THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court Of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2009-CP-22-01655

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

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

v.

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

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

v.

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

RECORD ON APPEAL
Volume IV of V

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p. 19, line 18 – p. 20, line 3 (*cont'd*)

A. Not specifically.

Q. All right, sir. Well, generally, did you look to see how they had dealt with it, whether they were adequate reserves or how they dealt with repairs to common elements, did you look at those to see --

A. At the time, it all seemed to be satisfactory to me.

p. 23, line 18 – p. 25, line 12

Q. . . .

Now, when did you determine the condition of Buildings A and B to be as severe as it was that brought about the assessment?

A. You're talking about me as an individual?

Q. Yes, you as a member of the board.

A. Oh, as a member of the board?

Q. Yeah.

A. Okay. Well, I can't put a specific time because, you know, once we started investigation and looking for professional help to -- well, it's when people were starting to talk about their windows leaking and other problems that were occurring, then we became more sensitive to that. I guess that's a -- but I can't specifically recall the exact time.

Q. That's fair enough.

But people were beginning to talk about the windows leaking in Buildings A and B?

A. Yes, they were.

p. 23, line 18 – p. 25, line 12 (*cont'd*)

Q. All right, sir. And I assume as a result of that, the board -- Sutton-Kennerly -- I'm trying to get a point of time.

A. Yes, sir.

Q. Is that when the board -- at that point in time, you hired Sutton-Kennerly, or if there was a time prior to that, tell me. But when you hired Sutton-Kennerly, is that when the board began to look at the extent of the situation with Buildings A and B?

A. No. We had looked at the -- we had talked to other engineers --

Q. Okay.

A. -- prior to Sutton-Kennerly.

Q. Tell me about that then.

A. Well --

Q. And it what year?

A. You know, Ken Schneider was one, and Eddie -- oh, my gosh -- MEG Engineering. These were other firms prior to SKA that we had talked to about, you know, their assessment of the buildings and what was involved and so forth.

Q. All right. And what year would that have been in?

A. Well, that would have probably been in '07, '08, 2007 or '08.

p. 27, lines 8–19

Q. -- were you aware that Bob Gallagher had, early on, had recommended to the board, prior board, that they hire a structural engineer?

p. 27, lines 8–19 (*cont'd*)

A. No, sir, I was not familiar with that.

Q. You're not familiar with that?

A. Unh-unh.

Q. Would it be fair to say, Jim, that when you became -- the way you became aware of the problems with A and B is after you became on the board and after y'all began to investigate what you needed to do to fix A and B?

A. I think that's a fair statement.

p. 29, lines 8–11

Q. Well, was it fair to say that your experts told you that Buildings A and B were in a state of poor repair and were deteriorating?

A. Yes, they did.

p. 30, line 10 – p. 34, line 21

Q. When you came on the board, obviously the Master Deed provided that A and B and C and D, all were responsible for the maintenance and upkeep of the windows and doors?

A. Correct.

Q. And the amendments that -- then finally it was voted down, in March 21 of '09, the amendment failed, did it not?

A. Yes.

Q. All right. And when you looked at assessing the situation -- assuming and for the purpose -- the Master Deed provided A and B were responsible for the maintenance of the windows and doors.

p. 30, line 10 – p. 34, line 21
(cont'd)

All right, sir. Did you use, as a member of the board, or the board collectively, instruct any of your experts to make a determination of how much of the repair costs to Buildings A and B should be assessed against the unit owners in A and B.

A. Separately? No, not until later when we talk about the windows and the doors.

Q. Okay. So was there ever any attempt or any calculations done besides --

A. The total package.

Q. -- besides paying for the windows and doors -- and obviously, according to our records, after we brought the lawsuit challenging the amendment, the board voted to have A and B pay for the hard costs of the windows; is that correct? You reassessed --

A. That's when -- but to go back to your question, that's when we did ask Sutton-Kennerly to break that out for that purpose.

Q. All right. Just the hard costs for the windows and doors?

A. Just the windows and the doors.

Q. Why did you not ask Sutton-Kennerly to investigate what damage, besides replacing the windows, should be attributable to the A and B unit owners for the collateral damage that came for leakage around the windows that went into the common elements, did you ask them to extensively go in and look at what that should be and what would be a fair assessment?

A. Not to my knowledge, because that was part of the common elements.

p. 30, line 10 – p. 34, line 21
(*cont'd*)

Q. All right. Well, the windows and doors were the responsibility of A and B, though, weren't they?

A. Under the amendment, they were, with the change, yes.

Q. No. Well, I'm not talking about the change. I'm just talking about before the change, A and B were responsible -- before you attempted to amend, A and B were responsible for the windows and the doors for the maintenance and upkeep?

A. Well, I thought the association would have been before -- I mean, no, you're talking about individually?

Q. Yes.

A. Each individual unit would have been responsible before the vote.

Q. Yes, before the vote.

A. They would have been.

Q. All right. And knowing that and being on the board and then obviously as Jack Eblin has said, it looked like the assessment was going to be in the 85 to $95,000 range to repair.

A. That's correct.

Q. Was there ever any attempt to break out -- and I maintain -- to be fair, that's my word, not yours -- to be fair, to determine how much A and B should pay for their failure to maintain the windows and doors?

MS. BOAN: Object to the form. You can answer it.

THE DEPONENT: Huh?

p. 30, line 10 – p. 34, line 21
(*cont'd*)

MS. BOAN: You can answer it if you can.

THE DEPONENT: Okay. I'm sorry, I'm confused. Okay. Was there any --

BY MR. SKEETS BELLAMY:

Q. Attempt to breakout what A and B should have been assessed?

A. They -- yes, we asked them to tell us what the windows and doors specifically cost to break that out and that was what was determined the difference.

Q. All right. I understand that. But besides that, if the windows leaked and the leak went into the common elements --

A. Right.

Q. -- did you ask Sutton-Kennerly to determine how much of the repair of the common elements should be assessed against A and B?

A. I don't think so, because you're talking about the damage that was done to the carpet --

Q. Yes.

A. And to --

Q. No, I'm talking about the common elements, not the carpet.

A. Oh, the -- oh, okay, not the individual owners, common elements, okay.

Q. Yes, sir. You didn't ask them to do that?

A. Unh-unh.

p. 30, line 10 – p. 34, line 21 (*cont'd*)

Q. All right, sir. Did you feel it was your responsibility to do so?

A. I don't recall at that time in our discussions as to what -- how we approached that.

Q. All right. But the ultimate thing was there was an assessment against A, B, C and D for the projected costs of repair to Buildings A and B?

A. Correct.

p. 37, line 9 – p. 38, line 3

Q. All right, sir. Well, the reason I'm asking you the question is, starting in 1982, according to this section, the board would be required to keep records and documents of the monies they expend on the maintenance and repair of all the buildings?

A. Yes, sir.

Q. And at least you haven't had an opportunity to look to see what previous boards did or didn't do?

A. I didn't take the opportunity to do that, if that's what you meant.

Q. All right. You just didn't think it was necessary?

A. No, sir.

Q. Okay. And then -- when was the first time that you became aware of the structural damage to the concrete surfaces in Buildings A and B?

A. I don't recall the exact time.

p. 37, line 9 – p. 38, line 3
(*cont'd*)

Q. Sometime after 2006?

A. It would be sometime after 2006.

p. 43, line 14 – p. 44, line 2

Q. All right, sir. When the last vote was taken on March 21 concerning the amendment -- and I understand the purpose of the amendment was to take away the responsibility for the windows and doors and those things that are set out in Section 3.4 of the Master Deed.

When that did not -- that amendment did not pass for the third time on May 21, 2009, was it your understanding that the amendment had not taken place and was no longer valid or enforceable?

A. It was my understanding that it did not pass.

Q. Okay. And that's your position today?

A. Yes.

p. 44, line 18 – p. 47, line 20

Q. And is it my understanding that the board does not intend -- and you tell me yes or no if I'm wrong -- does not intend to make an effort to determine how much unit owners of A and B should be assessed for any damages they caused to the common elements as a result of their failure to maintain the windows and doors?

A. Repeat that, if you don't mind.

Q. Does the board intend -- knowing where we are today, does the board intend to go back and reconsider whether or not they should additionally assess A and B? I know you've given credit for the windows, a general credit, but for

p. 44, line 18 – p. 47, line 20
(*cont'd*)

the collateral damage that's done as a result of water coming -- the windows not being sealed and maintained and going into the common elements, does the board intend to reassess how much more A and B should be assessed?

A. No, sir.

Q. All right. Do you think that's necessary?

A. You mean to reassess?

Q. To determine how much more they should pay.

A. No.

Q. Okay. And why is that?

A. Well, because of the way the Master Deed reads, that the expense should be shared.

Q. That's the common elements? You're talking about the common elements?

A. I thought that's what you were talking about.

Q. Well, no. Listen to me, because we don't want to spend too long on this. The Master Deed, in Section 3.4 --

MR. HOWELL BELLAMY: 3.6.

MR. SKEETS BELLAMY: 3.6.

MR. HOWELL BELLAMY: 3.6, Subsection C.

BY MR. SKEETS BELLAMY:

Q. -- yes, Subsection C defines the common elements, 3.6 of the unit [sic]. Do you understand what I'm talking about now?

p. 44, line 18 – p. 47, line 20
(*cont'd*)

A. Common elements.

Q. There's common elements and there's limited common elements and there are things that are the responsibility of the unit owners --

A. Correct.

Q. -- basically the inner surface walls of the unit. And that's -- 3.6, you would agree, deals with the responsibility of the unit owners for those things set out in 3.6.

A. (Pause.)

Q. Let me see if I can make it clear. 3.6 deals with the responsibility of the unit owners. For instance, it says, "Each unit shall also encompass and include the following: The doors, including screen doors, openings into the unit and onto any balcony reserve to the use of the unit, including the frames, casings, hinges, handles and other fixtures which are part of the doors, the window glasses, screens, frames, and casings which are part of the window opening of the unit, the plumbing, wiring, mechanical vents which exclusively serve the unit, the appliances, air-conditioning, and heating units, including the condenser and all pipes, wiring and attachments, hot water heaters, lavatory, bathtubs, toilets, carpeting, floor covering, trim, furnish surfaces, ceiling and walls, insulation and other fixtures and furnishings which are within or serve the unit which when delivered to the initial co-owner, all appurtenances which are integral and exclusive to the unit, including but not limited to lamps attached to the exterior unit and water and sewer pipes within the unit exclusively serving the unit."

I've just read to you that section of the Master Deed which we've agreed controls the actions of the all the parties, including the board.

p. 44, line 18 – p. 47, line 20 (*cont'd*)

A. Correct.

p. 48, line 2 – p. 50, line 24

Q. All right, sir. My questions is, is -- that was the state of affairs in 1982 and remains the state of affairs. And what I'm saying is, is either -- one of the issues in this suit has been -- is the board has failed to assess, from A and B unit owners, any damages that they caused or allowed to occur as a result of their failure to maintain the windows and doors and the other things set out in this section.

Do you understand what I'm saying?

A. Uh-huh.

Q. All right. Now, if that is the case, that the A and B unit owners have that responsibility, and they don't discharge it, then it -- as I understand the documents -- the board has the responsibility to assess A and B, and if necessary, sue them to make them repair and fix the windows and doors.

Were you aware of that?

A. (Pause.)

Q. If they're not doing their job --

A. I understand what you're saying, but I don't -- I would have to -- I'm afraid that I can't answer that specifically because I don't -- I'm not -- I don't know what the word is.

Q. Well, as you understand --

A. I understand how that breaks down, but I --

p. 48, line 2 – p. 50, line 24
(*cont'd*)

Q. Fine. If it -- and I hope I've read it correctly. But if that, in fact, is what guides everybody, including the board, then you did not feel it was a responsibility of the board to determine what damage to the common elements had occurred as a result of A and B failing to maintain the windows and doors?

A. You mean to differentiate it?

Q. Yeah, to break it out and charge them for that.

A. No, I did not.

Q. All right. Well, do you understand -- did you know that the Master Deed provided that the board has the right -- or the association had the right to sue or write to A and B unit owners -- and there's correspondence in the files, where unit owners had been written and saying, You're not maintaining windows and doors, we're going to assess you, we're going to fine you, we're going to do these things?

A. I don't recall that.

Q. To your knowledge -- huh? You did not know?

A. I just can't remember us doing that.

Q. Okay. But you could have done that if you would have chosen?

A. Uh-huh.

Q. And had you gotten advice that they were responsible for more than just the actual window and the door, then you could have assessed them for whatever damages your expert told you that their failure to maintain created. You could have done that, could you not?

p. 48, line 2 – p. 50, line 24 (*cont'd*)

A. I guess we could have --

Q. All right, sir.

A. -- but I'm not -- I'm just not quite clear of this particular part of it.

Q. But the fact is you didn't do that. Whether you could or couldn't, you didn't do that. You didn't do that, at least while you've been on the board.

A. Unh-huh.

Q. You have to speak up.

MS. BOAN: You have to answer "yes" or "no."

THE DEPONENT: Oh, yes or no? No, we did not.

p. 52, lines 8–17

Q. Would that not put any reasonable person on notice that the damages to Buildings A and B were substantial and severe?

A. I would say that it would, but that that would have also been based on the professional advice we got.

Q. I understand. But your professional advice indicated there was substantial and severe damages to Buildings A and B.

A. Yes, sir.

p. 59, lines 12–22

Q. Well, I'm a little surprised you don't understand it, because this lawsuit is about A and B, the windows and doors, prior to the attempt to

p. 59, lines 12–22 (*cont'd*)

amend the Master Deed, were the responsibility of A and B, C and D.

A. That's correct.

Q. All right. And if they fail to maintain the windows and doors and, as a result of that, other collateral damage occurred, it would be the responsibility of that unit owner, would it not?

A. I guess it would.

p. 61, lines 13–24

Q. -- that you've got two buildings that are arguably -- ". . . badly distressed, unsafe, arguably uninhabitable in our regime."

That's a pretty strong statement, isn't it?

A. It is.

Q. Yes, sir. And, in fact, that was the condition, was it not?

A. That was the assessment.

Q. Yes, sir.

And is there any reason that the association allowed this to occur?

A. I can't -- I can't answer that. I'm sorry.

p. 64, lines 4–21

[Discussing PLF. EXH. 3, Photos]

Q. Okay. And do you know whether or not there was water intrusion as a result of that rot into the common elements?

A. I did not.

p. 64, lines 4–21 (*cont'd*)

Q. Okay. Could it be possible that water got into the common elements as a result of that rot?

A. Got into the common elements?

Q. Yes.

A. Or --

Q. The structure of the building.

A. Sure.

Q. Okay. Now these things were taken by -- in 2010 by Structural Preservation Systems. Okay. And these are authentic, aren't they?

A. Yes.

Q. All right, sir. And fairly represent, in 2010, the condition of your unit?

A. Yes, sir.

p. 68, lines 8–11

Q. -- at least as of that day, part of the assessment was $326,000 for interior finishes and temporary walls?

A. Uh-huh.

I know you -- when I took Jack Eblin's deposition, I gave him what we marked as Exhibit 1, which is a Notice of the taking of the deposition, which is today, and this is by agreement of counsel. And we asked for -- attached to that was a Subpoena Duces Tecum, which is a charge on you to bring whatever documents that you would rely upon with regard to your testimony. 11:37AM

If I understand from Leigh's testimony, you have brought no documents with you? 11:37AM

A. That is correct.

Q. Okay. So as far as the Subpoena for Jim Poag is concerned, there are 1 through -- let me see how many Howell's got, there's one through a series of things. Have you looked at the Subpoena? 11:37AM

A. No, sir.

Q. Okay. So you haven't looked at it or tried to gather anything?

A. No, sir.

Q. Okay. Now, let me ask you this. Again, if you need to take a restroom break, something like that, get water, whatever, let us know. 11:38AM

A. Okay.

Q. Now, which units do you own at Shipyard --

A. Hmm... 11:38AM

Q. Bear in mind, so the court reporter doesn't have a problem, one of us is going to have to talk at a time; we can't talk over.

A. Sure.

Q. Which units do you own at Shipyard Village, and what building are they located? 11:38AM

A. In Shipyard Village, I own -- I have interval ownerships in A and B buildings. In A, it's A-58.

Q. A-58? 11:38AM

A. A-58.

Q. Okay.

A. And in B, it's B-51.

Q. 51, okay.

And do you own those in your name individually? 11:39AM

A. Yes, sir.

Q. The interval?

A. Me and my wife.

Q. Okay. You and your wife? 11:39AM

A. Yes.

Q. You and your wife own them?

A. Yes, sir.

Q. Your deed for the interval ownership is in your name and your wife's name? 11:39AM

A. Uh-huh.

Q. Okay. When you came on the board and were elected to the board, who was on the board at that time?

A. Leon Jennings, Bob Shaffner, Marie Aker. I believe Jack was on the board at that time, wasn't he, Howell? 11:44AM

MR. HOWELL BELLAMY: That's correct.

