to enforce restrictions, only to be told by The Court of Appeals or the Supreme Court that if you have failed as a POA to enforce the restrictions properly over a period of years, you can't just wake up one day and decide that, "Now is the day that we're going to enforce it."

And the plaintiff's representatives have freely admitted that, for years, four, five, six, eight years, they allowed cars to be stored in the parking areas so that they were not available for people coming and going, looking for parking spaces. They even let a camper sit there for years, didn't enforce it. They've got a car today, while we're in court

and they're trying to get this so important one and a half parking spaces back, they still have a car that's in there, in storage, that's been there for three years, at least, since they said they changed their parking regulation. For some reason, the group in charge has decided, for reasons we can't figure out, that Mr. Goude and his parking spaces are in a different category than all those others that they failed to enforce, and I don't think they can do that. I don't think they have the right to selectively enforce the rules and regulations that they asked the court to find to be so important against just one owner. While I don't dispute in any way what the master deed says, because why would I bother, it says what it says; the Horizontal Property Regime Act says what it says. But the Court of Equity goes beyond the letter of the law in cases like this, when -- and I know I'm beating a dead horse, I apologize, but for 20 years, this guy's had this deck. Give me a break. At what point does estoppel kick in if it doesn't kick in after 17, 18, 20 years? I think it does. I think we have met the

criteria of the appropriate provisions of law regarding estoppel.

And having said all that, I will then touch on the issue of res judicata, because frankly, I think res judicata is a defense that, frankly, would have warranted summary judgment. There is no question. I mean, they presented their own letters from 1991 showing their knowledge of the deck. There's no question that this was an issue that existed when they filed the previous action. It all relates to their attempt to enforce the provisions of the master deed, and the cases are clear on that question.

I will be happy to submit cases, in fact, I have some here right now that I would draw The Court's attention to. One is the case of Nelson versus QHG of South Carolina, a 2003, 2004 case. There was, let me give you a couple more cites, Your Honor, Mccall versus State Farm, 2004, Court of Appeals' case, 359 South Carolina 372, Faile, F-A-I-L-E, versus South Carolina Department of Juvenile Justice, 350 South Carolina 315, a 2002 case, Peterson versus West American

Insurance Company, Court of Appeals, 1999. There is no doubt that this issue existed, that they had the right to bring it, they could have brought it, and they chose not to do it.

If I may finance a quote that I think is relevant, if you'll bear with me just a moment. I will point out that the side deck had existed, when they brought the first case in 2003, for 13 years at that point. They probably would have been estopped had they even brought it then, but they didn't choose to bring it. Well, I have it here somewhere, but rather than make The court wait any longer, I'm going to wait, and if you will allow me, I'll simply pass it up as part of a memorandum, but ---

THE COURT: MR. NEWBY, LET ME ASK YOU THIS. YOU WERE INVOLVED IN DEFENDING MR. GOUDE IN THAT FIRST LAWSUIT, ---

Mr. Newby: Correct.

THE COURT: --- WEREN'T YOU? WAS THE ISSUE OF THE SIDE DECK EVER DISCUSSED AT ALL IN ANY OF THE DISCOVERY IN THE FIRST

LAWSUIT, TO THE BEST OF
YOUR KNOWLEDGE?
Mr. Newby: Well, if I may answer with a caveat, and that is that I am accused regularly of having a failing memory, especially by my wife, not to mention ---
THE COURT: I HAVE BEEN ACCUSED OF THAT.
Mr. Newby: Not to mention, failing hearing. But my recollection is that that was not an issue brought up in any fashion. I don't recall it being mentioned in the pleadings, and I don't think they presented evidence on it. So I can't say that it was an issue that was ruled on, because they didn't raise it. And I think the cases that I will cite state that if there is a cause of action that existed and that could have been, that either was brought or could have been brought, that they're barred by res judicata.
THE COURT: WELL, LET ME ASK YOU THIS. IN THE FIRST LAWSUIT, AS I UNDERSTAND IT, THE ISSUE WAS NOISE; IS THAT CORRECT?
Mr. Newby: It was primarily noise. There were --

We actually counterclaimed on a couple of points. I think you heard some testimony about the fact that they had locked him and his patrons out of the deck above the deal, and we filed a claim on that, and they finally said, "Okay, you're right," so that kind of went away. But it largely had to do with, "What time do you turn the music down? Which way are the speakers facing," and, "What time do you shut down?" So I think you're right. It was generally relating to the noise issue.

THE COURT: AND THERE NEVER WAS ANY TESTIMONY CONCERNING NOISE EMANATING FROM THE SIDE BAR, SIDE DECK, ---

Mr. Newby: Not to my knowledge.

THE COURT: --- IT WAS ALWAYS FROM THE POOL BAR?

Mr. Newby: I don't think there was any distinction made about the side deck versus anything else. That's my recollection. There was actual testimony about people sitting around the pool and drinking.

THE COURT: SITTING AROUND THE POOL SIDE DECK?

Mr. Newby: The pool.
THE COURT: JUST THE POOL, OKAY. I'M GOING TO READ THE OTHER, I HAVE THE OTHER LAWSUIT, I'LL READ THE PLEADINGS AND WHAT ALL IS IN THERE TO SEE IF THERE WAS ANY DISCUSSION CONCERNING THE SIDE DECK IN THAT LAWSUIT.
Mr. Newby: All right. Your Honor, I think I found the quote that I was looking for. It was in the case of Hilton Head Center of South Carolina versus Public Service Commission, 1987.
THE COURT: OKAY. WHAT IS THAT, NOW?
Mr. Newby: Hilton Head Center, C-E-N-T-E-R, of S.C., Inc. versus public service commission, 1987. It's 294 South Carolina 9. Also, Judy versus Judy is another case that seems to stand for the same principle, 383 South Carolina 1. And to paraphrase it, the court said, when claims arising out of a particular transaction or occurrence are adjudicated, res judicata bars the parties to that suit from bringing subsequent actions on

either the adjudicated issues or any issues that might have been raised in the first suit. So we believe that res judicata should end the discussion. But for the reasons I've stated previously, even if it doesn't, the facts as presented in this case don't give rise to the plaintiff's claim for relief. And I suspect that The Court feels that it's heard enough about this case, so I'll sit down, unless you have questions.

THE COURT: NO. BUT IF YOU WOULD LIKE TO SUBMIT A MEMO, MR. BARNETT HAS SUBMITTED A MEMORANDUM OF LAW. IF YOU WOULD LIKE TO SUBMIT ONE, YOU'RE CERTAINLY WELCOME TO DO THAT.

Mr. Newby: I think we'll do that, Your Honor. That's all I have.

THE COURT: THANK YOU. MR. BARNETT, DO YOU HAVE ANYTHING IN RESPONSE?

Mr. Barnett: Yes. I'd like to reply to that.

THE COURT: OKAY.

Mr. Barnett: Mr. Newby mentioned several items that

I'd just like to address. He mentioned the wooden deck being constructed by the association, and as Your Honor will recall and the pictures show, that's a dune crossover that was built after Hugo. I don't know what impact that has here, but -- And there was something about selective enforcement. You know, certainly, there have been other people who have parked cars for extended periods of time, but there's no one else that has constructed an encroachment that eliminates the use of parking. And those others were temporary things that come and go. You know, they've talked to people over the years. They've actually adopted a rule applying to that, I think, several years ago, and they're trying to enforce that. They only have that problem with one now. There's nothing selective about what they're doing here. This is a unique encroachment, and what they may or may not have done periodically over various people parking their car does not waive their right to enforce this unique encroachment.

And he mentioned, too, other things that I'll address. The estoppel

issue, again, as I pointed out earlier, estoppel, according to the law, and I'm quoting Provident Life & Accident versus Driver, 317 S.C. 471, that sets forth, and this is, it's in my brief, Your Honor, sets forth these elements that must be proved by the defendant claiming estoppel, and the party claiming estoppel must show a lack of knowledge or means of acquiring knowledge of the true facts. And as I pointed out earlier, they can't show that here. The defendant had either knowledge or certainly had the means of acquiring knowledge of the true fact that the association president alone had no authority to grant this right.

And the last thing I want to talk about is estoppel, because I think there's a little misunderstanding about what the law on estoppel may be as it applies to this case, and Mr. Newby, in fact, cited a case that I'm going to cite, which is the, I believe, the latest case I can find was issued in April 2009, Judy versus Judy. It was opinion number 45-28. He cited it as 383 S.C. 1, which it may be by now. But in that case, it talked about this issue. You know, certainly, we all know that,

generally equitable estoppel requires three elements. Number one, a final valid judgment was entered in the merits of the first case. We know that occurred in the previous case. Secondly, the parties to both suits were the same, that element is there. And the last one is the subsequent action involves matters properly included in the first action, and we know that the side deck was not a matter included in the first action.

Now, I won't leave it there because it actually expands on that some because there is some law that says that if it should have been, not that it could have been, there's no law that says that if it could have been included in the previous action, it's res judicata. That's not law. As you know, there are some affirmative defenses that must be raised in some cases, but the fact that a previous action could have included an additional cause of action does not preclude another one.

There is some law that talks about, and I'm citing from Judy, and it's citing in here Lowe versus Clayton, the rule

precluding re-litigation of issues that might have been raised in the prior action applies only where the two actions involved the same cause of action. You know, this is a cause of action to have the removal of the side deck. The other was a cause of action to stop the activities that were the nuisance and noises, activities that were occurring there. And it even goes beyond that, and I'll try to get into the details of that, "The test utilized by this court for comparing two causes of action is to determine whether the primary right and duty and the delict or wrong are the same in both actions." Again, clearly, the wrong in the first action involved solely activities. It was a bad behavior lawsuit. They had passed a resolution saying, "You need to stop the noise, need to close at a certain time. Your behavior on your property is wrongful, and we want that behavior to stop." This is an action where it's an encroachment of real estate. It had nothing to do with their behavior. It talks about an encroachment on a piece of a real property.

Finally, The Court, in Judy, goes even

further and gives a four pronged test, and it says the South Carolina courts use various tests in determining whether a claim should have been raised in a prior lawsuit, and it mentioned four things that a court should consider in whether or not a case should have been brought in a previous lawsuit. One is where there's an identity of the subject matter in both cases, and as Your Honor's already determined, from your questions, the subject matter in that previous case was the loud noise around the pool bar, and the subject matter of this case is an encroachment of a wooden deck onto a parking lot. Secondly, where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant. And does this case involve one primary wrong -- do both cases involve one primary wrong committed by the defendant, again, clearly not. The other case involved one primary wrong, being wrongful activities occurring on the property, and the other one being the encroachment of a building on real estate. Number three, when there is the same evidence in both cases, again, totally

different, totally different evidence in that Case and this case; and, finally, when the claims arise out of the same transaction or occurrence, again, totally different occurrences. The occurrence in the previous case was the actions, it was a case about bad activity, bad actions. And in this case, the occurrence is the existence of an encroachment upon a common area.

So for all these reasons stated, the fact that it's in violation of the Horizontal Property Act, the Myrtle Beach zoning code, has been testified that they need the parking, that the master deed says that any delay, no matter how long, does not preclude it from being brought later, the fact that it is not detrimental to him to remove it at this time, in fact, he's garnered benefits that he wasn't entitled to for a long period of time, all, I believe, Your Honor, respectfully, weigh in favor of the plaintiff, and we would certainly

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THE COURT: MR. BARNETT, COULD YOU GIVE ME THE CITE FOR JUDY VERSUS JUDY?

Mr. Barnett: Yes, ma'am. It's, on the copy I have, I say it's opinion, it's a 2009 opinion issued four months ago under opinion number 4528.
THE COURT: 4528?
Mr. Barnett: Now, Mr. Newby cited it as 383 S.C. 1. so maybe, by now, it's in the ---
THE COURT: 383 S?
Mr. Barnett: S.C. 1.
THE COURT: S.C. 1?
Mr. Barnett: Yes. That's what he cited.
THE COURT: OKAY.
Mr. Barnett: Anything else, Your Honor?
THE COURT: THAT'S ALL.
Mr. Barnett: Thank you, Your Honor.
THE COURT: AND, MR. BARNETT, ONCE WE RECEIVE MR. NEWBY'S MEMO, IF YOU WANT TO REPLY TO THAT, YOU CERTAINLY MAY.
Mr. Barnett: Thank you, Your Honor.
THE COURT: THANK YOU VERY MUCH, HOMEOWNERS, FOR BEING HERE AND BEING VERY COURTEOUS TO THE COURT. YOU WERE VERY QUIET. THANK YOU.
(THE HEARING CONCLUDED ON 08-25-09 AT 12:31 P.M.)

CERTIFICATE

This is to certify that the foregoing transcript of the hearing before The Honorable Cynthia Graham Howe, consisting of **THREE HUNDRED THIRTY-TWO (332)** pages, is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **26th** day of **JANUARY, 2011**.

Alice S. Nelson
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 7-26-16

COPY

EXHIBIT
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Pg 557

A TRUE COPY. ATTEST
REGISTER OF MESNE CONVEYANCE
HORRY COUNTY, S. C.
BY Josephine M.

7-31-09

MASTER DEED

ST. CLEMENTS

Horizontal Property Regime

Myrtle Beach, South Carolina

December 8, 1987

HORRY COUNTY ASSESSOR
NEW PARCEL 174-03-04-333 thru 398
SPLIT FROM 174-03-04-026
Map Blk Parcel 12/9/87

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STATE OF SOUTH CAROLINA)
) MASTER DEED FOR
) THE ST. CLEMENTS
COUNTY OF HORRY) HORIZONTAL PROPERTY REGIME

THIS MASTER DEED, made this 30th day of November, 1987, by St. Clements, Ltd., a California Limited Partnership, with its principal place of business located in Myrtle Beach, South Carolina, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner in fee simple of certain real property located in the County of Horry, State of South Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Declarant is the owner of a multi-unit building and all other improvements heretofore constructed or hereinafter to be constructed upon the above described property and intends, by the filing of this MASTER DEED, to submit said property, buildings and improvements, whether heretofore or hereafter constructed, together with all appurtenances thereto, to a Horizontal Property Regime pursuant to the provisions of Section 27-31-10 et. seq., of South Carolina Code of Laws, 1976 as amended.

NOW, THEREFORE, Declarant does hereby declare that all of the real property described herein, together with all improvements heretofore constructed or hereafter constructed thereon, is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth hereinafter, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning any interest in the real property and improvements described herein, or any subdivision thereof, their grantees, successors, heirs, devisees, executors, administrators, and assigns.

ARTICLE I
SUBMISSION OF PROPERTY

1.0 Pursuant to the provisions of Sections 27-31-10 et. seq., South Carolina Code, Declarant does hereby submit all of the real property described in Exhibit A, attached hereto and made a part hereof by reference, together with all improvements thereon and described herein to the provisions of the Horizontal Property Act as set out in the said Act, as amended from time to time.

ARTICLE II
DESCRIPTION OF LAND AND
PLAN OF DEVELOPMENT

2.0 The subject real property is the same as set out in Exhibit A attached hereto and incorporated herein by reference.

2.1 Plan of Development. The name by which this condominium project shall henceforth be known is The St. Clements

Horizontal Property Regime, sometimes referred to hereinafter as "The St. Clements". The Declarant has caused to be constructed upon the real property described in Exhibit A, the multi-unit building containing Sixty-five (65) condominium units, as well as the common areas, limited common elements, and facilities of the buildings and the real property, all as defined and described herein and as shown upon the plat and the plans contained in Exhibits F and G, attached hereto and made a part hereof by reference. The units of the building, together with their privileges and appurtenances, may be offered for sale to the public by the Declarant as condominium units pursuant to the provisions of Chapter 27-31-10 et. seq., of the Code of Laws of the State of South Carolina, 1976, as amended, subject to the covenants, conditions, restrictions, and obligations stated in the Articles of this MASTER DEED, the Articles of Incorporation of the Association, its duly adopted By-Laws and its Rules and Regulations, provided however, that Declarant may retain ownership of one or more of the units of its choice.

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

ARTICLE III
UNIT DESIGNATION

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

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

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

3.3 Each unit is hereby defined to include:

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

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

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

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

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

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

ARTICLE IV
LIMITED COMMON ELEMENTS OR AREAS AND APPURTANANCES

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

ARTICLE V
DESCRIPTION OF GENERAL COMMON AREAS

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

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

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

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

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

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

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

ARTICLE VI
NATURE AND INCIDENTS OF UNIT OWNERSHIP

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

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

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

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

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

ARTICLE VII
USE AND RESTRICTIONS ON USE

7.0 RESTRICTIONS ON USE.

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

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

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

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

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

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

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

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

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

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

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

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

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

intended for such purpose, said containers or receptacles to be kept at all times in the space provided therefor.

(k) It shall be the responsibility of each unit owner and the Board of Directors of The St. Clements Homeowners Association, to prevent the development of any unclean, unsightly or unkempt conditions of the limited and general common areas.

(l) So long as the Declarant shall retain ownership of any units, it, its agents or representatives may utilize any such unit or units for sales or rental offices, models or other usage for the purpose of selling or renting units within said project and may erect such signs pertaining thereto as it deems appropriate.

(m) The use of the condominium or any units therein may be further restricted under the By-Laws of the Association, its Rules and Regulations.

7.1 All Use restrictions and affirmative obligations set forth in this MASTER DEED shall run with the land and shall be binding on all parties and persons claiming under them for a period of Twenty (20) years from the date of recordation of this MASTER DEED, after which time said restrictions and obligations will automatically extended for successive periods of Ten (10) years, unless an instrument signed by the then owners of condominium units entitled to vote at least Ninety (90%) percent of the Association affected by such restrictions and obligations has been recorded agreeing to change such restrictions and obligations in whole or in part.

7.2 In the event of a violation or breach of any of these restrictions, or of any other covenants of this MASTER DEED, by any property owner, invitee, guest, renter or agent thereof, the owners of other units or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel the compliance of the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Board of Directors of The St. Clements Homeowners Association shall have the right whenever there shall have been any violation of these restrictions to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, if after Thirty (30) days written notice of such violation it shall not have been corrected or removed by the owner. Any such entry and abatement or removal shall not be deemed a tresspass. The failure to enforce any right, reservation or conditions contained in this MASTER DEED, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The remedies set out herein for such violation or breach are cumulative with any other legal or equitable rights available to any entity or person. The invalidation by any court of any restrictions or obligations in this MASTER DEED shall in no way affect any of the other restrictions, which shall remain in full force and effect.

7.3 All present and future owners, tenants and occupants of units, and empoyees, guests and invitees thereof, shall be subject to, and shall comply with the provisions of this MASTER DEED, the By-Laws and any Rules and Regulations as may be adopted in accordance with the By-Laws; said MASTER DEED, By-Laws and Rules and Regulations may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any unit or any common element, shall constitute an agreement that the provisions of this MASTER DEED, By-Laws, and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person

having, at any time, any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE VIII
EASEMENTS

8.0 In addition to easements and rights established and/or reserved elsewhere in this MASTER DEED, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

(a) In case of any emergency originating in or threatening any unit, including limited common elements, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent, shall have the right to enter such unit for the purpose of remedying or abating the cause of such emergency, and such right shall be immediate.

(b) Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, ducts, cables, wires, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same to remove violations therefrom and to maintain, repair, or replace the common facilities contained therein or elsewhere in the building.

(c) The initial and subsequent Boards of Directors for the Association may grant or assume easements, leases, or licenses for utility purposes for the benefit of the condominium, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the unit and/or common areas and facilities and limited common areas and facilities; and, each unit owner hereby grants to the Board of Directors for the Associaiton, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each owner such instruments as may be necessary to effectuate the foregoing.

(d) Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, docks and lanes as the same from time to time may exist upon the common areas and facilities; and for vehicular traffic over, through and across such portions of the common areas and facilities as from time to time may be paved or intended for such purposes, for all unit owners of units in The St. Clements, their guests, families, invitees, lessees, the Association, the Declarant, its successors and assigns.

(e) The Declarant hereby reserves unto itself easements for ingress and egress and for the storage of materials and the right to grant such easements over any of the common areas and limited common areas and facilities of The St. Clements to be used for, by, or in connection with any other future construction of or at The St. Clements, which may hereafter be erected on the property described in Exhibit A, pursuant to this MASTER DEED, or as may become necessary for the purpose of the Declarant, its grantee, lessee, successors or assigns, servicing such construction with utility services, drainage, and easements for ingress and egress. Declarant further retains an easement of access to all units in the Project for a period of six months after closing of such unit for the purpose of performing warranty

or "punch-list" work, whether or not the owner is present or consents.

(f) In the event that any unit shall encroach upon any of the common areas and facilities, or any other unit or units, for any reason not caused by the purposeful or negligent act of the unit owner, or agents of such owner, then an easement appurtenant to such unit shall exist for the continuance of such encroachment so long as it naturally exists; and, in the event that any portion of the common areas and facilities shall encroach upon any unit, then an easement shall exist for the continuance of such encroachment of the common areas and facilities upon any unit for so long as such encroachment shall naturally exist. If any unit or common areas and facilities shall be partially or totally destroyed as a result of fire and/or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such unit and/or common areas and facilities in accordance with this MASTER DEED, there exist encroachments of portions of the common areas and facilities upon any unit, or of any unit upon any other unit or upon any portion of the common areas and facilities, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

ARTICLE IX
THE ASSOCIATION

9.0 To provide for the administration and maintenance of The St. Clements Horizontal Property Regime by the unit owners a non-profit South Carolina Corporation known and designated as The St. Clements Homeowners Association, Inc. (hereinafter the "Association"), has been organized, a true copy of its Articles of Incorporation having been attached hereto as Exhibit C, and the provisions thereof incorporated herein by reference. The Association shall administer the operation and management of the condominium, The St. Clements, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and duly adopted By-Laws. A true copy of the original By-Laws are attached hereto as Exhibit D and incorporated herein by reference.

9.1 MANAGEMENT OF ASSOCIATION.

(a) Declarant shall be soley responsible for, and have all rights and control of, the management of the Association, as herein described, for a period of time not to exceed One Hundred Twenty (120) days after Seventy-five (75%) percent of the unit estates in the condominium project have been conveyed to the unit purchasers. Within One Hundred Twenty (120) days after conveyance of Seventy-five (75%) percent of the unit estates of the condominium project to the unit estate purchasers, or within Three (3) years of Recordation of this MASTER DEED, whichever first occurs, Declarant shall transfer the right and responsibility for management of the Association to the unit owners to be exercised through the Association. Such transfer of the rights and responsibility for management of the Association will not preclude or prevent Declarant from exercising continued influence in the management of the Association through such votes as are allocated to Declarant through the ownership of unit estates.

(b) Until transfer of the rights and responsibility for management of the Association occurs, as set forth in the above paragraph, the Board of Directors of the Association shall consist of those Three (3) individuals as are appointed by the Declarant to the initial Board of Directors of the Association as stated in the Articles of Incorporation for the Association or successors or replacements for such Directors as named by Declarant. The Board of Directors as described herein shall have the exclusive control and responsibility for the operation and management of the Associa-

tion, exercising all powers, duties and obligations, free from interference or control of the purchasers of the units.

9.2 MEMBERSHIP AND VOTING RIGHTS. Membership and voting rights in the Association shall be as provided in Article VI of the Articles of Incorporation referred to and incorporated herein as stated hereinabove subject to the Declarant's rights of management control of the Association as set out above. Membership shall be mandantory for all unit owners of all units at The St. Clements. All owners of all units shall be members of the Association as provided in the Articles of Incorporation and By-Laws of the Association.

9.3 POWERS. The Association shall have all powers granted to it as stated in Article V of said Articles of Incorporation.

9.4 COMMON EXPENSES. The common expenses of the Association shall be shared by the unit owners in amounts determined by applying each unit owner's proportionate share of ownership in the common areas and facilities to the total common expenses of the Association, and as assessed against the unit owners, and their units as provided for hereinafter.

9.5 MANAGEMENT AND MAINTENANCE.

(a) The Association, as a common expense, shall be responsible for the maintenance, repair, and replacement of all the common areas and facilities, and limited common areas including those portions thereof which contribute to the support of the building or buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the common areas and facilities for the furnishing of utility and other services to the units and said common areas, limited common areas and facilities, and should any incidental damage be caused to any unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any common areas and facilities or limited common areas, the Association shall, at its expense, repair such incidental damage. Whenever the Association incurrs expenses in the maintenance, replacement or repair of common areas or facilities or limited common areas, and such expense is occassioned by any act of a unit owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the unit owner who is responsible for the act causing the damage (whether done by himself or by his family, guests, lessees, or invitees) shall be required to pay such portion of the cost of such maintenance, repair, and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, or otherwise exceed the amount of the available insurance proceeds.

(b) The Association shall have the right to make or cause to be made such alterations or improvements to the common areas, limited common areas and facilities which do not prejudice the rights of the owner of any unit in the use and enjoyment of his unit, provided the making of such alterations or improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be common expenses to be assessed and collected from all of the owners of units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a certain unit and certain unit or units requested the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the owner or owners of the unit or units exclusively or substantially benefited, the assessment to be lev-

ied in such proportion as may be determined by the Board of Directors of the Association.

(c) The Declarant may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. This Contract may provide for the use and operation of a rental office, lobby and other related services associated with operating the building as a hotel. Each owner is free to enter into separate management contracts that pertain to his unit and to exercise such control as he deems appropriate. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any such contract shall contain a provision allowing the Association to terminate such contract, without justification or penalty and upon Ninety (90) days notice after transfer of management by the Declarant to the Association. Any such termination shall not affect any contracts betwen the manager and the individual owner.

(d) All contracts and agreements, whether for management or otherwise, entered into by Declarant for the Association, or by the Board, while under the control of Declarant, shall contain a provision allowing the Association to terminate such contract, without justification or penalty and upon Ninety (90) days notice after transfer of management by the Declarant to the Members.

9.6 UNIT OWNERS MAINTENANCE.

(a) Every owner shall perform promptly all maintenance and repair work within his unit, which, if omitted, would affect the condominium, either in its entirety or in a part belonging to other owners; every owner being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, and other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the surfaces of any and all walls, ceilings, and floors which are a part of his unit, including painting, decoration, furnishings, and all other accessories which such owner may desire to place or maintain in his unit. Whenever the maintenance, repair, and replacement of any item for which the owner of a unit is obligated to maintain, replace or repair, at his own expense in occassioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement, except that the owner of such unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, or otherwise exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

(b) All parts of a unit shall be kept in good, clean and sanitary condition and repair by and at the expense of the owner. The unit shall be maintained by the owner in a clean and safe condition, free of nuisance. Each unit owner shall also perform normal maintenance for any deck or balcony adjacent to his unit, even though it is a limited common element, and he shall keep it clean, orderly, and sanicary. Each unit owner will promptly comply with any requirements of the insurance underwriters of the insurance for the common areas and facilities wnen so requested in writing by the Board or its designated agent. Any failure of an owner to repair, maintain, or replace, as may be required pursuant this MASTER DEED, or a determination by the

Board or its designated agent that such failure will endanger or impair the value of the common areas and facilities of any unit may be, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repaired or replaced by the Association and any cost thereof charged to the unit and unit owner as a special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance by the unit owner therein.

9.7 LIMITATION OF LIABILITY. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners, their families, guests, and invitees for injury or damage caused by any latent condition of the property to be maintained by the Association, or caused by the common elements or other owners or persons.

9.8 INSURANCE.

(a) ACQUISITION. Insurance policies upon the condominium (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustee for the unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its right of subrogation as to any claims against the unit owners, the Association and their respective servants, agents and guests. Each unit owner may obtain insurance, at his own expense, affording coverage upon his unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

(b) COVERAGE. All common areas, including buildings and improvements upon the land and all personal property included in the common areas and facilities and related limited common elements (not including owner's personal property), shall be insured in an amount equal to the maximum insurable replacement cost of any repair or reconstruction thereof from any covered hazard. Such coverage shall afford protection against:

(i) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(ii) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings and improvement on the real property, including but not limited to, vandalism and malicious mischief.

All casualty insurance policies shall have an inflation guard endorsement if reasonably available and an agreed amount endorsement with annual review, if reasonably available. All insurance policies secured by the Association shall, if reasonably available, provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) that no policy may be cancelled, invalidated or suspended on account of any one or more individual owners;

(iv) that no policy may be cancelled, invalidated or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any owner, or mortgagee; and

(v) that any "other insurance" clause in any policy exclude individual owners' policies from consideration.