THE DEPONENT: Brian Nisbet, maybe.

MR. HOWELL BELLAMY: That's right. 11:45AM

MR. SKEETS BELLAMY: Howell, you're not testifying.

MR. HOWELL BELLAMY: Here you go.

BY MR. SKEETS BELLAMY:

Q. Now, at that time, what was the state of the situation involving repairs, work on Buildings A and B, when you came on the board? 11:45AM

A. I don't -- I'm afraid I don't recall anything specific when I first came on the board about that. 11:45AM

Q. All right.

A. I mean --

Q. Well, what I am trying to get at, is had the board -- when you came on the board, had the board looked into what needed to be done to Buildings A 11:46AM

examine them for any particular purpose?

A. Actually, I was just more interested in the form of the way that minutes were taken.

Q. Okay. Not so much the content?

A. Well, that's right. 11:47AM

Q. Okay.

A. And there's a reason for that.

Q. Okay, go ahead.

A. And the reason was because I was going to take over helping Marie with some of the minutes -- 11:47AM

Q. Okay.

A. -- and that's why I went back and looked at them to see how she had done it.

Q. Okay. When you looked to see, when you examined the minutes -- or some of the minutes; you didn't do all of them, as I understand it. 11:47AM

A. No, sir.

Q. -- but did you go back to look to see how previous boards had dealt with the problems that ultimately surfaced with Buildings A and B? 11:47AM

A. Not specifically.

Q. All right, sir. Well, generally, did you look to see how they had dealt with it, whether they were adequate reserves or how they dealt with repairs to common elements, did you look at those 11:48AM

A. Well, we've always been open with our association.

Q. Well, what I am asking you --

A. But I don't -- but you know what executive session is about and -- 11:50AM

Q. Yeah. But I'm saying is -- you don't feel that that information is also available to all the unit owners?

A. Well, why would you have executive session if that was the case? 11:50AM

Q. Okay. Well, the answer to that is, there's information that you're not going to share with the rest of the owners; is that correct?

A. Well, at that time, uh-huh.

Q. All right, sir. And what executive -- well, she's instructed you not to answer. I'm not going to ask you that. We'll have to deal with that. 11:51AM

Now, when did you determine the condition of Buildings A and B to be as severe as it was that brought about the assessment? 11:51AM

A. You're talking about me as an individual?

Q. Yes, you as a member of the board.

A. Oh, as a member of the board?

Q. Yeah.

A. Okay. Well, I can't put a specific time 11:51AM

can't recall exactly that. We talked to a lot of professional people, and I just don't remember.

Q. All right, sir. Well, was there any evidence in the minutes of the board meetings indicating -- such as a letter from Bob Gallagher, who was a structural engineer early on -- 11:55AM

A. Oh, okay.

Q. -- were you aware that Bob Gallagher had, early on, had recommended to the board, prior board, that they hire a structural engineer? 11:55AM

A. No, sir, I was not familiar with that.

Q. You're not familiar with that?

A. Unh-unh.

Q. Would it fair to say, Jim, that when you became -- the way you became aware of the problems with A and B is after you became on the board and after y'all began to investigate what you needed to do to fix A and B? 11:55AM

A. I think that's a fair statement.

Q. A fair statement? 11:55AM

And when you started to look into it, of course, you had Schneider and other engineers but you ended up, as I understand, hiring Sutton-Kennerly --

A. Yes, sir. 11:56AM

Q. Part of the process.

A. Yes, sir.

Q. But it started --

A. Well, to the extent it was more. I mean, Eddie, MEC had a different -- they all had sort of different theories about it, you know, in terms of -- or ways to go about repairing it. 11:57AM

Q. Well, was it fair to say that your experts told you that Buildings A and B were in a state of poor repair and were deteriorating? 11:57AM

A. Yes, they did.

Q. All right, sir. And then ultimately, what this board did, at least from 2006 forward, is you tried to hire an expert to advise you on what should be done. 11:57AM

A. That's correct.

Q. All right. Were you aware, when you came on the board or soon after you came on the board, that under the Master Deed -- and I'll give you the section, but I'm sure we've talked about the three 11:58AM amendments to the Master Deed, about discharging the unit owners of the responsibility for the windows and doors.

A. Yes, sir.

Q. Were you aware, when you came on the board, 11:58AM

or did you ask Sutton-Kennerly or any of the experts to assess how much of the repair costs should be assessed against the individual A and B units as a result of their failure, if they fail, to maintain the windows and doors in Buildings A and B? 11:58AM

A. Repeat that, if you don't mind.

Q. Sure.

A. When we came on the --

Q. When you came on the board, obviously the Master Deed provided that A and B and C and D, all were responsible for the maintenance and upkeep of the windows and doors? 11:58AM

A. Correct.

Q. And the amendments that -- then finally it was voted down, in March 21 of '09, the amendment failed, did it not? 11:58AM

A. Yes.

Q. All right. And when you looked at assessing the situation -- assuming and for the purpose -- the Master Deed provided A and B were responsible for the maintenance of the windows and doors. 11:59AM

All right, sir. Did you use, as a member of the board, or the board collectively, instruct any of your experts to make a determination of how much 11:59AM

document?

A. I don't recall a document --

Q. Well, if you don't --

A. -- I mean, because K.A. Diehl would have been the one that would have maintained that. 12:05PM

Q. All right. So if such a document exists, it would be with K.A. Diehl?

A. I would think so.

Q. All right, sir. Well, the reason I'm asking you the question is, starting in 1982, according to 12:06PM this section, the board would be required to keep records and documents of the monies they expend on the maintenance and repair of all the buildings?

A. Yes, sir.

Q. And at least you haven't had an opportunity 12:06PM to look to see what previous boards did or didn't do?

A. I didn't take the opportunity to do that, if that's what you meant.

Q. All right. You just didn't think it was 12:06PM necessary?

A. No, sir.

Q. Okay. And then -- when was the first time that you became aware of the structural damage to the concrete surfaces in Buildings A and B? 12:07PM

A. I don't know.
Q. You don't know?
A. I don't know, other than the reserves that have been accumulated through the previous lawsuit?
Q. No, that's C and D. Forget that now. 12:12PM
A. Okay.
Q. Forget C and D. Reserves for A and B.
A. I don't know.
Q. You don't know?
A. Unh-unh. 12:12PM
Q. Would that be something that would be important?
A. You would think it probably would be.
Q. All right, sir. When the last vote was taken on March 21 concerning the amendment -- and I understand the purpose of the amendment was to take away the responsibility for the windows and doors and those things that are set out in Section 3.4 of the Master Deed. 12:12PM
When that did not -- that amendment did not pass for the third time on May 21, 2009, was it your understanding that the amendment had not taken place and was no longer valid or enforceable? 12:13PM
A. It was my understanding that it did not pass. 12:13PM

Q. Okay. And that's your position today?

A. Yes.

Q. All right, sir. Now, if, in fact, A and B unit owners, as well as C and D to be fair, are still responsible for windows and doors and those things set out in Section 3.4 of the Master Deed -- let me, first -- you would agree that the Master Deed and the bylaws control the acts of the board of directors, do you not? 12:13PM

A. The act -- 12:13PM

Q. The actions of the board of directors --

A. -- of the board of directors?

Q. -- are controlled by the Master Deed and the bylaws.

A. Yes, sir. 12:14PM

Q. You looked to those for guidance?

A. Yes.

Q. And is it my understanding that the board does not intend -- and you tell me yes or no if I'm wrong -- does not intend to make an effort to determine how much unit owners of A and B should be assessed for any damages they caused to the common elements as a result of their failure to maintain the windows and doors? 12:14PM

A. Repeat that, if you don't mind. 12:14PM

A. Yes, sir.

Q. All right, sir. My question is, is -- that was the state of affairs in 1982 and remains the state of affairs. And what I am saying is, is either -- one of the issues in this suit has been -- is the board has failed to assess, from A and B unit owners, any damages that they caused or allowed to occur as a result of their failure to maintain the windows and doors and the other things set out in this section. 12:18PM

Do you understand what I'm saying?

A. Uh-huh.

Q. All right. Now, if that is the case, that the A and B unit owners have that responsibility, and they don't discharge it, then it -- as I understand the documents -- the board has the responsibility to assess A and B, and if necessary, sue them to make them repair and fix the windows and doors. 12:19PM

Were you aware of that? 12:19PM

A. (Pause.)

Q. If they're not doing their job --

A. I understand what you're saying, but I don't -- I would have to -- I'm afraid that I can't answer that specifically because I don't -- I'm 12:19PM

Q. -- who says he's going off on Saturday.

A. Uh-huh.

Q. But he was concerned about the disparity, but the fact is that y'all were getting ready -- everybody was getting ready to be assessed 85 or $90,000 at that time. 12:24PM

A. Correct.

Q. Would that not put any reasonable person on notice that the damages to Buildings A and B were substantial and severe? 12:24PM

A. I would say that that would, but that that would have also been based on the professional advice that we got.

Q. I understand. But your professional advice indicated there was substantial and severe damages to Buildings A and B. 12:25PM

A. Yes, sir.

Q. All right, sir.

THE DEPONENT: Can I go to the restroom real quick? 12:25PM

MR. SKEETS BELLAMY: You sure can.

THE DEPONENT: You said I could ask, so I need to ask. I can't hold it.

MR. SKEETS BELLAMY: You go ahead because we're not going to be that much 12:25PM

if they were leaking around the windows into the common elements, leaks in the window frame into the common elements, leaks under the door into the substrate of the concrete substrate, that would have been the responsibility of the unit owner to repair those things and keep it in good repair. 12:34PM

A. Well, are you talking about the actual window and door being the problem, or are you talking about the other issues that became more evident during that process? Because that changes it. 12:35PM

Q. Well, I'm a little surprised you don't understand it, because this lawsuit is about A and B, the windows and doors, prior to the attempt to amend the Master Deed, were the responsibility of A and B, C and D. 12:35PM

A. That's correct.

Q. All right. And if they fail to maintain the windows and doors and, as a result of that, other collateral damage occurred, it would be the responsibility of that unit owner, would it not? 12:35PM

A. I guess it would.

Q. All right, sir. Now, with regard to a memo that went out on January 26, 2010 -- do we have a clean copy? 12:35PM

doors and windows."

We've covered that.

A. Yes, sir.

Q. But is that a fair statement, that the two -- we are referring to Buildings A and B in this memo, are we not? 12:39PM

A. Yes.

Q. All right, sir. And "...faced with the prospects of two badly distressed" -- this is the board, or K.A. Diehl for the board of directors, the board of K.A. Diehl? 12:40PM

A. Uh-huh.

Q. -- that you've got two buildings that are arguably -- "...badly distressed, unsafe, arguably uninhabitable in our regime." 12:40PM

That's a pretty strong statement, isn't it?

A. It is.

Q. Yes, sir. And, in fact, that was the condition, was it not?

A. That was the assessment. 12:40PM

Q. Yes, sir.

And is there any reason that the association allowed this to occur?

A. I can't -- I can't answer that. I'm sorry.

Q. All right. Now, let me show you this -- 12:40PM

Q. But somebody was responsible for that, the owner and/or the association.

A. Yes, yes.

Q. Okay. And do you know whether or not there was water intrusion as a result of that rot into the common elements? 12:43PM

A. I did not.

Q. Okay. Could it be possible that water got into the common elements as a result of that rot?

A. Got into the common elements? 12:43PM

Q. Yes.

A. Or --

Q. The structure of the building.

A. Sure.

Q. Okay. Now, these things were taken by -- in 2010 by Structural Preservation Systems. Okay. And these are authentic, aren't they? 12:43PM

A. Yes.

Q. All right, sir. And fairly represent, in 2010, the condition of your unit? 12:44PM

A. Yes, sir.

Q. Okay. I'm about finished.

Look at this document from SKA, which is Special Members' Meeting, August 1, 2009 Agenda. Look at that for me. I'm just going to ask you -- 12:44PM

I'm not going to ask you about every item on there; I'm going to ask you about one item.

A. And you're saying -- okay. This was submitted -- okay, from SKA to us.

Q. Yes, sir. 12:45PM

MS. BOAN: Can we mark that as an exhibit, please, so it doesn't get lost?

MR. HOWELL BELLAMY: Sure.

MR. SKEETS BELLAMY: What now?

MS. BOAN: Mark it as an exhibit. 12:45PM

BY MR. SKEETS BELLAMY:

Q. Well, I'm just asking you to identify first and then we'll mark it.

A. Oh, okay. You're going to ask me specific -- 12:45PM

MR. SKEETS BELLAMY: All right. Now you can go ahead and mark it. I just didn't want to mark something he didn't know.

MS. BOAN: All right. That's fine.

(PLF. EXH. 4, SKA Opinion of Construction Costs and 8/1/09 Special Members' Meeting Agenda, was marked for identification.)

BY MR. BELLAMY

Q. You're familiar with Plaintiff's Exhibit 12:45PM

Number 4?

A. Yes.

Q. And it's dated August 1, 2009. And it deals with a Special Members', Meeting so everybody was in attendance. 12:45PM

A. Uh-huh.

Q. Buildings A and B Repair Methodology is Item IV to be after the opening statements, the introduction. I assume you didn't make an opening statement. 12:45PM

A. I doubt it. I was too busy writing. When you're secretary, you write a lot. You've read a lot of my minutes, so...

Q. I don't know how they tricked you into that.

A. I was not present, you know that. 12:46PM

Q. We have marked an item, Interior Finishes and Temporary Walls (includes demising walls and interior finishes), that item was $326,000.

A. Uh-huh.

Q. Now, is that correct? 12:46PM

A. Well, that's what this says.

Q. All right, sir. Well, what I am saying is --

A. What do you want --

Q. And they came up with an estimate of 12:46PM

$10,943,336 for the repairs to A and B.

A. Correct.

Q. And included in that was $326,000 for interior finishes and temporary walls.

A. Well, I can tell you that -- 12:46PM

Q. I'm just talking about that document right there.

A. Right, right. Explain to me what your interpretation of "interior finishes" is. What had to be painted, for example, or carpeted or 12:47PM anything like that?

Q. Yes, in the interior of the unit.

A. Right.

Q. Okay.

A. That was paid individually by the owners. 12:47PM

Q. All right. But it's a part of the 10,943,336, is it not?

MR. HOWELL BELLAMY: It's a common expense.

BY MR. SKEETS BELLAMY: 12:47PM

Q. It's a common -- everybody was assessed, and that was part of the assessment.

A. I understand that, but I know that we paid that individually.

Q. Well, that document doesn't say that. 12:47PM

A. But, I mean, I can't -- I don't know if we went back -- I cannot recall, really, if we went back and, you know, whatever. This was from SKA and we looked at so many of these assessments and changes that went into that, so... 12:47PM

Q. Well, to be fair to you --

A. Uh-huh.

Q. -- at least as of that day, part of the assessment was $326,000 for interior finishes and temporary walls? 12:47PM

A. Uh-huh.

Q. Whether you --

A. Yes, a demising wall was a part of that. That was part of the plan, for sure.

Q. All right.

A. That was included. Now, what they defined as far as interior finishes, it could be two separate things from what I'm saying --

Q. I understand.

A. -- that we paid for versus what this calls for as part of the repair. 12:48PM

Q. Part of the repair. And that was part of the assessment that everybody was assessed based on their unit and how many bedrooms they had and what their percentage interest was? 12:48PM

A. Correct.

MR. SKEETS BELLAMY: All right, sir. That's all I have.

THE DEPONENT: That's it?

MS. BOAN: Thank you. 12:48PM

MR. HOWELL BELLAMY: Whoa, one more question.

MR. SKEETS BELLAMY: We are not going to have one more question.

(The deposition concluded at 12:48 p.m.)

CERTIFICATE OF REPORTER

I, Madonna M. Perkins, Registered Professional Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the deponent, JAMES C. POAG, was duly sworn by me to testify to the truth, and that the above deposition, Pages 1 through 72, inclusive, was recorded stenographically by me and transcribed through computer-aided transcription by me to the best of my ability.

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

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

IN WITNESS WHEREOF, I have set my hand and seal this 22nd day of April 2012.

Madonna Perkins

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	C/A NO. 2009-CP-22-01655
	)	
Richard Fisher, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shipyard Village Council of Co-Owners, Inc.,	)	
	)	
Defendant.	)	
	)	

EXCERPTS FROM
DEPOSITION OF KENNETH G. SCHNEIDER, JR., AIA
DATED JULY 26, 2011

BY ATTORNEY LEIGH P. BOAN

p. 121, lines 7-25

Q. What other opinions are you rendering in this case?

A. That the board was negligent in not fulfilling its duties.

Q. And in what way were they negligent?

A. They didn't raise the money. They had a duty to raise the money and they didn't raise it; they didn't assess when they should have.