(c) PUBLIC LIABILITY INSURANCE. Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, but in no event in an amount less than One Million ($1,000,000.00) Dollars, including, but not limited to, an endorsement to cover liability of the unit owners as a group or to a single unit owner individually. There shall also be obtained such other insurance coverage as the Board of Directors or manager shall determine from time to time to be desirable or necessary.

(d) FIDELITY COVERAGE. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than One and one-half (1 1/2) times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least Thirty (30) days prior written notice to the Association and all the mortgagees. Provided, however, if professional management is obtained by Association and it has this type of coverage and it handles the Association's funds, then this requirement shall be deemed satisfied.

(e) PREMIUMS. Premiums upon insurance policies purchased by the Association shall be paid by the Association and chargeable to the Association as common expense.

(f) PROCEEDS. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners individually and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this MASTER DEED. The Board of Directors of the Association is hereby irrevocably appointed agent for each unit owner and his mortgagee as their interest may appear for the purpose of compromising and settling claims arising under insurance policies purchased by the Board of Directors for the benefit of the Association and the unit

owners; said Board of Directors or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board of Director's duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear.

(g) DISTRIBUTION OF INSURANCE PROCEEDS. Proceeds of insurance policies shall be payable to the Board of Directors of The St. Clements Homeowners Association, Inc., as insurance trustee and shall be distributed in the following manner:

(i) EXPENSE OF THE TRUST. All expenses of the insurance trustee shall be first paid or provision made therefor, if any;

(ii) RECONSTRUCTION OR REPAIR. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as determined in Paragraph 9.9 hereof. Any proceeds remaining after defraying such cost shall be distributed as surplus to the General fund of the Homeowners Association as common funds.

(iii) FAILURE TO RECONSTRUCT OR REPAIR. If it is determined, as provided in Paragraph 9.9 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the owners and mortgagees, as their interest shall appear, in the same proportion as their ownership of the common areas, or otherwise as provided in Paragraph 9.9 (ii) (2) below.

(iv) MORTGAGEES. In the event a mortgagee endorsement has been issued to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner, as their interest may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired.

9.9 DAMAGE AND DESTRUCTION.

(a) DETERMINATION TO RECONSTRUCT OR REPAIR. If any part of the condominium property shall be damaged by casualty, whether it shall be reconstructed or repaired shall be determined in the following manner:

(i) COMMON AREAS, LIMITED COMMON AREAS, AND FACILITIES. If the damaged improvement is a commol area, limited common area or facility, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated;

(ii) UNITS.

(1) PARTIAL DESTRUCTION: If the damaged improvement is a unit, and if termination as provided in subparagraph (2) below does not take place, the damaged property shall be reconstructed or repaired unless within Sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated;

(2) TOTAL DESTRUCTION: If more than two-thirds (2/3) of the units are destroyed, reconstruction shall not be required. In such event, the insurance proceeds shall be distributed to the owners and their mortgagees, as their interests appear, in the same proportion as their ownership of the common areas, or distributed otherwise as determined by a vote of three-fourths (3/4) of the owners. Reconstruction shall take place in the event One Hundred (100%) percent of the owners agree to such recon-struction.

(b) PLANS AND SPECIFICATIONS. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as Exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is a unit, by the owners of all damaged units therein, which approvals shall not unreasonably be withheld.

(c) RESPONSIBILITY. If the damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair shall be that of the Association.

(d) ESTIMATE OF COSTS. Immediately after a determination to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair.

(e) ASSESSMENTS. If the proceeds of insurance are no sufficient to defray the estimated costs of reconstruction an repair by the Association, or if at any time during reconstructio and repair, or upon completion of reconstruction and repair, th funds for the payment of the costs thereof are insufficient, asses sments shall be made against all unit owners in sufficient amount to provide funds for the payment of such costs. Such assessment shall be in proportion to the unit owner's share in the commo areas and facilities.

9.10 ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES. The Association shall at all times maintain a Register setting forth the names of the owners of all of the units. In the event of a sale or transfer of any unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any unit. Further, the owner of each unit shall notify the Associaiton of the names of the parties holding any mortgage or mortgages on any unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any unit may, if he so desires, notify the Association of the existance of any mortgage or mortgages held by such party on any unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

9.11 ASSESSMENTS.

(a) Each owner of any unit and the Declarant as owner of any unsold units, or units purchased by Declarant, by acceptance of the deed thereto, whether or not it shall be so expressed in such deed, is deemed to, and does thereby, covenant and agree to pay assessments (both regular and special) for the common expenses of the upkeep, maintenance and improvement of the common areas and for expressly designated services provided to all unit owners in the condominium project (excluding specific owner expenses such as utility costs).

(b) All assessments levied against the unit owners and their units shall be uniform, except as provided on Exhibit B, and, unless specifically otherwise provided for in this MASTER DEED, all assessments made by the Association shall be in such an amount that any assessment levied against each unit owner and each unit shall bear the same ration to the total assessment made against all unit owners and their units as the undivided interest in common areas and facilities appurtenant to all units.

(c) Regular annual assessments provided for herein shall be payable in monthly installments or otherwise as determined by the Board of Directors of the Association. Such installments shall commence for each unit on the first day of the first month following the recordation of the deed for such unit in the Public Records for Horry County, South Carolina, from the Declarant to the first unit owner. Provided that the Declarant shall not be assessed and no assessment shall be due for unsold units until Seventy Five (75%) Per Cent of the units are conveyed. Until that time the Declarant shall pay to the Association the following:

(1) Any deficit in the Association's operational Budget; and

(2) The capital replacement reserve for each such unsold unit.

(d) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of The St. Clements and, in particular, for the acquisition, improvement and maintenance of properties, services and facilities including, but not limited to, the costs of water and sewer services; garbage collection; electricity for the common areas; repairs, replacements and additions to the common areas and facilities; the costs of labor, equipment and material expended on the common areas and facilities; the procurement and maintenance of liability and hazard insurance coverage on the common areas; the employment of attorneys, accountants, and professional management personnel when deemed necessary or advisable by the Association; and such other needs as may arise.

(e) The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calandar year, except that in the initial year of operation of the condominium, the fiscal year shall commence with the closing of the sale of the first condominium unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate items relating to capital improvements. Upon adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be delivered to each owner of a unit and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each owner shall not affect the liability of any owner for such assessment. Should the Board of Directors at any time determine, in its sole discretion, that the regular assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the condominium, as contemplated in Article IX, Section 9.9 (e) hereinabove, or if there are unexpected non-recurring expenses associated with the property, the Board of Directors shall have the authority to levy such additional or "special" assessment or assessments as it shall deem to be necessary.

(f) RESERVE FUND. The Board of Directors of the Association, in establishing the annual budget for operation, management, and maintenance of the condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of any capital improvements to the common areas, limited common areas and facilities, which captial improvement and replacement fund (capital improvement fund) shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the common areas, limited common areas and facilities, as well as the replacement of personal property which may constitute a portion of the common areas and facilities held for the joint use and benefit of the owners of units. The amount to be allocated to the capital improvement fund shall be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of common areas, limited common areas and facilities. This amount collected for the captial improvement fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to common areas, limited common areas and facilities. Any interest earned on monies in the capital improvement fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

(g) WORKING CAPITAL. In addition to the aforementioned Reserve Fund, the Board of Directors of the Association shall establish a fund to be designated as a WORKING CAPITAL FUND. The purpose of such fund is to insure that the Association Board will have cash available to meet unforseen expenditures, or to provide

additional equipment or services deemed necessary or desirable by the Board. The Board of Directors shall establish, as an allocation to the said fund, a minimum of Two (2) months estimated common area charges for each unit. Each unit estate's share of said fund must be collected and transferred to the Association at the time of closing of the sale of each unit estate.

(h) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operation and management of the condominium, or the to proper undertaking of all acts or duties imposed upon it by virtue of this MASTER DEED, The Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid into the Association by any owner of a unit, the same may be comingled with monies paid to the Association by the other owners of units except as hereinabove specified regarding Reserve Funds. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of the common areas and facilities, shall be held for the benefit of the members of the Association. No member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his unit. When the owner of a unit shall cease to be a member of the Association by reason of his divestment of ownership of such unit, by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such owner, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the condominium.

(i) The payment of any assessment or installment thereof to the Association (the "Association") shall be in default if such assessment or installment is not paid to the Association within Thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the maximum rate allowed by law or Eighteen (18%) percent, whichever is lesser, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to Association shall be due and payable at the main office of the Association. Any holder, insurer, or guarantor of a mortgage on any unit is entitled to notice whenever the assessments on that unit become Sixty (60) days delinquent. This notice must be requested from the Association in writing.

(j) The owner or owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such unit while such party or owner or owners are in default in payment of any assessment or installment thereof owed to the Association, such unit owner or owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment and for attorney's fees, whether suit be brought or not.

(k) No owner of a unit may exempt himself from liability for any assessment levied against him or his unit or membership by waiver of the use or enjoyment of any of the common areas, limited common areas and facilities, or by abandonment of the unit or in any other way.

(l) The Association is hereby granted a lien upon each unit and its appurtenant undivided interest in common areas, limited common areas and facilities which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner of each such unit, which lein shall also secure interest, if any, which may be due on the amount of any

delinquent assessment owing to the Association and, which lien shall also secure all costs and expenses, including reasonable attorney's fees, which may be incurred by the Association in enforcing this lien upon said unit and its appurtenant undivided interest in common areas, limited common areas and facilities. The lien granted to the Association may be foreclosed in the manner provided by South Carolina law for the foreclosure of mortgages and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the owner of any unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said unit and membership. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect their lien, and the Association shall further be entitled to interest at the highest rate allowed by law, or 18%, whichever is lesser, on any such advances made for such purposes. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any unit expressly subject to such lien rights.

(m) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Public Records of Horry County, South Carolina, which claim shall state the description of the unit encumbered thereby, the name of the record owner, the amount and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien provided for herein shall be subordinated to the lien of any first mortgage or deed of trust and any person, firm or corporation acquiring title to any unit and its appurtenant undivided interest in common areas and facilities by foreclosure, deed in lieu of foreclosure or judicial sale, shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be laiable shall be absorbed and paid by owners of all units as a part of the common expenses, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(n) Whenever any unit may be leased, sold, or mortgaged by the unit owner thereof, the Association, upon written request of the unit owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such unit or membership. Such statement shall be prepared by any officer of the Association and any lessee, purchaser, or mortgagee may rely upon such statement in concluding the proposed lease, purchase, or mortgage transaction, and the Association shall be bound by such statement.

(o) In the event that a unit is to be leased, sold or mortgaged at a time when payment of any assessment against the owner of said unit is due or is in default (whether or not a claim of lien has been recorded by the Association), then the rent, pro-

ceeds of such purchase, or mortgage proceeds shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments therof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the owner of any unit who is responsible for payment of such delinquent assessment.

(p) In any voluntary conveyance of a unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

(q) Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking by foreclosure to attempt such collection, nor shall it be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

(r) COMMON SURPLUS. Common surplus, meaning all funds and other assets of the Association (including excess receipts of the Association from, without limitation, assessments, rents, profits, and revenues from whatever source over the amount of the common expense), shall be owned by the owners of all units in the same proportion that the undivided interest in common areas and facilities appurtenant to all units; provided, however, that said common surplus shall be held by the Association in the manner, and subject to the terms, provisions, and conditions of this MASTER DEED, imposing certain limitations and restrictions upon the use and distribution thereof. Distribution of common surplus which may be made from time to time, shall be made to the then owners of units in accordance with their percentage interest in common surplus as declared herein.

9.12 COST OF MAINTENANCE. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the owner or owners of a unit or units, or the family, guests, lessees, or invitees thereof, or results from causes excluded from coverage in the Insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which the unit or units or such owner of owners is subject.

ARTICLE X
MORTGAGE OF UNITS

10.0 Any unit owner may give a deed of trust or mortgage on his unit without prior notice to or authorization by the Declarant or the Board of Directors of the Association; provided, however, that should foreclosure proceedings be instituted under the terms of same mortgage or deed of trust, the unit owner shall notify the Declarant and the Board of Directors of the Association simultaneously by registered mail, return receipt requested, of the pending foreclosure sale, said notice to be given not less than fifteen (15) days prior to the date of such foreclosure sale. Said notice shall contain the date, time, and place of such sale and shall specify the amount of the outstanding indebtedness remaining on the unit.

ARTICLE XI
PARTITIONING

11.0 The common areas, limited common areas and facilities shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a condominium unit by the entireties, jointly or in common, or in any other form by law permitted.

ARTICLE XII
AMENDMENT OF MASTER DEED

12.0 This Master Deed may be amended by the vote of at least Ninety (90%) percent in common interest of all unit owners, cast in person or by proxy, at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until duly and properly recorded in the Office of the Clerk of Court for Horry County, South Carolina, wherein this initial MASTER DEED is recorded. All amendments must comply with paragraphs 13.2 and 13.3 of this Master Deed.

ARTICLE XIII
TERMINATION

13.0 The condominium shall be terminated, if at all, in the following manner:

(a) By the unanimous agreement of all unit owners of all units of The St. Clements expressed in an instrument to that effect duly recorded, and provided, that the holders of all liens affecting any of the units, consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property as provided herein. The termination shall become effective when such agreement has been recorded in the Public Records of Horry County, South Carolina.

(b) If it is determined in the manner elsewhere provided that the condominium shall not be reconstructed after casualty, the condominium plan of ownership shall be terminated and this MASTER DEED revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Horry County, South Carolina.

(c) After termination of the condominium, the unit owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the unit or units formerly owned by such unit owners shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the common areas and facilities previously owned by each unit owner. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held for the unit owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a common expense.

(d) Following termination, the property may be partitioned and sold upon the application of any unit owner. Following a termination, if the Board of Directors determines by not less than a three-fourths (3/4) vote to accept an offer for the sale of the property, each unit owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

(e) The members of the Board of Directors, acting collectively as agent for all unit owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

13.1 Except as provided for in this MASTER DEED, no alteration in the percentage of ownership in common areas and facilities appurtenant to each unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of common surplus, shall be made without the prior written consent of all of the owners of all units and all of the institutional lenders holding first mortgages or first deeds of trust on the units.

13.2 No alteration, amendment, or modification of the rights and privileges granted and reserved hereunder in favor of an insitutional lender or institutional lenders shall be made without prior written consent of all institutional lenders holding mortgages on units in the condominium being first had and obtained.

13.3 No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Declarant shall be made without the written consent of said party being first had and obtained.

ARTICLE XIV
REMEDIES IN EVENT OF DEFAULT

14.0 The owner or owners of each unit shall be governed by and shall comply with the provisions of this MASTER DEED and the Articles of Incorporation and By-Laws of the Association, as any of the same are now constituted or as they may be amended or supplemented from time to time. A default by the owner of any unit shall entitle the Declarant, the Association or the owner of other units to such relief as is available at law or equity, including:

(a) Failure to comply with any of the terms of this MASTER DEED or other restrictions and regulations contained in the Articles of Incorporation or the By-Laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injuctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved unit owner.

(b) Each unit owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member of his family, or his or their guests, employees, agents, or lesses, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occassioned by use, misuse, occupancy, or abandonment of a unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

(c) In any proceedings arising because of alleged default by a unit owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court, but in no event shall any unit owner be entitled to such attorney's fees.

(d) The failure of the Association or any unit owner to enforce any right, provision, covenant, or condition which may be granted by this MASTER DEED or the other above-mentioned documents, shall not constitute a waiver of the right of the Association or of the unit owner to enforce such right, provision, covenant, or condition in the future.

(e) All rights, remedies and privileges granted to the Association or the owner or owners of a unit pursuant to any terms, provisions, covenants, or conditions of this MASTER DEED or other abovementioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be available to such party at law or in equity.

(f) The failure of the Declarant to enforce any right, privilege, covenant, or condition which may be granted to it by this MASTER DEED or other above-mentioned documents, shall not constitute a waiver of the right of the Declarant to thereafter enforce such right, provision, covenant or condition in the future.

(g) The failure of an institutional lender or institutional lenders to enforce any right, provision, privilege, covenant, or condition which may be granted to it or them by the MASTER DEED or other abovementioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

ARTICLE XV
RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

15.0 "Institutional Lender" or "Institutional Lenders" as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, the Federal National Mortgage Association, or other mortgage lenders. So long as any institutional lender or institutional lenders shall hold any mortgage upon any unit or units, or shall be the owner of any unit or units, such institutional lender or institutional lenders, holders, insurors or guarantors of such mortgages, shall have the following rights in addition to any rights set out elsewhere in this MASTER DEED:

(a) To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished, upon request, at least one copy of the annual financial statmement and report of the Association prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by April 15 of each calander year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment, other than as provided for herein, for future phases of construction by Declarant, to this MASTER DEED, or the Articles of Incorporation and By-Laws of the Association, which notice shall state the nature of the amendment being proposed.

(c) To be given notice of any Sixty (60) day default in the payment of assessments by any owner owning a unit encumbered by a mortgage held by the institutional lender or institutional lenders, such notice to be given in writing and to be sent to the principal office of such intstitutional lender or institutional lenders, or to the place which it or they may designate in writing.

(d) To be given access to copies of the MASTER DEED, By-Laws of the Association and any Rules applicable to the project.

(e) To be given notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its loan.

(f) To be given notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(g) To be given notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

15.1 Whenever any institutional lender or institutional lenders desire the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein, identifying the unit or units upon which any such institutional lender or institutional lenders hold any mortgage or mortgages, or identifying any units owned by them or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such institutional lender or insitiutional lenders.

ARTICLE XVI
SEVERABILITY

16.0 In the event that any of the terms, provisions, or covenants of this MASTER DEED are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provision, or covenants held to be partially invalid or unenforceable.

ARTICLE XVII
LIBERAL CONSTRUCTION

17.0 The provisions of this MASTER DEED shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. These Article headings are for convenience of reference only and shall not be considered terms of this MASTER DEED.

ARTICLE XVIII
MASTER DEED OF CONDOMINIUM BINDING ON ASSIGNS AND SUBSEQUENT OWNERS

18.0 The restrictions and burdens imposed by the Articles of this MASTER DEED are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each unit and its appurtenant undivided interest in common areas and facilities; this MASTER DEED shall be binding upon the Declarant, its successors and assigns, and upon all parties who may subsequently become owners of units in the condominium, and their respective heirs, devisees, legal representatives, successors and assigns. This MASTER DEED and the Exhibits attached hereto and amendments hereof shall be construed and controlled by and under the laws of the State of South Carolina.

ARTICLE XIX
EMINENT DOMAIN

19.0 In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of the common areas, limited common areas and facilities, the award of such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for repair, restoration, replacement or improvement of the remaining common areas and facilities, if only part are taken. If all or more than two-thirds (2/3) of all of the general common areas and facilities are taken, it shall be deemed a destruction of more than two-thirds (2/3) of all of the general common areas and facilities and the condominium shall be terminated as hereinbefore provided. Any funds not utilized (in the case of a partial taking) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part or a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their interests may appear. Institutional mortgagees shall be given notice of any condemnation of a material portion of the property.

ARTICLE XX
WARRANTIES AND REPRESENTATIONS

20.0 The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the condominium, except as specifically set forth herein, and no person shall rely upon any warranty or representation not specifically made therein. Any estimates of common expenses, taxes, or other charges are deemed accurate, but no warranty or guarantee is made or intended, nor may one be relied upon. This disclaimer in not to be construed as relieving Declarant from complying with any VA Regulation, specifically VAR 4360.1 (d), requiring warranties against defects in construction for any units sold and guaranteed by the Veterans Administration.

ARTICLE XXI
TRANSFER OF DECLARANT RIGHTS

21.0 Any or all of the rights and obligations of Declarant hereunder may be transferred by Declarant to other persons or entities, provided that such transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided no such transfer shall be effective unless it is in a written instrument signed by the Declarant and recorded in the official records of Horry County, South Carolina.

ARTICLE XXII
DEFINITIONS

22.0 The terms defined in Section 27-31-20, South Carolina Code, 1976 as amended, ("The Act"), shall have the same meaning when used in this Master Deed and the By-Laws and Articles of Incorporation of The St. Clements Homeowners Association, Inc.

(a) "UNIT" - The term "unit" as used in the project documents shall have the same meaning as the term "Apartment" as used in the Act.

(b) "ACT" - means the South Carolina "Horizontal Property Act",

Sections 27-31-20, South Carolina Code of Laws, 1976, as amended.

(c) "PROJECT DOCUMENTS" - means this Master Deed and its exhibits, the By-Laws and Articles of the Association.

(d) "ASSOCIATION" - means the The St. Clements Homeowners Association, Inc., a South Carolina Corporation.

IN WITNESS WHEREOF, The Declarant, St. Clements Ltd., a California Limited Partnership, has caused this MASTER DEED to be signed for and on behalf of the Partnership by the Managing Partner, the day and year first above written.

WITNESS:

St. Clements Ltd., a
Californa Limited Partnership

By: Whiteville Properties
Development Company, Inc.
General Partner

Maria K Jenkins

By: C Dwight Cox
C. Dwight Cox, President

* * * * * * * * * * * *

Personally appeared before me Maria K. Jenkins who after being duly sworn deposes and states that s/he with Fred B. Newby saw the within named St. Clements Ltd., A California Limited Partnership, by Whiteville Properties Development Company, Inc., by C. Dwight Cox, its President, sign, seal, and as its act, deliver the preceeding Master Deed for The St. Clements Horizontal Property Regime.

Maria K Jenkins

Sworn before me this 8th
day of December, 1987.

Notary Public for South Carolina
My commission expires: 8-16-94

EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land lying and being in Dogwood Neck Township, County of Horry, State of South Carolina, and being more particularly described as follows:

Being Lot Number Three (3) of Block Number Six CP (6-CP) of Block of Property North of Cane Patch Swash, at Myrtle Beach, SC as shown on map or plat made by T.J. Jordan, C. E., dated April, 1946, recorded in the Office of the Clerk of Court for Horry County in Plat Book 5A, at page 36, reference to which is craved as forming a part of this description.

AND

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Myrtle Beach, Horry County, South Carolina, and described as follows:

BEGINNING at the southwest corner of Lot 3, Block 6-CP, Cane Patch Section and running N 51 deg. 00' E 150.83 feet to a point; thence turning and running S 45 deg. E 27 feet to a point; thence turning and running S 46 deg. 49' 11" W 150.08 feet to a point; thence turning and running N 45 deg. 00' W 38 feet to the point of beginning; all as shown on a plat prepared by Robert L. Bellamy & Associates, dated October 9, 1984, and recorded in Plat Book 82, at page 166, Office of the Clerk of Court for Horry, County, South Carolina, and identified as Lot 3-A, adjoining Lot 3, Block 6-CP, Cane Patch Section.

THE ST. CLEMENTS

EXHIBIT B TO MASTER DEED

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

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

501	128,000	1.5075%
502	128,000	1.5075%
503	128,000	1.5075%
504	128,000	1.5075%
505	128,000	1.5075%
506	128,000	1.5075%
507	128,000	1.5075%
508	128,000	1.5075%
509	128,000	1.5075%
601	128,000	1.5075%
602	128,000	1.5075%
603	128,000	1.5075%
604	128,000	1.5075%
605	128,000	1.5075%
606	128,000	1.5075%
607	128,000	1.5075%
608	128,000	1.5075%
609	128,000	1.5075%
701	128,000	1.5075%
702	128,000	1.5075%
703	128,000	1.5075%
704	128,000	1.5075%
705	128,000	1.5075%
706	128,000	1.5075%
707	128,000	1.5075%
708	128,000	1.5075%
709	128,000	1.5075%
PH-1 (may be used as a commercial or residential unit)	256,000	3.0150%
Pool-1 (commercial)	128,000	1.5075%
C-1	42,667.00	.5024
	8,490,667.00	100.0000*

* Rounded from 99.9974

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EXHIBIT C

23 472

The State of South Carolina

CERTIFICATE OF INCORPORATION
BY THE SECRETARY OF STATE

EXECUTIVE DEPARTMENT

WHEREAS, C. Dwight Cox, 5001 N. Kings Hwy., Suite 207, Myrtle Beach, SC
Guy C. Collins, 14 Old Bridge Road, Myrtle Beach, SC 29577
Charlotte A. Collins, 14 Old Bridge Road, Myrtle Beach, SC 29577

two or more of the officers or agents appointed to supervise or manage the affairs of

THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

which has been duly and regularly organized, did on the 19th day of November, A. D. 19 87 file with Secretary of State a written declaration setting forth:

That, at a meeting of the aforesaid organization held pursuant to the by-laws or regulations of the said organization, they were authorized and directed to apply for incorporation.

That, the said organization holds, or desires to hold property in common for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose, or any two or more of said purposes, and is not organized for the purpose of profit or gain to the members, otherwise than is above stated, nor for the insurance of life, health, accident or property, and that three days' notice in the Sun News, a newspaper published in the County of Horry has been given that the aforesaid Declaration would be filed.

AND WHEREAS, *Said Declarants and Petitioners* further declared and affirmed:

FIRST: Their names and residences are as above given.

SECOND: The name of the proposed Corporation is THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

THIRD: The place at which it proposes to have its headquarters or be located is 70th Avenue North
Myrtle Beach, SC

FOURTH: The purpose of the said proposed Corporation is (see Attached)

FIFTH: The names and residences of all Managers, Trustees, Directors or other officers are as follows:

C. Dwight Cox	5001 N. Kings Hwy. Ste. 207, Myrtle Beach, SC	President
Guy C. Collins	14 Old Bridge Rd., Myrtle Beach, SC	Secretary/Treasurer
Charlotte A. Collins	14 Old Bridge Road, Myrtle Beach, SC	Vice President

SIXTH: That they desire to be incorporated: in perpetuity

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

GIVEN under my hand and the seal of the State, at Columbia, this 19th day of November in the year of our Lord one thousand nine hundred and 87 and in the two hundred and Twelfth year of the Independence of the United States of America.

John T. Campbell
JOHN T. CAMPBELL,
Secretary of State.

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EXHIBIT "C"

ARTICLES OF INCORPORATION
OF

THE ST. CLEMENTS
HOMEOWNERS ASSOCIATION, INC.

(A CORPORATION NOT FOR PROFIT)

In order to form a corporation under and in accordance with the provisions of the laws of the State of South Carolina for the formation of Corporations Not For Profit, we, the undersigned, hereby associate ourselves into a corporation for the purpose and with the powers hereinafter mentioned; and to that end we do, by these Articles of Incorporation, set forth:

I.

The Name of the proposed Corporation shall be:

THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

II.

The purposes and objects of the Corporation shall be to administer the operation and management of certain common areas of a condominium project to be established, on property situate, lying and being in Horry County, South Carolina, (the Project) as well as more fully described in the Master Deed of The St. Clements Horizontal Property Regime,

For a more complete legal description, see attached Exhibit "A".

and to undertake the performance of the acts and duties incident to the administration of the operation and management of said facilities in accordance with the terms, provisions, conditions and authorizations contained in these Articles of Incorporation and which may be contained in the formal MASTER DEED of The St. Clements Horizontal Property Regime (the MASTER DEED) which will be recorded in the Public Records of Horry County, South Carolina, at the time said property, and the improvements now or hereafter situate thereon, are submitted to a plan of condominium ownership; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said facilities. The Corporation shall be conducted as a non-profit organization for the benefit of its members.

III.

The Corporation shall have the following powers:

1. The Corporation shall have all of the powers and privileges granted to corporations not for profit under the law pursuant to which this Corporation is chartered.

2. The Corporation shall have all of the powers reasonably necessary to implement and effectuate the purposes of the Corporation including, but not limited to, the following:

(a) To make and establish reasonable rules and regulations governing the use of units and Common Elements in said Project as said terms may be defined in said MASTER DEED to be recorded.

(b) To levy and collect assessments against members of the Corporation to defray the common expenses of the Association as may be provided in said MASTER DEED and in the By-Laws of the Corporation, which may hereafter be adopted, including the right to levy and collect assessments for the purposes of acquiring, operation, leasing, managing and otherwise trading and dealing with such property, whether real or personal, including units in said Project, which may be necessary or convenient in the operation and management of the Project and facilities and in accomplishing the purposes set forth in said MASTER DEED.