Q. And when should they have assessed?

A. As soon as they knew.

Q. And when would that have been?

p. 121, lines 7-25 (*cont'd*)

A. I don't know. They knew or should have known; it was their duty to know.

Q. At what point does a co-owner have an obligation to raise the issue to the board that they need to do something to address the buildings or collect assessments to repair the buildings?

A. I don't know.

Q. If a co-owner is aware of it and allows the

board to go on --

p. 122, lines 1-17

A. Yeah, if, if the co-owner was aware of it. I would think that the most eligible co-owners would have been the co-owners that were on the board. That's what they were elected to do. But I think Katie Morrow was a really good co-owner. She was extremely concerned.

Q. As far as the board being negligent, you've said they were negligent and they didn't – in that they didn't raise money when they should have.

A. That's right.

Q. What other opinions?

A. They had the fiduciary responsibility to raise the money.

Q. What else?

A. That they failed to put a planned maintenance program into place and to follow it.

p. 128, lines 4-14

Q. Did you recommend to them to do a plan in 2007?

A. Yes.

p. 128, lines 4-14 (*cont'd*)

Q. And who did you recommend that to?

A. To the board.

Q. And did you put that recommendation in writing?

A. No. It should be in their minutes.

Q. Did anybody on behalf of the board tell you that they didn't have a plan?

A. No. It was evident.

p. 132, lines 1-25

By Mr. Bellamy

Q. For the record, my name is Howell V. Bellamy, III. I'm an attorney with the Bellamy Law Firm. We represent the Plaintiffs in this matter.

Mr. Schneider, did you have an occasion to review Mr. Geiger's report?

A. Yes.

Q. Did you have an opportunity to review the report in its entirety?

A. Yes.

Q. Okay. Do you agree with his findings and conclusions as set forth in his report?

A. Yes.

Q. Is there anything about Mr. Geiger's report that you disagreed with?

p. 132, lines 1-25
(*cont'd*)

A. No. I read it strictly for information, just like I read everybody else's, knowing that that's really not my area of expertise. But I agree with the things that he said. And that's as far as I went with it.

Q. All right, sir. Do you have an opinion whether the board failed to properly plan for the maintenance and repair of Buildings A and B since their inception?

p. 133, lines 1-25

A. Yes, sir.

Q. Okay. And what is the basis for your opinion?

A. Well, the basis for my opinion is my personal knowledge and having worked on the site and what I read in the file, and that's just the way my opinion is now.

And Ms. Boan asked me those questions, and right now as I sit here today, I think that you-all have all of my opinions.

Q. All right, sir. I want to just make one [thing] sic clear. You maintained the board was negligent as far as the maintenance of Buildings A and B. As far as ... also would be with respect to the repair of Buildings A and B, too?

A. Yes.

Q. Okay.

A. The plan would have taken all of that into consideration, what can be repaired and what has to be replaced.

Q. Can you be more descriptive as far as what the plan – give ... more details as

p. 133, lines 1-25 (*cont'd*)

far as what the plan of repair for a horizontal property regime such as Shipyard,

p. 134, lines 1-25

what the board should have done as far as formulating the plan, what details should be in the plan and as far as the format, as far as executing the plan?

A. Yes. The board should have canvassed all of the property owners, told them what was going on and tell them that we're putting a long - range maintenance plan into place, and we would like to know if you have any leaks in your units. You collect those aggressively, and then you see what you've got.

Then the next thing you do is make an inspection of those units so that you can see, Number 1, what exists and then how to fix it; how severe is it? If it's very severe, then you make a priority list. Then you say this is – we've got to raise this much money, or we've got enough money to do these.

And you've got the pieces of this puzzle a lot better than we had at Bohicket because we didn't know what it would cost to dot these things. So where there was a red door on that schedule, if the door was bad and you had to replace it, then you know that you had to do that right now.

So you make the choices. As Ms. Boan said,

p. 135, lines 1-25

you've got choices to make, but you've got limitations, too. You can only go so far because you've only got that much money. Then you say, how can we get more money? We've got to assess our people, and we got to tell them we to to – we are going to assess it. It may not be a popular thing, but we've got to do it anyway.

p. 135, lines 1-25 (*cont'd*)

That's what you do; that's what your plan is. Once you set the plan on that tract, then you begin to seek further information. And you'll find further information as the inspections are made on the units that have already said that they have bad windows or doors or whatever they have. And you begin to make a matrix. And as the matrix comes together, then you begin to execute it.

The plain basically is to stop the water from getting in the building and keep it stopped. Once you do that, then you get ahead of it. But not until you do that are you going to get ahead of it.

Q. This would also include the exterior of the building, too?

A. Absolutely, the exterior. The skin of the building is what you are worried about. The roof, the weather envelope – anything that is a safety features. If the railings are bad, you need to do

p. 136, lines 1-15

something about it now.

Q. Does the board have the discretion whether or not to act, whether to fix something or not fix something? ... [F]or example, if the board knew that there ... was concrete spalling, in your opinion, do they have the discretion to say, well, ... we'll wait maybe a year to fix that ....

A. No, no, no. No, there's not – you don't have, as you said, discretion. You don't have a choice in that; you've got to do it now. You've got to do it. You have the ability to raise the money, then you need to act on that ability. If it's a safety factor, then you better do it now.

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

Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

DEPOSITION OF: **KENNETH G. SCHNEIDER, JR.,AIA**

DATE: Tuesday, July 26, 2011

TIME: 10:20 a.m. through 2:15 p.m.

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

TAKEN BY: Attorneys for the Defendant(s)

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



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

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

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

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STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

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

KENNETH G. SCHNEIDER, JR., P.E., *being first duly sworn, testified as follows:*

EXAMINATION

BY MS. BOAN:

Q. Mr. Schneider, I know you told me to call you Kenny, but for purposes of deposition, I'll probably call you Mr. Schneider. I hope that's okay. 10:20AM

A. That's fine.

Q. All right. I'm assuming with your qualifications as an expert that I've reviewed on your resumé that you have had your deposition taken many times before. Is that a fair statement? 10:20AM

A. Yes.

Q. So you know the rules of the game. It's just basically, I'm here to find out what you know and what your opinions are going to be in this case. 10:20AM

STIPULATION: It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.

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

KENNETH G. SCHNEIDER, JR., P.E., *being first duly sworn, testified as follows:*

EXAMINATION

BY MS. BOAN:

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A. That's fine.

Q. All right. I'm assuming with your qualifications as an expert that I've reviewed on your resumé that you have had your deposition taken many times before. Is that a fair statement? 10:20AM

A. Yes.

Q. So you know the rules of the game. It's just basically, I'm here to find out what you know and what your opinions are going to be in this case. 10:20AM

case is a mirror image of Bohicket; you mentioned that there -- something about a long-range planned program, that they didn't have one; and when I asked you about that, you've given me some specific details as to what you believe that long-range plan should look like. 01:52PM

What other opinions are you rendering in this case?

A. That the board was negligent in not fulfilling its duties. 01:52PM

Q. And in what way were they negligent?

A. They didn't raise the money. They had a duty to raise the money and they didn't raise it; they didn't assess when they should have.

Q. And when should they have assessed? 01:52PM

A. As soon as they knew.

Q. And when would that have been?

A. I don't know. They knew or should have known; it was their duty to know.

Q. At what point does a co-owner have an obligation to raise the issue to the board that they need to do something to address the buildings or collect assessments to repair the buildings? 01:52PM

A. I don't know.

Q. If a co-owner is aware of it and allows the 01:53PM

board to go on --

A. Yeah, if, if the co-owner was aware of it. I would think that the most eligible co-owners would have been the co-owners that were on the board. That's what they were elected to do. But I think Katie Morrow was a really good co-owner. She was extremely concerned. 01:53PM

Q. As far as the board being negligent, you've said they were negligent and they didn't -- in that they didn't raise money when they should have. 01:53PM

A. That's right.

Q. What other opinions?

A. They had the fiduciary responsibility to raise the money.

Q. What else? 01:53PM

A. That they failed to put a planned maintenance program into place and to follow it.

Q. And what else?

A. That's it, isn't it?

Q. I'm just asking. I'm wanting to know what all your opinions are going to be. 01:54PM

A. Well, I think -- I'm not going to testify, unless you ask me to, something about what we found about defective building materials or those things. That's not -- you got Derek and all those other 01:54PM

Q. Were you asked to do a plan in 2007 for them?

A. No.

Q. Did you recommend to them to do a plan in 2007? 02:01PM

A. Yes.

Q. And who did you recommend that to?

A. To the board.

Q. And did you put that recommendation in writing? 02:01PM

A. No. It should be in their minutes.

Q. Did anybody on behalf of the board tell you that they didn't have a plan?

A. No. It was evident.

Q. And it was evident, why do you make such a conclusion? How do you make such a conclusion? 02:01PM

A. Well, we were trying to do the mockups in order to help them make the plan. Like I said before in this deposition, we knew what the costs were to do each specific type, and we knew how long it took. So all they had to do was take those pieces and say, we have this much money, we can do this and this and this and this. Which ones are the worst and which ones do we need to do? That's putting the plan in place. 02:02PM 02:02PM

EXAMINATION

BY MR. BELLAMY:

Q. For the record, my name is Howell V. Bellamy, III. I'm an attorney with the Bellamy Law Firm. We represent the Plaintiffs in this matter. 02:06PM

Mr. Schneider, did you have an occasion to review Mr. Geiger's report?

A. Yes.

Q. Did you have an opportunity to review the report in its entirety? 02:06PM

A. Yes.

Q. Okay. Do you agree with his findings and conclusions as set forth in his report?

A. Yes.

Q. Is there anything about Mr. Geiger's report 02:06PM that you disagreed with?

A. No. I read it strictly for information, just like I read everybody else's, knowing that that's really not my area of expertise. But I agree with the things that he said. And that's as 02:07PM far as I went with it.

Q. All right, sir. Do you have an opinion whether the board failed to properly plan for the maintenance and repair of Buildings A and B since their inception? 02:07PM

A. Yes, sir.

Q. Okay. And what is the basis for your opinion?

A. Well, the basis for my opinion is my personal knowledge and having worked on the site and what I read in the file, and that's just the way my opinion is now. 02:07PM

And Ms. Boan asked me those questions, and right now as I sit here today, I think that you-all have all of my opinions. 02:08PM

Q. All right, sir. I want to just make one clear. You maintained the board was negligent as far as the maintenance of Buildings A and B. As far as you're also -- correspondingly, also would be with respect to the repair of Buildings A and B, too? 02:08PM

A. Yes.

Q. Okay.

A. The plan would have taken all of that into consideration, what can be repaired and what has to be replaced. 02:08PM

Q. Can you be more descriptive as far as what the plan -- give a -- kind of for the record, kind of more details as far as what the plan of repair for a horizontal property regime such as Shipyard, 02:08PM

what the board should have done as far as formulating the plan, what details should be in the plan and as far as the format, as far as executing the plan?

A. Yes. The board should have canvassed all of the property owners, told them what was going on and tell them that we're putting a long-range maintenance plan into place, and we would like to know if you have any leaks in your units. You collect those aggressively, and then you see what you've got. 02:08PM 02:09PM

Then the next thing you do is make an inspection of those units so that you can see, Number 1, what exists and then how to fix it; how severe is it? If it's very severe, then you make a priority list. Then you say this is -- we've got to raise this much money, or we've got enough money to do these. 02:09PM

And you've got the pieces of this puzzle a lot better than we had at Bohicket because we didn't know what it would cost to do these things. So where there was a red door on that schedule, if the door was bad and you had to replace it, then you knew that you had to do that right now. 02:09PM

So you make the choices. As Ms. Boan said, 02:10PM

you've got choices to make, but you've got limitations, too. You can only go so far because you've only got that much money. Then you say, how can we get more money? We've got to assess our people, and we got to tell them we got to -- we are 02:10PM going to assess it. It may not be a popular thing, but we've got to do it anyway.

That's what you do; that's what your plan is. Once you set the plan on that tract, then you begin to seek further information. And you'll find 02:10PM further information as the inspections are made on the units that have already said that they have bad windows or doors or whatever they have. And you begin to make a matrix. And as the matrix comes together, then you begin to execute it. 02:11PM

The plan basically is to stop the water from getting in the building and keep it stopped. Once you do that, then you get ahead of it. But not until you do that are you going to get ahead of it.

Q. This would also include the exterior of the 02:11PM building, too?

A. Absolutely, the exterior. The skin of the building is what you are worried about. The roof, the weather envelope -- anything that is a safety features. If the railings are bad, you need to do 02:11PM

something about it now.

Q. Does the board have the discretion whether or not to act, whether to fix something or not fix something? If -- for example, if the board knew that there was either a safety danger or there was concrete spalling, in your opinion, do they have the discretion to say, well, we need -- you know, we'll wait maybe a year to fix that or we'll wait 30 days or... 02:11PM

A. No, no, no. No, there's not -- you don't have, as you said, discretion. You don't have a choice in that; you've got to do it now. You've got to do it. You have the ability to raise the money, then you need to act on that ability. If it's a safety factor, then you better do it now. 02:12PM 02:12PM

Q. Give me another example. What if the board submits a special assessment and the unit owners vote it down? Under those facts and circumstances, is the board relieved of its obligation to fix or repair the common elements? 02:12PM

A. No. And I looked up that specifically because that's one of the stumbling blocks that I see from the comparison of Master Deed and bylaws that I've seen before. And you-all being lawyers, you know more about that than I do. The board has 02:12PM

CERTIFICATE OF REPORTER

I, Madonna M. Perkins, Registered Professional Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the deponent, KENNETH G. SCHNEIDER, JR., P.E., was duly sworn by me to testify to the truth, and that the above deposition, Pages 1 through 138, inclusive, was recorded stenographically by me and transcribed through computer-aided transcription by me to the best of my ability.

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

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

IN WITNESS WHEREOF, I have set my hand and seal this 2nd day of August, 2011.

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

case is a mirror image of Bohicket; you mentioned that there -- something about a long-range planned program, that they didn't have one; and when I asked you about that, you've given me some specific details as to what you believe that long-range plan should look like. 01:52PM

What other opinions are you rendering in this case?

A. That the board was negligent in not fulfilling its duties. 01:52PM

Q. And in what way were they negligent?

A. They didn't raise the money. They had a duty to raise the money and they didn't raise it; they didn't assess when they should have.

Q. And when should they have assessed? 01:52PM

A. As soon as they knew.

Q. And when would that have been?

A. I don't know. They knew or should have known; it was their duty to know.

Q. At what point does a co-owner have an obligation to raise the issue to the board that they need to do something to address the buildings or collect assessments to repair the buildings? 01:52PM

A. I don't know.

Q. If a co-owner is aware of it and allows the 01:53PM

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VERIFICATION OF DEPONENT

CASE: FISHER vs. SHIPYARD VILLAGE COUNCIL

I, KENNETH G. SCHNEIDER, JR., P.E., have read the foregoing deposition consisting of 139 pages, which was reported by Madonna M. Perkins, Registered Professional Reporter and notary public in and for the State of South Carolina, on July 26, 2011.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of _____ corrections as listed on the attached correction sheet, which was filled in by me.

_____

KENNETH G. SCHNEIDER, JR., P.E.

, 2011

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS _____ DAY OF _____, 2011.

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: 9/19/15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	C/A NO. 2009-CP-22-01655
Richard Fisher, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shipyard Village Council of Co-Owners, Inc.,	)	
	)	
Defendant.	)	
	)	

EXCERPTS FROM
DEPOSITION OF J. LAWRENCE ELKIN, P.E.
DATED AUGUST 10, 2011

BY MR. HOWELL BELLAMY:

p. 31, line 3 – p. 32, line 1

A. . . .

He told me about now there's a bunch of work going on and that the owners -- or some of the owners in the C and D buildings -- I guess they find it less than fair that they have to pay to repair Buildings A and B, is pretty much the way it was described to me.

Q. Okay. Did he ask you to look in as far as -- did he ask you to look in this case as -- referring, like, he wanted you to use your expertise as a mechanical engineer or, as you quoted, construction engineer? Or did he kind of define what the issues were as far as from the defense perspective of things that he wanted you to look into?

A. Frankly, I told him that "I don't really know why you need an engineer. I mean, they

p. 31, line 3 – p. 32, line 1 (*cont'd*)

aren't really engineering issues. This is all -- really, this is more of a -- all of y'all should have accountants to figure all this stuff out, or someone else."

He said, "Well, they've got an engineer; I need an engineer."

I said, "Well, if you want me to look at it, I'll be glad to look at it."

p. 33, line 12 – p. 34, line 6

Q. So you don't think you're qualified to render an opinion regarding whether or not the board was negligent as far as the maintenance/repair of Buildings A and B or, an alternative, whether the board breached its fiduciary duty regarding the maintenance/ repair of Building A and B?

MS. BOAN: Object to the form.

THE DEPONENT: What I would say is that we could talk about whether or not a certain repair was adequate or not.

BY MR. HOWELL BELLAMY:

Q. Please answer my question.

A. I am answering your question.

Q. Well, answer yes or no. Just answer my question and then you can explain.

A. I've already told you that I'm not qualified, and neither is anybody else, to talk about the fiduciary responsibility of a board. None of us have that qualification.

p. 38, lines 3–12

Q. All right, sir. Have you had an opportunity to talk to Bruce Henderson in this case?

A. Nope.

Q. Have you talked to Bobby Warner?

A. No.

Q. Have you had any communication with past or present board members regarding the condition and maintenance/repair of Buildings A and B since their inception to the present date?

A. All I've done is reviewed these documents.

p. 38, line 21 – p. 39, line 14

Q. Have you talked to Stephen Robinson with SKA?

A. No.

Q. Have you talked to anybody with Structural Preservation Systems regarding this particular case?

A. I met some of the people at the site, but we haven't had any substantive conversations.

Q. Mr. Elkins, would you identify any person that either served on a board that was a member or a current member or past member of Buildings A and B or also that was a current member or past member of either Buildings C and D as it relates to this particular lawsuit?

A. I haven't interviewed anyone --

Q. Okay.

A. -- in regards to this lawsuit.

p. 38, line 21 – p. 39, line 14 (*cont'd*)

Q. Haven't reviewed anybody?

A. I haven't interviewed anyone, no.

p. 41, line 1 – p. 42, line 16

Q. When you conducted, you know, your first site visit on the -- on November 30, 2010, did you take anything away from that site visit that you're using to support your opinions that you are going to render in the report?

A. Well, as I understood, one of the complaints was that water leakage through the windows damaged the buildings and that there was -- part of the basis of the allegations is that the windows were originally owned by the individual unit owners; and to the extent that they allowed water to leak through their windows and damage the buildings, that those individuals might be held responsible for damage to the buildings.

So what I was looking for was what type of windows they were. And what I found is that they were nail flanged windows.

Q. Were they residential or commercial?

A. They were aluminum framed. I'm not sure what their capacity was. Most of the stuff I saw had already been broken down. So the sliders looked like they were probably commercial grade, but the windows themselves, it was a thinner metal, but I don't know who made them. I've heard in some or read in some of the documents that some people think that they were residential-quality windows. But nevertheless, I was really more concerned about the attachment. They were flanged windows. And what's interesting about that is there's no way to put one of those windows

p. 41, line 1 – p. 42, line 16 (*cont'd*)

in or take one of those windows out without getting into the cladding. ...

p. 43, lines 17-21

Q. So you're not going to offer an opinion the water basically migrated through the --as far as through the cracks and stucco and damaged the window?

A. If that's possible. But I didn't test it.

p. 44, lines 10-13

Q. Engineer joint, right.

A. Yeah. That that's where the water was going in. It would blow up against the wall, and it would go into that joint.

p. 46, lines 9–19

Q. Well, let's take a break.

A. Before we go off the record, what I would tell you is that once we get to Ken Schneider being at the building, that's where we get into licensed professionals being at the building and working on the building, and that's really when the solution that we have now, it goes into place.

And so once we get to Ken Schneider, you know, I know that he has -- he wanted to put in this fiberglass assembly to go under the door to catch this water, and he did a mockup at two different locations to try to test this solution.

p. 57, line 20 – p. 59, line 9

Q. Okay. What documents, information are you relying upon as far as the basis of this opinion?

p. 57, line 20 – p. 59, line 9
(*cont'd*)

A. They're all enumerated under -- in Items A through N on Pages 2 and 3.

Q. All right. Let me ask you this. You said the board enlisted the assistance of technical experts and consultants. Who were you referring to specifically?

A. ProCon, Henderson, McGee, Bobby Warner, Finkel & Altman, Keystone, Schneider & Associates, Richard Bennett. Those are all listed. And, of course, Eddie Porcher was working for Ken Schneider, also.

Q. Okay. You indicated earlier that you had not had an opportunity to talk to Bobby Warner, correct?

A. No.

Q. Okay. Do you know whether or not he's licensed as a general contractor with the State of South Carolina?

A. I don't know that.

Q. Do you know if he has any particular certifications or expertise?

A. No, sir. I have no idea what his educational background is.

Q. Okay. Are you referring to him as a -- Bobby Warner as a technical expert or in the alternative, a consultant?

A. He was part of the their management and maintenance staff. He was being paid to perform services and provide information to them.

p. 57, line 20 – p. 59, line 9
(*cont'd*)

Q. Again, let me restate my question. Is

p. 57, line 20 – p. *(cont'd)*

Bobby Warner a technical expert or a consultant?

p. 57, line 20 – p.

A. He would be a technical expert, I suppose.

Q. Can you explain what his expertise is as it relates to stucco repairs, concrete distress, waterproofing and so on and so forth?

MS. BOAN: Object to the form.

THE DEPONENT: He was their site maintenance person.

p. 61, lines 5–8

Q. Okay. Again, would you classify him as a technical expert, you individually?

A. I don't know enough about him for me to make that designation.

p. 62, line 20 – p. 63, line 3

Q. And you've already indicated that you didn't talk to any of the board members, correct?

A. I didn't, no.

Q. And you already indicated -- you already testified that you did not talk to any of the property managers, correct?

A. That's correct.

Q. Past and present?

A. Correct.

p. 87, lines 14–24

Q. Well, let's do this for the sake of argument. Assuming those conditions exist at Buildings A and B, specifically the cracking and spalling which is occurring in the pre-cast slabs, assume they exist just for the sake of argument. As a professional engineer, would you not agree it would be prudent to have a structural engineer to look at those conditions?

A. I guess my general answer is it's never going to be a bad idea to have an engineer look at your building.

p. 89, line 15 – p. 90, line 4

Q. Mr. Elkins, let me ask this. Would it be a fair -- could the cracking and spalling result from the rebar corroding based upon water intrusion damage as far as water and salt ions getting to the reinforced rebar and causing it to corrode and expand which possibly causes the spalling?

A. That's a possibility, yes, sir.

Q. Okay. And you would agree, if that's what was actually occurring on Buildings A and B and around April 9, 1993, it would have been very prudent to get a structural engineer to go out there and look at those conditions, correct?

A. Certainly it wouldn't have hurt. I don't know what other information the management company was giving to the board at that time.

p. 94, lines 1–22

Q. Okay. Did they hire an engineer in 1994?

A. Not that I'm aware of.

p. 94, lines 1–22 (*cont'd*)

Q. Did they hire an engineer in 1995 through 1999?

A. Not that I'm aware.

Q. When is the first time you are aware of that they actually hired a structural engineer to assess the properties, specifically, the horizontal slabs, private balconies and walkways in Buildings A and B?

A. I know that McGee was on-site in 2002.

Q. Is McGee a structural engineer?

A. McGee is a consultant who -- I don't know if he markets himself as a structural engineer or not. If we have his CV, we can talk about it, I suppose, but he studies water problems in the buildings and specifies repairs and manages repairs.

Q. Would you not agree that the first structural engineer that did invasive testing on the property was Stantec, Eddie Porsche?

A. Like I said, I don't know how George markets himself.

p. 95, lines 9–14

Q. Okay. So you would agree, the first person that actually did -- that's documented -- invasive testing on the horizontal surfaces, the private balconies and the walkways of Buildings A and B was Eddie Porsche of Stantec, correct?

A. I believe that's correct.

p. 97, lines 4–12

Q. Let me finish.

-- structural engineer to come and evaluate the A and B properties, specifically the horizontal surfaces, okay?

With regard to "cracking and spalling which is occurring in the pre-cast slabs and beams," the board didn't follow that recommendation, correct? I think you testified to that?

A. Did not hire the engineer, no.

p. 104, lines 6–10

Q. Again, did they hire ProCon to waterproof the horizontal surfaces of Buildings A and B after March 9, 1994? Yes or no?

A. Did they hire ProCon? No, they didn't hire ProCon to waterproof the horizontal surfaces.

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

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Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

COPY

DEPOSITION OF: **J. LAWRENCE ELKIN, P.E.**

DATE: Wednesday, August 10, 2011

TIME: 10:18 a.m. through 3:10 p.m.

LOCATION: McNAIR LAW FIRM
11019 Ocean Highway
Pawleys Island, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

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



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

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

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

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

Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

DEPOSITION OF: J. LAWRENCE ELKIN, P.E.

DATE: Wednesday, August 10, 2011

TIME: 10:18 a.m. through 3:10 p.m.

LOCATION: McNAIR LAW FIRM
11019 Ocean Highway
Pawleys Island, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

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

APPEARANCES OF COUNSEL

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involved in that, and I had been working for Ken at the time.

He told me about now there's a bunch of work going on and that the owners -- or some of the owners in the C and D buildings -- I guess they find it less than fair that they have to pay to repair the Buildings A and B, is pretty much the way it was described to me. 10:52AM

Q. Okay. Did he ask you to look in as far as -- did he ask you to look in this case as -- referring, like, he wanted you to use your expertise as a mechanical engineer or, as you quoted, construction engineer? Or did he kind of define what the issues were as far as from the defense perspective of things that he wanted you to look into? 10:52AM 10:52AM

A. Frankly, I told him that "I don't really know why you need an engineer. I mean, they aren't really engineering issues. This is all -- really, this is more of a -- all of y'all should have accountants to figure all this stuff out, or someone else." 10:52AM

He said, "Well, they've got an engineer; I need an engineer."

I said, "Well, if you want me to look at it, 10:52AM

I'll be glad to look at it."

Q. Okay. And specifically what did he ask you to look into?

A. I read the Geiger report, and he asked me to look at the Geiger report and say if there was merit to what he was saying. 10:53AM

Q. Good. Initially when you first read it, after you read Steve Geiger's report the first time, did you form any opinions initially or one way or another? 10:53AM

A. Clearly, I was surprised about the fact that he was testifying or that he was offering opinions about the fiduciary responsibility of what a board should or shouldn't do.

Q. Let me ask you this. Why were you surprised? 10:53AM

A. It's just outside the field of engineering.

Q. Any other reason?

A. Well, I wouldn't offer an opinion about medicine. I wouldn't offer an opinion about accounting. It just sort of struck me as being outside of what engineers normally assess. 10:54AM

Q. And you think as far as rendering your opinion regarding the duties and responsibilities of an association's board is outside as far as what 10:54AM

you can opine to?

A. You know, if -- I think it's -- I think at the end of the day it was going to -- if I had a crystal ball, that essentially I think it's fair for us to testify factually about were the reserves funded at certain levels or not. 10:54AM

Q. That's not what I am asking you.

A. I know. That's more of a factual. But then to derive an opinion about whether or not that's appropriate, I think is really -- I think that's someone else's expertise. 10:55AM

Q. So you don't think you're qualified to render an opinion regarding whether or not the board was negligent as far as the maintenance/repair of Buildings A and B or, an alternative, whether the board breached its fiduciary duty regarding the maintenance/repair of Building A and B? 10:55AM

MS. BOAN: Object to the form.

THE DEPONENT: What I would say is that we could talk about whether or not a certain repair was adequate or not. 10:55AM

BY MR. HOWELL BELLAMY:

Q. Please answer my question.

A. I am answering your question. 10:55AM

Q. Well, answer yes or no. Just answer my question and then you can explain.

A. I've already told you that I'm not qualified, and neither is anybody else, to talk about the fiduciary responsibility of a board. None of us have that qualification. 10:55AM

Q. But let me refer you to your report that's been marked as Plaintiff's Exhibit Number 3, Page 13 of 14. And under "Summary," the heading "Summary" -- for the record, let me read this. Read this with me. 10:56AM

"The evidence clearly shows that the Shipyard Village Council of Co-Owners' Board of Directors acted in good faith to preserve and maintain the condition of Buildings A and B." 10:56AM

You're offering essentially an opinion regarding the standard of care of the board?

A. You could interpret it that way. You know, as I was looking through these documents, I tried to place myself in the position of -- I said what if I, was a retired schoolteacher sitting on this board and what knowledge would that person bring to the operation of the board and what information do they have available to them, and how do they respond to it? 10:56AM 10:56AM

followed the advice. I don't know how that makes the board members negligent.

Q. All right, sir. Have you had an opportunity to talk to Bruce Henderson in this case?

A. Nope. 11:01AM

Q. Have you talked to Bobby Warner?

A. No.

Q. Have you had any communication with past or present board members regarding the condition and maintenance/repair of Buildings A and B since their inception to the present date? 11:01AM

A. All I've done is reviewed these documents.

Q. Okay. Have you talked to --

MR. SKEETS BELLAMY: Howell.

MR. HOWELL BELLAMY: Yeah.

MR. SKEETS BELLAMY: What did he review?

MR. HOWELL BELLAMY: I was going to do that.

BY MR. HOWELL BELLAMY: 11:01AM

Q. Have you talked to Stephen Robinson with SKA?

A. No.

Q. Have you talked to anybody with Structural Preservation Systems regarding this particular 11:01AM

case?

A. I met some of the people at the site, but we haven't had any substantive conversations.

Q. Mr. Elkins, would you identify any person that either served on a board that was a member or a current member or past member of Buildings A and B or also that was a current member or past member of either Buildings C and D as it relates to this particular lawsuit? 11:02AM

A. I haven't interviewed anyone -- 11:02AM

Q. Okay.

A. -- in regards to this lawsuit.

Q. Haven't reviewed anybody?

A. I haven't interviewed anyone, no.

Q. Okay. Let me get back to your report, in the second paragraph -- as I mentioned earlier, that -- you indicated that you conducted a site visit at Buildings A and B on November 17, 2010, correct? 11:02AM

A. Correct. 11:02AM

Q. Did anybody accompany you regarding this particular visit?

A. Well, Mr. Mills was with me for awhile and Ms. Boan came out for a bit. And then there was a field engineer from Sutton-Kennerly that walked me 11:03AM

Q. When you conducted, you know, your first site visit on the -- on November 30, 2010, did you take anything away from that site visit that you're using to support your opinions that you are going to render in the report? 11:04AM

A. Well, as I understood, one of the complaints was that water leakage through the windows damaged the buildings and that there was -- part of the basis of the allegations is that the windows were originally owned by the individual unit owners; and 11:05AM to the extent that they allowed water to leak through their windows and damage the buildings, that those individuals might be held responsible for damage to the buildings.

So what I was looking for was what type of 11:05AM windows they were. And what I found is that they were nail flanged windows.

Q. Were they residential or commercial?

A. They were aluminum framed. I'm not sure what their capacity was. Most of the stuff I saw 11:05AM had already been broken down. So the sliders looked like they were probably commercial grade, but the windows themselves, it was a thinner metal, but I don't know who made them. I've heard in some or read in some of the documents that some people 11:05AM

think that they were residential-quality windows. But nevertheless, I was really more concerned about the attachment. They were flanged windows. And what's interesting about that is there's no way to put one of those windows in or take one of those windows out without getting into the cladding. 11:06AM

The other thing that was interesting is that a fair amount of the aluminum exhibited corrosion from direct contact with cementitious products. Aluminum is an amphoteric material, 11:06AM a-m-p-o-t-e-r-i-c (sic). And so it's susceptible to corrosion when it's in contact with concrete-type things, stucco or concrete decks. So that indicated to me that the flashings and the isolations between the structure and the 11:06AM fenestration was inadequate.

Q. Could you define "fenestration"?

A. Sure. Fenestration would be the disposition of windows and doors collectively in a building, windows and doors. 11:07AM

So that -- I think I was just saying that the flashings and separations, the terminations between the building itself, the cladding and the frame and the window wasn't done properly.

Those are the kinds of things I was looking 11:07AM

for at the site.

Q. Are you going to offer an opinion as far as how the water penetrated the building, in what locations and how it migrated as far as the distress to the concrete? 11:07AM

A. My opinion about that is that I don't know that anybody determined that, actually. I don't see records indicating where testing -- conclusive testing was performed to show that water went through windows and damaged the building or water 11:08AM got into the cladding and -- approximate to the windows and doors. We have reports of both but there's no, that I saw, structured conclusive testing demonstrating either one. And the evidence is gone now, so I don't know that we could ever 11:08AM know.

Q. So you're not going to offer an opinion the water basically migrated through the -- as far as through the cracks and stucco and damaged the window? 11:08AM

A. If that's possible. But I didn't test it.

Q. Okay. Is it possible that water could have entered the building through the windows, leaking windows?

A. It's possible, but nobody's demonstrated 11:09AM

that, either.

Q. Is it possible that water could have entered the building through the -- under the sliding glass doors as far as where basically -- as far as where -- I think it's on top of the horizontal core slab, it's right on top that? 11:09AM

A. It's possible, and I think it was actually in Ken's deposition where I read about there being an open joint between --

Q. Engineer joint, right. 11:09AM

A. Yeah. That that's where the water was going in. It would blow up against the wall, and it would go into that joint.

So whether it was going through the corners of the slider or whether it was going under the slider and getting into the concrete joint, I don't think anybody ever tested that. 11:09AM

Q. Have you had an opportunity to look at the investigative reports from Ken Schneider in detail?

A. I've read the documents he had in the file. 11:10AM If there's additional stuff that is -- that more conclusively shows his testing, I'd be happy to see those. I saw some letters and some sketches.