(c) To maintain, repair, replace, operate and manage the facilities and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvements of the Association property.

(d) To contract for the management of the common facilities and to delegate to such contractor all of the powers and duties of the Association except those which may be required by the MASTER DEED to have approval of the Board of Directors or Membership of the Corporation.

(e) To enforce the provisions of said MASTER DEED, these Articles of Incorporation, the By-Laws of the Corporation, which may be hereafter adopted, and the Rules and Regulations governing the use of said facilities as same may be hereafter established.

(f) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Corporation pursuant to the MASTER DEED aforementioned.

IV.

The qualifications of the members, the manner of their admission to membership and termination of such membership, and voting by members shall be as follows:

1. The owners of all Units in the Project shall be members of the Corporation, and no other persons or entities shall be entitled to membership, except as provided in Item (5) of Article IV.

2. Membership shall be established by the acquisition of fee simple title to a Unit in the Condominium or the Project or by the acquisition of a fee ownership interest therein, whether by conveyance, judicial decree or otherwise, and the membership of any party shall be automatically terminated upon his being divested of all title to or his entire fee ownership interest in any unit except that nothing contained herein shall be construed as terminating the membership of any party who may own Two (2) or more units or who may own a fee ownership interest in Two (2) or more units so long as such party shall retain title to or a fee ownership interest in a.. unit

3. The interest of a member in the funds and assets of the Corporation cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his unit. The funds and assets of the Corporation shall be loaned solely to the

Corporation subject to the limitation that the same be expended, held or used for the benefit of the Membership and for the purposes authorized herein, in the MASTER DEED and in the By-Laws which may be hereafter adopted.

4. On all matters on which the Membership shall be entitled to vote, there shall be only one vote for each unit in the Project, (with the exception of the Penthouse, which shall have two (2) votes), which vote(s) may be exercised or cast by the owner or owners of each unit in such manner as may be provided in the By-Laws hereafter adopted by the Corporation. Should any member own more than One (1) unit, such member shall be entitled to exercise or cast as many votes as he owns units in the manner provided by said By-Laws. Voting shall be non-cumulative.

5. Until such time as the property described in Article II hereof, and the improvements which may be hereafter constructed thereon, are submitted to a plan of Condominium ownership by the recordation of the MASTER DEED, the Membership of the Corporation shall be comprised of the Subscribers to these Articles, each of which Subscribers shall be entitled to cast One (1) vote on all matters on which the Membership shall be entitled to vote.

V.

The Corporation shall have perpetual existence.

VI.

The principal office of the Corporation shall be located in South Carolina, but the Corporation may maintain offices and transact business in such other places within or without the State of South Carolina as may from time to time be designated by the Board of Directors. The principal office of the Corporation shall be located at the site of the Condominium in Myrtle Beach, South Carolina.

VII.

The affairs of the Corporation shall be managed by the President of the Corporation assisted by the Vice President, Secretary and Treasurer and, if any, the Assistant Secretaries and Assistant Treasurers, subject to the direction of the Board of Directors. The Board of Directors may employ a Managing Agent and/or other such managerial and supervisory personnel or entities to administer or assist in the administration of the operation and management of the facilities, and the affairs of the Corporation and any such person or entity may be so employed without regard to whether such person or entity is a member of the Corporation or a Director or Officer of the Corporation, as the case may be.

VIII.

The number of members of the first Board of Directors of the Corporation shall be Three (3). The number of members of succeeding Boards of Directors shall be as provided from time to time by the By-Laws of the Corporation. The members of the Board of Directors shall be elected by the members of the Corporation at the Annual Meeting of the Membership as provided by the By-Laws of the Corporation, and at least a majority of the Board of Directors

shall be members of the Corporation, or shall be authorized representatives, officers or employees of a corporate member of the Corporation. Voting for Directors shall be non-cumulative, as described in the By-La s. Notwithstanding the foregoing, so long as St. Clements Ltd., hereinafter referred to as "Owner" or "Declarant", is the owner of Twenty Five (25%) percent or more of the units in said Project, Owner shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association. Owner may designate and select the person or persons to serve as a member or members of each said Board of Directors in the manner provided in the By-Laws of the corporation. The power of the Owner to designate directors as above referred to shall terminate no later than the earlier of the following events:

(i) One Hundred Twenty (120) days after Seventy-five (75%) percent of the units in the Project have been conveyed; or

(ii) Three (3) years following the date of the recording of the MASTER DEED.

IX.

The Board of Directors shall elect a President, Secretary, and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall determine. The President shall be elected from among the membership of the Board of Directors, but no other officer need be a Director. The same person may hold Two (2) offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

X.

The names and post office addresses of the first Board of Directors, who, subject to the provision of the Articles of Incorporation, the By-Laws, and the laws of the State of South Carolina, shall hold office for the first year of the Corporation's existence, or until their successors are elected and have qualified are as follows:

NAME	ADDRESS
C. Dwight Cox	Suite 207, 5001 N. Kings Highway Myrtle Beach, SC 29577
Guy C. Collins	14 Old Bridge Road Myrtle Beach, SC 29577
Charlotte A. Collins	14 Old Bridge Road Myrtle Beach, SC 29577

The initial registered Office of the Corporation shall be at 5001 N. Kings Hwy, Myrtle Beach, South Carolina and the initial agent shall be C. Dwight Cox.

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XI.

The subscribers to these Articles of Incorporation are the persons herein named to act and serve as members of the first Board of Directors of the Corporation, the names of which Subscribers and their respective post office addresses are more particularly set forth in Article X above.

XII.

The Officers of the Corporation who shall serve until the first election under these Articles of Incoproration shall be the following:

C. Dwight Cox	PRESIDENT
Guy C. Collins	SECRETARY
Guy C. Collins	TREASURER

XIII.

The first By-Laws of the Corporation shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the By-Laws.

XIV.

Every Director and every officer of the Corporation shall be indemnified by the Corporation against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Corporation, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the Corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

XV.

Any amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Corporation acting upon a vote of the majority of the Directors, or by the members of the Corporation owning a majority of the total value of the property in the condominium, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to these Articles of Incorporation being proposed by said Board of Directors or members, such proposed amendment or amend-

other Officer of the corporation in the absence of the President, who shall thereupon call a Special Joint Meeting of the members of the Board of Directors of the Corporation and the membership for a date not sooner than Twenty (20) days nor later than Sixty (60) days from the receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such Meeting stating the time and place of the meeting and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed or presented personally to each member not less than Ten (10) days or more than Thirty (30) days before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the member at his post office address as it appears on the records of the Corporation, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice. Such waiver, when filed in the records of the Corporation, whether before or after the holding of the Meeting, shall be deemed equivalent to the giving of such notice to such member. At such Meeting, the amendment or amendments proposed must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the total value of the property in the Project in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to register the same in the Ofice of the Secretary of State of the State of South Carolina, and upon the registration of such amendment or amendments with said Secretary of State, a certified copy thereof shall be recorded in the Public Records of Horry County, South Carolina, within Ten (10) days from the date on which the same are so registered. At any meeting held to consider such amendment or amendments of these Articles of Incorporation, the written vote of any member of the Corporation shall be recognized, if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Corporation at or prior to such meeting.

WHEREFORE, Your Petitioners pray that the Secretary of State does issue to the aforesaid "THE ST. CLEMENTS HOMEOWNER'S ASSOCIATION, INC.", a charter with all rights, powers, privileges and immunities and subject to all of the limitations and liabilities conferred by Chapter 31, Title 33, 1976 Code of Laws of South Carolina, and acts amendatory thereto.

C. Dwight Coy
Incorporator

Charlotte A. Collins
Incorporator

Guy C. Cox
Incorporator

This is to certify that I have examined and approved the foregoing Articles and Declarations of Incorporation pursuant to Section 33-31-40, Code of Laws of South Carolina.

M.L. Brown, Jr.
M.L. Brown, Jr.
Sheriff for Horry County
11-16-87

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EXHIBIT "D"

BY-LAWS
OF
THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

A Corporation not for profit under the laws of the State of South Carolina.

I.
IDENTITY

These are the By-Laws of the The St. Clements Homeowners Association, Inc., a non-profit corporation existing under the laws of the State of South Carolina, which has been organized for the purpose of administering a condominium established as a Horizontal Property Regime pursuant to the Horizontal Property Act which is Chapter 31, Title 27 of the 1976 Code of Laws of South Carolina. This Horizontal Property Regime is identified by the name The St. Clements Horizontal Property Regime and is located upon lands in Horry County, South Carolina as more particularaly described in Exhibit A annexed hereto.

(a) The provisions of these By-Laws are applicable to said Condominium, and the corporation, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions and authorizations contained in the Articles of Incorporation and which may be contained in the formal MASTER DEED which will be recorded in the Public Records of Horry County, South Carolina, at the time said property and the improvements now or hereafter situate thereon are submitted to the plan of condominium ownership, the terms and provisions of said Articles of Incorporation and MASTER DEED to be controlling wherever the same may be in conflict herewith.

(b) All present or future owners, tenants, future tenants, or their employees, invitees or any other person that might use said Condominium or any of the facilities thereof in any manner, are subject to the regulations set forth in the By-Laws and in said Articles of Incorporation and MASTER DEED.

(c) The office of the Association shall be located at the site of the Condominium in Myrtle Beach, Horry County, South Carolina or such other place as the Board of Directors directs or as directed in the Articles of Incorporation.

(d) The fiscal year of the Association shall be the calendar year, or such other year as approved by the Board of Directors.

(e) The seal of the Association shall bear the name of the Association, and the words "South Carolina", the words "Corporation Not for Profit", and the year of incorporation, an impression of which seal is as follows:

II.
MEMBERSHIP, VOTING, QUORUM, AND PROXIES

(a) The qualifications of members, the manner of their admission to membership and termination of such membership, and

voting by members, shall be as set forth in Article IV of the Articles of Incorporation of the Association, the provisions of which said Article of the Articles of Incorporation are incorporated herein by reference.

(b) A quorum at members' meetings shall consist of persons entitled to cast a majority (51% of the value of the property) of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.

(c) The vote of the owners of a unit owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the owners of the unit and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.

(d) Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary before the appointed time of the meeting.

(e) Approval or disapproval of a unit owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such owner if in an Association meeting.

(f) Except where otherwise required under the provisions of the Articles of Incorporation of the Association, these By-Laws, the MASTER DEED, or where same may otherwise be required by law, the affirmative vote of the owners of a majority of the units represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

III.
ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(a) The Annual Members' Meeting shall be held at the office of the Association at 2:00 P.M., Eastern Standard Time, on the first Saturday in November of each year beginning in 1988 for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Saturday.

(b) Special Members' Meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such Officers upon receipt of a written request from members of the Association owning a majority of the units

(c) Notice of all members meetings, regular or special, shall be given by the President, Vice President or Secretary of the Association, or other Officer of the Association in absence of said Officers, to each member, unless waived in writing, such notice to be written or printed and to state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than Ten (10) days nor more than Sixty (60) days prior to the date set for such meeting, which notice shall be mailed or presented personally. Receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his Post Office address as it ap-

pears on the records of the Association, the postage thereon prepaid. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members meeting cannot be organized because a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws or the MASTER DEED, the members who are present, either in person or by proxy, may adjourn the meetings from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.

(d) At meetings of membership, the President shall preside, or in the absence of him, the membership shall select a chairman.

(e) The order of business at Annual Members' Meetings and, as far as practical, at any other members' meeting, shall be:

(i) Calling of the roll and certifying of proxies

(ii) Proof of notice of meeting or waiver of notice

(iii) Reading of minutes

(iv) Reports of Officers

(v) Reports of Committees

(vi) Appointment by Chairman of Inspectors of Election

(vii) Election of Directors

(viii) Unfinished business

(ix) New business

(x) Adjournment

IV.
BOARD OF DIRECTORS

(a) The first Board of Directors of the Association and succeeding Boards of Directors shall consist of three (3) persons. At least a majority of the Board of Directors shall be members of the Association, or shall be authorized representatives, officers, or employees of a corporate member of the Association. It is provided that subject to the limitations below, St. Clements Ltd., a California Limited Partnership, hereinafter referred to as "Owner", shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association. Notwithstanding the foregoing provisions, the power of the Owner to designate Directors as set forth above shall terminate no later than the earlier of the following events:

(i) One Hundred Twenty (120) days after Seventy-five (75%) percent of the units in the project have been conveyed; or

(ii) Three (3) years following the date of the recording of the MASTER DEED.

(b) Election of Directors shall be conducted in the following manner:

(i) Owner, Sponsor of the Condominium and "Declarant" under the aster Deed, shall at the beginning of the election of the Board of Directors, designate and select that number of the members of the Board of Directors which it should be entitled to designate and select in accordance with the provisions of these By-Laws, and upon such designation and selection by Owner by written instrument presented to the meeting at which such election is held, and individuals so designated and selected by Owner shall be deemed and considered, for all purposes, Directors of the Association, and shall thenceforth perform the offices and duties of such Directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws.

(ii) All members of the Board of Directors whom Owner shall not be entitled to designate and select under the terms and provisions of these By-Laws, shall be elected by a plurality of the votes cast at the Annual Meeting of the members of the Association immediately following the designation and selection of the members of the Board of Directors whom Owner shall be entitled to designate and select.

(iii) Vacancies in the Board of Directors may be filled until the date of the next Annual Meeting by the remaining Directors, except that should any vacancy in the Board of Directors be created in any Directorship previously filled by any person designated and selected by Owner, Owner shall designate and select, by written instrument delivered to any Officer of the Association, the successor Director to fill the vacated Directorship for the unexpired term thereof.

(iv) At the first Annual Meeting of the members held after the MASTER DEED has been recorded in the Public Records of Horry County, South Carolina, the term of office of the One (1) Director receiving the highest plurality of votes shall be established at Two (2) years, and the Two (2) Directors selected by Owner, shall serve until Owner no longer has the power, as provided herein, to select members of the Board of Directors. Thereafter, as many Directors of the Association shall be selected at the Annual Meeting as there are regular terms of office of Directors expiring at such time. The term of the Directors so selected at the Annual Meeting of members each year shall be for Two (2) years expiring at the second Annual Meeting following their election, and thereafter until their successors are duly elected and qualified, or until removed in the manner elsewhere provided or as may be provided by law for the removal of Directors of South Carolina Corporations for profit.

(v) In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, provided, however, that no member or owner of any unit may cast more than one vote for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative.

(vi) In the event that Owner, in accordance with the privilege granted unto it, selects any person or persons to serve on any Board of Directors of the Association, the said Owner shall have the absolute right at any time, in it its sole discretion, to replace any such person or persons with another person or persons to serve on said Board of Directors. Replacement of any person or persons designated by Owner to serve on any Board of Directors of the Association shall be made by written instrument delivered to any officer of the Association, which instrument shall specifiy the name or names of the person or persons designated as successor or successors to the persons so removed from said Board of Directors. The removal of any Director and designation of his successor shall be effective immediately

upon delivery of such written instruement by Owner to any officer of the Association.

(c) The orgar zational meeting of a newly elected Board of Directors shall be held within Ten (10) days of their election, at such time and at such place as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary provided a quorum shall be present.

(d) Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, which notice shall state the time, place, and purpose of the meeting.

(e) Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board. Not less than Three (3) days notice of a meeting shall be given to each Director, personally or by mail, telephone or telelgram, which notice shall state the time, place and purpose of the meeting.

(f) Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

(g) A quorum at a Director's meeting shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as specifically otherwise provided in the Articles of Incorporation, these By-Laws or the MASTER DEED. If any Director's meeting cannot be organized because a quorum has not attended, wherever the latter percentage of the Directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws or the MASTER DEED, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present. At any adjourned meeting, any business which may have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes there of shall constitute the presence of such Director for the purpose of determining a quorum.

(h) The presiding Officer of Director's meetings shall be the President. In the absence of the President, the Directors present shall designate one of their number to preside.

(i) Director's fees, if any, shall be determined by the members.

(j) The Board of Directors shall manage and direct the affairs of the Association and subject to any rescrictions imposed by law, by the MASTER DEED, or these By-Laws, may exercise all of the powers of the Association subject only to approval by the co-owners when such is specifically required of these By-Laws. The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, the MASTER DEED or these By-Laws, as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

(i) To make, levy and collect assessments against members and members units to defray the costs of the common areas and facilities of the Condominium, and to use the

proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

(ii) The maintenance, repair, replacement, operation surveillance and the management of the common areas and facilities of the Condominium wherever the same is required to be done and accomplished by the Association for the benefit of its members;

(iii) The reconstruction of improvements after casualty and the further improvement of the property, real and personal;

(iv) To make and amend regulations governing the use of the property, real and personal, in the Condominium project so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles of Incorporation and MASTER DEED.

(v) To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including units in the Condominium, as may be necessary or convenient in the operation and management of the Condominium, and in accomplishing the purposes set forth in the MASTER DEED.

(vi) To contract for the management of the common areas and facilities in the Condominium project and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the MASTER DEED to have approval of the Board of Directors or membership of the Association.

(vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the MASTER DEED and the regulations hereinafter promulgated governing use of the property in the Condominium.

(viii) To pay all taxes and assessments which are liens against any part of the Condominium other than units and the appurtenances thereto, and to assess the same against the members and their respective units subject to such liens.

(ix) To carry insurance for the protection of the members and the Association against casualty and

BOOK 1182 PAGE 599 600

1.80

liability or other risks as provided in the Master Deed.

(x) To pay all costs of power, water, sewer and other utility services rendered to the condominium and not billed to the owners of the separate units and

(xi) To employ parsonnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association as well as the dismissal of said personnel.

(l) The undertakings and contracts authorized by the first Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board of Directors duly elected by the membership after the property identified herein has been submitted to the plan of the Condominium ownership and said MASTER DEED has been recorded in the Horry County Public Records, so long as any undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association of and in accordance with all applicable Condominium documents, provided, however, nothing contained herein shall be construed to expand the powers to contract as limited in Paragraph 9.5 (d) of the Master Deed.

(m) Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina corporations for profit.

V.
ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS & DIRECTORS

(a) Notwithstanding anything contained in these By-Laws to the contrary, any meeting of members or Directors may be held at any place within or without the State of South Carolina of which notice is given in the notice of any such meeting or notice of which is waived by any person otherwise entitled thereto at, during or after any such meeting.

(b) To the extent now or from time to time hereafter permitted by the law of South Carolina the Directors may take any action which they might take at a meeting of Directors without a meeting, a record of any such action so taken, signed by each Director, is to be retained in the Association's Minute Book and given equal dignity by all persons to the minutes of meetings duly called and held.

VI.
OFFICERS

(a) The executive officers of the Association shall be a President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer, a Secretary and an Assistant Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two or more offices, except that the President shall not also be the Secretary or an Assistant Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers

and duties as the Board shall find to be required to manage the affairs of the Association.

(b) The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion, determine appropriate, to assist in the conduct of the affairs of the Association.

(c) The Vice President shall, in the absence or disability of the president, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

(d) The Secretary shall keep the minutes of all proceedings of the Directors and members. He shall attend to the giving and serving of all notices to the members and Directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of an association and as may be required the the Directors or President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.

(e) The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.

(f) The compensation of all officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association, nor preclude the contracting with a Director for the management of the condominium.

VII.
FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the MASTER DEED and Articles of Incorporation shall be supplemented by the following provisions:

(a) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such an account shall designate the name and address of the owner or owners, the dates and amounts of each assessment against the owners, the dates and amounts in which assessments come due, the amounts paid upon the account and the balance due.

(b) The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to, the following items:

(i) Common expense budget, which may include, without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of Common Elements, landscaping, Club House street and walkways, office ex-

pense, swimming pool, utility services, casualty insurance, liability insurance, administration and reserves (operating and replacement).

(ii) Proposed Assessments Against Each Member. Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 1 of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to, at any time in their sole discretion, levy an additional assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

(c) The Board of Directors shall determine the method of payment of such assessments and the due dates thereof and shall notify the members thereof. The assessments will initially be on a quarterly basis unless changed by a vote of the majority of the Board of Directors.

(d) The depository of the Association shall be such bank or banks as designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

(e) An audit of the accounts of the Association shall be made annually by a Certified Public Accountant, and a copy of the report shall be furnished to each member not later than April 1st of the year following the year for which the report is made. Further, upon written request, any holder of a first mortgage shall be entitled to a copy of the report.

(f) Fidelity bonds shall be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but shall be at least One and one-half (1 1/2) times the annual operating expenses and reserves. The premiums on such bonds shall be paid by the Association.

(g) The books and records of the Association shall be maintained at its office in Myrtle Beach, South Carolina, or such other place as the Board may direct, and will be available for inspection by Owners and the holder of any first mortgage during regular business hours on business days.

VIII.
PARLIMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the Statues of the State of South Carolina.

IX.
AMENDMENTS

Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting upon vote of the majority of the Directors, or by members of the Association owning a majority of the total value of the property in the Condominium, whether meeting as members or by instrument in writing signed by them.

(b) Upon any amendment or amendments to these By-Laws being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other Officer of the Association in absence of the President, who shall thereupon call a Special Joint Meeting of the members of the Board of Directors of the Association and the membership for a date not sooner then Twenty (20) days or later than Sixty (60) days from the receipt by such Officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a Special Meeting of the members if required as herein set forth.

(c) In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the total value of the property in the Condominium. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the Public Records of Horry County, South Carolina, within Ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the Directors and members.

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

(e) Notwithstanding the foregoing provisions of this Article IX, no amendment to these By-Laws which shall abridge, amend or alter the right of Owner to designate and select members of each Board of Directors of the Association, as provided in Article IV hereof, may be adopted or become effective without the prior written consent of Owner.

X.
CONFLICTS

In the event of any conflict between the provisions of the MASTER DEED and the provisions of these By-Laws, the provisions of the MASTER DEED shall control.

XI.
MISCELLANEOUS

(a) The Corporation shall provide for the operation of lobby and other facilities related to the operation of a hotel business in the Project. Each owner shall be responsible for the management of his unit and such items as maintenance, rate setting, payments of assessments, hiring management companies and the negotiation of his own management agreement. Each owner shall be allowed to use the common facilities associated with the hotel business, subject however to reasonable changes and rules established by the common area management company. In addition to the above each owner is responsible for the personnel policies, financial affairs, including budget preparation and establishment of reserves, supervising his management company, promoting offsite rental activities and in general, managing the affairs which pertain to his unit. Nothing contained herein however may be deemed to supersede or alter the requirements of this Master Deed, but are deemed to be in addition to those requirements.

Respectively Submitted and Approved,

C. Dwight Cox
Director

Charlotte A. Collins
Director

Director

EXHIBIT E

NARRATIVE DESCRIPTION OF
UNITS AND IMPROVEMENTS

The Project consists of one building, that being a ten story residential facility, and parking garage.

Section 4.01 Buildings and Improvements. Access to the Property is by Ocean Boulevard and 70th Avenue North, Myrtle Beach, South Carolina.

The building contains Eight habitable levels with a Mechanical Room (elevator) rising above the roof. Included within the building are both residential and commercial units, and other improvements for the benefit of all, as hereinafter described. The floors are numbered entrance through Penthouse and the residential units are numbered, albeit not consecutively, 101 through 709, plus the Penthouse. The commercial units are also numbered, and are designated on the Architectural Plan (Exhibit F and G) attached hereto and are described in the Master Deed (Exhibit B). In addition, there occur on each residential level (floors 1-7) Common Element and likewise there occur on the separate levels of the parking garage certain mechanical rooms(s) and storage area(s) which are without designation except by name and location and which are Common Elements.

The building is constructed of poured in place concrete and set upon pilings. Details of construction and finish are shown in Floor Plans (Exhibit G) hereinabove cited and attached hereto and incorporated by reference in this Master Deed.

All levels are serviced by two enclosed stairwells and two elevators. All habitable levels are serviced by an exposed corridor providing access to each apartment. In the garage the parking levels are joined vertically by a sloped driveway (ramp). Further for administrative purposes and for reasons of safety considerations, access to the entire roof area will, at all times, be restricted and all facilities, structures, and equipment located threupon shall be designated as Common Elements as herein defined.

The Units are as shown on the plans and average between 450 square feet and 534 square feet, with the exception of the Penthouse. Each unit opens into a corridor which in turn is serviced by the stairwells and elevators.

BOOK 1182 PAGE 606

606

EXHIBIT F

Exhibit F consists of a Survey of the project filed herewith in Condominium ~~Plat Book~~ B at Page 60, Office of the Clerk of Court for Horry County.

BOOK 1182 PAGE 607

607

EXHIBIT G

Exhibit G consists of a Set of Floor Plans of the project filed herewith in Condominium ~~Plat~~ Book B, Page 600, Office of the Clerk of Court for Horry County.

BOOK 1182 PAGE 608

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EXHIBIT H

ARCHITECT'S CERTIFICATE

The Undersigned, an architect duly registered to practice under the laws of the State of South Carolina, hereby certifies that these plans entitled "St. Clement's Inn, Myrtle Beach, South Carolina" are an accurate copy of portions of the plans of the buildings as filed with, and approved, by the governmental subdivisions having jurisdiction over the issuance of permits for construction of buildings. These plans fully and accurately depict, within normal construction tolerances, the layout of the location, ceiling and floor heights, unit numbers and dimensions of the units, as well as the common areas of the building.

Timbes, Wilund, Usry, Carter, Inc.

By: Robert Wilund

STATE OF SOUTH CAROLINA
REGISTERED ARCHITECTS
TIMBES-WILUND
USRY-CARTER
Myrtle Beach
B-7800S

BOOK 1182 PAGE 609

6 8 9

HORRY COUNTY ASSESSOR
174-03-04-397
Map Blk Parcel 8/1/88

07355

Deed Bk 1240 Pg 22

FILED
HORRY COUNTY, S.C.
AUG 18 PM 3:23
R.M.C.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AMENDMENT OF MASTER DEED
THE "REGIME"

WHEREAS, St. Clements Horizontal Property Regime (the "Regime") was created by Master Deed (the "Master Deed") which was recorded on December 8, 1987 in Deed Book 1182, Page 557 in the real property records of Horry County; and

WHEREAS, Exhibit B of the Master Deed identifies the Pool Bar located on Regime as Commercial Condominium Unit Pool-1, but the floor plans of the Regime filed in Condominium Plat Book B, Page 600 do not contain the floor plans for such Condominium Unit since the final plans for such unit did not exist when the Master Deed was recorded; and

WHEREAS, the Board of Directors of the St. Clements Resort Homeowners Association, Inc. (the "Association") and St. Clements, Ltd. (the "Declarant") desire to correct such omission by recording the plans for Condominium Unit Pool-1 and amending the Master Deed.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Master Deed is hereby amended by adding the plans for Condominium Unit Pool-1, designed by Timbes, Wilund, Usry and Carter, and recorded in Condominium Plat Book B, Page 600, Horry County Records to the previously filed floor plans forming a part of the Master Deed. Also, the stairs leading to the roof above the Pool Bar and such room area are hereby designated as limited common elements appurtenant to such unit.

BOOK 1240 PAGE 022

22

A TRUE COPY, ATTEST
REGISTER OF MESNE CONVEYANCE
HORRY COUNTY, S. C.
7-31-09
BY

In all other particularly the Master Deed remains as previously written.

IN WITNESS WHEREOF, the parties hereto have herewith set their hands and seals on the 15th day of July, 1988.

St. Clements Homeowners Association, Inc.

Maria K Jenkins

By: C. Dwight Cox
President

Sandra M. Lee

Guy C. Collins
Secretary

St Clements, Ltd.

Maria K Jenkins

By: C. Dwight Cox
President, of Whiteville Properties Development Company, Inc., its General Partner

Sandra M. Lee

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that s/he saw the within named St. Clements Homeowners Association, Inc., by C. Dwight Cox, its President and Guy C. Collins, its Secretary Sign, Seal and Deliver the within Document, and that s/he with the other subscribing witness whose signature appears above, witnessed the execution thereof.

Sworn to before me this 26th day of July, 1988.

Sandra M. Lee
Notary Public for South Carolina

Maria K Jenkins

My Commission Expires: 11/25/1997

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

BOOK 1240 PAGE 023

23

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that s/he saw the within name St. Clements, Ltd., by C. Dwight Cox, its President and _____ its _____ Sign, Seal and Deliver the within Document, and that s/he with the other subscribing witness whose signature appears above, witnessed the execution thereof.

Sworn to before me this 26th day of July, 1988.

Sandra M Lee
Notary Public for South Carolina

Maria K Perkins

My Commission Expires: 11/15/1997

BOOK 1240 PAGE 024

24



A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
Bullery V. Skippus, Director — Bullery V. Skippus

AMENDMENT TO BY LAWS
ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

FILED
2004 SEP 24 AM 9:10
DALE REGISTRAR C. DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AMENDMENT TO BY LAWS FOR THE ST. CLEMENTS HORIZONTAL PROPERTY REGIME, SAID BY LAWS BEING DATED DECEMBER 8, 1987 AND RECORDED DECEMBER 8, 1987 IN DEED BOOK 1182 PAGE 558 RECORDS OF HORRY COUNTY SOUTH CAROLINA

WHEREAS, the By Laws for the St. Clements Horizontal Property Regime was executed December 8, 1987, and recorded December 8, 1987, in Deed Book 1182 at Page 558, records of Horry County, South Carolina (said By Laws, as previously amended, is hereby referred to as the "St. Clements By Laws"); and

WHEREAS, Article IX of the By Laws provides the method by which the St. Clements By Laws may be amended; and

WHEREAS, pursuant to the terms of the St. Clements By Laws, a special meeting of the members of the Association (as defined in the St. Clements By Laws) was duly called for the purpose of amending the St. Clements By Laws; and

WHEREAS, pursuant to the St. Clements By Laws, the proposed amendment to the St. Clements By Laws was approved by an affirmative vote of at least 67% of the members of the Association.

NOW THEREFORE, pursuant to the terms and conditions of the St. Clements By Laws, St. Clements Homeowners Association, Inc. by and through its President and Secretary, with the consent and approval of at least 67% of all Owners of Units within St. Clements Horizontal Property Regime, does hereby amend to the St. Clements By Laws as follows:

Section iv of Article IV of the By Laws, entitled Board of Directors is hereby amended to read as follows:

> **"At the first annual members meeting following the recording of this Amendment, three (3) Directors shall be elected. One of the Directors, elected pursuant to this section, shall be elected to serve for a term of three (3) years and the two remaining Directors shall be elected to serve for a two (2) year term. Following the initial term, each Director thereafter will serve a 2 year term. The purpose of this Amendment is to stagger the terms of the Directors."**

As amended, the St. Clements Master Deed and By Laws shall remain in full force and effect.

In accordance with the requirements of Article IX of the By Laws, execution of the President and Secretary on behalf of the St. Clements Homeowners Association, Inc. shall constitute the required certifications that the within Amendment has been duly adopted in accordance with the requirements of the By Laws, including the requirement that the Amendment be approved by at least 67% of all Co-Owners.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to the By Laws to be executed on this 19th day of July, 2004.

In the presence of:

Angelina R Snyder

Dessa Sisk

ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

BY: Robert L. Baker
PRESIDENT

ATTEST: Donna Cates
SECRETARY

DEED
2982 1070

1070

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

A TRUE COPY, ATTEST
HORRY COUNTY REGISTER OF DEEDS
Bethany V. Skipper, Director — Bethany V. Skipper

PERSONALLY APPEARED before me the undersigned witness and made oath that he/she saw the within named representative, Robert Brothers and Donna Cates, of The St. Clements Horizontal Property Regime, sign, seal, and as his/her act and deed deliver the within Amendment to the By-Laws and the deponent, with the other witnesses whose name is subscribed above, witnessed the execution thereof.

Witness

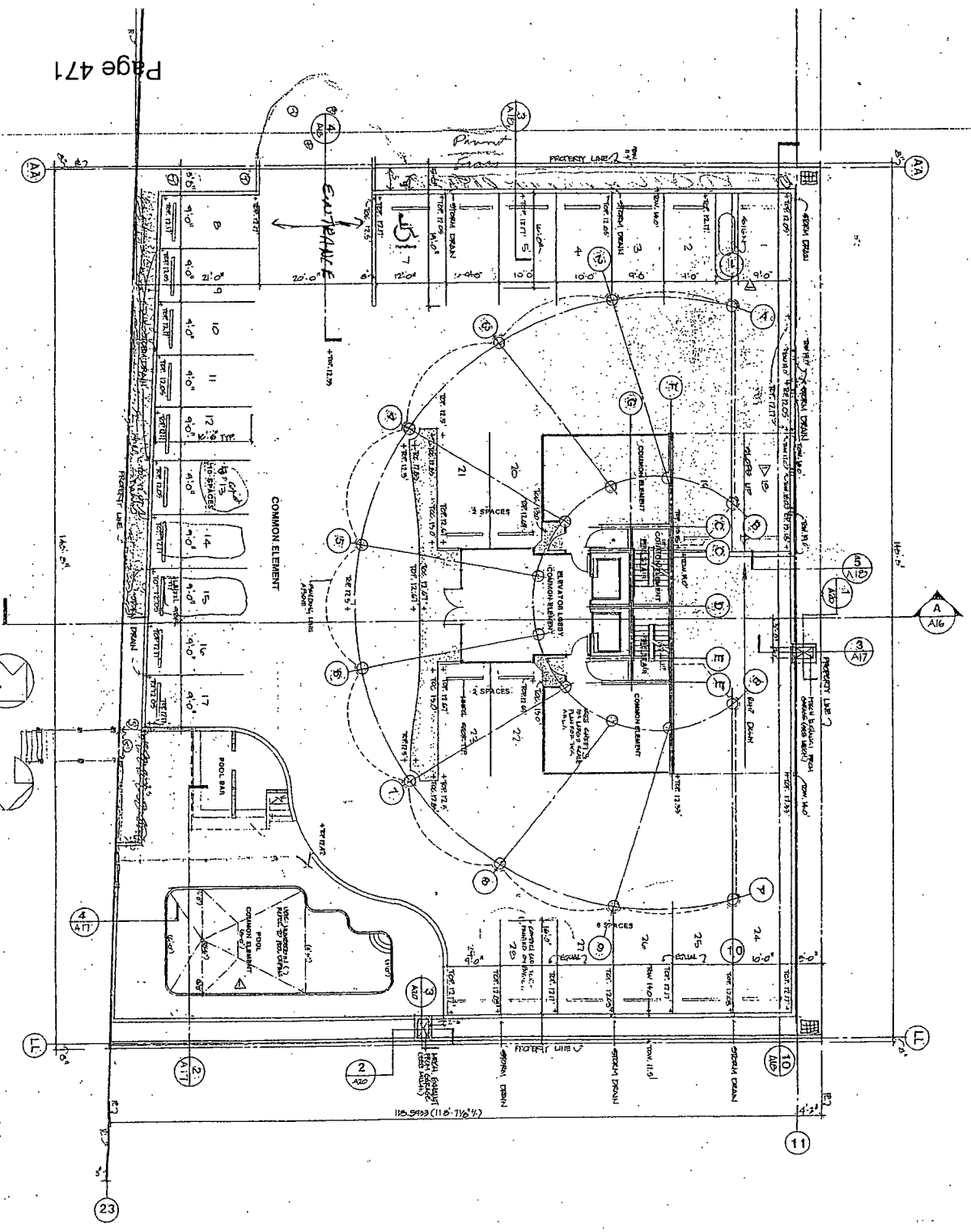
Witness

SWORN TO before me this

19 day of July 2004.

Notary Public for the State of South Carolina
My commission expires: 12/13/11

1071



LEVEL 1 - ENTRANCE /MEETING LEVEL PLAN

SCALE: 1/8" = 1'-0"

STREET LEVEL PARKING DECK

Parking spaces #16 + #17 are tight 2 spaces the BMW goes under deck into one

tabbies EXHIBIT 1A

LEVEL 1 - ENTRANCE /MEETING LEVEL PLAN

TIMBES WILUND USRY ARCHITECTS

5001 NORTH KINGS HIGHWAY RAINBOW HARBOR SUITE 203 MYRTLE BEACH S.C. 449-5204

ST. CLEMENT'S INN

MYRTLE BEACH, SOUTH CAROLINA

FOR DWIGHT COX

PROJ. NO. 3284	REVISION
SET NO.	WATER FEE & COMMERCIAL AREA
DATE 11/9/87	
DRAWN BY	
CHECKED BY	

THESE DRAWINGS ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT OF THE ARCHITECT

OF

FILED
HORRY COUNTY, S.C.

88 AUG -8 PM 3:23

R.M.C

HORRY COUNTY ASSESSOR
174-03-04-397
Map Blk Parcel

EXHIBIT
2

STATE OF SOUTH CAROLINA)
) INDENTURE DEED
COUNTY OF HORRY)

Deed Bk 1240 Pg 25

INDENTURE made the day herein below stated, by and between ST. CLEMENTS, LTD., a California Limited Partnership, hereinafter called GRANTOR, which expression shall include its successors and assigns, where the context so requires, or admits, on the one part, and

Be-Mi, Inc.
Rt. 3, Box 269
Hemingway, South Carolina 29554

hereinafter called GRANTEE(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires or admits, on the other part; and in this agreement, the singular shall include the plural, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained and the sum of EIGHY NINE THOUSAND NINE HUNDRED AND 00/00 ($89,900.00), paid to the GRANTOR by said GRANTEE(S), the GRANTOR has granted, bargained, sold and released, and by these presents, grants, bargains, sells and releases unto the said Be-Mi, Inc., its, successors and assigns forever, all the real property located in Horry County, South Carolina, described as follows:

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY STAMP
AUG 8 '88
TAX $89.00
EXEMPT

DWELLING NO. Pool-1 of St. Clements Horizontal Property Regime, a Horizontal Property Regime created by the Grantor pursuant to the South Carolina Horizontal Property Regime Act, Sec. 27-31-10 et. seq., South Carolina Code of Laws 1976, as amended, and submitted by Master Deed recorded December 8, 1987, in Deed Book 1182, at Page 557, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared and certified by Timbes, Wilund, Usry and Carter, Architects, dated November 9, 1987, and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book B, at Page 800.

Subject to all of the provisions of the aforesaid Master Deed and all Exhibits thereto.

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY STAMP
AUG 8 '88
TAX $89.00
EXEMPT

TOGETHER with all of the appurtenances thereto according to said Master Deed, and the GRANTEE(S) assume and agree to observe and perform their obligations under said Master Deed including, but not limited to, the payment of assessments for the maintenance and operation of the dwelling and condominium. AND SUBJECT to the provisions of the By-Laws of the St. Clements Homeowners Association, Inc. and to all other reservations and restrictions of record, easements, zoning ordinances, and rights-of-way of record, including those as set out in the aforesaid map.

BOOK 1240 PAGE 025

HORRY COUNTY

8/8/88 1240/25

The above described property is located in Myrtle Beach, South Carolina, and conveyed to the Grantor herein by deed recorded in Deed Book 1011 at Page 13, Office of the Clerk of Court for Horry County, South Carolina. As amended in Deed Book 1240, at Page 020 R. M. C. Office for Horry County, South Carolina.

ACKNOWLEDGEMENT AND RATIFICATION BY GRANTEE(S):

The GRANTEE(S), by the acceptance and execution of this Warranty Deed, acknowledge that this conveyance is subject to the provisions of the Master Deed and By-Laws of the St. Clements Homeowners Association, Inc., as described above, including the provisions of all exhibits. The GRANTEE(S) agree to be bound by all of the aforesaid provisions; and the GRANTEE(S) acknowledge and agree that all of said provisions are reasonable, fair and equitable; and GRANTEE(S) acknowledge and agree that the Master Deed and By-Laws of the St. Clements Homeowners Association, Inc. and Exhibits, and the Contract executed by the GRANTOR and GRANTEE(S), contain all of the warranties, representations, and inducements concerning the purchase by GRANTEE(S) of the dwelling described above.

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

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Be-Mi, Inc. its successors and assigns forever.

AND the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular, the said premises unto the said Be-Mi, Inc., its successors and assigns forever, against itself and its successors and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the GRANTOR, ST. CLEMENTS, LTD., a California Limited Partnership, has caused these presents to be signed by its General Partner and the GRANTEE(S) have caused these presents to be signed and sealed this 15th day of July, in the year of our Lord One Thousand Nine Hundred Eighty Eight, and the Two Hundred Twelfth Year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Jean R. Terauny

Bonnie Pa

ST. CLEMENTS, LTD.,
a California Limited
Partnership, by
Whiteville Properties
Development Company,
Inc., General Partner

BY: C. Dwight Cox
its President

BOOK 1240 PAGE 020

ACKNOWLEDGED:
Be-Mi, Inc.
BY: Raymond L. Gould
President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me, the undersigned witness, and made oath that s/he saw the within named ST. CLEMENTS, LTD., INC., a California Limited Partnership, by its General Partner, Sign, Seal and Deliver the within Indenture Deed; and that s/he with the other subscribing witness whose name appears above witnessed the execution thereof.

Sworn to before me this 15th
day of July, 1988.

Brenda Pridgen
Notary Public for South Carolina

Kim N. Truesdale

My Commission expires: 5/20/1993

BOOK 1240 PAGE 027

EXHIBIT 3

ST. CLEMENTS HOMEOWNERS' ASSOCIATION
1st Annual Members' Meeting

Dan Hatch, the General Manager of the Caravelle, introduced himself and explained that ~~Dwight Cox~~, the developer, would be ~~unable to attend the meeting~~; and in his absence and because the two other Board Members were ~~not present~~, Caravilla Management would conduct the meeting and follow the Agenda as agreed to earlier. Mr. Hatch also advised that the purpose of the meeting was to discuss the Homeowners' Association and subjects related to Association business.

He introduced Kevin Warren, the Assistant General Manager, who called the roll. Dan Hatch advised the membership that they were one unit short of having a quorum; however, another owner came in later making the meeting official and fulfilling the quorum requirements.

Proof of Notice of Meeting was established and the next item on the Agenda, the Reports of Officers, was addressed. Board Members usually give the committee reports; but in their absence, Kevin Warren began with the report on the budget.

Kevin went over and explained each item contained in the Proposed 1989 Budget to those attending. He also handed out a report which compared the Proposed 1989 Budget to actual expenditures. This report predicted what expenses would be at the end of 1988. It was the consensus of the membership to have the Association dues remain the same and to lower the reserve amount proportionately to the increase in expenses.

A question from the floor pertained to the Penthouse: whether it was completed, whether association fees were being collected for it, and how much the fees were. Kevin answered as follows: the sixty-three units, penthouse, and pool bar are all individually owned. The Penthouse is twice the amount of a normal unit, the Pool Bar is the same as a unit, and the small room on the left (used as an office or meeting room) is counted as half of a unit.

Percentages are used to determine the amount of association dues owed according to the recorded St. Clements' Master Deed. Although each unsold unit has been assessed and billed for full association dues, these dues are not collected by the Association until each individual unit is closed.

The new Board of Directors, which will be elected today, will need to investigate some of these concerns.

The Board of Directors have a right to put a lien on a unit if the Association dues have not been paid. If the unit is put up for sale, the dues must be paid before the unit can be sold.

Kevin Warren asked if it was agreeable to everyone to go to New Business on the Agenda and leave the Election of Board of Directors until last. The membership agreed.

Kevin discussed several things that had happened which increased expenses. One major expense occurred when guests bumped the sides of the building with their cars. We were unable to match the paint and had to repaint the entire bottom of the building. We have now been able to come up with a particular color number so any additional touch ups can be handled without repainting large areas. The tire bumpers have been moved back, a heavy steel corner has been added in the parking area, and a mirror has also been installed to enable people to see better in the parking area. Utilities were also a little higher than expected; otherwise, most other areas of the budget were in line.

Other new business included items that would lend to the attractiveness of the building; such as, colorful plants to be added near the entrance to the building. The building also needs ice machines. The Board should make a decision on this as well as discuss the issue of vending machine locations. There is a house phone in the lobby of the building now, but some additional improvements need to be made to improve the looks of the lobby. The Board has been asked to review those items with the management company and advise them what they would like accomplished.

The new officers of the Board of Directors were elected and are as follows: President, Marshall Melton; Vice President, Leon Bechtel; and Treasurer, Randolf Morgan.

President, Marshall Melton, asked for a motion from the floor concerning the vending machines. Several questions were asked including if a contract exists with the owner of the pool bar regarding the vending machines. It was decided that the Board would look into all aspects of the vending machine question. In the meantime, however, a motion was made and seconded to take the vending machines out of the lobby.

A show of hands was requested to determine how many owners understood that there would be an ice machine on every other floor of the building. A show of hands was also requested to determine if the owners thought ice machines were needed in the building. A majority of owners agreed to both questions.

November 17 was given as the date when the microwave ovens would be delivered.

Kevin showed samples of laminated fabric which could be used to recover the four dining room chairs in the units. Quantity pricing is available, and the total price would be $243.60. The recovering should be done in January. A decision must be made as soon as possible if you want to take advantage of this reduced price.

There was a question from the floor asking if a converter box with a remote control could solve the problems with the TVs being too high for guests to reach. It was decided that this wouldn't solve the problem because the volume on the TVs could not be controlled this way.

Another question from the floor concerned the requirements for flood insurance coverage. Dan Hatch replied that $250,000 is the minimum requirement, but some banks require more than this. This is something the Board should look into.

Another question from the floor pertained to getting extended warranties on the A/C. Kevin said he would check into this.

There was a small leak from the swimming pool and the water had to be emptied; however, this has not yet been solved. It is the developer's responsibility to get this corrected. The parking deck needs to be sealed, and the Board is to advise the management company on what action needs to be taken.

It was mentioned from the floor that there should be some kind of sign saying the seagulls should not be fed from the balcony. Kevin will have a sign made up to put in each unit.

If anyone wants a copy of the by-laws, Kevin will put a sign-up sheet on the table.

The Board will address what the Penthouse should pay for association fees. A specific amount is specified in the By-laws and probably cannot be changed. A legal opinion on this should be obtained.

A discussion was held on the question of rates. Kevin explained that rates are established by taking a fair market analysis on like units in the Myrtle Beach area. Generally, we try to get as much revenue as possible considering what the market will bear. We also take into consideration soft rental periods. The 1989 rate season will contain fifteen rate breaks rather than the eight previously used. This should help increase occupancy during many slower rental periods.

A question was asked concerning what is being done to advertise the St. Clements. Dan Hatch discussed the marketing plan which was being followed this year and explained that it changes from year to year. Next year's marketing plan is in the process of being formulated.

There being no further business, the meeting was adjourned.

EXHIBIT
3A

St. Clements Homeowners' Association
2nd Annual Members' Meeting
November 4, 1989

Kevin Warren, General Manager of the Caravelle, opened the meeting and called the roll. Kevin advised the membership that there was a quorum, making the meeting official and fulfilling the quorum requirements.

Proof of Notice of Meeting was established and the next item on the Agenda, Reports of Officers was addressed. The next item was the reading of the minutes. Marshall Melton made a motion that the minutes be read, Roger Sundgaard seconded. Kevin Warren read the minutes. Mrs. Clements made a motion that the minutes be approved as prepared and read, Marshall Melton seconded.

Kevin next handed the meeting over to Dwight Cox of Cox Development who has been handling the insurance claims relative to Hurricane Hugo. Dwight Cox advised the membership that there was no structural damage to the building, but there were some mechanical damages. Damages were to the elevators, carbonmonoxide equipment in parking garage, sump pumps, and the fire alarm system. Mr. Cox stated that the elevator companies along the Grand Strand were having problems getting parts and that the parts needed to fix one of the elevators arrived Friday. One of the elevators should be operational by Wednesday.

Next, Mr. Cox explained the Flood Insurance and the Wind Insurance policies. Due to the deductible on the Wind Insurance, we were unable to place a claim as of this date.

Mr. Cox informed all attending that if an engineer will write a letter stating that the building was built to with stand hurricane force winds we might have a chance in lowering our insurance premium.

A committee for Insurance was established to check into other insurance companies for the purpose of lowering the premiums and not the overall coverage. Dwight Cox and Luke Goude volunteered to head up the Insurance Committee.

Dwight Cox suggested that we investigate the possibility of lowering the deductible on the Wind Insurance so if we had losses in the future we would have a better chance of filing a claim. Kevin stated that he would check with Scottish Insurance and mail out a letter to each homeowner stating the deductible amount.

Kevin explained the proposed the 1990 budget. He handed out a report which compared the 1989 budget with the actual year end expenses. He stated that there were expense items that were higher than projected amounts, some of those being janitorial wages, payroll taxes on those wages, security, elevator repair and maintenance, utilities, and insurance.

Mr. Warren outlined that with the increase in expenses and the uncertainty of future insurance premiums, most homeowners' associations do a separate insurance assessment when the premium is due. If this is done with the St. Clements homeowners, the 1990 budgeted association dues would increase only a few dollars and one special assessment for insurance would take place during 1990.

Dr. Clements made a motion that we special access all homeowners for the insurance just for this year, instead of including it in the 1990 budget, the motion was seconded. Mrs. Clements made a motion to approve the 1990 budget as discussed and written, Dwight Cox seconded.

Mr. Sundgaard made a motion to take a portion of the association dues and place it into a money market fund. Money can only be removed from this account by Mr. Warren. If funds are removed, Mr. Warren is required to send the board a letter stating why and for what purpose the money was removed, Floyd Landis seconded.

Mr. Warren indicated that there was approximately $28,000 in unpaid association dues. Kevin suggested that the homeowners' association put a lien on those units which still owe dues. He noted that in the Associations master deed the management company could only assess up to 18% interest on any unpaid dues. Suggestions from the floor were to take all dues out of the monthly rental checks. Kevin stated that he didn't think it was possible, but would check into it. Pete Morgan made a motion that Kevin be authorized to write a rather stern letter, stating that all owners who are behind in payments that they would have 30 days to clear their account. This letter would be vague but not specific and state that it has been discussed among the member of the homeowners association that any owner behind in payments will have specific action taken against them, Floyd Landis seconded.

Leon Bechtel made a motion that Caravilla Management send out a loss of rental income letter stating that we have an undetermined amount of loss and are currently assessing the situation, Mr. Turner seconded the motion.

Dr. Clements made a motion to put the Coke machine in the lobby, Dwight Cox added that when he remodeled the lobby he would construct a wall around the machine so only the face would show, Mrs. Bechtel seconded the motion.

Dwight Cox made a motion to lease three ice machines to be put on every even floor, Dr. Clements seconded the motion.

Dwight Cox made a motion that coin operated washer and dryers be put in the underground parking level, the motion was seconded.

Dr. Clements made a motion that Dwight Cox sell all the scrap aluminum that was in the underground parking level, Ed Hanks seconded.

Being no other business, Marshall Melton motioned to adjourn the meeting, Dr. Clements seconded.

EXHIBIT
tabbies
4

Minutes of the 3rd Annual
Homeowners Association Meeting

The 3rd Annual Meeting of the St. Clements Homeowners Association was held at 2:00 P.M., Saturday, November 3, 1990 at the Caravelle's Santa Maria Restaurant.

Marshall Melton, President of the association, opened the meeting. Kevin Warren called the roll and certified proxies. Kevin advised the membership that there was a quorum, making the meeting official and fulfilling the quorum requirements.

Proof of "Notice of the Meeting" was established. The next item on the agenda was the reading of the minutes. Dr. Clements made a motion that we dispense with the minutes and approve then as written. Leonard Ruth seconded the motion.

Mr. Warren reported on the financial position of the association, ending with September 1990. He stated that we will be reviewing actual assessments and expenses. The hurricane expenditures and assessments are omitted. You will find a budget vs. the actual report enclosed. Mr. Warren presented the 1991 budget for approval. Dr. Clements made a motion to approve the 1991 budget as presented. All of the homeowners present approved. The quarterly dues will remain the same for 1991.

Mr. Warren proceeded to explain the hurricane damages and repairs. Please allow me to explain that after the hurricane we had two choices to make in order to restore the building. Caravilla Management could oversee all repairs taking place, or we could have the developer take care of the repairs. After lengthy discussions, the board made the decision to have Dwight Cox complete the repairs because of his extensive knowledge of the building. Mr. Cox agreed to repair the damages for the price on the initial proof of loss with no additional expenses. The initial proof of loss was valued at $386,000. Once the FEMA adjustor inspected the property, they not only reduced the loss amount, but they discovered the building was built lower than what the elevation certificate indicates. At that time, the property was resurveyed in order to make sure the certificate was correct. It turned out that the elevation certificate was approximately the same as the initial one.

St. Clements was paying insurance based on the overall elevation. Because of the incorrect elevation certificate and the increased risk, this insurance was increased. The insurance increased from $3,414.00 per year to $35,796.00 per year. With the insurance policy due, the association had no other choice but to assess the homeowner $539.54 per owner for payment of the premium. You will also recall receiving an assessment for $278.90 for the regular property insurance. (The board made the decision in 1989 to seperate the insurance expense from the quarterly dues) At the same time, the elevator bill was past due. The total outstanding elevator repair bill was $55,000. U.S. Elevator indicated that if the elevator bill was not paid in full immediately they would remove the parts that were not paid for. If this were to take place it would make the elevator useless, therefore we would be unable to rent the building. The association now had to assess the homeowners $829.99 in order to keep the elevators operating. Because of the increased flood insurance premiums, Dwight Cox and Bill Benik (owner of Scottish Insurance Agency) make a special trip to Washington to meet with the FEMA officials. As a result of that meeting, the flood insurance was reduced to $19,000.

Mr. Warren explained that if all assessment and association dues were paid and current, we would have a $44,522.59 overassessment on the books. The board agreed to credit homeowner accounts when everything is finalized.

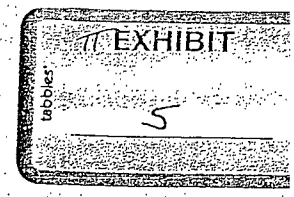
Mr. Warren stated that the elevation was the main cause for these assessments. Basically, the building wasn't built in accordance to federal flood regulations. The building was built too low. The board will be taking legal action against the surveying company, the building contractor, and possibly the City of Myrtle Beach. The board will hopefully employ an attorney on a contingency basis in order to help with this problem.

Mr. Warren announced to the homeowners that as of December 31, 1990, Caravilla Management would not be managing the property management the St. Clements. Kevin explained that Caravilla didn't specialize in property management, but rental management.

The next topic for discussion was the election of officers. Floyd Landis nominated Leon Bechtel. Leonard Ruth seconded the motion. Nancy Landis nominated Dr. Clements. Floyd Landis seconded the motion. Ed O'Reilly nominated Marshall Melton. Victoria Mead seconded the motion. Judge Clements moved that the nominations be closed. Eric Hillard seconded. All were in favor of the nominations.

Mr. Warren updated the board on the condition of the furnishings and carpet in the units. He explained that all the sofas needed to be replaced and the bucket chairs needed recovering with a coordination fabric. Many of the carpets are faded and worn. These carpets need to be replaced as soon as possible. We are recommending the owners use the teal green carpet as opposed to the peach color. The Caravelle has had much success with this color carpet in their other properties. The white dining chairs need to be recovered also. The white cannot withstand the amount of traffic in the units.

Dr. Clements moved the meeting be adjourned. The motion was seconded by Leonard Ruth. Being no other business, the meeting was adjourned.



St. Clements
Homeowners' Association, Inc.

February 21, 1991

Dr. Robert Clements
[redacted]

Dear Dr. Clements:

Enclosed is a copy of a chronological summary to me from Mr. Bill Benik at the Scottish Insurance Agency dated February 14, 1991. I met with Bill on February 18 to discuss and review the issue surrounding Hurricane Hugo flood damage and its related dilemma with the claims and increase in premiums for which the following enclosed documentation summarizes same.

All of the documents referenced in Bill's letter dated February 14, 1991 are attached and numerous highlighted areas were emphasized by Bill. I would strongly suggest that each Board member read this documentation thoroughly and be familiar with same since I feel that the Board should invite Bill Benik to the next Board of Directors meeting to answer any questions or concerns regarding this entire issue.

My general feelings here, without knowing any more detail, is that possibly the surveyor, the City of Myrtle Beach and/or the architect/engineering firm, all of which were originally involved in the construction of St. Clements, were at fault. However, this is not a legal opinion and only one based on general observations as derived from the attached correspondence.