Q. All right. Based on the documents that you reviewed from Mr. Schneider, do you have any 11:10AM

Ken Schneider. If you need to look at it, we'll take a break.

MR. SKEETS BELLAMY: Yeah, let him look at it.

THE DEPONENT: Yeah, what I would tell you -- 11:11AM

BY MR. HOWELL BELLAMY:

Q. Well, let's take a break.

A. Before we go off the record, what I would tell you is that once we get to Ken Schneider being at the building, that's where we get into licensed professionals being at the building and working on the building, and that's really when the solution that we have now, it goes into place. 11:11AM

And so once we get to Ken Schneider, you know, I know that he has -- he wanted to put in this fiberglass assembly to go under the door to catch this water, and he did a mockup at two different locations to try to test this solution. 11:12AM

Q. Why don't we do this. 11:12AM

A. His documents that I saw were the first reports back to the board about the deterioration of the hollow core slabs and there being water inside the tubes and inside the slabs. And beyond that, I'm really not too much interested in what 11:12AM

disposal and within the constraints of" -- constraints -- excuse me, back up. Strike that, let me restate it.

All right. Mr. Elkins, let me direct you to Paragraph 1 on Page 2 of 14 and read with me. "The board enlisted the assistance of technical experts and consultants to provide them guidance as to the condition of Buildings A and B. The board acted in accordance with their recommendations. At times these recommendations were conflicting; the board made choices based on the best information at their disposal and with the constraints of their budgets." 01:55PM 01:55PM

Did I correctly state your opinion?

A. It's actually "within" and not "with," but other than that -- 01:55PM

Q. Okay. Aside from that, did I correctly state your opinion?

A. You read what I wrote, yes, sir.

Q. Okay. What documents, information are you relying upon as far as the basis of this opinion? 01:55PM

A. They're all enumerated under -- in Items A through N on Pages 2 and 3.

Q. All right. Let me ask you this. You said the board enlisted the assistance of technical 01:56PM

experts and consultants. Who were you referring to specifically?

A. ProCon, Henderson, McGee, Bobby Warner, Finkel & Altman, Keystone, Schneider & Associates, Richard Bennett. Those are all listed. And, of course, Eddie Porcher was working for Ken Schneider, also. 01:56PM

Q. Okay. You indicated earlier that you had not had an opportunity to talk to Bobby Warner, correct? 01:57PM

A. No.

Q. Okay. Do you know whether or not he's licensed as a general contractor with the State of South Carolina?

A. I don't know that. 01:57PM

Q. Do you know if he has any particular certifications or expertise?

A. No, sir. I have no idea what his educational background is.

Q. Okay. Are you referring to him as a -- Bobby Warner as a technical expert or in the alternative, a consultant? 01:57PM

A. He was part of the their management and maintenance staff. He was being paid to perform services and provide information to them. 01:57PM

Q. Again, let me restate my question. Is Bobby Warner a technical expert or a consultant?

A. He would be a technical expert, I suppose.

Q. Can you explain what his expertise is as it relates to stucco repairs, concrete distress, waterproofing and so on and so forth? 01:57PM

MS. BOAN: Object to the form.

THE DEPONENT: He was their site maintenance person.

BY MR. HOWELL BELLAMY: 01:58PM

Q. Again, I'm asking, what were his qualifications that you are aware of that you would designate him as an expert?

A. I've already answered that.

Q. Can you be more specific, please? 01:58PM

A. I've already answered that. I told you I don't know what his educational background is. What more do you want?

Q. Well, how can you -- Mr. Elkins, I'm just trying to understand what the basis of your opinions are. And basically you designated Bobby Warner as a technical expert, and you don't have any understanding what his educational background is, whether his experience or training -- whether he's certified or licensed as a general contractor, 01:58PM 01:58PM

professional?

A. As a professional?

Q. Yes.

A. I don't know that he's a professional.

Q. Okay. Again, would you classify him as a technical expert, you individually? 02:00PM

A. I don't know enough about him for me to make that designation.

Q. What about Bruce Henderson, is Bruce Henderson a technical expert or a consultant? 02:00PM

A. He would be a technical expert, I reckon.

Q. And what are you basing that on?

A. He has the same credentialing as Bob Gallagher. I noticed you haven't asked me whether or not I classify Bob Gallagher as a technical expert or not. 02:00PM

Q. Well, I'm going to get to that.

A. Okay, good.

Q. Explain to me what it is that -- are you aware of -- do you have any -- as far as Bruce Henderson, do you know what his educational background is? 02:00PM

A. No, sir.

Q. Do you know if he is even licensed in the State of South Carolina as a general contractor? 02:00PM

A. I did not check that.

Q. Do you know if he's even licensed in the State of South Carolina as a residential contractor?

A. I don't know that. 02:01PM

Q. Would you agree that you don't have enough information at this point in time to classify him as a technical expert?

A. How about this? How about if we agree that we'd say that the board enlisted the assistance of 02:01PM people who represented themselves to be technical experts and consultants.

Q. Did the board assist you in writing your report?

A. No. I've already told you, I haven't 02:01PM interviewed any one of those people.

Q. Did anybody from the McNair Law Firm assist you in drafting this report?

A. No, sir.

Q. And you've already indicated that you didn't 02:01PM talk to any of the board members, correct?

A. I didn't, no.

Q. And you already indicated -- you already testified that you did not talk to any of the property managers, correct? 02:01PM

A. That's correct.
Q. Past and present?
A. Correct.
Q. So as far as the first sentence of your opinion, obviously you had to come up with that by yourself. 02:02PM
A. Well, I wrote it.
Q. Let me ask you this way. Mr. Elkins, are there any documents or information that you're relying upon to refer to Bobby Warner and Bruce Henderson as technical experts? 02:02PM
A. Those (indicating).
Q. Would you please retrieve it?
A. I'm not going to dig through that pile. You know they're in there. 02:02PM
Q. Look, Mr. Elkins --
A. Read the minutes. That's all you need to do, is read the minutes.
Q. No, I'm asking you, because the point is my understanding is if we went through the report -- and I'm just asking a basic, simple question why you've classified them as technical experts. And you first stated because they were first designated by the board or the management company. And all I'm asking is, if that's the case, if there are 02:02PM 02:03PM

Mr. Gallagher -- excuse me, Bob Gallagher/ProCon -- that if he did observe these conditions on April 9, 1993, or soon before that, as far as the cracking and spalling which is occurring in the pre-cast slabs and beams, you would agree that it would be prudent at that point in time to get an engineer, structural engineer, to look at it, correct? 02:37PM

A. Well, it depends on what other information they provided. I mean, that's Bob's recommendation. I've already told you that that's his standard operating procedure, was to stick that in everything he sent. 02:38PM

Q. Well, let's do this for the sake of argument. Assuming those conditions exist at Buildings A and B, specifically the cracking and spalling which is occurring in the pre-cast slabs, assume they exist just for the sake of argument. As a professional engineer, would you not agree it would be prudent to have a structural engineer to look at those conditions? 02:38PM

A. I guess my general answer is it's never going to be a bad idea to have an engineer look at your building.

Q. You would agree, better to be safe than 02:38PM

Q. Okay. And you would agree, based upon that, that that's not -- basically, the building at this point in time is about 11 years old?

A. Correct.

Q. Okay. So that's not what we call new concrete? 02:40PM

A. This is not new concrete.

Q. Okay.

A. But the cracks could be remnants from original construction. I don't know; I wasn't there. 02:40PM

Q. I understand.

A. You asked me generally, and then there's a whole long list of things that can cause cracking.

Q. Mr. Elkins, let me ask this. Would it be a fair -- could the cracking and spalling result from the rebar corroding based upon water intrusion damage as far as water and salt ions getting to the reinforced rebar and causing it to corrode and expand which possibly causes the spalling? 02:40PM 02:41PM

A. That's a possibility, yes, sir.

Q. Okay. And you would agree, if that's what was actually occurring on Buildings A and B and around April 9, 1993, it would have been very prudent to get a structural engineer to go out 02:41PM

there and look at those conditions, correct?

A. Certainly it wouldn't have hurt. I don't know what other information the management company was giving to the board at the time.

Q. Let me ask you this. When concrete -- and that is, I think, what he is referring -- structural, these are the structural slabs. When you have -- let me ask you this. 02:41PM

As far as your report, do you have any independent knowledge or information that the horizontal surfaces, the private balconies and the horizontal walkways, were ever waterproofed? 02:42PM

A. You know, it's interesting you bring that up because Bob Gallagher's deposition was the first time I had heard that. And I think that Derek testified to the same thing, that he wasn't aware of that, either. 02:42PM

What I think is so ironic about that is that Bob's testimony -- is that his whole purpose was to educate these people so they would have a better idea how to take care of the buildings. And you have Derek Hodgin, who I know you think very highly of -- 02:42PM

Q. Well, I think very highly of you, too.

A. -- that no withstanding, what -- but Derek 02:42PM

Q. Okay. Did they hire an engineer in 1994?

A. Not that I'm aware of.

Q. Did they hire an engineer in 1995 through 1999?

A. Not that I'm aware. 02:46PM

Q. When is the first time you are aware of that they actually hired a structural engineer to assess the properties, specifically, the horizontal slabs, private balconies and walkways in Buildings A and B? 02:46PM

A. I know that McGee was on-site in 2002.

Q. Is McGee a structural engineer?

A. McGee is a consultant who -- I don't know if he markets himself as a structural engineer or not. If we have his CV, we can talk about it, I suppose, 02:46PM but he studies water problems in the buildings and specifies repairs and manages repairs.

Q. Would you not agree that the first structural engineer that did invasive testing on the property was Stantec, Eddie Porsche? 02:46PM

A. Like I said, I don't know how George markets himself.

Q. Well, let me ask, you've read the minutes?

A. Yes, sir.

Q. When George McGee -- I think it was in 2002 02:46PM

that they asked him to do water testing on Buildings A and B. And I think that's documented in your report and also in your notes.

Are you aware of any information or documentation, as far as minutes, reports, that he did invasive testing on the horizontal surfaces of Buildings A and B? 02:47PM

A. I'm not aware of that, no, sir.

Q. Okay. So you would agree, the first person that actually did -- that's documented -- invasive testing on the horizontal surfaces, the private balconies and the walkways of Buildings A and B was Eddie Porsche of Stantec, correct? 02:47PM

A. I believe that's correct.

Q. Thank you. 02:47PM

And, again, as far as Plaintiff's Exhibit Number 10, that the board did not -- as far as Shipyard Village board association -- did not follow ProCon or Bob Gallagher's recommendation to waterproof or to -- as far as to waterproof the horizontal surfaces in 1993? 02:47PM

A. No. What they did is they had Bob come back out there subsequently and give them a price for the work that he thought needed to be done.

Q. Again, let me restate my question. Back in 02:48PM

he's making a recommendation that they hire or employ a structural engineer --

A. (Indicating).

Q. Let me finish.

-- structural engineer to come and evaluate the A and B properties, specifically the horizontal surfaces, okay? 02:49PM

With regard to "cracking and spalling which is occurring in the pre-cast slabs and beams," the board didn't follow that recommendation, correct? 02:49PM I think you testified to that?

A. Did not hire the engineer, no.

Q. Okay. So, accordingly, they didn't hire the engineer to come out there and do a -- as far as do an invasive -- or at least a condition assessment 02:50PM of the properties regarding horizontal surfaces, and do an invasive testing to find out if water infiltration is migrating down and corroding the reinforced rebar, then clearly they didn't do that, didn't do anything to follow Bob's recommendation 02:50PM to apply a waterproof membrane on those surfaces, correct?

MS. BOAN: I'm objecting to the form.

THE DEPONENT: That's not what that document says. 02:50PM

of this letter.

Q. Mr. Elkins, would you please answer my question. Did they follow the recommendation?

A. The recommendation is to hire an engineer. Isn't that what it says? 02:59PM

Q. Again, did they hire ProCon to waterproof the horizontal surfaces of Buildings A and B after March 9, 1994? Yes or no?

A. Did they hire ProCon? No, they didn't hire ProCon to waterproof the horizontal surfaces. 02:59PM

Q. Did they hire ProCon to waterproof the horizontal surfaces, decks and balconies in '95?

A. I need to go back and check that because I know that they filled the handrail stanchions in '95. 02:59PM

Q. All right.

A. But if you have the minutes, we'll look at it.

Q. Sure. I'm telling you, you can go through and look through all the minutes. If you want to take a break and look through the minutes, I'm telling you, they did not hire ProCon or any other contractor to waterproof the horizontal surfaces in Buildings A and B, '94 going all the way to the present day. 03:00PM 03:00PM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	C/A NO. 2009-CP-22-01655
	)	
Richard Fisher, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shipyard Village Council of Co-Owners, Inc.,	)	
	)	
Defendant.	)	

EXCERPTS FROM
DEPOSITION OF DORIS BRAY
DATED APRIL 23, 2012

BY MR. HOWELL BELLAMY:

p. 11, lines 7–15

Q, Okay. Let me ask you this. When did you first purchase your unit at the Shipyard Village Horizontal Property Regime?

A. I purchased it new.

Q. Okay.

A. I think it was 1984 or something like that.

Q. 1984. And your unit is B-27; is that correct?

A. Correct.

p. 12, lines 18–24

Q. That's okay. We can -- it's been a long time, 1984, but -- did the McNair Law Firm represent you when you bought your unit back in

p. 12, lines 18–24 (*cont'd*)

'84, jointly? Along with -- because they represented --

A. Yeah, I think the McNair Law Firm did the closing. I didn't have a separate attorney.

p. 13, lines 5–13

Q. Okay. Let me explain this. When were you first elected to the board?

A. Elected? I was appointed to fill a vacancy --

Q. That's what I'm saying.

A. -- but it wasn't Brian Nisbet.

Q. Okay. When were you first appointed?

A. I am not absolutely certain, but I think it was 2007.

p. 16, line 22 – p. 17, line 8

Q. You would agree that pursuant to the Master Deed and bylaws . . ., along with the South Carolina Horizontal Property Act, that the Council of Co-Owners board, which you are a member of, has a fiduciary duty to maintain and repair the common elements along with setting aside adequate reserves for future maintenance and repair, correct?

A. I would have to look at the document to tell you if those are the words of the document. The document sort of stands for itself. We have a duty to do what the document tells us to do.

p. 17, lines 16–17

A. I have whatever duty the statute imposes on me.

p. 19, lines 12–19

Q. . . . "The regime shall be administered by a Council of Co-Owners, an incorporated association which shall act by and through a Board of Directors elected as herein provided. The Council may employ a managing agent (Manager) for the Regime."

Did I read that correctly?

A. Correct.

p. 20, lines 13–17

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

A. Correct.

p. 20, line 22 – p. 23, line 10

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

Did I read that correctly?

A. Correct.

p. 20, line 22 – p. 23, line 10
(*cont'd*)

Q. Okay. Section 6.4, Expenses. "The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors including losses by storm, fire or other casualty insured by the Council, shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Co-Owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a Co-Owner, they shall be charged to such Co-Owner as an Individual Assessment."

Did I read that correctly?

A. Correct.

Q. Okay. I want to take you to Section 7.1 [sic], Enforcement, it's on Book Page 201 -- it's [at] Deed Book 201, Page 944, excuse me. And I refer you specifically to Section 7.3 Enforcement. "The Board of Directors shall enforce the terms of the Act, the Master Deed, and these Bylaws and the Regulations promulgated pursuant hereto by -- excuse me, pursuant hereto by taking prompt and appropriate action to correct any violations. In addition to any remedy to which the Council or any Co-Owner may be entitled, the Board of Directors may impose against a Co-Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently apply for any violation of the terms of the Act, the Master Deed or these Bylaws or any other Regulations promulgated" -- sorry -- "promulgated pursuant hereto. Such fines shall be collected by Individual Assessments. Each day during which a violation occurs or continues may be deemed as a separate offense."

p. 20, line 22 – p. 23, line 10 (*cont'd*)

Did I read that correctly?

A. Correct.

Q. Okay. Now, based upon those specific provisions that I've read in the Master Deed and bylaws, you would agree that the board of co-owners has an affirmative duty to maintain and repair the common elements of the Shipyard Village Horizontal Property Regime?

MS. BOAN: Object to the form.

BY MR. HOWELL BELLAMY:

Q. Correct?

A. Correct.

Q. Thank you.

p. 23, lines 16 – p. 25, line 17

Q. Ms. Bray, I represent to you I'm holding Plaintiff's Exhibit Number 3. It is the report that was prepared by your expert Larry Elkins and it's dated June 30, 2011. Have you ever had an opportunity to review Mr. Elkins' report before, prior to today?

A. I probably have, I don't remember.

Q. Would you just take a few minutes to kind of look through it? Because I'm going to ask you some questions.

A. Well, just ask your questions.

Q, Okay. Is there anything in Mr. Elkins' report that you disagree with as far as his findings or conclusions as set forth in his report?

p. 23, lines 16 – p. 25, line 17
(*cont'd*)

A. I'm not qualified to agree or disagree with an expert in building. I am not an engineer, I'm sorry.

Q, I'm not asking you as an engineer. I'm asking you, is there anything in this report, as far as his conclusions -- do you agree with his conclusion or disagree?

A. I have to look at his conclusions.

Q. If you want me to, I can walk you though them, if necessary.

A. Please walk me though what you want me to answer.

Q. All right. On Page 2 of 14 of his report, where it's under Shipyard Opinions, I'll read it into the record. Number 1, "The board enlisted the assistance of technical experts and consultants to provide them with guidance as to condition of Buildings A and B. The board acting in accordance with their recommendations. At the times these recommendations were conflicting; the board made choices based upon the best information at their disposal and within the constraints of their budgets."

Do you agree with that?

A. Well, I don't have any knowledge of anything that happened when I was not on the board. And this appears to be -- to go back to 1993. I have no idea what happened in 1993.

Q. Let me -- all right. Let me ask you this. When you came onto the board in 2007, I think you were appointed to fill the vacancy of Mr. Shaffner; is that correct?

A. Uh-huh.

p. 23, lines 16 – p. 25, line 17 (*cont'd*)

Q. Did you go back and review the minutes of past board meetings or past annual meetings of the co-owners or special meetings of the co-owners or meetings of the board of directors?

A. I did not.

p. 26, line 3 – p. 28, line 7

Q. All right. Let me ask you about his Conclusion Number 2, his Opinion Number 2, it's on Page 3 of 14 [of Elkins report]. "The Board engaged financial consultants and property managers to provide them with guidance regarding the operating and reserve budgets for the HOA. The board followed the guidance of these professionals.

Do you agree with that?

A. Well, I agree that that occurred in 2008, but I don't know anything about the preceding years.

Q. Okay. Because you haven't taken the time -- let me ask you this. You haven't review [sic] any of the financial records, have you, in the proceeding [sic] years as far as the operating budgets or the audits or any of that information?

A. I have not.

Q. Okay.

A. Except that I reviewed them as a homeowner, the financial information that was sent out in connection with the annual meetings.

Q. Okay. When you reviewed it, at the time you reviewed the financial information as a homeowner, was it your opinion that the board

p. 26, line 3 – p. 28, line 7
(*cont'd*)

was setting aside adequate reserves for future maintenance and repair?

A. I don't recall that I came to any opinion on that.

Q, You just read the information; you didn't form any opinions about it?

A. I assumed it to be correct.

Q. Okay. Let me ask you about -- go to Page 7 of 14 [of Elkin's report]. And specifically, it is Conclusion Number 6. It says, "There is no evidence that the board had actual or constructive knowledge of damages or deficient conditions upon which they failed to act."

Do you agree or disagree with that statement?

A. I agree with that statement for the period I was on the board.

Q. Let me ask you specifically, when did you become aware of the distressed conditions regarding Buildings A and B with respect to the concrete surfaces, the horizontal walkways or the corridor walkways and the balconies?

MS. BOAN: Object to the form.

THE DEPONENT: I don't recall the specifics. I mean, I don't recall the problems of specific conditions. I recall that from the time I went on the board, the issue was being considered and discussed and there were experts at every meeting discussing the issues with regard to the buildings.

p. 31, lines 14–20

Q. Okay. Well, then let me ask you this. Can you tell me what documents you did review regarding the repairs and the necessary investigation that was made of Buildings A and B regarding the distressed concrete and the water intrusion problem around the windows or --

A. I cannot tell you what documents I reviewed.

p. 38, line 20 – p. 39, line 13

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 31, which is Exhibit Number 31 to the deposition of Dr. Leon Jennings. It's titled McGee Consulting Associations, Inc., Building Investigations, Shipyard Condominiums, Captains Quarters Buildings C and D, Litchfield, South Carolina. And it's signed by Frank E. Henry, Professional Engineer, and it's dated 4/30/2003. Now, my question is -- first, let me preface it by saying I know you were not on the board at this time, but what I'm asking is, were you ever provided or furnished a copy of this document by the board or by the management company?

A. Not that I recall, but I don't remember.

Q. Okay. So you don't have any recollection of receiving a copy of this document by the board and/or the management company sometime around 2003, or '04 or '05?

A. I don't recall that.

p. 40, line 22 – p. 41, line 13

Q. Okay. One of the things that you probably should be familiar with is pursuant to our lawsuit, we take the position that [$]1.5 [Million] should be earmarked for the repair and reconstruction of Buildings C and D. And

p. 40, line 22 – p. 41, line 13 (*cont'd*)

through our mediation, it's my understanding that the board, at least the way it's relayed to us, does not necessarily agree with that; they believe that the [$]1.5 [Million] does not belong to Buildings C and D. Is that correct?

A. As I -- well, no, that's not correct.

Q. Then --

A. There is an amount, I believe it's --

Q. [$]600,000?

A. -- [$]600,000 set aside for the recoating of C and D. The other money is in the general reserves and will be spent however it needs to be spent, basically.

p. 47, lines 7–17

Q. -- the A, B, C and D unit owners were responsible for all water intrusion damage to the interior of their units, correct, even after the amendment had passed?

A. No, they were only responsible for the interior damage.

Q. That's what I am saying, the interior, they were responsible for --

A. If there was interior damage.

Q. Interior water intrusion damage, okay.

A. They were responsible for the interior only.

p. 48, line 8 – p. 49, line 8

A. We're taking the position that it's valid.

p. 48, line 8 – p. 49, line 8 (*cont'd*)

Q. Okay. Is the board responsible for all the water intrusion damage that has occurred since October 16, 2006? That's the date the window amendment -- I'll represent to you, the window amendment was recorded on October 16th, 2006. From that date going forward, is the board taking the position that it's responsible for all the water intrusion damage that came into the common elements and into the individual units? If y'all are assuming responsibility for the maintenance and repair of the windows, are you [not] also taking responsibility for what [damage] has occurred from that date going forward?

A. No.

Q. Well, all the experts have said that the windows have not been properly maintained and repaired, not only from '83 going forward but also from 2006 going to 2010.

A. I disagree with that statement.

Q. All right. Explain why you disagree.

A. I don't think the windows are responsible for the problems.

Q. Why do you not think the windows are not responsible for --

A. The windows didn't leak.

p. 50, line 25 – p. 53, line 7

Q. Ms. Bray, I hand you Plaintiff's Exhibit Number 13. Would you take a minute and look at it?

A. Uh-huh.

p. 50, line 25 – p. 53, line 7
(*cont'd*)

Q. And I'll represent to you those are still shots of your unit. And for the record, is that your unit?

A. I guess it's my unit.

Q, Well, I'll represent to you that it is your unit.

A. Okay.

Q. Okay.

A. It says, "Possible water damage, possible water damage." I never saw any water damage, and I never did any repairs as a result of water damage.

Q. All right. Let me ask, I've got one question for your regarding those photos.

A. Okay.

Q. Right here on Page 13 of 14, where it shows the middle picture, Photo 32, it shows the tack straps. Wouldn't you agree that that's evidence of water damage right there?

A. I'm not an engineer, and I have no idea what it's evidence of.

Q. Would it --

A. I know there was no wetness in my unit, and I never did any repairs related to wetness.

Q. Well, obviously the tack strips are black, and it looks like there's rusting on them. And you're saying that is not as a result of water intrusion?

A. I have no idea what it's a result of.

p. 50, line 25 – p. 53, line 7 (*cont'd*)

Q. Okay. What do you think -- if it's not water, what do you think caused it?

A. I don't know.

Q. And it's your testimony today that there's never been any type of water damage with respect to your unit regarding the sliding glass doors or any of the windows?

A. Not to my knowledge, not that I ever observed.

Q. And you've lived in this unit since 1984 to the present?

A. That is correct.

Q. And you're testifying that you never had a problem with water intrusion damage?

A. No.

Q. Okay. Ms. Bray, did you ever look at any of the -- and let me represent to you there were -- prior to the work on building A, just like the video I showed you of your unit, there were 39 other videos from Building B, and there were also 40 videos for Building A.

Did you ever look at any of the videos for purposes of determining -- to the extent of water intrusion damage to a particular unit and who was responsible for it?

A. I don't recall that I ever looked at any videos.

p. 53, line 22 – p. 54, line 7

Q. . . .

When the board got Sutton-Kennerly's estimated cost of repair for Buildings A and B in

p. 53, line 22 – p. 54, line 7 (*cont'd*)

the amount of $11 million, did the board undertake to do any investigation to find out to what extent the A and B unit owners had been negligent regarding the maintenance repair of their units?

A. No.

Q. Can you explain why? No. Was it -- was it -- was it -- did the board -- why didn't they undertake that responsibility to do that?

A. Why should we have?

p. 56, line 15 – p. 58, line 1

Q. Okay. My question is -- or let me put it this way. On June 15, 1999, at an organizational meeting of the board of directors os Shipyard Village, the board moved to make the owners and informed them that they are responsible for their thresholds and window frame of their units and threshold -- first, correct? Do you agree with that statement?

A. I think that's what it says. I don't agree with it.

Q. Okay. You don't agree? Okay.

A. I don't agree that's what is the case.

Q. Well, let me ask this. What do you mean you don't agree? Are you agreeing that's what the statement says?

A. I agree that's what the statement says. I was not on the board at that time.

Q. Okay. But you're saying that that's --

A. I don't agree that windows includes thresholds and frames.

p. 56, line 15 – p. 58, line 1 (*cont'd*)

Q. Okay. And my point being at the -- pursuant to the board moving to make thresholds the responsibility of the unit owners meant that they had the -- basically they were responsible for caulking and waterproofing thresholds around the windows and the sliding glass doors, correct?

A. Well, I'm not sure the board had authority to do that.

Q. Well, I'm just saying --

A. And that's what the minutes say, yeah.

Q. Correct, okay.

Based upon the minutes, the unit owners were responsible for caulking and waterproofing around the thresholds of the windows and sliding glass doors, based on the minutes of what they say, correct?

A. The minutes say that.

p. 59, line 13 – p. 62, line 2

Q. Refer to Section 3.6, Boundaries of Units in Phase I. Then specifically, follow me, go down to Subsection (c). It says, "Each unit shall also encompass and include the following: (i) the doors (including screen doors) opening into the Unit and onto balcony reserved to the use of a Unit, including the frames, casings, hinges, handles, and other fixtures which are part of the door."

A. Uh-huh.

Q. And then it goes under Number (ii), "The windows glasses, screens, frames, and casings which are part of the window openings of the unit"; and Number (iii), "The plumbing,

p. 59, line 13 – p. 62, line 2
(*cont'd*)

wiring and mechanical vents which exclusively serve the unit."

A. Uh-huh.

Q. I don't think I need to go any further but --

A. Right.

Q. So do you agree with me now that at that point in time, as far as in 1999, the window frames and the doors were a defined element of the unit, correct?

A. The windows and doors, yeah.

Q. And the frames and the casings and the glass?

A. And the question is, what are the frames and the casings and the glass?

Q. Well, they --

A. I consider that to be the window, not what adjoins the window.

Q. I agree, that's what I'm saying.

A. Yeah.

Q. We are on the same page. It's the window, okay?

A. Right.

Q. And when I read as far as when the board moved, in June of 1999, to make the unit owner responsible for waterproofing the thresholds around the windows and sliding glass doors, do you agree that's what they did at that point in time?

p. 59, line 13 – p. 62, line 2 (*cont'd*)

A. I agree that's what they did. I don't think they had authority to do it if it's not within the scope of what the Master Deed says.

Q. Assuming that it is within the scope of what the Master Deed provides, then the unit owners are responsible for caulking and waterproofing around the windows and sliding glass doors, correct?

A. Well, I don't agree with that.

Q. Well, I understand you don't agree with that but --

A. I mean, based on your assumption that that's included, that's included. But I don't agree that that's a correct assumption.

Q. Well, based upon the board's action, that would be a correct assumption, correct?

A. Well, the board has no authority to do anything other than what's within the Master Deed. So I wasn't on the board, I don't know why they did that, but I would question whether they had the authority to do that.

Q. Well, assuming they had authority to do that, okay, you would agree that the unit owners are responsible for waterproofing, sealing and caulking around --

A. I would agree the board said that.

p. 62, line 19 – p. 63, line 3

Q. -- and made the windows and sliding glass doors the responsibility, repair and maintenance of the association, correct?

A. Right.

p. 62, line 19 – p. 63, line 3 (*cont'd*)

Q. Okay. So from the date that the window amendment was recorded in October 16, 2006, from that date forward, the board was responsible for caulking, waterproofing and sealing around the windows and sliding glass doors, correct? Correct?

A. Correct.

p. 65, line 14 – p. 66, line 4

Q. Well, let me ask you this about the business judgment rule. Does the business judgment rule protect the board when they fail to act, when they fail to pan for the maintenance and repair of the buildings?

A. Yes, the business judgment rule protects the board in every decision they make.

Q. What if they fail to act? What if -- what it -- for example --

A. Or not act, yes.

Q. If they don't act, do you think the business judgment rule protects them?

A. Absolutely. It depends on the circumstances. Yes, I am a corporate lawyer, and I know the business judgment rule. I disagree with your interpretation.

p. 70, line 10 – p. 71, line 12

Q. Well, my question is -- weighing that, my question to you is, is it your position that the board exercised good business judgment by not following his recommendations, but not hiring a structural engineer?

A. You're asking me for a legal opinion in circumstances that I don't know the surrounding

p. 65, line 14 – p. 66, line 4 (*cont'd*)

circumstances, and I will not answer that question. That is a legal question; it is not a factual question.

Q. What's --

A. I can't judge what somebody did in 1993. I don't know the circumstances.

Q. Well, the circumstances are set forth in the minutes as set forth in his report.

A. Well, there may have been other circumstances, and you're asking me for a legal opinion, and I'm not giving it to you.

Q. Well, all right. Generally speaking, do you think it's good business, as far as the business judgment rule, it's good practice, when you hire a particular person to inspect, you know, your buildings, and he says you need to hire a structural engineer and you don't hire a structural engineer, my question is, is that covered under the business judgment rule?

A. I think it depends on a lot of circumstances.

p. 78, lines 7–16

Q. The budget for 2010. So you had an annual meeting in 2009 of the co-owners.

A. We did not submit it at that meeting. We submitted it at the end of the year --

Q. Okay.

A. -- to all the co-owners.

Q. When you submitted it, did you -- my question is, did you hold a meeting to allow the membership to review it, amend it or vote on it?

p. 78, lines 7–16 (*cont'd*)

A. No, not to my knowledge.

p. 79, line 8 – p. 80, line 1

Q. Okay. Pursuant to Section 5.2, the board was required to present the budget in an annual meeting to the members or at a subsequent meeting to the members, agree, correct?

MS. BOAN: Object to the form.

THE DEPONENT: Well, it says, "At their annual meeting, an annual budget for the Regime for the Regime for the next fiscal year."

BY MR. HOWELL BELLAMY:

Q. And you didn't present the budget at the annual meeting, correct?

A. What budget?

Q. The budget for 2010.

A. Well --

Q. At the annual meeting of April 2009, y'all did not present the budget, the 2010 budget to the membership, correct?

A. That is correct. . . .

p. 80, lines 10–15

Q. Well, in November, did the board see fit to schedule a special meeting of the co-owners to allow them to review the budget and vote on it and possibly --

A. That has never been done. It's presented at the annual meeting the way the bylaws say.

p. 80, line 25 – p. 82, line 9

Q. All right. Well, let me read this section right here. Look at Section 5.3, Approval of Budget: "The Budget, as adopted by the Board, may be amended by the motion and affirmative vote of Co-Owners holding two-thirds of the Percentage Interest in the Common Elements."

A. That's correct.

Q. Did I state that correctly?

A. That's correct. It may be amended.

Q. Right.

A. Correct.

Q. You would agree that in 2009, the board did not present the budget to the membership, one; and, two, the membership was never allowed to amend it or given the right to amend it as set forth in Section 5.3, correct?

A. Correct -- incorrect. We presented it at the annual meeting in 2009, and we gave people the opportunity to speak however they wanted to, and there was never an amendment proposed.

Q. I thought you just testified earlier that in April of 2009, you did not present the budget at the annual meeting --

A. We did; we presented the 2009 budget. You asked me if we presented it in -- you were -- you had different years.

Q. Well, the point I'm saying, in 2009, you're preparing the budget for 2010, correct?

A. No. In the 2009 annual meeting, we present the budget for 2009 and people are given the opportunity to amend it if they want to.

p. 80, line 25 – p. 82, line 9 (*cont'd*)

Q. Well, let me ask you this. Almost in 2009, you're already -- the fiscal year has already begun?

A. That's correct.

p. 82, line 18 – p. 84, line 3

Q. Even though the present fiscal year is four months into, you're four months into the fiscal year?

A. Well, we present the budget to the members in either November or December of the preceding year. And then the only thing the members can do at the annual meeting is to amend it. And they have a right to amend it if they're unhappy with it. They have a right to move that it be amended, and it requires two-thirds. But they do not adopt the budget.