On an unrelated matter, I have met and spoken with Mr. Luke Gude regarding his pool bar structure. Based upon my request to Bill Benik, I am advised that Luke does not currently have a liquor liability policy, products and completed operations coverage, a general liability policy and/or an agreement of indemnification regarding the Homeowners Association. Since Luke operates a commercial establishment and since there is some probability that his patrons might be involved in an accident resulting from the consumption of alcoholic beverages, I am going to request copies of the above referenced insurance coverages from Luke

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in the best interest of the Homeowners Association. If any of your Board colleagues know more about this liability insurance or indemnification issue, would you please call me and advise?

The last issue also references commercial activities and was recently raised as a question by one of the homeowners. Does Luke have specific written approval from the Homeowners Association or the developer which gave him permission to occupy two parking spaces? Further, was this approved by the City of Myrtle Beach since normally a certain number of parking spaces are required based upon the size of condominium development? Does Luke also have written approval to operate the vending machines in the common area? I will try to follow-up with Luke on these issues as well and advise you accordingly.

As always, if we can be of any assistance, please don't hesitate to call upon us.

With kindest regards.

Sincerely,

Robert W. Johnston/ktc

Robert W. Johnston
Paragon, Inc.
Managing Agent

PC: Mr. Leon Bechtel
Mr. Marshall Melton

RWJ/ktc
2-20ltr.stc

St. Clements
Homeowners' Association, Inc.

EXHIBIT 6

February 26, 1991

Mr. Luke Gude
BE-MI, Inc.
[redacted]

Dear Luke,

Good luck with the "Grand Opening" of your ~~pool bar~~ at St. Clements on March 1, 1991. I hope 1991 proves to be a profitable and enjoyable year for you.

The St. Clements Homeowners' Association Board of Directors carries the responsibility of making sure the property is properly insured; inclusive of that is the pool bar structure that you own. In this light, would you please provide proof of insurance (via a Certificate of Insurance) for the following coverage and show the Association as a named insured:

1. General Liability Coverage and/or an Agreement of Indemnification regarding the Homeowners' Association
2. Liquor Liability Coverage
3. Products and Completed Operations Coverage
4. Workers Compensation Coverage

On another issue, several homeowners have questioned your authorization to utilize two parking spaces. Have you received written approval from the Association or the developer for said permission? As limited as parking spaces are, we would like to resolve this matter as soon as possible.

The vending machines located throughout the common areas are another item of concern. Do you have written approval from the Association to operate these machines? Is there any commission split between you and the Association?

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Please provide written response to our office within thirty (30) days so a report can be given to the Board of Directors before their next meeting. Should you have any questions, comments or suggestions, please don't hesitate to call upon us.

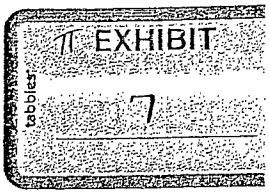
With ~~kind~~est regards.

Sincerely,

Robert W. Johnston
Paragon, Inc.
Managing Agent

PC: Board of Directors

RWJ/ktc
2-221tr.stc



March 27, 1991

Mr. Luke Gude
BE-MI, Inc.
[redacted]

Dear Luke,

Pursuant to my letter to you dated February 26, 1991, thank you for your call to Kate Collins to inform her that Bill Benik of Scottish Insurance Agency will bind insurance coverage for your pool bar at St. Clements when the bar actually opens. Since we have observed business activities being conducted, we will assume that coverage is bound and we await the Certificate of Insurance from Scottish. Would you please forward Certificates of Insurance showing the Homeowners Association as a named insured on the following policies:

1. General Liability Coverage and/or an Agreement of Indemnification for the Homeowners Association
2. Liquor Liability Coverage
3. Products and Completed Operations Coverage
4. Workers Compensation Coverage

That same letter (copy attached) addressed other issues which have not yet been resolved (parking spaces; vending machines and their associated income). I would appreciate your response to these issues before April 15, 1991 so a timely report can be given to the Board of Directors. Even though you have assured me verbally that you have written permission for the parking spaces and the vending rights, would you please help us update the Homeowners Association's files by supplying us with these written documents? Do you also have same for the storage area in the basement?

In response to some of your maintenance concerns with the on-site Project Manager, Mr. Todd Cannon, please be advised that he is willing and capable of addressing some special maintenance needs (plumbing, electrical, carpentry and painting). From time to time however, he may be forced to call upon outside contractors to correct a problem because he may lack the total expertise and/or equipment to properly handle the task at hand.

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Also, with respect to the work done around the pool bar area, we understand that you secured a contractor to perform the work at a cost of $700.00 versus $850.00 proposed to Paragon by another vendor. First, the $850.00 bid was based on a thorough waterproofing job versus the regular paint job which you saw recently performed. Furthermore, on or about March 8, 1991, I understand you spoke with Jose Ponton and quoted the work to cost $450.00, yet the final billing was $700.00 without further explanation. Perhaps you can provide us with further information on this issue.

As always, please feel free to call upon us when we can be of service with any of your Association needs.

With kindest regards.

Sincerely,

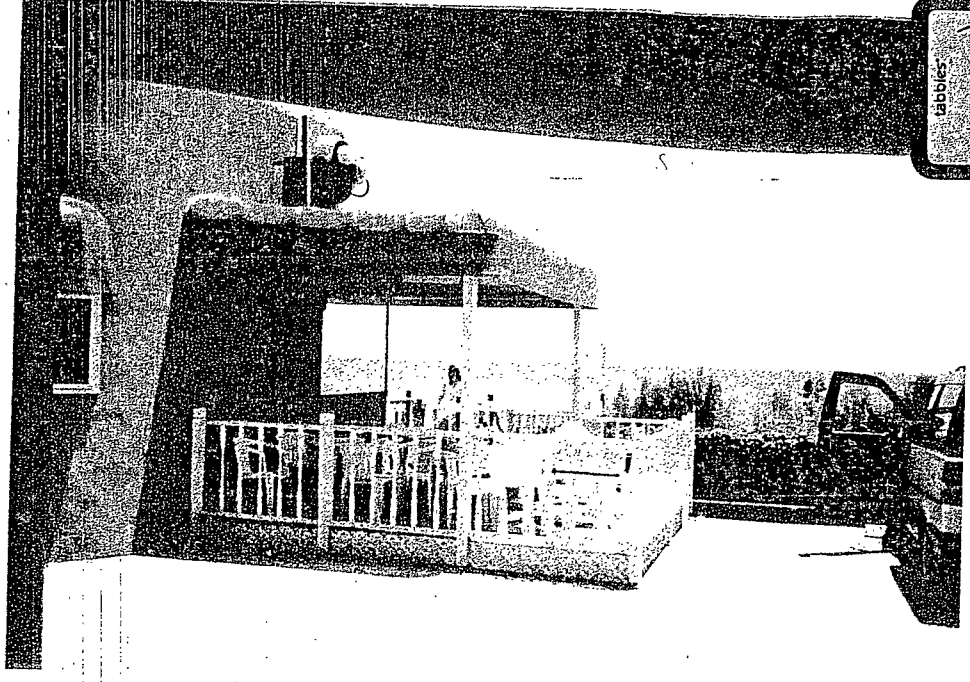
Robert W. Johnston/ktc

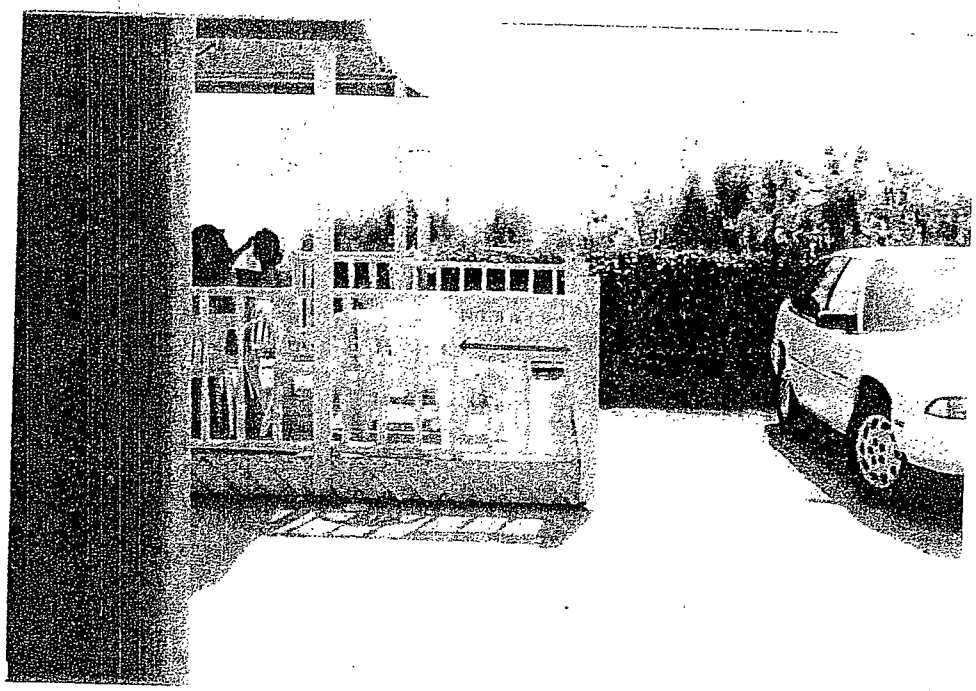
Robert W. Johnston
Paragon, Inc.
Managing Agent

PC: Board of Directors

RWJ/ktc
3-27ltr.stc

EXHIBIT
tabbies
8



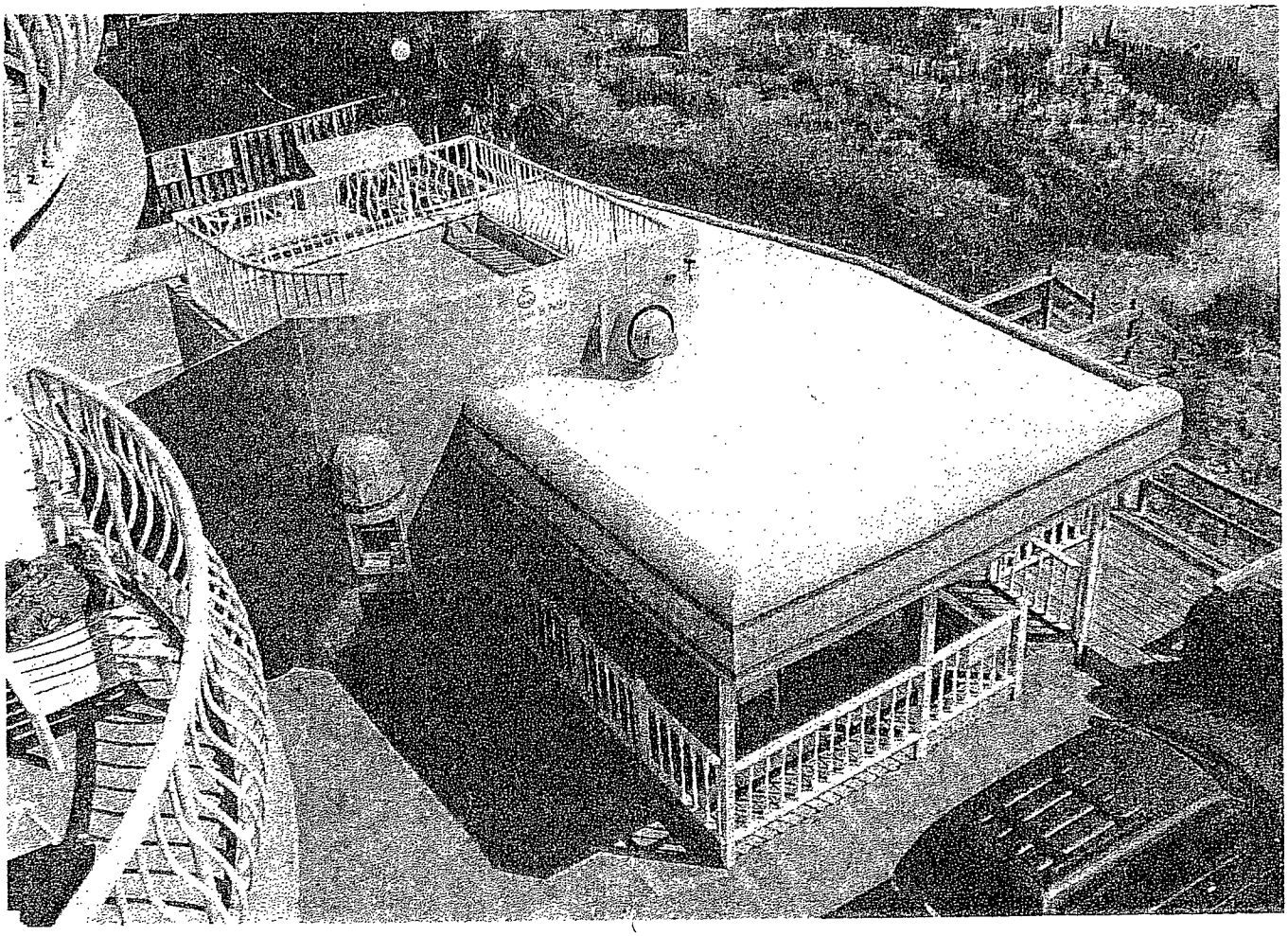


SIDE DECK · VIEW · FROM LOBBY
1992

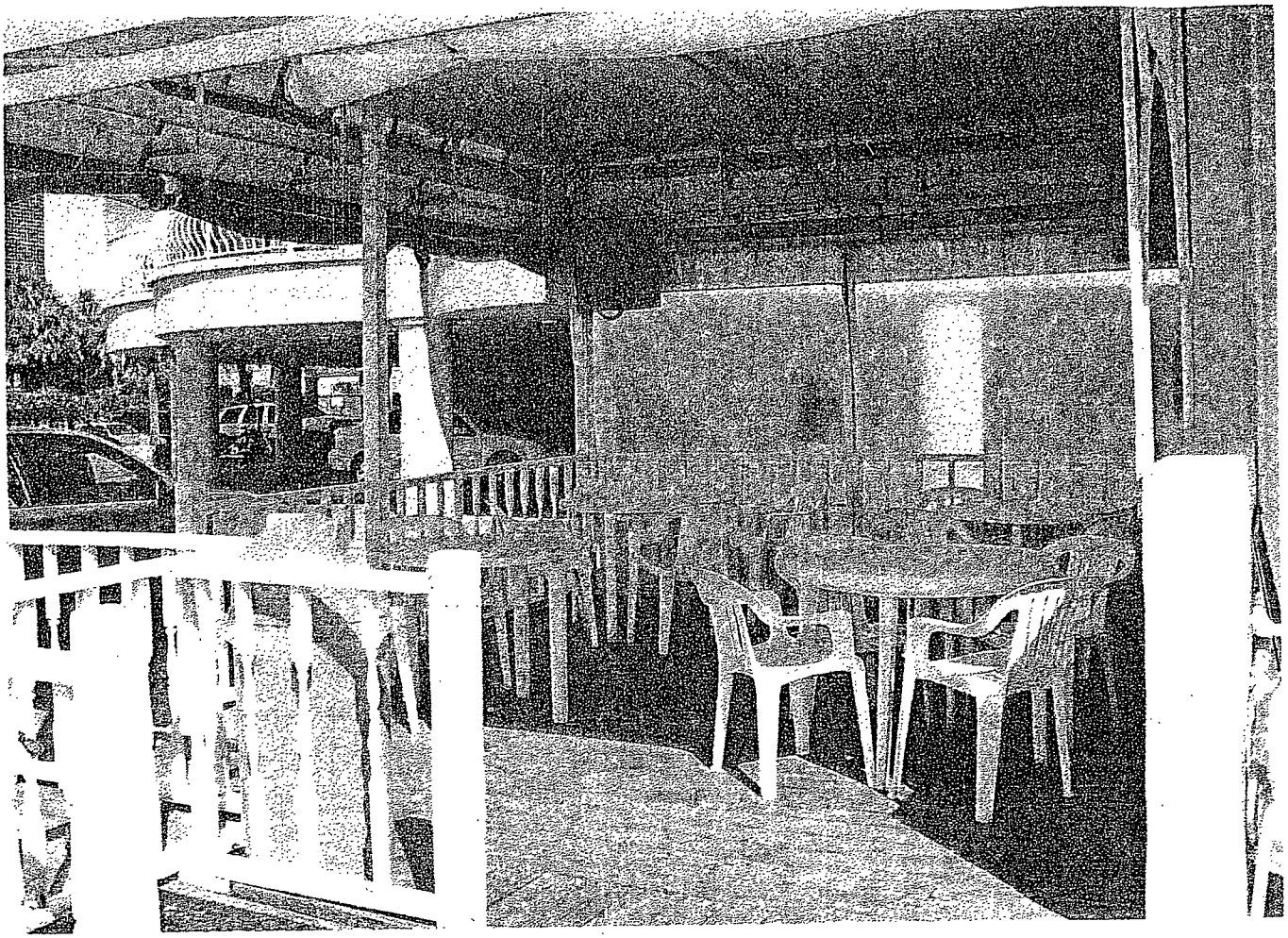
POOL BAR SIDE DECK AND AWNING VIEW FROM OCEAN SIDE

5/10

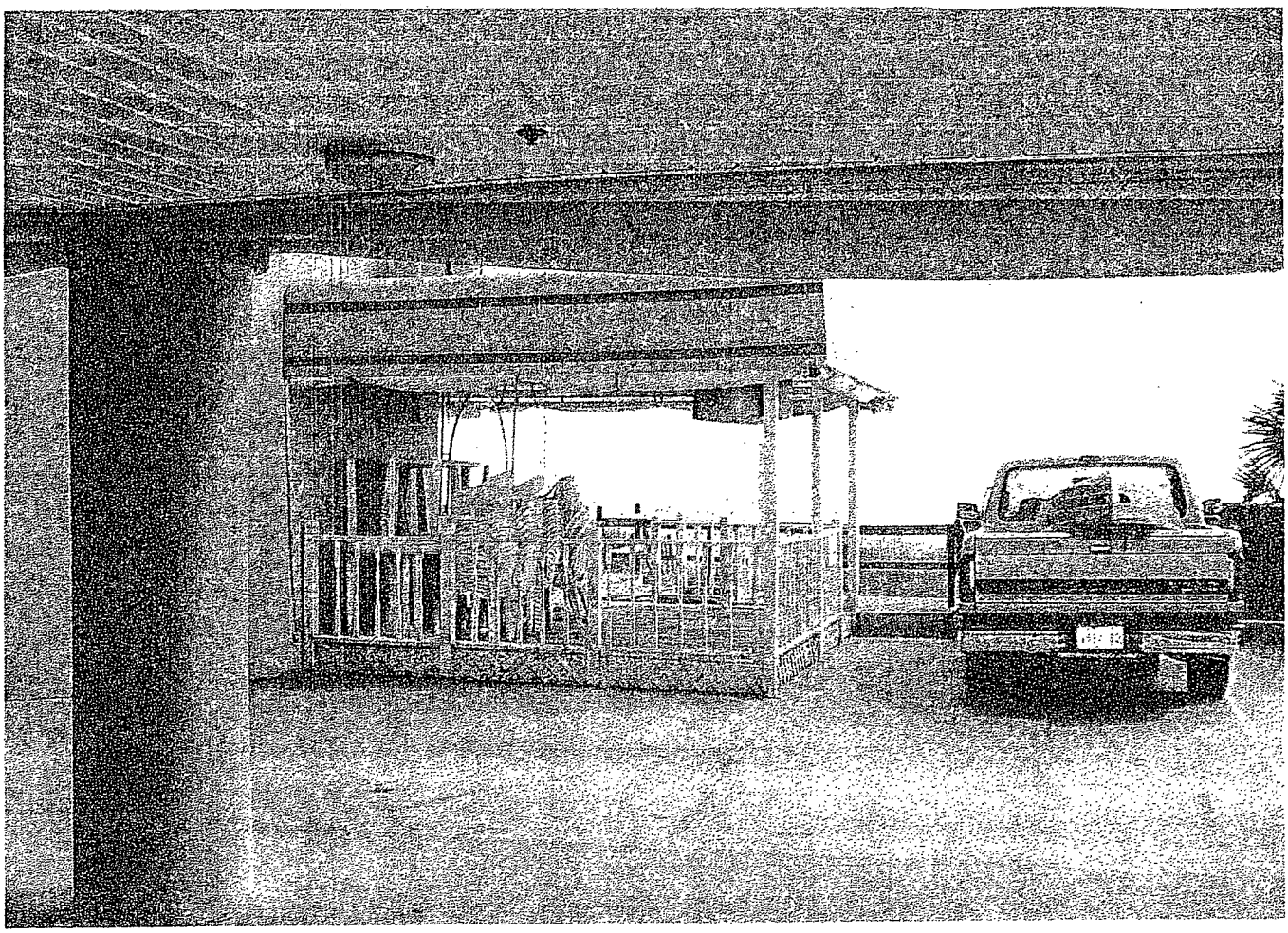
VIEW FROM LOBBY NOTE ENLARGED CANOPY 5/16



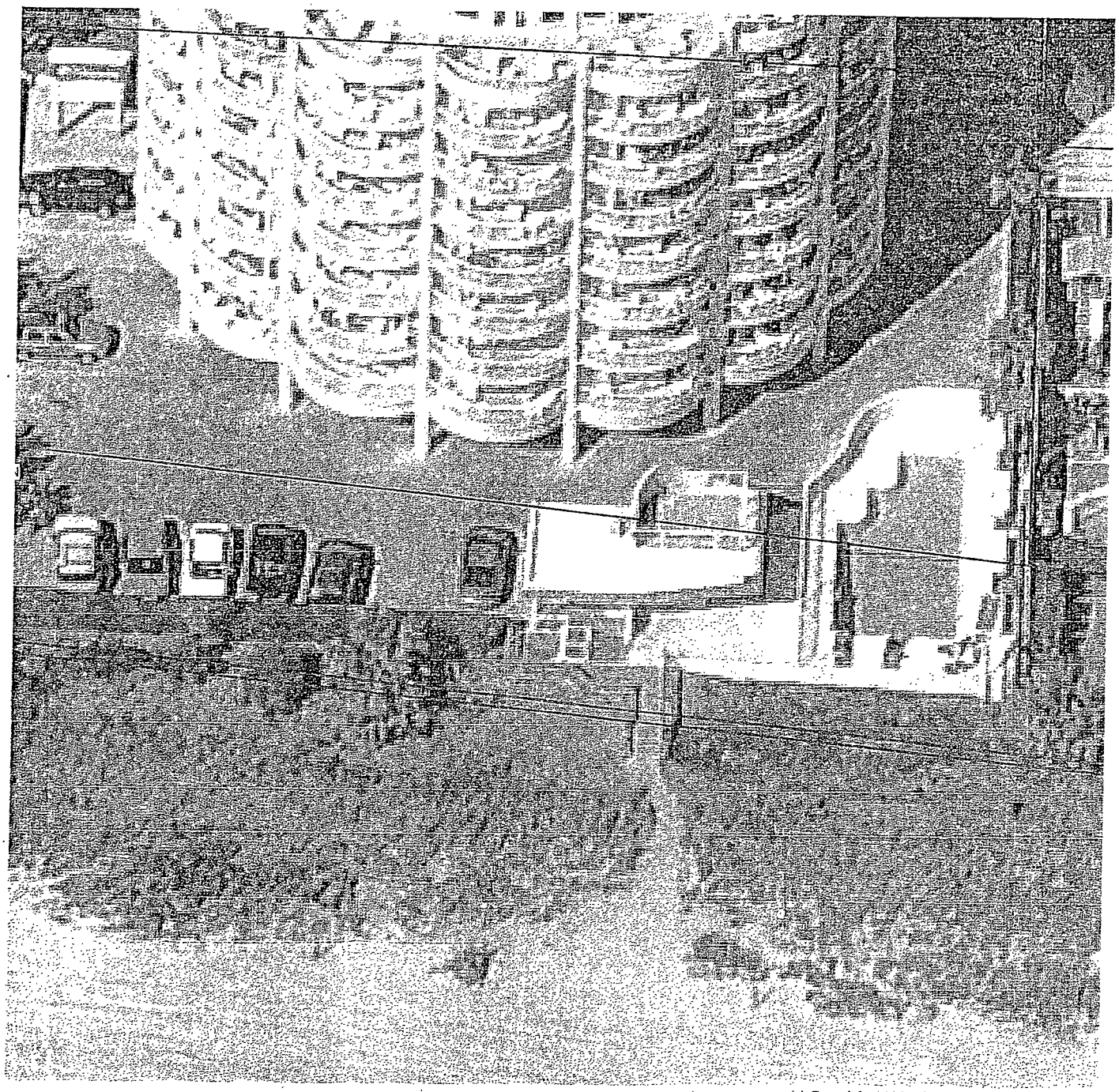
SIDE DECK - VIEW FROM OWNER'S BALCONY
2007



INTERIOR OF SIDE DECK
2007



SIDE DECK - VIEW FROM LOBBY
APPEARANCE DURING 4 MONTHS
OFF-SEASON NOV-DEC-JAN-FEB
2008



(c) Copyright 2009, Pictometry International Corp.

Creation Date: Feb 08, 2009 12:01
Modification Date: Feb 12, 2009 09:02

Average Scale: 1 inch = 19.4 feet

Distance between tick marks: 18.653262 feet

St. Clements

EXHIBIT tabbies 9

August 27, 1992

VIA CERTIFIED AND
REGULAR DELIVERY

Be-Mi Inc.
Attn: Mr. Luke Goude
[redacted]

Dear Mr. Goude:

The reported agreement between you and Mr. Dwight Cox which apparently allows you to maintain vending machines on the common elements of the St. Clements property and to collect income generated by such machines is no longer valid. The transfer of rights and responsibilities for the management of the Association has been transferred to the unit owners as a collective whole. This event occurred some time ago and is defined in the Master Deed of the St. Clements Horizontal Property Regime. Mr. Cox, then a Director, Developer and Declarant no longer has the authority to grant you the collection of such vending income.

The vending machines that exist in the St. Clements building (5 soda machines and 4 snack machines) are the property of Coastal Coca-Cola Bottling and Lance. Effective 7:30 A.M., September 1, 1992, the income generated by those machines, or replacement machines, will be the property of the St. Clements Homeowners Association, to be placed in their operating account. Please be advised that you should remove all products that you have paid for and all monies prior to this date. Either the machines will be exchanged or the locks on the existing machines will be changed.

Additionally, no vending machines shall be placed anywhere on the common elements without the written consent of the Board of Directors. Also, no temporary or permanent modifications to the common elements are authorized without the permission of the Board.

Thank you for your attention to this matter.

Sincerely,

Chicora Development
Managing Agent

Carl Armstrong
Property Supervisor

CA/laj

CHICORA P.O. Box 329, Myrtle Beach, South Carolina 29578 / Phone 803-272-8700

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Be-Mi, Inc.
Mr. Luke Gaude
[redacted]
Myrtle Beach, S.C.
29577

4a. Article Number
P 064 832 074

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
SEP 1992

5. Signature (Addressee)

6. Signature (Agent)
[signature]

8. Addressee's Address (Only if requested and fee is paid)

DUNES BEACH NEWS

PS Form 3811, November 1990 ☆U.S. GPO: 1991—287-066 DOMESTIC RETURN RECEIPT

P 064 832 074

Be-Mi, Inc-Luke Gaude
[redacted]
Myrtle Bch, SC 29577

.29
1.00
1.00
2.29

August 27, '92

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail
(See Reverse).

Sent to Luke Goude	
Street & No.	
P.O., State & ZIP Code	
Postage	$ .29
Certified Fee	2.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing ... & Date Delivered	

EXHIBIT
tabbies
10

November 19, 1992

CERTIFIED DELIVERY

Mr. Luke Goude
Be-Mi, Inc.
[redacted]
Myrtle Beach, SC 29577

Re: St. Clements Homeowners Association, Inc.

Dear Mr. Goude:

The attached resolution is forwarded concerning the structure which serves as a deck and sitting area which was reported to have been constructed under your initiative. The Association is reviewing the liability aspects of this structure with St. Paul Fire & Marine Insurance Company.

The Board of Directors has disapproved your verbal request to attach a serving bar to the recently installed pool fence. Furthermore, the Board agrees that no modification of the fence (e. g. attachment of tables, chairs, advertisements) shall be made by any homeowner without the written consent of the Board.

Please note that Article VII of the Master Deed addresses the restrictions on the use of the common areas.