Q. I understand that. But you're supposed to present the budget to them at the annual meeting.

A. That's what we do, every year.

Q. Ms. Bray, I may have missed this, but I've got -- let me go ahead and mark this.

(PLF. EXH. 15, 4/4/09 Meeting Minutes, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. I've got Plaintiff's Exhibit Number 15, and it's titled Shipyard Village Council of Co-Owners, Inc., 27th Annual Members' Meeting dated April 4, 2009, Minutes.

And I want to ask you to show me in here -- and I may be wrong -- but show me in here

p. 82, line 18 – p. 84, line 3 (*cont'd*)

where any budget was presented to the membership.

A. It is not -- I imagine it was done in connection with the annual reports, but it does not specifically state that, but that is our practice.

Q. Thank you.

So am I am correct in that there's nothing in the meeting minutes that shows the budget for 2009 was presented to the members in 2009 or that the 2010 budget was present to members on that date, correct.

A. That is true.

p. 84, lines 15–19

Q. Ms. Bray, you would agree that the board of the Shipyard Village Council of Co-Owners is bound by the Horizontal Property Act, the Master Deed and the bylaws, correct?

A. I would.

p. 84, line 24 – p. 87, line 11

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 2 from the deposition of Jim Poag, and it's dated January 26, 2010, and it is two "Dear Shipyard Village Unit Owner." It's two pages. And then it says on the back, it says "Sincerely, Board of Directors, Shipyard Village Council of Co-Owners, Inc."

And specifically under the second paragraph -- I'll hand this to you so you can read it. It's the second sentence from the bottom which states, "Faced with the prospect of two badly distressed, unsafe, and arguably uninhabitable buildings in our regime, your board instructed the general contractor to move forward with the

p. 84, line 24 – p. 87, line 11
(*cont'd*)

repairs to be funded as a component of the 2010 and 2011 operating budgets."

And I'll let you read that first, and I'll tell you what my question is.

MS. BOAN: Is that Exhibit 2 from Jennings?

MR. HOWELL BELLAMY: From Jim Poag.

THE DEPONENT: Okay.

BY MR. HOWELL BELLAMY:

Q. And, I understand, that's the board's definition of "badly distressed."

And, let me make sure I read it correctly, if I can look at it. I want to make sure -- I don't want to misstate it. This is the board's definition of how they described Buildings A and B; this is not my definition.

"Faced with the prospect of two badly distressed" -- the adjectives, "unsafe, and arguably uninhabitable buildings."

My question is, is that evidence that the board, the present board and the past board of the Shipyard Village Council of Co-Owners, has properly maintained and repaired the common elements, specifically Buildings A and B?

MS. BOAN: Object to the form.

THE DEPONENT: I'm not giving an opinion on evidence. I have no idea who wrote that.

p. 84, line 24 – p. 87, line 11 (*cont'd*)

BY MR. HOWELL BELLAMY:

Q. Would it be your position, as a layperson, not as an attorney --

MR. SKEETS BELLAMY: Howell?

MR. HOWELL BELLAMY: Okay.

MR. SKEETS BELLAMY: Who wrote the letter?

BY MR. HOWELL BELLAMY:

Q. The letter was -- I told you, the letter basically is the board of directors.

A. Uh-huh.

Q. And you were on the board at this time?

A. Uh-huh.

Q. Okay. Ms. Bray, is it your position that the board, the current board and the past boards, have always maintained and repaired Buildings A and B in a timely manner?

A. I can't speak to past boards. I have no idea what they did. I think this present board has been very diligent in trying to maintain the buildings.

p. 89, lines 4–21

Q. My question basically is this. The board did not individually assess any of the A and B unit owners for failure to maintain and repair the units, correct.

A. We assessed the individual unit owners for cost of the windows.

Q. Only, correct?

p. 89, lines 4–21 (*cont'd*)

A. Correct.

Q. But not for the collateral damage or the water intrusion damage into the interior of the units?

A. We didn't assess anybody for what happened in the interior of the windows -- of the units. That's the homeowners association -- I mean, that's a homeowner's responsibility. And I don't agree with you that the windows had anything to do with the rest of the damage in the building. I don't agree with you on that.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen

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(CONTINUED)

DEPOSITION OF: **DORIS R. BRAY**

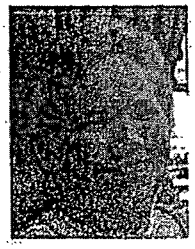
DATE: Monday, April 23, 2012

TIME: 9:09 a.m. through 11:22 a.m.

LOCATION: McNAIR LAW FIRM
11019 Ocean Highway
Pawleys Island, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

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



M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard T. White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008 and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H.S. Keeter and Sandra C. Keeter; Linda A. Mendicino; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC and SGS Beach Partners, LLC; Morgan J. Mann and Angela M. Mann; Michael

Cameron Foster, Sr. And Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC; Georgia M. Pruitt and Howard M. Pruitt, Jr.; Jean T. Blaylock; William C. Covington, Jr. and Donna C. Covington; Litchfield Captain's Quarters, LLC; James A. Schubert and Laraine C. Schubert; Daniel P. Duvall and Mary Lynn Duvall; Victor A. Medina and Melinda Leigh Medina; Judy P. Hamer; Boyce F. Miller and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. And Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood and Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame,

Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO.
2009-CP-22-01655

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I had my deposition taken as an expert, and the cases were settled. I think twice, that I remember.

Q. But you've never been qualified by a judge as an expert? 09:13AM

A. No.

Q. Okay. Let me ask you this. When did you first purchase your unit at the Shipyard Village Horizontal Property Regime?

A. I purchased it new. 09:14AM

Q. Okay.

A. I think it was 1984 or something like that.

Q. 1984. And your unit is B-27; is that correct?

A. Correct. 09:14AM

Q. Okay. Let me ask you this. I didn't -- are you married or currently married?

A. No.

Q. Okay. Have you ever been married?

A. Yes. 09:14AM

Q. Okay. How many children do you have?

A. I have one.

Q. Okay. Do you have any family that resides in Georgetown County or friends, relatives?

A. No. 09:14AM

Q. Okay. Do you own any additional property in Georgetown County aside from Unit B-27?

A. No.

Q. Okay. Are you a member of any charities or boards in Georgetown County? 09:14AM

A. No.

Q. Okay.

A. Except for the Shipyard Village board.

Q. Okay. The reason why I ask that, if we are, you know, getting ready to pick a jury in front of 12 people, trying to find out, you know, who knows you or who's, you know... 09:14AM

A. (Moves head up and down.)

Q. Okay. Who was the -- do you remember who the closing attorney for your unit was? Who was your closing attorney? 09:15AM

A. I'm not quite sure.

Q. That's okay. We can -- it's been a long time, 1984, but -- did the McNair Law Firm represent you when you bought your unit back in '84, jointly. Along with -- because they represented -- 09:15AM

A. Yeah, I think the McNair Law Firm did the closing. I didn't have a separate attorney.

Q. Okay. Looking at my notes right now, I 09:15AM

think you were first -- my understanding is you were -- when Brian Nisbet resigned, were you appointed to complete his term; is that correct?

A. No.

Q. Okay. Let me explain this. When were you first elected to the board? 09:16AM

A. Elected? I was appointed to fill a vacancy --

Q. That's what I am saying.

A. -- but it wasn't Brian Nisbet. 09:16AM

Q. Okay. When were you first appointed?

A. I am not absolutely certain, but I think it was 2007.

Q. 2007? Okay.

Would it be like at the annual meeting of April 28, 2007 when you first came on to the board or when -- 09:16AM

A. No, it was because of the resignation of Bob Shaffner, I believe I was appointed to fill his vacancy. I don't think I was elected at that meeting. 09:16AM

Q. That's right, you were appointed, okay.

And you started serving, would it be at the April 28, 2007 --

A. I really don't remember. 09:16AM

A. Right. I think you probably already have that.

Q. Hopefully we have most of it.

A. Yeah, I don't think I have anything that you don't have. 09:19AM

Q. In preparation for your deposition today, what have you reviewed, if anything?

A. I have not immediately reviewed anything.

Q. Okay. Let me ask you this. Have you ever read the Master Deed and bylaws? 09:19AM

A. I have.

Q. Okay. When was the last time you read the Master Deed and bylaws?

A. I don't remember.

Q. Was it in 2012, 2011? 09:19AM

A. I have looked at them a number of times. I'm sure I've looked at them in 2011. Whether I've looked at them in 2012, I'm not sure, probably so, but I would not have reviewed the whole thing --

Q. Okay. 09:20AM

A. -- every time I look at them.

Q. You would agree that pursuant to the Master Deed and bylaws is the governing documents, along with the South Carolina Horizontal Property Act, that the Council of Co-Owners board, which you are 09:20AM

a member of, has a fiduciary duty to maintain and repair the common elements along with setting aside adequate reserves for future maintenance and repair, correct?

A. I would have to look at the document to tell you if those are the words of the document. The document sort of stands for itself. We have a duty to do what the document tells us to do. 09:20AM

Q. You would agree a fiduciary duty, correct?

A. Well, I don't know. Fiduciary duty is not a word that's in the North Carolina statutes anymore. I don't know if they're in South Carolina statutes. 09:20AM

Q. They're in the South Carolina statutes. You have a duty of care, you're familiar with that, correct? 09:21AM

A. I have whatever duty the statute imposes on me.

Q. Okay.

MR. HOWELL BELLAMY: Go ahead and mark this as Plaintiff's Exhibit Number 2. 09:21AM

(PLF. EXH. 2, Master Deed and Bylaws, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, I represent that's a copy of the Master Deed and bylaws, if you want to take a 09:21AM

The Council of Co-Owners, Board of Directors and Manager. It says, "The regime shall be administered by the council of co-owners, an unincorporated [sic] association which shall act by and through a Board of Directors as elected as herein provided." It goes on to say, "The council may employ a managing agent (Manager) for the Regime." 09:23AM

Did I read that correctly?

A. No, you said "unincorporated." It says, "an incorporated." 09:23AM

Q. Well, I'll read it again, okay? "The regime shall be administered by a Council of Co-Owners, an incorporated association which shall act by and through a Board of Directors elected as herein provided. The Council may employ a managing agent (Manager) for the Regime." 09:23AM

Did I read that correctly?

A. Correct.

Q. Okay. Let me refer you to Page -- Book 201 at Page 901, and it's Section 7.4. And just read with me. It's Section 7.4, Bylaws and Regulations. It's entitled Bylaws and Regulations. It provides, "The Council and the administration of the Regime shall be governed by (1) the bylaws attached to 09:23AM 09:24AM

this Master Deed as Exhibit E as [sic] hereby incorporated by reference herein, and (2) any regulations (Regulations) adopted pursuant to the Bylaws."

Did I read that correctly? 09:24AM

A. No, you said "as" instead of "and," but it makes no difference; I've read it.

Q. Okay. Let me refer you to Book 201, Page 941. It's on Page 13 of the bylaws, specifically, it's Article IV -- Article VI, excuse me, 09:25AM Maintenance and Improvements.

A. Uh-huh.

Q. Section 6.1, Maintenance by Manager. "The Manager or the Board of Directors shall provide for the maintenance, repair, and replacement of the 09:25AM Common Elements."

A. Correct.

Q. Okay. I've gone to Book Page 201, Page 942, it's of the bylaws, and let me refer you to Section 6.1, Default by the Co-Owner. 09:26AM

A. 6.3?

Q. Excuse me, 6.3, Default by the Co-Owner. "In the event that any Co-Owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates 09:26A

or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Co-Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall, after giving such Co-Owner reasonable notice and opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such Co-Owner by an Individual Assessment." 09:26AM 09:26AM

Did I read that correctly?

A. Correct.

Q. Okay. Section 6.4, Expenses. "The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors including losses by storm, fire or other casualty insured by the Council, shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Co-Owner to perform the maintenance required by these Bylaws or by any lawful Regulation or (2) the willful act, neglect, or abuse of a Co-Owner, they shall be charged to such Co-Owner as an Individual Assessment." 09:27AM 09:27AM

Did I read that correctly? 09:27AM

A. Correct.

Q. Okay. I want to take you to Section 7.1 [sic], Enforcement, it's on Book Page 201 -- it's on Deed Book Page 201 -- Deed Book 201, Page 944, excuse me. And I refer you specifically to Section 7.3 Enforcement. "The Board of Directors shall enforce the terms of the Act, the Master Deed, and these Bylaws and the Regulations promulgated pursuant hereto by -- excuse me, pursuant hereto by taking prompt and appropriate action to correct any violations. In addition to any remedy to which the Council or any Co-Owner may be entitled, the Board of Directors may impose against a Co-Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently apply for any violation of the terms of the Act, the Master Deed or these Bylaws or any other Regulations promulgated" -- sorry -- "promulgated pursuant hereto. Such fines shall be collected by Individual Assessments. Each day during which a violation occurs or continues may be deemed as a separate offense."

09:28AM 09:28AM 09:28AM 09:29AM 09:29A

Did I read that correctly?

A. Correct.

Q. Okay. Now, based upon those specific

provisions that I've read in the Master Deed and bylaws, you would agree that the board of co-owners has an affirmative duty to maintain and repair the common elements of the Shipyard Village Horizontal Property Regime? 09:29AM

MS. BOAN: Object to the form.

BY MR. HOWELL BELLAMY:

Q. Correct?

A. Correct.

Q. Thank you. 09:29AM

MR. HOWELL BELLAMY: I'd like to mark that Plaintiff's Exhibit Number 3.

(PLF. EXH. 3, 6/30/11 Letter from Larry Elkin, was marked for identification.)

BY MR. HOWELL BELLAMY: 09:30AM

Q. Ms. Bray, I represent to you I'm holding Plaintiff's Exhibit Number 3. It is the report that was prepared by your expert Larry Elkins and it's dated June 30, 2011. Have you ever had an opportunity to review Mr. Elkins' report before, 09:30AM prior to today?

A. I probably have. I don't remember.

Q. Would you just take a few minutes to kind of look through it? Because I'm going to ask you some questions. 09:31AM

A. Well, just ask your questions.

Q. Okay. Is there anything in Mr. Elkins' report that you disagree with as far as his findings or conclusions as set forth in his report?

A. I am not qualified to agree or disagree with an expert in building. I am not an engineer, I'm sorry. 09:31AM

Q. I'm not asking you as an engineer. I'm asking you, is there anything in his report, as far as his conclusions -- do you agree with his conclusion or disagree? 09:31AM

A. I have to look at his conclusions.

Q. If you want me to, I can walk you through them, if necessary.

A. Please walk me through what you want me to answer. 09:31AM

Q. All right. On Page 2 of 14 of his report, where it's under Shipyard Opinions, I'll read it into the record. Number 1, "The board enlisted the assistance of technical experts and consultants to provide them with guidance as to condition of Buildings A and B. The board acting in accordance with their recommendations. At the times these recommendations were conflicting; the board made choices based upon the best information at their 09:32A 09:32A

disposal and within the constraints of their budgets."

Do you agree with that?

A. Well, I don't have any knowledge of anything that happened when I was not on the board. And this appears to be -- to go back to 1993. I have no idea what happened in 1993. 09:32AM

Q. Let me -- all right. Let me ask you this. When you came onto the board in 2007, I think you were appointed to fill the vacancy of Mr. Shaffner; is that correct? 09:33AM

A. Uh-huh.

Q. Did you go back and review the minutes of past board meetings or past annual meetings of the co-owners or special meetings of the co-owners or meetings of the board of directors? 09:33AM

A. I did not.

Q. Okay. Then let me -- as far as conclusion Number 1, from the time you went on the board, would you agree as far as when you went on the board in April of 2007 as applies to that time period going forward, how would you respond to -- as far as Conclusion Number 1 in Mr. Elkins? 09:33AM

A. But Conclusion Number 1 is based on things that happened from 1993 to 2006, so I don't know 09:33AM

that he was giving an opinion of anything that happened after 2006.

Q. All right. Let me ask you about his Conclusion Number 2, his Opinion Number 2, it's on Page 3 of 14. "The board engaged financial consultants and property managers to provide them with guidance regarding the operating and reserve budgets for the HOA. The board followed the guidance of these professionals." 09:34AM

Do you agree with that? 09:34AM

A. Well, I agree that that occurred in 2008, but I don't know anything about the preceding years.

Q. Okay. Because you haven't taken the time -- let me ask you this. You haven't review any of the financial records, have you, in the proceeding years as far as the operating budgets or the audits or any of that information? 09:34AM

A. I have not.

Q. Okay. 09:34A

A. Except that I reviewed them as a homeowner, the financial information that was sent out in connection with the annual meetings.