Sincerely,

Chicora Development
Managing Agent

Carl Armstrong
Property Supervisor

CA/laj
Enclosure

RESOLUTION OF
THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

RESOLVED, that the presence of the wooden structure adjacent to the pool bar unit, south side, in the form of a deck with canopy and which occupies two parking spaces considered to be a common area is in violation of Article VII, Section 7.0 of the Master Deed of the St. Clements Horizontal Property Regime (Attachment A).

The structure is an alteration of the exterior portion of the building. Additionally, this structure changes the appearance of the common areas. No written consent of the Board of Directors exists granting permission for such alteration or change of appearance.

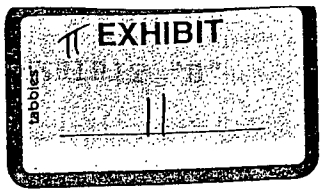
The Association has the right to compel the compliance of the terms of the Master Deed by having the structure removed at the expense of the owner who breached the restrictions of the Master Deed.

The failure to enforce any right, reservation or conditions contained in this Master Deed, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior to subsequent thereto and shall not bar or affect its enforcement.

BY: _____ 11-7-92
Dr. Robert Clements — Date
President

BY: _____
Harry Orlick — Date
Vice President

BY: _____ 11/7/92
Leon Bechtel — Date
Secretary/Treasurer



MEMORANDUM

TO: Board of Directors/St. Clements Homeowners Association

FROM: Carl Armstrong

DATE: January 5, 1995

SUBJECT: Moisture Intrusion

The following is added to the list of eleven items:

ISSUE:

The wallboard inside unit 201 has retained moisture following two recent heavy rainfalls. The wallpaper is separated from the damp and mildewed wallboard near the baseboard.

BACKGROUND:

- The Rental Manager is hesitant about keeping the unit on the rental program because of the rough appearance.
- The owner has been advised by the Rental Manager that repairs are necessary.
- The owner has asked the Managing Agent for recommendations on repairs.
- The wallpaper has separated from the wallboard near the bottom and will not reattach because of moisture and mildew.
- Procon Waterproofing, Inc. recently inspected the interior of Unit 201. The contractors stated that the possible sources of water intrusion may be:
    a) The corner of the balcony (point "A" on the diagram); the effect of wind driven rain from the northeast
    b) Breaches in the exterior wall system. Although the wall was inspected and caulked in January, 1993, by Procon, new cracks may have opened up during high winds and building movement. The exterior wall cannot be properly inspected without expensive staging equipment.

ALTERNATIVES:

- Caulk the balcony: juncture of the slab with the vertical wall (a simple procedure to be done as soon as possible)
- Waterproofing contractor to hang stage equipment, and inspect for breaches and caulk as appropriate. This could be coordinated with the removal of mildew on the exterior wall.
- Contact the architect previously used during destructive testing to inspect the west wall.
- To improve the interior appearance of Unit 201
    a) Replace wallboard
    b) Replace wallpaper

Possibilities:

1. Fund and hire an additional on site cleaner to provide seven day a week coverage.
2. Contract the rental manager to clean the property at least two days a week.
3. The rental manager can perform spot checks at night

ISSUE: Construction Litigation

Background - Coordination between the Board of Directors and the attorney, Steve Ouverson, should result in a smooth flow of information. The Managing Agent acts as a peripheral, taking direction from the Board of Directors to provide available data or to perform basic tasks. The Association will be invoiced a fee of $50.00 per hour for specialized services as stated in the management agreement. As authorized by the former Board President, the Managing Agent may bill the Association for up to ten hours at $500.00 of specialized services with regard to the litigation. As of November 28, 1994 no services have been completed.

Possibilities:

1. The Managing Agent is waiting for the attorney to establish a date to meet and open the Association's files for his review. This authorization was granted by Al Metcalf.

ISSUE: Balcony Carpets

Background - The rental manager has inquired about replacing a few of the carpets on the balconies. According to the Master Deed, the balcony is a limited common element for the specific use of the owner of the unit.
According to Section 9.6 of the Master Deed:

"Each unit owner shall also perform normal maintenance for any deck or balcony adjacent to his unit, even though it is a limited common element, and he shall keep it clean, orderly, and sanitary."

The carpet on the balcony is considered to belong to the owner of the unit. The condition of the balcony carpets is average for the age. Replacement of a carpet would be at the expense of the owner.

Possibilities:

1. Replacement of a balcony's carpet should be the responsibility of the unit owner.
2. The replacement carpet should match, as close as possible, the existing carpet to maintain a uniform appearance.

ISSUE: Pool Bar

Background - The owner of the pool bar, a separate unit identified in the Association's documents, has modified the exterior of the unit on at least two separate occasions, both being in violation of the Master Deed as no prior permission was acquired in writing from the Board of Directors: constructed a deck which consumed two parking places; installed a pay telephone on the exterior of the pool bar unit. In November, the owner installed a wind barrier which encloses the majority of the pool bar. The device appears reasonable and is considered to be temporary for the winter; however, the Board should have been consulted prior to its installation.

Possibilities:

1. Continue to monitor and report as necessary.

ISSUE: - Maintenance Office

Background - The on site maintenance person operates out of a corner space in the basement which is enclosed by the basement walls and a chain link fence. The environment in the basement during the summer is intolerable due to heat and humidity. The only air conditioned area to relax in during a break is in the maintenance office of an adjoining building.

Possibilities:

1. Continue to allow the person to take breaks off site.

ISSUE: Americans with Disabilities Act (ADA)

Background - The ADA (federal legislation) requires a building to accommodate those with disabilities. A condominium building which operates similar to a hotel is not exempt to this act according to the federal agencies contacted.

Possibilities:

1. Acquire the services of a professional to determine the requirements necessary to provide accommodations as stated in the act
2. Monitor the implementation of this act and respond accordingly

ISSUE: Appraisal of the Property

Background - The last appraisal, dated June 1991, was conducted to ensure adequate coverage of property insurance.

Consideration:

1. Consider a new appraisal for the future

EXHIBIT
tabbies
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Board of Directors Meeting
April 5, 2006

St. Clements Parking Policy

It's important to make sure that all parking spaces are available for parking. This is especially true when the greatest demand for parking spaces is from Memorial Day through Labor Day.

For the St. Clements there is only one parking space for each of the 65 condos, and 2 parking spaces for the penthouse condo.

If an owner will leave a car parked on the property for a longer period of time and that owner also rents/lets others use his condo, then 2 parking spaces are being occupied per one condo. This can prevent another owner/guest from parking.

To improve the parking, this will be the policy:

If an owner has a car parked at the St. Clements, and rents/lets others use his condo, he will have to remove his car from the property from Memorial Day through Labor Day so the required number of parking spaces are available.

Owners will be notified of the new policy.

Jim Moyer
Merrill Landes
Barbara Brown



LAW OFFICES
McCRACKIN, BARNETT & RICHARDSON, L.L.P.
POST OFFICE BOX 1182
MYRTLE BEACH, SOUTH CAROLINA 29578
(843) 448-8405

E. WINDELL McCRACKIN
MICHAEL J. BARNETT
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com

OFFICES:
1000 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
FAX (843) 448-5724

November 3, 2006

BE-MI, Inc.
Attn: Mr. Raymond L. Goude
[redacted]
Myrtle Beach, SC 29572

Re: Side deck and awning adjoining to St. Clements Pool Bar

Dear Mr. Goude:

We have been retained by The St. Clements Homeowners Association, Inc. to contact you concerning the above referenced wooden side deck and teal colored awning attached to your Dwelling No. Pool-1 (the "Pool Bar") at St. Clements Condominiums. The Association respectfully demands that you detach and permanently remove within thirty-five days of the date of this letter the following property: the wooden side deck that covers portions of two paved parking spaces adjacent to the Pool Bar, the portion of the teal colored awning that overhangs the two parking spaces, and any gutters, lighting, electrical wiring, and other property of every description adjoining or covering the two parking spaces. Please also remove at the same time the eight (8) large screw eyes that you installed in the pool deck common area near the Pool Bar, so as to avoid having anyone trip over them. Please avoid damaging any of the common elements when you remove the above-described property, since you would be responsible for the cost of repairing any such damage, but if any minor damage occurs that does not render the premises unsafe, such minor damage can be repaired by the Association when the entire concrete parking deck is repaired in the near future.

Although I am informed that the property to be removed has been in place for a number of years, the Association's rights and reasons for demanding removal now include, but are not limited to, the following:

1. Master Deed Article 7.2 provides that any failure to enforce any right, reservation, or condition contained in the Master Deed, however long continued, shall not be deemed a waiver of the right to do so.
2. Master Deed Article 14(d) provides that the failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Master Deed shall not constitute a waiver of the right of the Association to enforce such right, provision or covenant in the future.

3. The members of the Association and the Board have voted their desire to have the side deck removed.
4. Although efforts were made in meetings with you to reach some amicable resolution of this issue, including a meeting held as recently as April of this year, an amicable resolution could not be reached, and the above-described property must now be removed.
5. The property needs to be removed so that the concrete parking deck upon which the side deck is located can be properly used, maintained and repaired. Repairs of the entire parking deck have been scheduled by the Association to begin in the near future.
6. With two parking spaces covered by the side deck, there are not sufficient parking spaces to accommodate parking for all the Association's members.
7. Even if parking were sufficient without the two paved parking spaces that the side deck covers, those two spaces are required to be maintained for parking by the zoning ordinances of Myrtle Beach.
8. Master Deed Article 7(b) provides that no unlawful use may be made of any common areas and that all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction shall be observed. As stated above, the zoning ordinances of the City of Myrtle Beach required at the time the side deck was built and continue to require that all 70 of the paved parking spaces at St. Clements remain available for parking.
9. Master Deed Article 7(d) prohibits any structural modification or alteration of any unit, the installation of awnings, or the alteration of the appearance of the exterior portions of the building without the written consent of the Board of the Association, which consent the Association is informed and believes was not obtained by you when you installed the side deck, awning and screw eyes.
10. Master Deed Article 7(e) provides that no business activity of any kind shall be conducted on any portion of the condominium property not designated as a commercial area. The two parking spaces covered by the side deck are not designated as a commercial area.
11. Master Deed Article 6.2 provides that all of the general common elements, which include the two paved parking spaces covered by the side deck, shall be subject to a perpetual, non-exclusive easement in favor of <u>all</u> of the owners of units at St. Clements, for their use and the use of their immediate families, guests or invitees. The side deck encroaches upon this easement.
12. Master Deed Article 8(d) provides that ingress and egress is reserved for vehicular traffic over and across the portions of the common area and facilities that are paved for all unit owners at St. Clements. The side deck encroaches upon this easement.
13. Master Deed Article 14.0 provides that each unit owner shall comply with the provisions of the Master Deed

Master Deed Article 14(c) provides that in the event of default by an owner, the Association is entitled to any relief available at law or equity, including the recovery of the costs of any proceeding and reasonable attorney's fees. If you comply with the demands set forth in this letter within thirty-five days of the date hereof, then no legal action will be brought against you by the Association as a result of the maintenance of the side deck and awning on the Association's property in violation of the Master Deed as cited above, and the Association will not seek recovery from you of the substantial attorney's fees incurred by the Association to date as a result of the legal work performed by my law firm in this matter. However, if you fail to timely comply with the demands set forth herein, then the Association intends to commence appropriate legal proceedings to enforce its rights and to collect all costs and expenses, including all reasonable attorney's fees, incurred as a result of your violations of the Master Deed.

Sincerely yours,

Michael J. Barnett

MJB:mn

cc: BE-MI, Inc.
Attn: Mr. Raymond L. Goude
[redacted]

The St. Clements Homeowners Association, Inc.
c/o Ally Management
PO Box 7706
Myrtle Beach, SC 29578

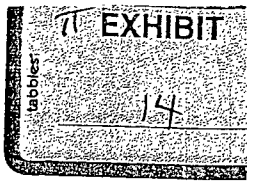


EXHIBIT 14

TOTAL ATTORNEY'S FEES/COSTS PER ATTACHED FEE STATEMENTS:	$ 30,552.66
CREDIT FOR SANCTIONS FEES PAID BY DEFENDANT:	- 900.00
NET TOTAL	$ 29,652.66

LAW OFFICES
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E. WINDELL McCRACKIN
MICHAEL J. BARNETT
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com

OFFICES:
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FAX (843) 448-5724

August 21, 2009

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from January 6, 2009 to noon this date in The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conferences with Barbara Brown, Fred Newby, and potential witnesses; office conferences with Barbara Brown and potential witnesses; review of letters from Barbara Brown, Michelle DiScipio, and Fred Newby; review of pleadings, applicable case law and statutory law, discovery documents, Master Deed, photos, plats, letters, HOA records, and numerous other file documents in preparation for trial; review of Defendant's Motion to Amend Answer and Defendant's Motion for Summary Judgment; preparation of Motion for Order of Reference, Affidavits of Service my Mail, Chronology of Events, and Memorandum of Law; preparation of notes and exhibits for trial; and, preparation of letters to Barbara Brown, court reporter, and Fred Newby.	
(MJB - 28.7 hrs. @ $275/hr.)	$ 7,892.50
(Paralegal - 4.3 hrs. @ $75/hr.)	322.50
SUBTOTAL - Fee	8,215.00
Clerk of Court's filing fee - Motion	25.00
Master's hearing fee	125.00
Copying and postage costs	130.80
SUBTOTAL TO NOON TODAY:	8,495.80

Estimated time from noon today through the end of trial scheduled to start Monday morning, including further review of file documents and final trial preparation this afternoon and this weekend, including conference scheduled this weekend with Plaintiff's president for final trial preparation; and, representation at trial (which for the purposes of this statement is estimated

to be concluded by the end of the day on August 24; and, preparation of proposed Order for Master following trial.

(MJB - est. 26.5 hrs @ $275/hr.)	7,287.50
Estimated additional copying costs	35.00
TOTAL DUE	$ 15,818.30

Thank you,

Michael J. Barnett

MJB:mn

cc: Ms. Barbara Brown

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MYRTLE BEACH, SOUTH CAROLINA 29578
(843) 448-8405

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MICHAEL J. BARNETT
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com

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1000 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
FAX (843) 448-5724

January 6, 2009

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from September 1, 2008 to date in The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conferences with Barbara Brown, Kevin Warren, and Fred Newby; office conferences with Barbara Brown and Leon Bechtel; review existing file documents in preparation for conferences; efforts to locate listed witnesses; preparation of proposed Order of Reference; and, preparation of letters to Barbara Brown and Fred Newby.

(MJB - 8.1 hrs. @ $275/hr.)		$ 2,227.50
(Paralegal - .3 hrs. @ $75/hr.)		22.50
	SUBTOTAL - Fee	2,250.00
Copying costs:		2.80
	TOTAL DUE:	$ 2,252.80

Thank you,

Michael J. Barnett

MJB:mn
cc: Ms. Barbara Brown

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September 1, 2008

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from May 8, 2008 to date in connection with The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conference with Fred Newby; review of letters from Barbara Brown and Fred Newby; review of Motions Roster, existing file documents in preparation for Motion Hearing, photos, SC Rules of Civil Procedure, Defendant's supplemental responses to Plaintiff's Interrogatories and Requests for Production; attendance at hearing on July 28 on Plaintiff's Motion to Strike Answer; preparation of Order Compelling Discovery; and, preparation of letters to Barbara Brown, Judge Ben Culbertson, Fred Newby, Dwight Cox, Raymond Goude, Chris Kotsovos, Jimmy Gerald, and Marshall Melton.	
(6.6 hrs. @ $275/hr.)	$ 1,815.00
Clerk of Court's Filing Fees - Motion	25.00
Postage and copying costs	38.45
SUBTOTAL	1,878.45
Credit for $900.00 received from Defendant by Court Order for Defendant's failure to comply with discovery	-900.00
TOTAL DUE:	$ 978.45

Thank you,

Michael J. Barnett

MJB:mn
cc: Ms. Barbara Brown

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Writer's email: mbarnett@sc.rr.com

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MYRTLE BEACH, SC 29577
FAX (843) 448-5724

May 8, 2008

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from April 11, 2007 to date in connection with The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including review of letters from Barbara Brown, Roger Masters, Leigh Andrews, and Fred Newby; review of Master Deed, photos, pleadings, numerous file documents provided by client, SCRCP, Defendant's Answers to Interrogatories, Defendant's Responses to Request for Production, Motions and Trial Rosters, and existing file documents; office and telephone conferences by paralegal with client's president to prepare draft discovery responses; preparation of Motion to Compel Discovery, Affidavits of Service by Mail, Order Compelling Discovery, Plaintiff's Answers to Defendant's Interrogatories, Plaintiff's Responses to Defendant's Request for Production, and Plaintiff's Motion to Strike Answer; attendance at hearing on Plaintiff's Motion to Compel Discovery; and, preparation of letters to Fred Newby, Judge Jack Early, and Barbara Brown.	
(MJB - 9.1 hrs. @ $250/hr.)	$2,275.00
(Paralegals - 29.8 hrs. @ $75/hr.)	2,235.00
SUBTOTAL - FEE	4,510.00
Clerk of Court's Filing Fees - Motions (2)	50.00
Postage and copying costs	112.50
TOTAL DUE:	$4,672.50

Thank you,

Michael J. Barnett

MJB:mn
cc: Ms. Barbara Brown

LAW OFFICES
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MYRTLE BEACH, SC 29577
FAX (843) 448-5724

April 11, 2007

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from December 19, 2006 to date in connection with The St. Clements Homeowners Association, Inc. V. BE-MI, Inc. (07-CP-26-1426) including telephone conferences with Barbara Brown, Fred Newby, and Horry County Sheriff's Department; review of letters from Barbara Brown, Luke Goude, Steve Chapman and Fred Newby; preparation, filing and service of Civil Cover Sheet, Summons and Complaint; review of Affidavit of Non-Service, Summons, Answer and Counterclaim, Certificate of Service, and other documents from Defendant's attorney; preparation and service of Reply, Plaintiff's Interrogatories, and Plaintiff's Request for Production; and, preparation of letters to Barbara Brown, Fred Newby, Williamsburg County Sheriff, and Horry County Sheriff.	
(10.2 hrs. @ $250/hr.)	$ 2,550.00
Long distance telephone, fax, postage and copying costs:	35.44
Clerk of Courts Filing Fee - Complaint	150.00
Sheriffs' Service Costs	30.00
TOTAL DUE:	$ 2,765.44

Thank you,

Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

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MYRTLE BEACH, SOUTH CAROLINA 29578
(843) 448-8405

E. WINDELL McCRACKIN
MICHAEL J. BARNETT
JOHN R. RICHARDSON
ALAN D. CLEMMONS

OFFICES:
1000 21ST AVENUE NORTH
MYRTLE BEACH, SC 29577
FAX (843) 448-5724

December 19, 2006

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from June 14, 2006 to date in connection with dispute with BE-MI, Inc. regarding removal of side deck and awning adjacent to pool bar, including telephone conferences with Barbara Brown and phone call to Fred Newby's office; office conference with Barbara Brown, Jim Moyer, and Merill Landes; review of letters from Barbara Brown and Fred Newby; review of documents received from Barbara Brown including plats, letters and portions of master deed, etc.; and, preparation of letters to Barbara Brown, BE-MI, Inc., and Fred Newby.	
(7.3 hrs. @ $250/hr.)	$ 1,825.00
Long distance telephone and copying costs:	21.72
TOTAL DUE:	$ 1,846.72

Thank you,

Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

LAW OFFICES
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FAX (843) 448-5724

June 14, 2006

St. Clements Homeowners Association, Inc.
c/o Ally Management Co.
PO Box 7706
Myrtle Beach, SC 29572

Fee for representation from May 5, 2006 to date in connection with concerns regarding location of pool bar and various actions taken over the years by the owner of Unit Pool-1, including telephone conference with Jim Moyer; review of master deed, articles of incorporation, bylaws, amendment of master deed, amendment of bylaws, deeds, plats, plans, minutes of meetings, and correspondence provided by Barbara Brown and/or obtained from the Register of Deeds of Horry County; and , office conferences with Barbara Brown.

(MJB - 4.8 hrs. @ $250/hr.)	$1,200.00
(Paralegal - 1.2 hrs. @ $75/hr.)	90.00
Subtotal - fee	$1,290.00
Long distance telephone and copying costs:	28.45
TOTAL DUE:	$1,318.45

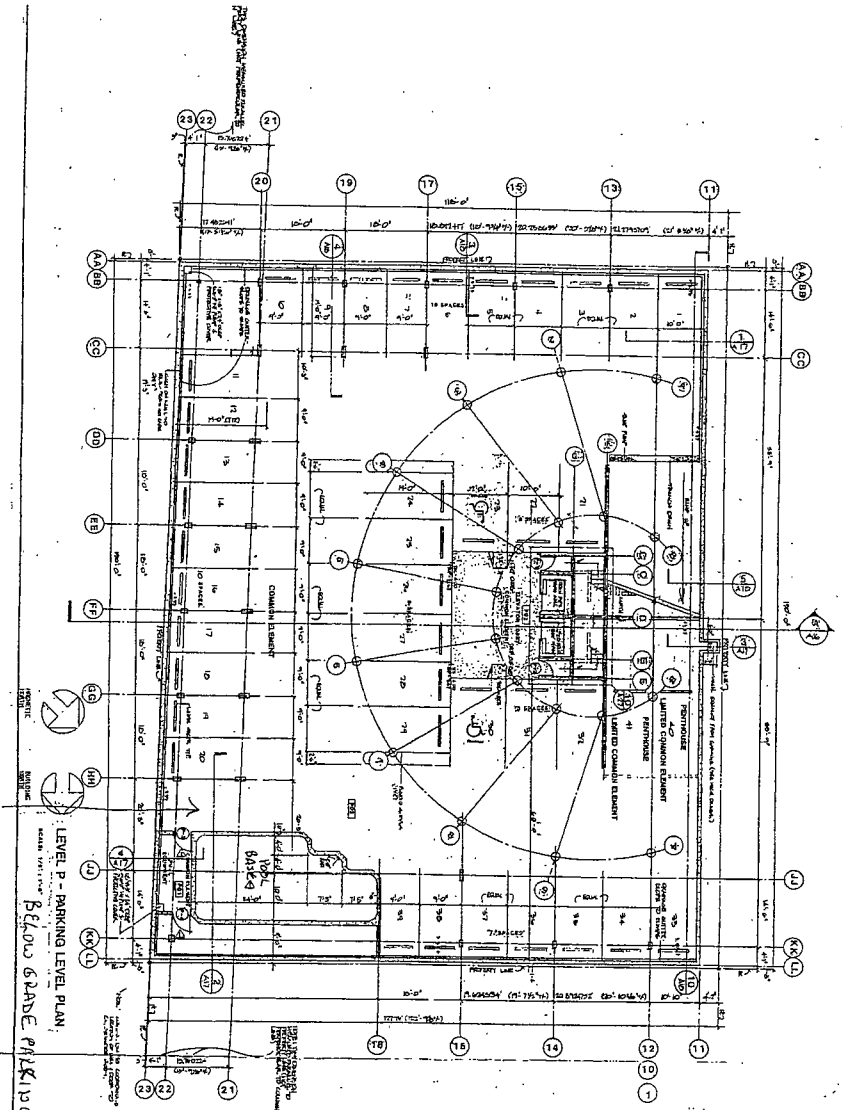
Thank you,

Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

PS to Barbara Brown: Barbara, when we last meet in my office on May 25, you were going to talk with the association's board about exactly what they want to demand that the Unit Pool-1 owner should do, so that I could write a letter to that owner setting forth such demand(s). As soon as you provide me with that information, I shall be happy to prepare a letter to that owner. In the meantime, if you have any questions, or if I may be of other assistance, please let me know. MJB



PLAINTIFF'S EXHIBIT 17

This space is for access to Pool Equipment Room.
St never was a parking space, it is marked "No Parking" Bi-Pass refers to this space

LEVEL P - PARKING LEVEL PLAN

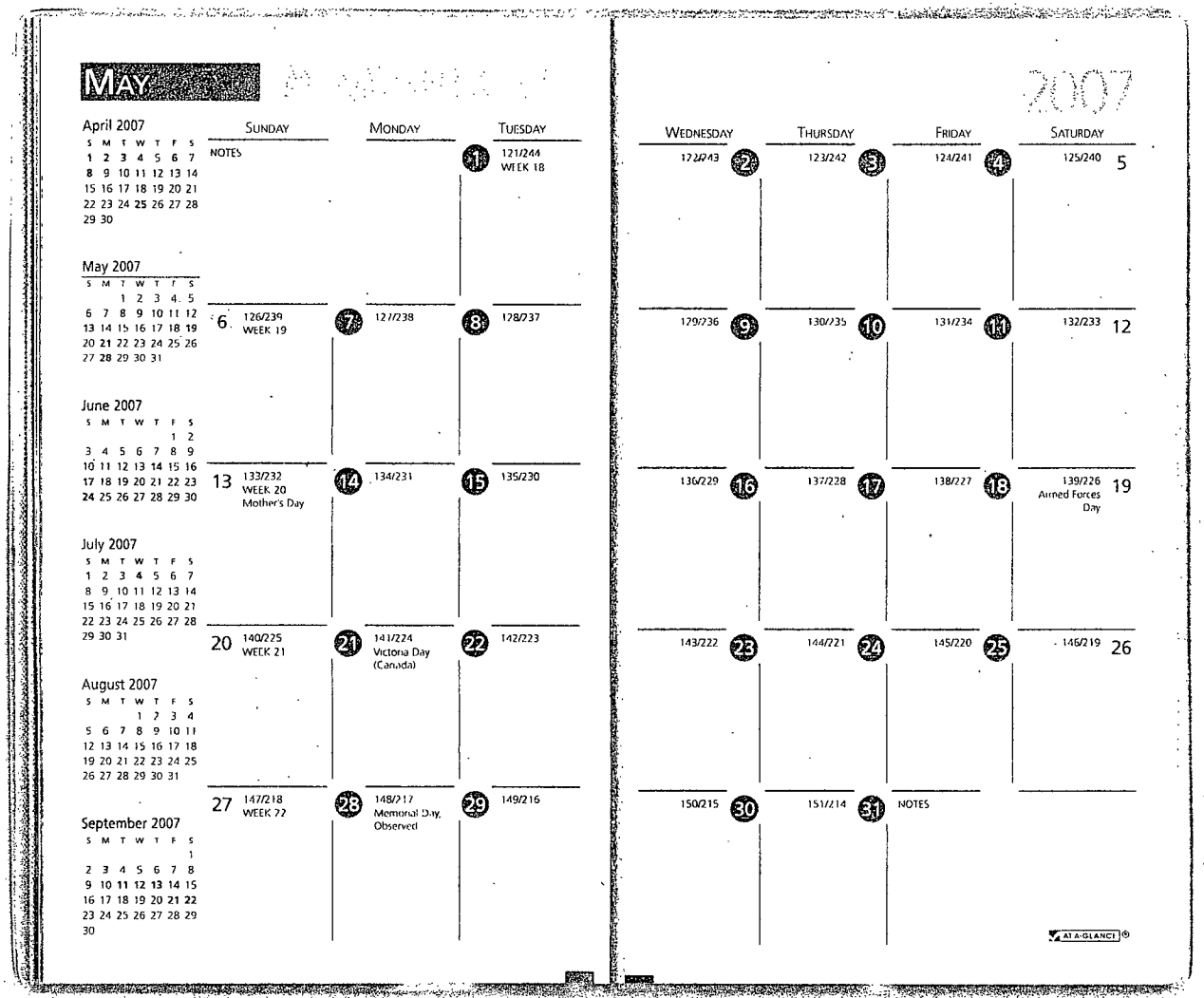
BELOW GRADE PARKING GARAGE

LEVEL P - PARKING LEVEL PLAN

1 OF 1	TIMBES WILUND USRY ARCHITECTS	ST. CLEMENT'S INN MYRTLE BEACH, SOUTH CAROLINA FOR DWIGHT COX	PROJ NO. 3284 SET NO. DATE: 11/9/87 DRAWN BY CHECKED BY	REVISION GRADE DEL. LAYOUT & BELOW GR. PKG	NO. / DATE A / 1/18/88

5001 NORTH KINGS HIGHWAY RAINBOW HARBOR SUITE 203 MYRTLE BEACH S.C. 448-8204

THESE DRAWINGS ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT OF THE ARCHITECT



MAY

2007

April 2007

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September 2007

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
NOTES		1 121/244 WEEK 18	122/243 2	123/242 3	124/241 4	125/240 5
6 126/239 WEEK 19	7 127/238	8 128/237	129/236 9	130/235 10	131/234 11	132/233 12
13 133/232 WEEK 20 Mother's Day	14 134/231	15 135/230	136/229 16	137/228 17	138/227 18	139/226 Armed Forces Day 19
20 140/225 WEEK 21	21 141/224 Victoria Day (Canada)	22 142/223	143/222 23	144/221 24	145/220 25	146/219 26
27 147/218 WEEK 22	28 148/217 Memorial Day, Observed	29 149/216	150/215 30	151/214 31	NOTES	

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PLAINTIFF'S EXHIBIT
tabbies
17

CITY OFFICIALS

MYRTLE BEACH, SOUTH CAROLINA

MAYOR AND COUNCIL

ROBERT M. GRISSOM, MAYOR

Councilman H. G. Charles
Councilman James E. Futrell
Councilman Mary Jeffcoat
Councilman Phillip J. Newsome
Councilman Marjorie D. Stonebrook
Councilman E. A. Thomas

Richard M. Marvin, CITY MANAGER

PLANNING AND ZONING COMMISSION

Jack Stirrup, Chairman

Commissioner Sam Burns
Commissioner Ray Caudle
Commissioner Keith Compton
Commissioner James Creel
Commissioner John P. "Pat" Gore
Commissioner J. Perrin Lawson, Jr.
Commissioner Harrell Mann
Commissioner Melvin Nace

February 1, 1986

Myrtle Beach Zoning Ordinance (pub. 1986)

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ZONING DISTRICT

A-5-2, Accommodations, Resort Residential

OBJECTIVES

To provide for the orderly development of certain areas within the community where both residential and resort-type land uses are now in evidence, and where, because of proximity to the ocean, the continuation of such 'mixed development' would promote year-round use of public facilities, and allow for flexibility of development, in accordance with the economic practicability for various type of residential and resort uses.

USE GROUPS PERMITTED

No.	Name
4	Residential, Multi-family
5	Residential, Resort
8	Social and Cultural

SPECIAL REGULATIONS

Appropriate open space and landscaping as required by Section 32-6, Open Space and Landscaping Requirements.

MINIMUM LOT REQUIREMENTS

Lot Area Per Dwelling Unit	1,500 sq. ft. per unit for all uses in Use Group 4, Residential, Multi-Family. No requirements elsewhere.
Total Lot Area	6,000 sq. ft.
Front Lot Width	50 ft.
Lot Depth	90 ft.

MINIMUM YARD REQUIREMENTS

Front Yard Depth	12 ft.
Side Yard Width (2)	12 ft.
Rear Yard Depth	12 ft.

5-13

Where a building exceeds eighty (80) feet horizontally and/or forty (40) feet vertically, whichever is greater, such side yard shall increase by the ratio of one (1) foot for each additional seven (7) feet in width and by the ratio of one (1) foot for each additional three (3) feet in height.

On lots with two or more principal residential buildings or uses, the minimum distance between such buildings or uses shall not be less than fifteen (15) feet.

✶ OFF-STREET PARKING REQUIREMENTS

For hotels, motels, rooming and boarding houses, one (1) space for each unit plus one (1) space for each ten (10) units or fraction thereof. A unit will consist of no more than five hundred fifty (550) square feet and units which exceed five hundred fifty (550) square feet will be required to provide one and one-half (1½) spaces per unit. One and one-half (1½) spaces will be required for dwelling units whether denominated apartments, town houses or any other apartment or dwelling unit. For all other uses, one (1) space for each two hundred fifty (250) square feet of gross floor space is required. (Amended 4/3/84)

ATLANTIC
OCEAN
1987 Myrtle Beach Zoning Map

Michael Barnett

From: "Michael Barnett" <mbarnett@sc.rr.com>
To: "Fred B. Newby" <fnewby@newbylaw.com>; <lawsona@horrycounty.org>
Sent: Monday, September 21, 2009 12:43 PM
Subject: Re: St. Clements v. Be-Mi, Inc. (07-1426)

Thanks again. If the **Master's office can please send a confirmation email affirming that those 5 pages are now deemed admitted as a plaintiff's exhibit in this case**, this issue about those 5 pages being admitted will be resolved.

Best regards,

Michael Barnett
McCRACKIN, BARNETT, & RICHARDSON, LLP
P.O. BOX 1182
MYRTLE BEACH, SC 29578
PH. 843-448-8405
FAX 843-448-5724

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----- Original Message -----
From: Fred B. Newby
To: 'Michael Barnett' ; lawsona@horrycounty.org
Sent: Monday, September 21, 2009 12:22 PM
Subject: RE: St. Clements v. Be-Mi, Inc. (07-1426)

Hello Mike,

You are correct, I think the court would be fine taking judicial notice of the Ordinance, and I have no objection to having the hard copy as part of the record. Let me know if you need anything else.

Fred

From: Michael Barnett [mailto:mbarnett@sc.rr.com]
Sent: Monday, September 21, 2009 12:12 PM
To: lawsona@horrycounty.org; Fred Newby
Subject: Re: St. Clements v. Be-Mi, Inc. (07-1426)

Fred, confirming our phone conversation a few minutes ago, you have kindly agreed to consent to the admission of the 5 pages of city law as a plaintiff's exhibit as requested in my 9/18/09 letter sent to the Master, with copy to you, per my emails below. Could you **please send to me and the Master's office a brief reply to this email confirming that consent**? Upon her receipt of your confirmation email, if the Master is also agreeable to those 5 pages being now deemed admitted into evidence, I am requesting that the **Master's office also please send me a brief reply email affirming that those 5 pages are now deemed admitted as a plaintiff's exhibit in this case**.

Thank you.

Michael Barnett

From: "Michael Barnett" <mbarnett@sc.rr.com>
To: "Graham Howe, Cynthia" <HoweC@HorryCounty.org>; "Fred Newby" <fnewby@newbylaw.com>
Sent: Monday, September 28, 2009 10:56 AM
Subject: Re: St. Clements v. Be-Mi, Inc.

Thank you.

Best regards,

Michael Barnett
McCRACKIN, BARNETT, & RICHARDSON, LLP
P.O. BOX 1182
MYRTLE BEACH, SC 29578
PH. 843-448-8405
FAX 843-448-5724

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----- Original Message -----
From: Graham Howe, Cynthia
To: mbarnett@sc.rr.com ; Fred Newby
Sent: Monday, September 28, 2009 10:48 AM
Subject: St. Clements v. Be-Mi, Inc.

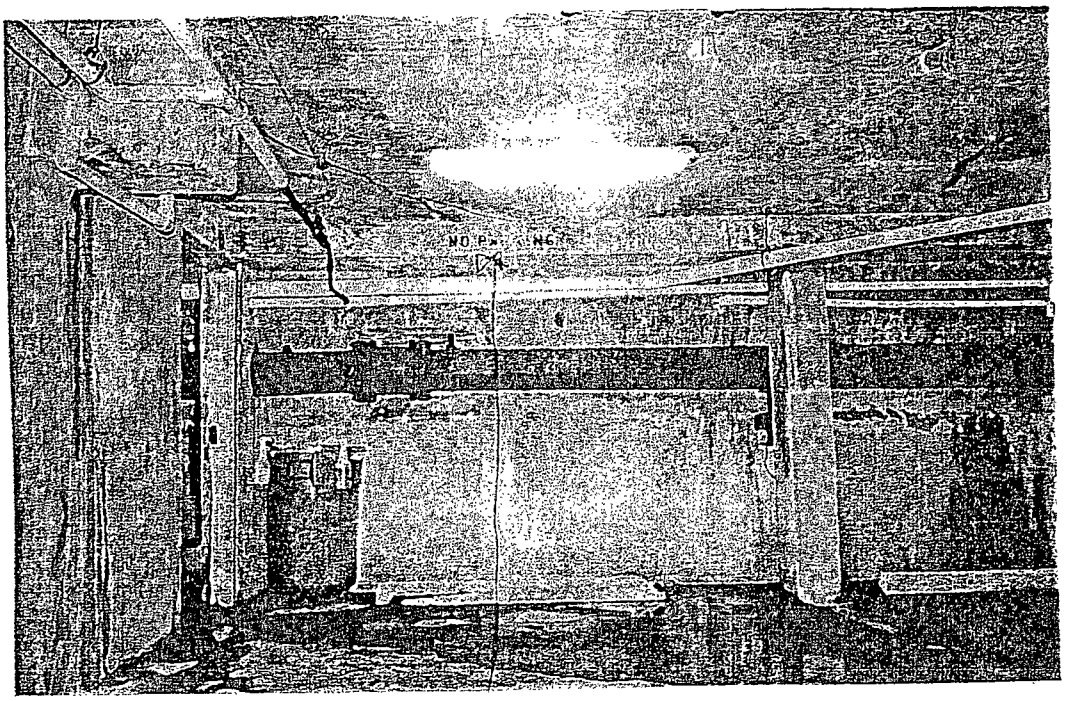
Dear Mr. Barnett and Mr. Newby:

This will confirm that pages 9 through 13 of the Plaintiff's Memorandum of Law have been admitted as an Exhibit for the Plaintiff, without objection.

With my regards, I am

Very truly yours,

Cynthia Graham Howe
Horry County Master in Equity
P.O. Box 1236
Conway, South Carolina 29528-1236
843-915-5310 (phone)
843-915-6310 (fax)
howec@horrycounty.org




DEFENDANT'S
EXHIBIT
1
8.24.09

St. Clements

July 26, 2001

BE-MI Inc.
Luke Goude
312 70th Avenue North
Myrtle Beach, SC 29527

Dear Luke:

We continue to receive many complaints from owners and guests in regard to the pool bar at St. Clements. The complaints include:

- Loud noises too late at night and into the morning hours, music, talking, laughter, etc.
- Left over trash in the common areas surrounding the pool and bar areas.
- Poor condition and trash in common area (lobby) restrooms in the early morning.

In my letter, dated May 8, 2001, I asked for your help in regard to these complaints. Al Metcalf reported that he had spoken to you since that time and that you had assured him that these issues were being addressed. The continued complaints suggest that an adequate solution has not been executed. This was discussed at a recent Board of Director's meeting. The Board feels that you are responsible for your guests the same as any other unit owner and strongly request that you eliminate the reasons for these complaints. The Board recommends that:

- The music volume to be turned down at midnight and turned off at one o'clock am.
- Trash be gathered and removed from the area around the pool and bar at closing by your staff.
- Restrooms be cleaned and trash removed at closing by your staff.
- The bar to be closed at one o'clock am.

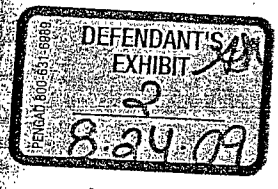
During the weekend of July 14th & 15th it was reported that one of your local patrons left their vehicle parked directly in front of the lobby doors overnight. Parking in the ingress/egress and loading/unloading areas is an imposition to the guests and owners of the St. Clements.

The Board feels that these will be major issues at the Annual Meeting if corrections are not made.

FOR THE BOARD OF DIRECTORS

Paula Holland

Paula Holland,
Association Manager,
Ally Property Management



P.O. Box 7706, Myrtle Beach, South Carolina 29572
(843) 497-3555 • Fax (843) 497-3652

ST. . .EMENTS HOMEOWNERS ASSOC..ATION, INC.

REGULAR MEETING OF THE BOARD OF DIRECTORS

THURSDAY, JUNE 28, 2001

MINUTES

Pursuant to call, a Regular Meeting of the Board of Directors of St. Clements Homeowners Association, Inc. was held on Thursday, June 28, 2001 at 9:00 AM, by telephone conference, from the offices of Ally Property Management, Inc., located at 5001 North Kings Highway, Suite 210, Myrtle Beach, South Carolina.

1. **Opening of Meeting**

Directors present at the meeting were Al Metcalf, Stephen Klaiber, and Mark Korros. Representing Ally Property Management, Inc. were Paula Holland and Angel Palermo.

2. **Waiver of Notice**

It was noted that the meeting had been scheduled via telephone, no written notice had been sent to the Board members. Upon a motion duly made, seconded and approved, it was:

MOVED; that notice of the meeting be waived as the meeting was scheduled via telephone.

Al Metcalf, President of the Board of Directors and Association, served as Chairman of the meeting and Mark Korros, Secretary/Treasurer of the Board of Directors and Association, served as Secretary of the meeting.

3. **Approval of Minutes** – None

4. **Old/New Business**

A. **Pool Bar**

Mr. Metcalf told the Board members that he had spoken with the owner of the pool bar and the owner stated that he is cleaning the lobby bathrooms and is asking people not to park on the property. The owner asked who was filing the complaints against the pool bar. Ms. Holland mentioned that she had received complaints from a few homeowners regarding the loud music from the pool bar. Mr. Metcalf asked that Ms. Holland obtain any complaints that may have been received by the Caravelle Resort regarding the pool bar.

Ms. Holland told the Board that she had sent a letter to the owner of the pool bar requesting that he clean up the common areas around the bar and clean the lobby bathrooms that his patrons use. She told the Board that she received no response from the owner.

Mr. Metcalf told the Board members that the deck where the bar is located was originally built by the owner of the bar, but the Association owns the deck. He stated that the only leverage the Association has is to disallow him to occupy the pool deck. Mr. Korros suggested that the Board request that the owner turns the music off and close the bar by 1:00 AM.

Mr. Metcalf stated that having the pool bar on the property is an asset and would like to work with the owner of the pool bar to curb some of the complaints. He stated that a letter should be sent to the owner requesting that the music be turned off at a reasonable time, the lobby bathrooms need to be cleaned, the common areas around the bar need to be cleaned up and that patrons are not to be parking on St. Clements property. Mr. Korros stated that the letter should be friendly and show that the Board wants to be cooperative.

The Board discussed the matter further and upon a motion duly made, seconded and approved, it was:

> **MOVED; that a letter will be sent to the owner of the pool bar recommending that the music from the bar be turned off and the bar closed at one o'clock am. The lobby bathrooms and the common areas around the bar must be cleaned at closing. The Board asked that the letter state that they are asking for the owner's help in solving these problems. The matter will be reviewed in 30 days to make sure the owner is in compliance with the Board's requests.**

The resulting letter is attached as **"exhibit A"**.

B. **Waterproofing Project**

Ms. Holland then discussed the major problems of water infiltration on the 01 stack or the northwest side of the building. She told the Board that there were a couple of options they could choose. The first option was to have an architectural engineer inspect the building and tell them what their problems are. The cost for this would be approximately $16,000.00. The second option is to have SpecTech Systems Corporation, a waterproofing company, perform tests cuts on the stucco to determine what the problem is and if the Board would need to have an engineer inspect the building. The cost for this would be $2500.00

The Board discussed using the lawsuit monies to make the repairs to the building. They discussed if they could utilize the monies to waterproof the building. Ms. Holland told the Board that they could use those monies to make the necessary repairs to the building. Ms. Holland told the Board that she had obtained bids for a building similar to St. Clements and the total cost for the bid was approximately $90,000.00. She told the Board that the cost might be lower due to the fact that there are no exterior hallways at St. Clements.

The Board also discussed the possibility of waterproofing the northwest wall only, not the entire building. Ms. Holland stated that the lifespan of normal waterproofing on a stucco building is seven years and that lifespan is expired. She told the Board that in her opinion the entire building should be waterproofed.

After further discussion, the Board asked that Ms. Holland contract with SpecTech to perform the test cuts on the stucco at a cost of $2500.00. The Board also requested that a bid be obtained from SpecTech to waterproof the northwest wall and a bid to waterproof the entire building. Ms. Holland told the Board that she would obtain three bids from three different companies for the waterproofing of the building.

C. Lawsuit Filed by Owner of Penthouse

With regard to the status of the lawsuit filed by the owner of the penthouse, Ms. Holland reported that the information had been sent to the Association's liability insurance carrier for the purpose of inquiring about coverage for payment of legal fees involved with the litigation of the counter claim filed by the penthouse owner against the association. She told the Board that the liability insurance carrier stated that there was no insurance coverage for legal fees. The information has now been sent to the Association, Directors and Officers insurance carrier for their review. Ms. Holland told the Board that she is still waiting to hear from them regarding insurance coverage for legal fees.

A Board member asked if the lawsuit affected the foreclosure action on the penthouse by the Association. Ms. Holland told the Board that the Association Attorney is proceeding with the foreclosure of the unit and should not be affected by the owner filing a counter claim against the Association. She told the Board that the owner is suing for $78,000.00 in damages with no invoices or documentation to back up the claim. The Association Attorney has requested the documentation.

A Board member asked if the fence had been removed from the designated parking area for the penthouse. Ms. Holland told the Board that the fence had been removed. She told the Board that owner has been very uncooperative and will not provide a key to his unit.

D. Fire Sprinkler System

Ms. Holland reported that recently the City of Myrtle Beach Fire Inspector performed an inspection on the fire alarm system. Corrosion and paint were found on the sprinkler heads in the outside lobby area and the inspector is ordering that they must be replaced. Ms. Holland stated that the cost to replace the sprinkler heads would be approximately $3000.00. The Board approved to have the sprinkler heads replaced.

The proposal from Eastern Carolina Fire Protection Inc. for repairs/replacements recommended for the St. Clements is attached as **exhibit "B"**.

E. Exterior Lobby Ceiling Repair

Ms. Holland reported that the ceiling on the right side of the exterior lobby had fallen and had to be replaced. She told the Board that the reason the ceiling fell was because the material previously installed was regular interior sheetrock. Ms. Holland told the Board that green board, a product made to withstand the elements, was recommended by the vendor and was installed in the area. Mr. Metcalf stated that the right side of the exterior

lobby ceil.. .g should also be replaced to alleviate the possibility of it falling down. He stated that this should be done after Labor Day.

With regard to the lights in the exterior lobby area, Ms. Holland reported that the lights needed to be replaced. The Board asked that bids be obtained for the replacement of the lights in the exterior lobby area.

The invoices relative to the ceiling repair are attached as **exhibit "C"**.

E. **Other**

The Board then discussed the possibility of refurbishing the interior of the elevator. They asked that bids be obtained for the upgrade of the interior of the elevator.

With regard to serving on the Board of Directors, the Board discussed the possibility of paying one quarter of dues as an incentive for a homeowner to serve on the Board. There had been a problem getting homeowners to serve on the Board of Directors. They asked Ms. Holland to research the Master Deed with regard to this issue.

A Board member mentioned that the wallpaper in the hallways is beginning to deteriorate and they should look at replacing the wallpaper. Mr. Metcalf asked Ms. Holland to ask the on-site maintenance supervisor if he would be willing to replace the wallpaper in the hallways.

Ms. Holland then presented bids to the Board for the installation of an ice machine in the parking deck. She told the Board she obtained two bids for two different size ice machines. The machines would be coin operated and dispense 2 ½ pounds of ice for twenty-five cents. One unit would make 600 pounds of ice and the cost would be $2500.00. The other unit can make 500 pounds of ice and would cost $1700.00. After some discussion, the Board decided to table this issue and revisit it in the future.

The Board also discussed of installing automatic doors in the lobby area. Ms. Holland presented a bid for the installation of new doors at a cost of $6500.00. The Board decided to table this issue and revisit it in the future.

With regard to security issues, the Board asked that Ms. Holland obtain a schedule from the Caravelle as to when their guards patrol the property and how much coverage they are getting.

Mr. Klaiber then discussed the parking garage area. He stated that the wall on the north side of the parking garage is obstructing motorist's ability to exit the area. He suggested removing approximately 30 to 40 feet of the wall to make it easier to get out of the parking garage. Mr. Korros suggested reversing the ingress and egress of the garage. After some discussion, the Board asked Ms. Holland to obtain bids to remove a portion of the wall.

Ms. Holland mentioned to the Board that the pool furniture is in disrepair and they should consider replacing it in the near future. The Board asked that bids be obtained for the replacement of the pool furniture and this cost should be included in the 2002 operating budget.

The Board asked that a newsletter be drafted and sent to the homeowners to inform them of what is happening at the property and what the Board is planning for the building.

The resulting newsletter is attached as **"exhibit D"**.

The Board members praised Ms. Holland for all her hard work with regards to St. Clements.

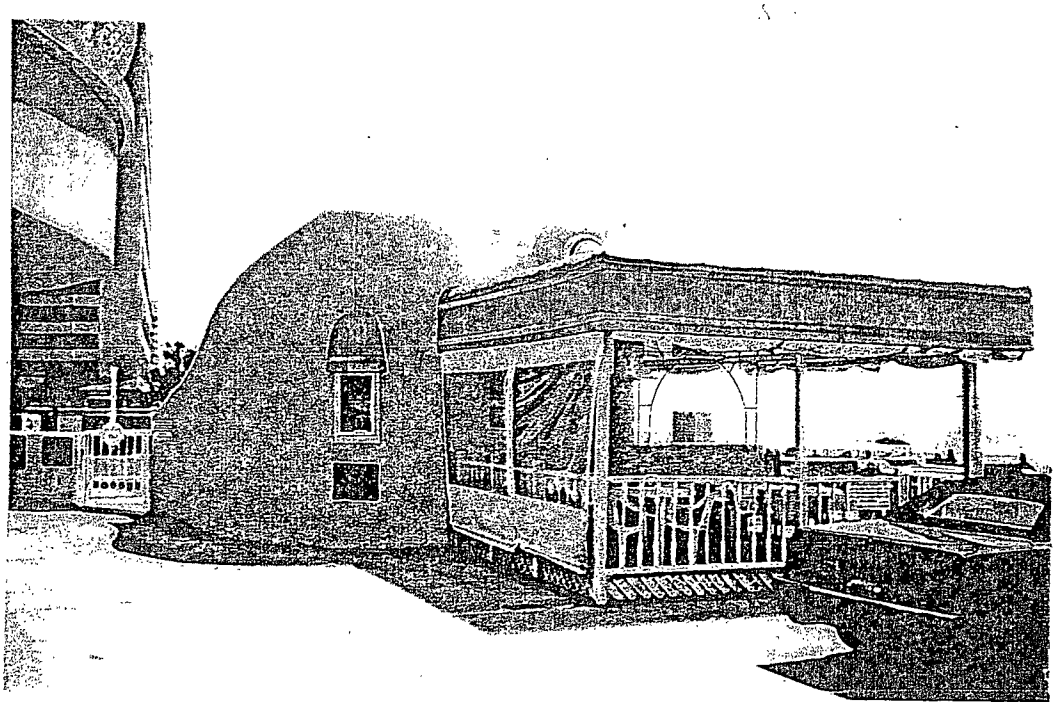
The Board will meet again once the waterproofing bids are obtained.

5. Adjournment

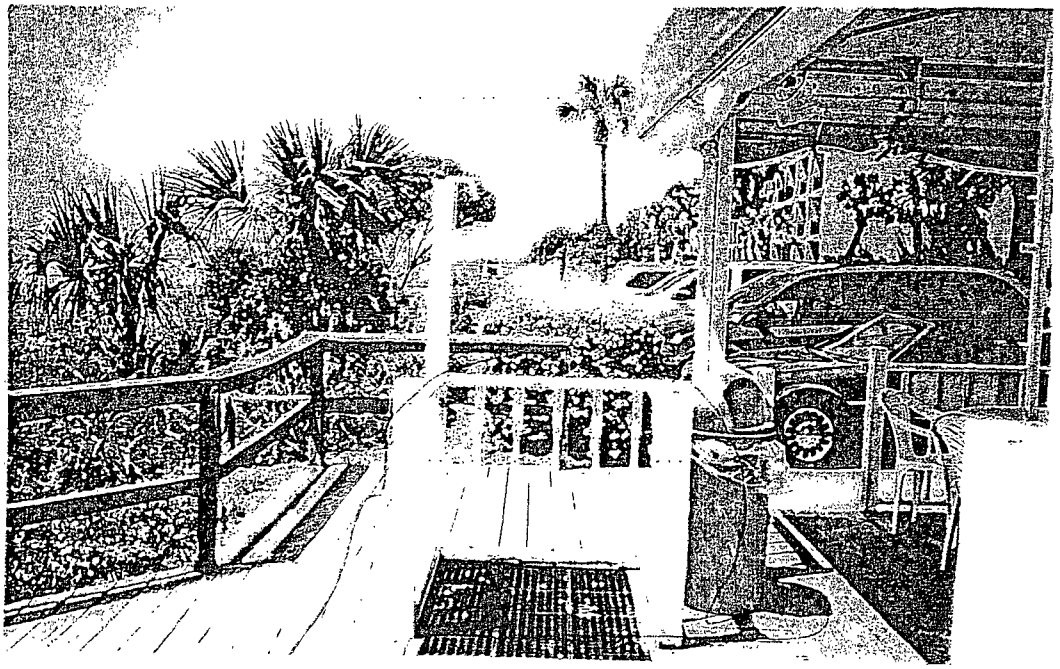
Mark Korros, Secretary

Al Metcalf, Chairman

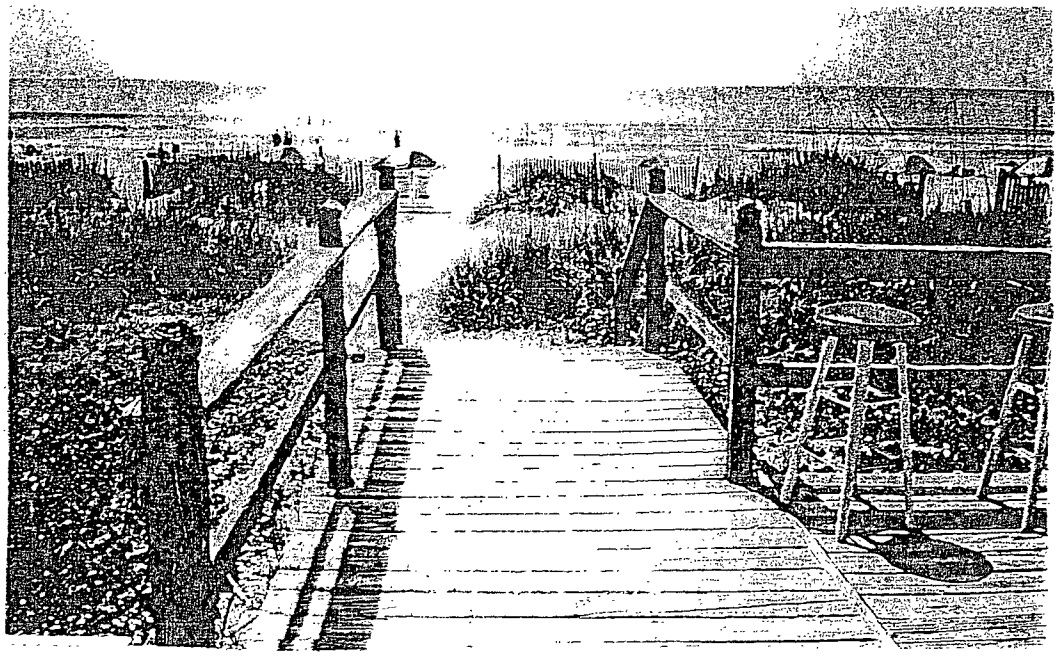
Meeting Commenced: 9:00 o'clock AM
Meeting Adjourned: 10:30 o'clock AM



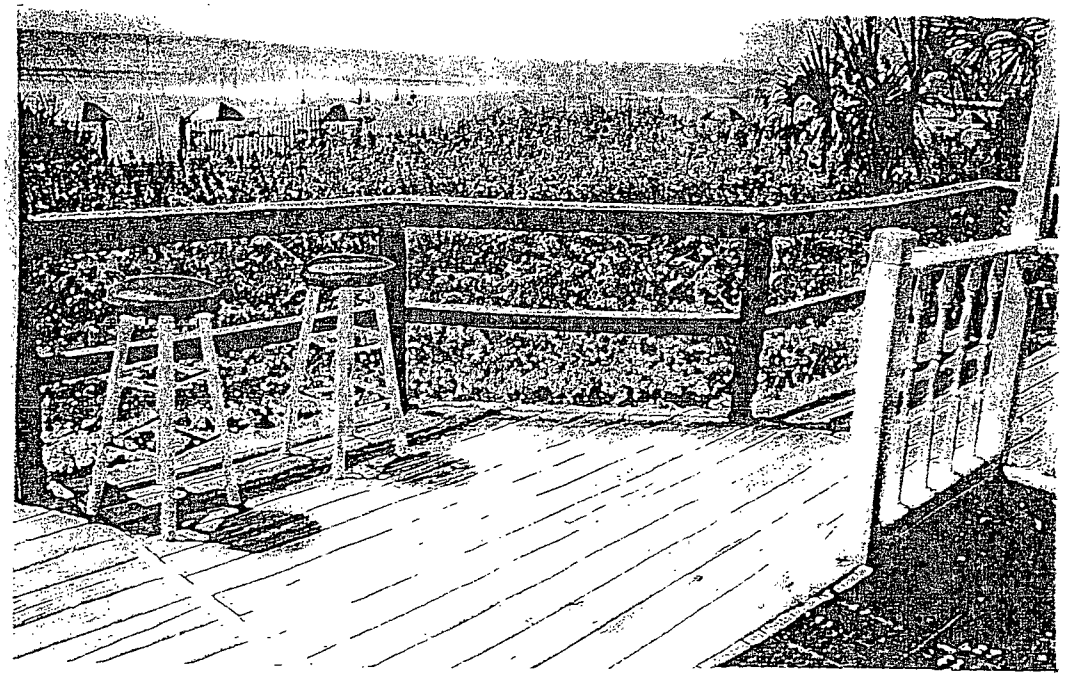
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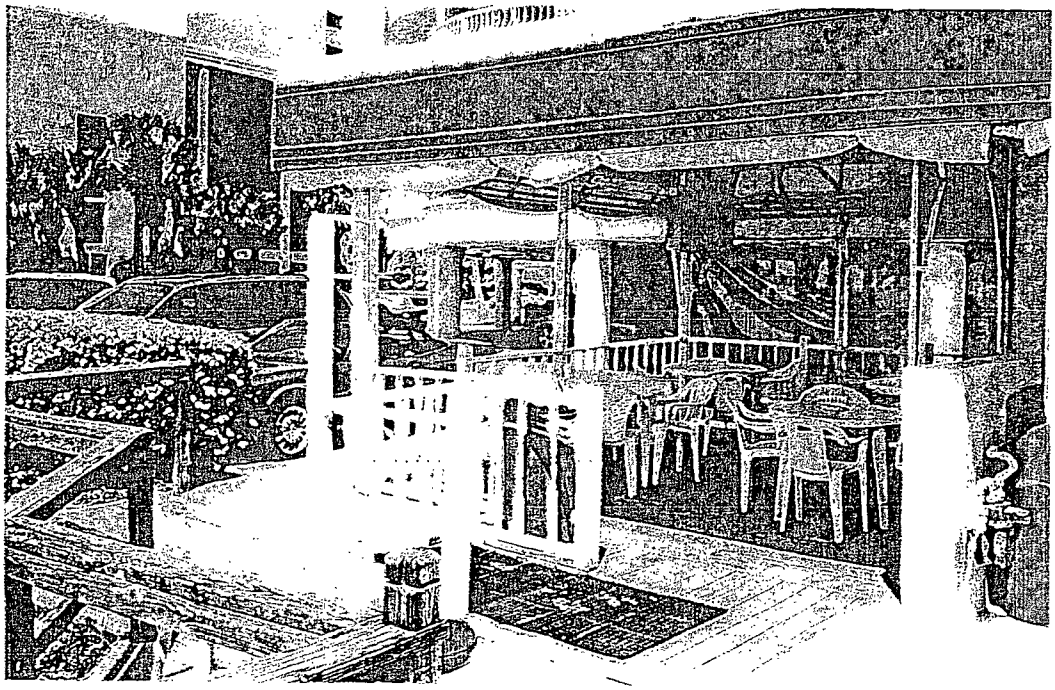

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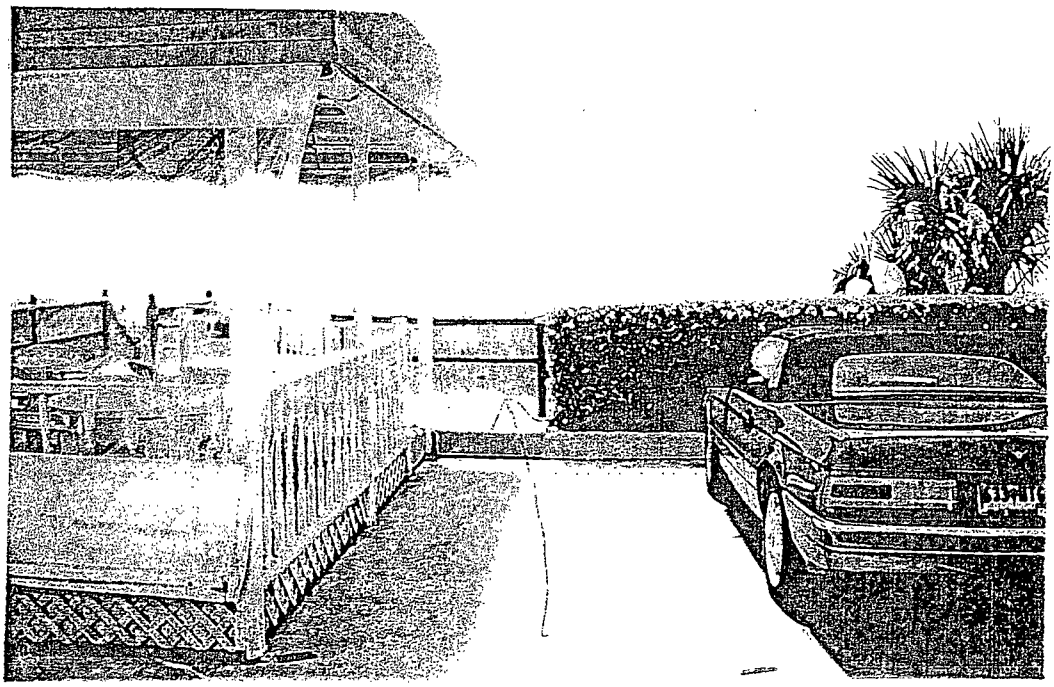
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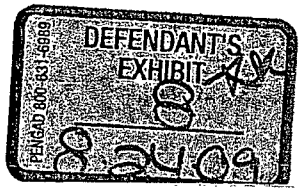


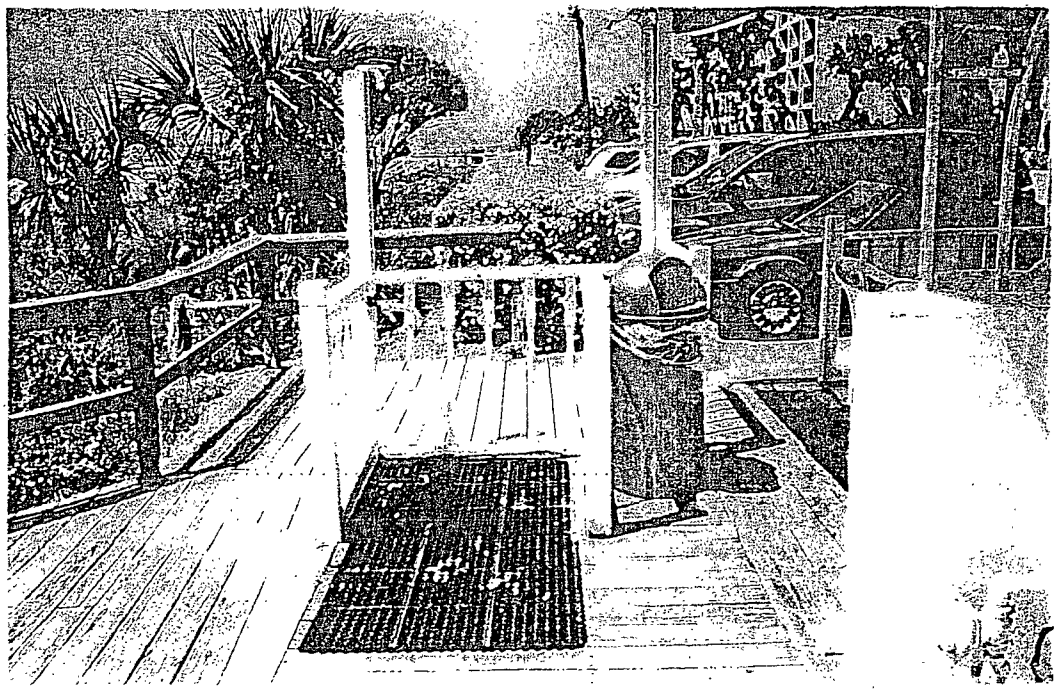
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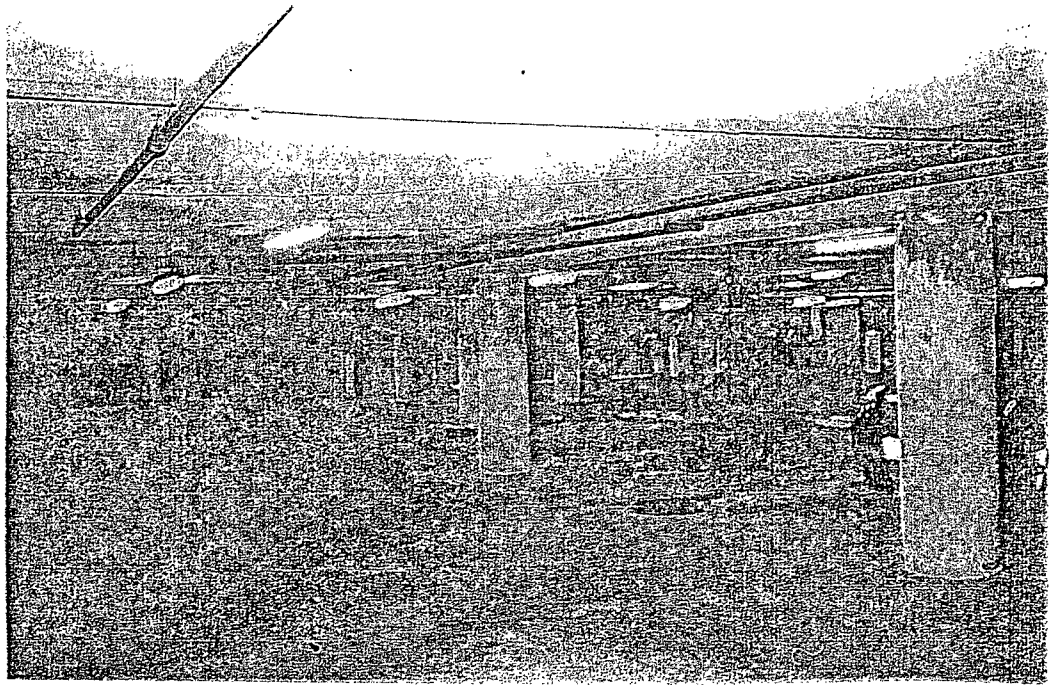
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EXHIBIT
8.24.09

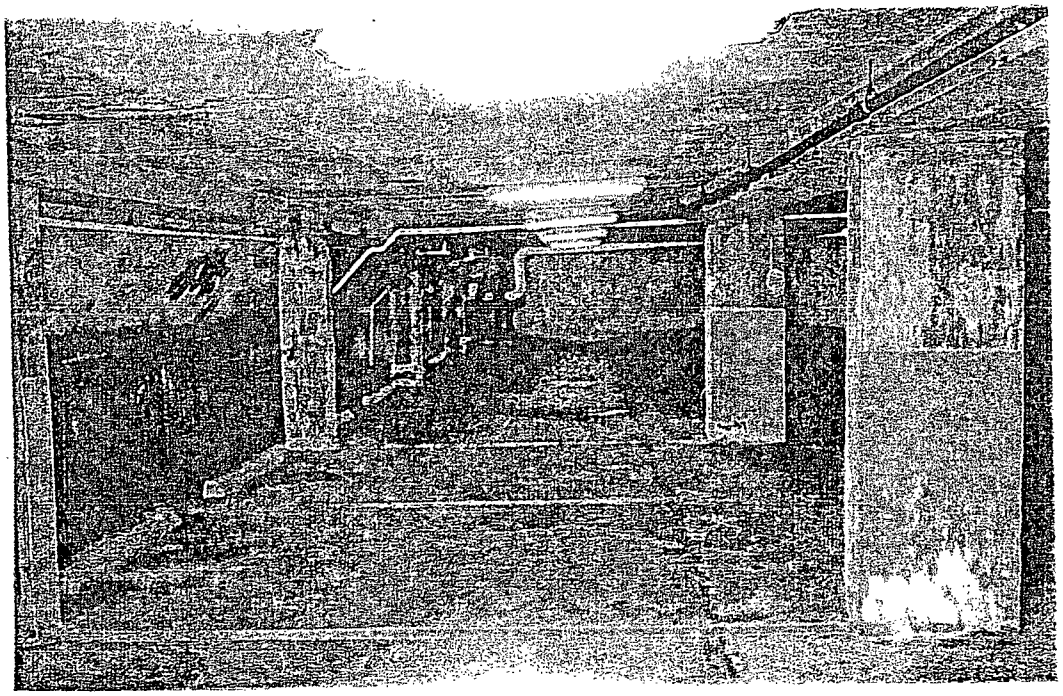


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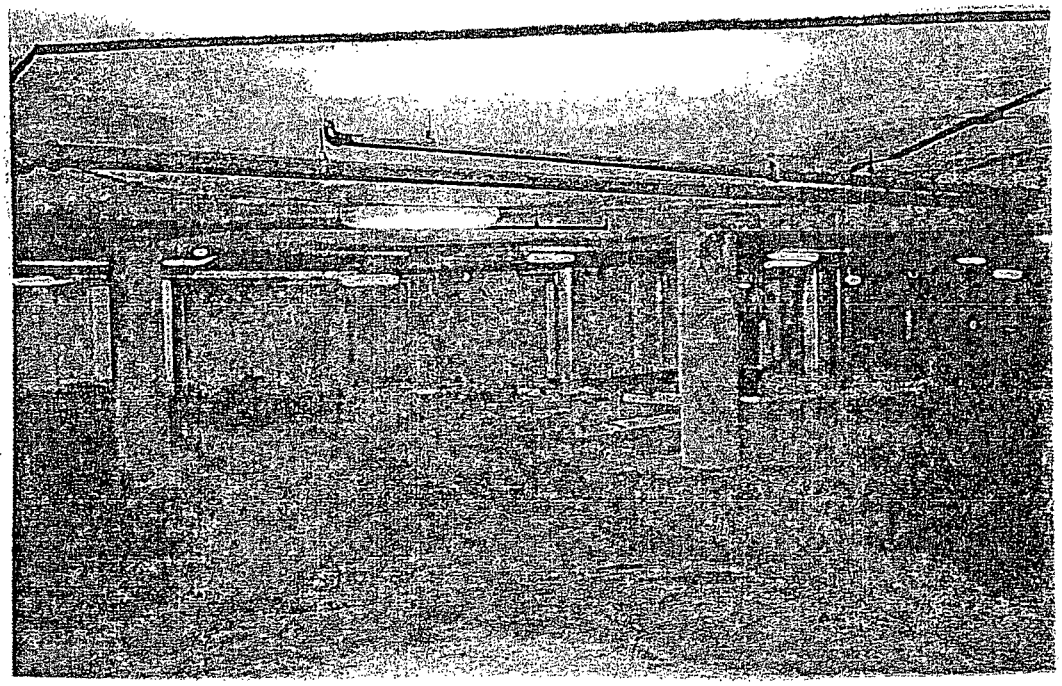


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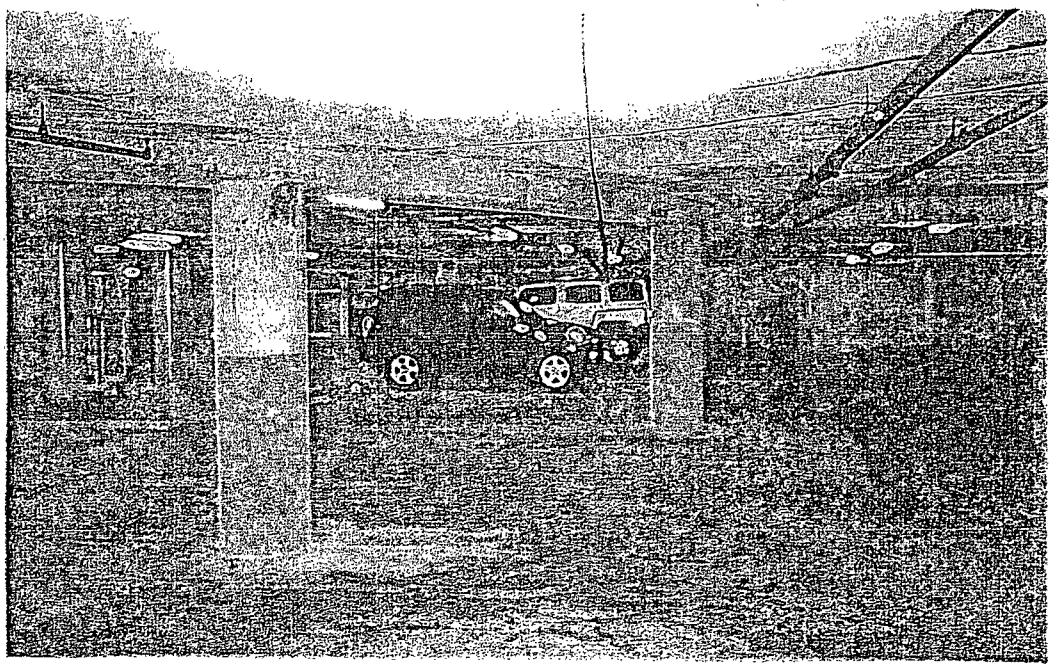
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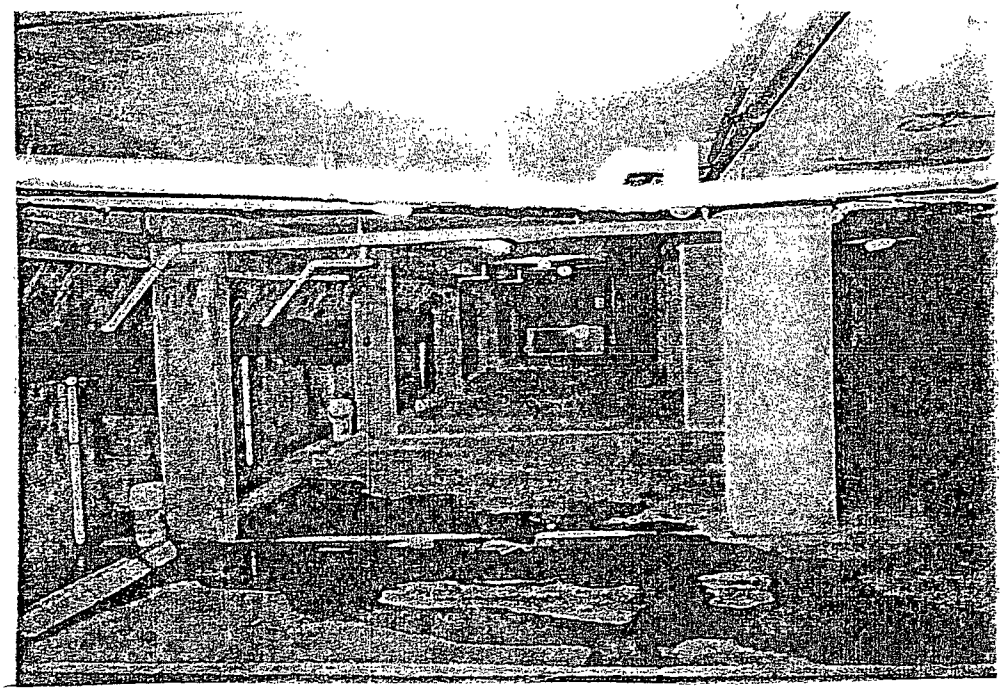
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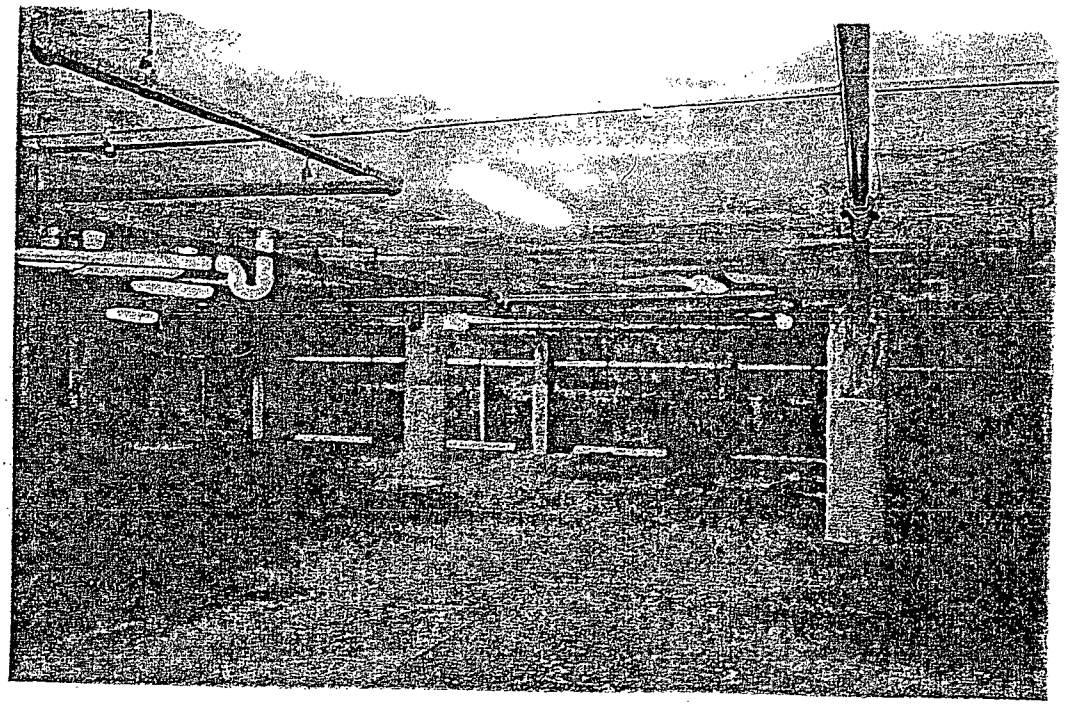
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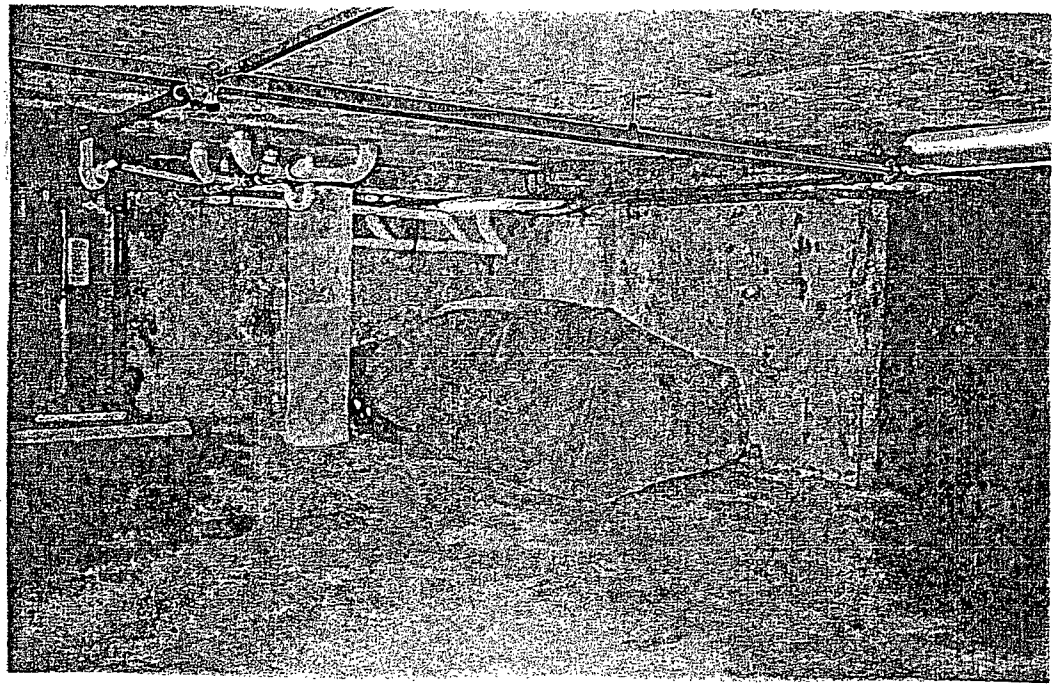
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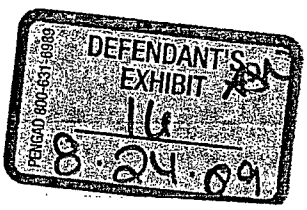


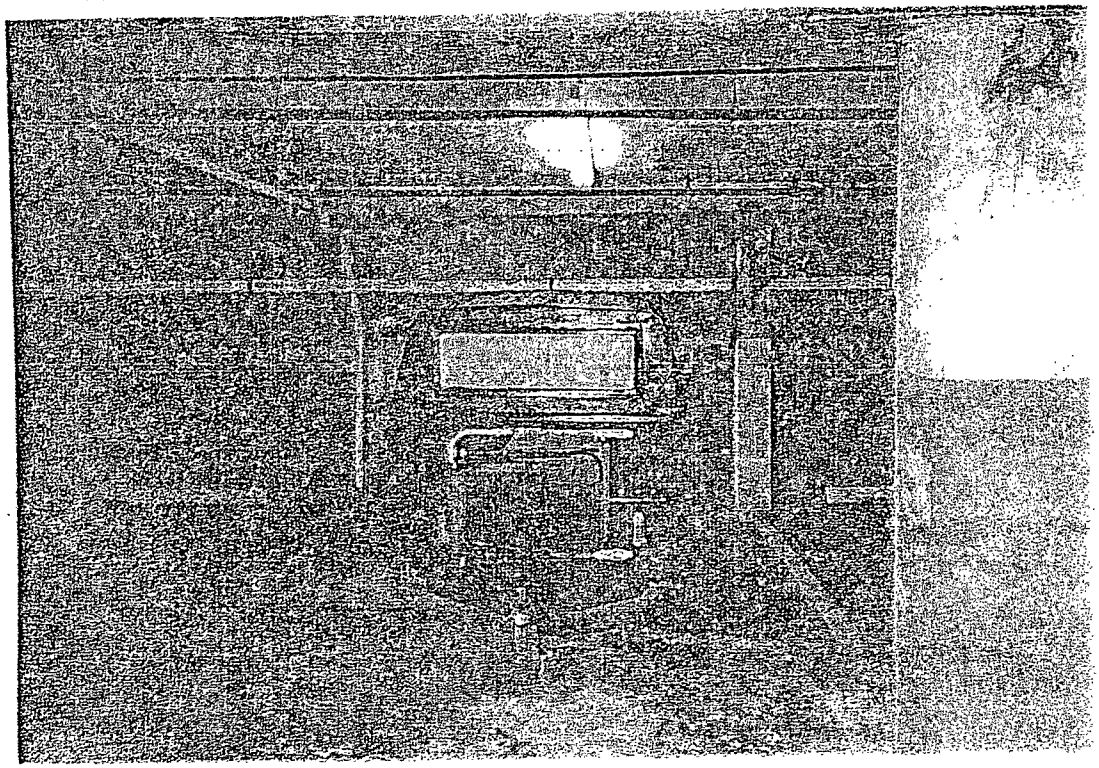
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DEFENDANT'S
EXHIBIT
8.24.09



DEFENDANT'S EXHIBIT 49
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8-25-09
PENGAD 800-631-6989

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

The undersigned also hereby certifies that the Record on Appeal complies with the August 13, 2007 order of the South Carolina Supreme Court regarding Appellate Court Filings.

March 27, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

RECEIVED
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SC Court of Appeals

Appellant Case No. 2012-213333

The St. Clements Homeowners Association, Inc., Appellant,

v.

BE-MI, Inc., Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on BE-MI, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on March 28, 2013, addressed to its attorney of record, Fred B. Newby, Newby Sartip Masel & Casper, LLC, 4593 Oleander Drive, Myrtle Beach, South Carolina 29577.

March 28, 2013

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