Q. Okay. When you reviewed it, at the time you reviewed the financial information as a homeowner, 09:35A

was it your opinion that the board was setting aside adequate reserves for future maintenance and repair?

A. I don't recall that I came to any opinion on that. 09:35AM

Q. You just read the information; you didn't form any opinions about it?

A. I assumed it to be correct.

Q. Okay. Let me ask you about -- go to Page 7 of 14. And specifically, it is Conclusion Number 6. It says, "There is no evidence that the board had actual or constructive knowledge of damages or deficient conditions upon which they failed to act." 09:35AM

Do you agree or disagree with that statement? 09:36AM

A. I agree with that statement for the period I was on the board.

Q. Let me ask you specifically, when did you become aware of the distressed conditions regarding Buildings A and B with respect to the concrete surfaces, the horizontal walkways or the corridor walkways and the balconies? 09:36AM

MS. BOAN: Object to the form.

THE DEPONENT: I don't recall the 09:36AM

specifics. I mean, I don't recall the problems of specific conditions. I recall that from the time I went on the board, the issue was being considered and discussed and there were experts at every meeting discussing the issues with regard to the buildings. 09:36AM

BY MR. HOWELL BELLAMY:

Q. So if I understand your testimony, what you're saying is that you were put on notice based upon the expert reports that you were receiving from the time you were on board from, for example, MEC Engineering, from PROCON, from Stantec? 09:37AM

A. I don't remember any of those names.

Q. Okay. Let me ask you this. You were on the board... 09:37A

MR. HOWELL BELLAMY: Mark this right here.

(PLF. EXH. 4, 10/11/07 Letter from Bob Gallagher, was marked for identification.)

THE DEPONENT: I may not have been -- I really can't remember when I was on the board. I need to look that up.

BY MR. HOWELL BELLAMY: 09:37

have at least make it available -- hopefully they would have made it available to the board members to review.

MS. BOAN: Object to the form.

THE DEPONENT: I have no way of knowing that. 09:41AM

BY MR. HOWELL BELLAMY:

Q. Okay. But if it's a -- obviously if the document was furnished by the association's management company, it's very likely that you probably had reviewed that document. 09:41AM

A. Well, I'm not going to speculate on whether I did or not.

Q. Okay. Well, then let me ask you this. Can you tell me what documents you did review regarding the repairs and the necessary investigation that was made of Buildings A and B regarding the distressed concrete and the water intrusion problem around the windows or -- 09:42AM

A. I cannot tell you what documents I reviewed. 09:42AM

Q. Okay.

A. This was five years ago.

(PLF. EXH. 5, 1/13/09 Sutton-Kennerly Report, was marked for identification.)

BY MR. HOWELL BELLAMY: 09:42AM

A. I don't specifically recall it. I may well have had an opportunity to review it.

Q. But you agree that the board hired Miller-Dodson to perform a reserve study on the horizontal property regime which consisted of Buildings A, B, C and D? 09:50AM

A. I assume we did since they did this work, but I don't specifically remember that decision.

Q. Okay.

A. Sorry, I'm old, I have not the memory I once did. 09:50AM

Q. That's all right. We've got plenty of time.

One second. I'll come back to those. There was something I was looking for and I'll come back to it. 09:51AM

A. Okay.

MR. HOWELL BELLAMY: Let's mark this -- let me see right here.

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 31, which is Exhibit Number 31 to the deposition of Dr. Leon Jennings. It's titled McGee Consulting Associations, Inc., Building Investigations, Shipyard Condominiums, Captains Quarters Buildings C and D, Litchfield, South 09:52AM

Carolina. And it's signed by Frank E. Henry, Professional Engineer, and it's dated 4/30/2003. Now, my question is -- first, let me preface it by saying I know you were not on the board at this time, but what I'm asking is, were you ever provided or furnished a copy of this document by the board or by the management company? 09:52AM

A. Not that I recall, but I don't remember.

Q. Okay. So you don't have any recollection of receiving a copy of this document by the board and/or the management company sometime around 2003 or '04 or '05? 09:53AM

A. I don't recall that.

Q. Okay. Thank you.

Ms. Bray, are you familiar with the settlement in the C and D lawsuit from the standpoint of being a member of the association? I understand you weren't on -- 09:53AM

A. I'm generally familiar with that.

Q. Okay. Can you tell me what you know about that, what you remember, please? 09:54AM

A. I remember it was a lawsuit about the EIFS on the building, and there was an assessment. I think I paid $5,000 to fund the lawsuit against -- I guess it was the builders, I'm not sure. I don't 09:54AM

know many of the specifics about it, at least I don't remember them.

Q. You anticipated one of my questions. My understanding, there was a, in 2002, there was a special assessment passed in the amount of 253,000 to furnish litigation costs to finance the lawsuit against the developer and the builder and so on and so forth. 09:54AM

And what I understand is you're saying that you paid $5,000? 09:54AM

A. That's my recollection.

Q. Could it be less than that?

A. It could have been. I'm not sure. I -- that's the number that I have in my mind, but it may be incorrect. 09:55AM

Q. Do you remember how much money was spent on Buildings A and B -- strike that.

Do you remember how much money was spent on the repair of Buildings C and D from the settlement proceeds? 09:55A

A. I don't recall that.

Q. Okay. One of the things that you probably should be familiar with is pursuant to our lawsuit, we take the position that 1.5 should be earmarked for the repair and reconstruction of Buildings C 09:55A

and D. And through our mediation, it's my understanding that the board, at least the way it's relayed to us, does not necessarily agree with that; they believe that the 1.5 does not belong to Buildings C and D. Is that correct? 09:55AM

A. As I -- well, no, that's not correct.

Q. Then --

A. There is an amount, I believe it's --

Q. 600,000?

A. -- 600,000 set aside for the recoating of C and D. The other money is in the general reserves and will be spent however it needs to be spent, basically. 09:56AM

Q. You're talking about 900,000?

A. Correct, if that's the number. 09:56AM

Q. Okay. That is, I'll represent to you -- Ms. Bray, that is the number. And if we'll go ahead and mark this right here. This is Shipyard Village Council of Co-Owners, Inc., it's the 26th Annual Members Meeting and it's dated April 19, 2008. Mark that as Plaintiff's Exhibit Number 10. 09:56AM

(PLF. EXH. 10, 4/19/08 Meeting Minutes, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. Okay. Ms. Bray, I represent to you that you 09:56AM

A. Uh-huh.

Q. What I am asking you is, my question to you is, is after the alleged Sixth Amendment had been passed, which we maintain is invalid --

MS. BOAN: Object to the form. 10:05AM

BY MR. HOWELL BELLAMY:

Q. -- the A, B, C and D unit owners were responsible for all water intrusion damage to the interior of their units, correct, even after the amendment had passed? 10:05AM

A. No, they were only responsible for the interior damage.

Q. That's what I am saying, the interior, they were responsible for --

A. If there was interior damage. 10:05AM

Q. Interior water intrusion damage, okay.

A. They were responsible for the interior only.

Q. Now, let me ask this. After the -- is it your position that the window amendment, Third Amendment, also known as the window amendment, is 10:06AM valid? Or for example, there were three votes. The first vote failed. The second vote, allegedly, we maintain was improper. And I'll come back to that later on. The third vote was on March 21st of 2009, and that vote failed. Our position is after 10:06A

the third vote failed, that the window amendment is improper or it's invalid, it's no longer binding.

What is your position or the board's position?

A. Well, that's a legal question. 10:06AM

Q. So is the board taking the position that the window --

A. We're taking the position that it's valid.

Q. Okay. Is the board responsible for all the water intrusion damage that has occurred since 10:07AM October 16, 2006? That's the date the window amendment -- I'll represent to you, the window amendment was recorded on October 16th, 2006. From that date going forward, is the board taking the position that it's responsible for all the water 10:07AM intrusion damage that came into the common elements and into the individual units? If y'all are assuming responsibility for the maintenance and repair of the windows, are you also taking responsibility for what has occurred from that date 10:07AM going forward?

A. No.

Q. Well, all the experts have said that the windows have not been properly maintained and repaired, not only from '83 going forward but also 10:07AM

from 2006 going to 2010.

A. I disagree with that statement.

Q. All right. Explain why you disagree.

A. I don't think the windows are responsible for the problems. 10:08AM

Q. Why do you not think the windows are not responsible for --

A. The windows didn't leak.

Q. Well, some of the experts, McGee & Associates, said the windows leaked. Did you read 10:08AM McGee's report back in 2002?

A. I may have. The windows themselves did not leak. I never had a leak in my unit.

Q. Okay. Your unit, if I understand -- all right. You're telling me today -- have you ever 10:08AM made any repairs to your unit regarding water intrusion coming in from the windows or sliding glass doors?

A. No.

Q. Okay. 10:08AM

MR. HOWELL BELLAMY: Let's take a minute and let me...

BY MR. HOWELL BELLAMY:

Q. Since we are on that subject, let me take a minute and mark this right here. This is 10:09AM

Plaintiff's Exhibit Number 12.

(PLF. EXH. 12, CD with Photos of Unit B-27, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. I represent to you that this is Shipyard Village Building B; it says Unit B-27. That is your unit? 10:09AM

A. Uh-huh.

Q. Okay. I'll represent to you that this CD was furnished to me by K.A. Diehl & Associates. The CD was prepared by Structural Preservation Systems. 10:09AM

A. Uh-huh.

Q. And the work that was -- actually, when they filmed your unit prior -- pre-construction video of your unit before the work started on Building B as far as the exterior work and then also the interior work. 10:10AM

MR. HOWELL BELLAMY: Right here, I'm going to mark this. This will be 13, Plaintiff's Exhibit Number 13. 10:10AM

(PLF. EXH. 13, Photos of Unit B-27, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, I hand you Plaintiff's Exhibit 10:10AM

Number 13. Would you take a minute and look at it?

A. Uh-huh.

Q. And I'll represent to you those are still shots of your unit. And for the record, is that your unit? 10:10AM

A. I guess it's my unit.

Q. Well, I'll represent to you that it is your unit.

A. Okay.

Q. Okay. 10:11AM

A. It says, "Possible water damage, possible water damage." I never saw any water damage, and I never did any repairs as a result of water damage.

Q. All right. Let me ask, I've got one question for your regarding those photos. 10:11AM

A. Okay.

Q. Right here on Page 13 of 14, where it shows the middle picture, Photo 32, it shows the tack straps. Wouldn't you agree that that's evidence of water damage right there? 10:12AM

A. I'm not an engineer, and I have no idea what it's evidence of.

Q. Would it --

A. I know there was no wetness in my unit, and I never did any repairs related to wetness. 10:12AM

Q. Well, obviously the tack strips are black, and it looks like there's rusting on them. And you're saying that is not as a result of water intrusion?

A. I have no idea what it's a result of. 10:12AM

Q. Okay. What do you think -- if it's not water, what do you think caused it?

A. I don't know.

Q. And it's your testimony today that there's never been any type of water damage with respect to 10:12AM your unit regarding the sliding glass doors or any of the windows?

A. Not to my knowledge, not that I ever observed.

Q. And you've lived in this unit since 1984 to 10:13AM the present?

A. That is correct.

Q. And you're testifying that you never had a problem with water intrusion damage?

A. No. 10:13AM

Q. Okay. Ms. Bray, did you ever look at any of the -- and let me represent to you, there were -- prior to the work on building A, just like the video I showed you of your unit, there were 39 other videos from Building B, and there were also 10:13AM

40 videos for Building A.

Did you ever look at any of the videos for purposes of determining -- to the extent of water intrusion damage to a particular unit and who was responsible for it? 10:14AM

A. I don't recall that I ever looked at any videos.

Q. Okay. And did the board ever, before passing the assessment or the -- let me back up for a second. 10:14AM

Back in August 1st of 2009, there's a special assessment that was submitted to the membership --

A. Uh-huh.

Q. -- for the repairs of Buildings A and B. 10:14AM And then that was $11 million --

A. Right.

Q. -- and the assessment failed, correct?

A. Right.

Q. Did the board -- let me back up for a second. 10:14A

When the board got Sutton-Kennerly's estimated cost of repair for Buildings A and B in the amount of $11 million, did the board undertake to do any investigation to find out to what extent 10:14A

the A and B unit owners had been negligent regarding the maintenance repair of their units?

A. No.

Q. Can you explain why? No. Was it -- was it -- was it -- did the board -- why didn't they undertake that responsibility to do that? 10:15AM

A. Why should we have?

Q. All right. You would agree that Buildings A and B are 16 years older than Buildings C and D, correct? 10:15AM

A. Well, I'm not sure of the exact dates, but I take your word for that.

Q. Okay. And based upon all the reports that I've read and all the minutes, I'll represent to you, would indicate, after all the experts have gone in there, the experts -- the experts that you hired when you were on the board, such as Stantec, Eddie Porcher, I think, also Kyzer & Timmerman, which was a structural engineer firm, Tourney Consulting, which was a corrosion -- they were structural engineers dealing with basically -- corrosion structural engineers that y'all hired, and they were out of Michigan -- and I'm trying to think of -- and, of course, I think -- and, of course, you hired -- when you were on the board, 10:15AM 10:15AM 10:16AM

MR. HOWELL BELLAMY: Let's take a break.

(A recess transpired from 10:18 a.m. through 10:30 a.m.)

BY MR. HOWELL BELLAMY: 10:30AM

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 3 to the deposition of Dr. Leon Jennings. It is titled the Organizational Meeting of the Board of Directors dated June 15, 1999. It's the minutes. And specifically what I'd like for you to 10:30AM do is take a minute to start on Paragraph 1 and stop when you get to right where the board says, "MOVED; To notify" and let me know when you finish.

A. Okay.

Q. Okay. My question is -- or let me put it 10:32AM this way. On June 15, 1999, at an organizational meeting of the board of directors of Shipyard Village, the board moved to make the owners and inform them that they are responsible for their thresholds and window frame of their units and 10:32AM threshold -- first, correct? Do you agree with that statement?

A. I think that's what it says. I don't agree with it.

Q. Okay. You don't agree? Okay. 10:32AM

A. I don't agree that's what is the case.
Q. Well, let me ask this. What do you mean you don't agree? Are you agreeing that's what the statement says?
A. I agree that's what the statement says. I was not on the board at that time. 10:33AM
Q. Okay. But you're saying that that's --
A. I don't agree that windows includes thresholds and frames.
Q. Okay. And my point being at the -- pursuant to the board moving to make thresholds the responsibility of the unit owners meant that they had the -- basically they were responsible for caulking and waterproofing thresholds around the windows and the sliding glass doors, correct? 10:33AM
A. Well, I'm not sure the board had authority to do that.
Q. Well, I'm just saying --
A. That's what the minutes say, yeah.
Q. Correct, okay. 10:33AM
Based upon the minutes, the unit owners were responsible for caulking and waterproofing around the thresholds of the windows and sliding glass doors, based on the minutes of what they say, correct? 10:33AM

A. The minutes say that.

Q. Okay.

A. I do not agree that that's necessarily the responsibility of the owners.

Q. All right. Now, when the board allegedly took over the responsibility of the windows and sliding glass doors -- because if you're aware, 3.6, Subsection (c) of the Master Deed specifically makes windows and sliding glass doors -- the Master Deed that was filed on July 7th -- yeah, July 7, 1982 -- specifically provided that windows and sliding glass doors were a defined element of the unit. 10:34AM 10:34AM

A. But it doesn't say anything about frames and thresholds. 10:34AM

Q. Well, I will represent to you that if you go back and read Section 3.6, Subsection (c) of the Master Deed, it provides that windows and doors, including the frames, including the casings, including the glass, are a defined element of a unit and not a limited common element. So -- 10:34AM

A. Well, the frame is not the same thing as threshold --

Q. I agree.

A. -- and the casing. 10:35A

Q. I agree but -- well, here, let me do this. So there's no misunderstanding in the record.

MS. BOAN: I don't want to -- I think it's been marked as an exhibit. She can pull it. 10:35AM

MR. HOWELL BELLAMY: Okay, yeah.

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, let me -- it's Deed Book Page -- it's Deed Book 201 and Page 891. And let me refer you to Section -- it's Page 9 of the Master Deed, 10:35AM if that would help you out.

A. Okay.

Q. Refer to Section 3.6, Boundaries of Units in Phase I. Then specifically, follow me, go down to Subsection (c). It says, "Each unit shall also 10:35AM encompass and include the following: (i) the doors (including screen doors) opening into the Unit and onto balcony reserved to the use of a Unit, including the frames, casings, hinges, handles, and other fixtures which are part of the door." 10:36AM

A. Uh-huh.

Q. And then it goes under Number (ii), "The windows glasses, screens, frames, and casings which are part of the window openings of the unit"; and Number (iii), "The plumbing, wiring and mechanical 10:36AM

vents which exclusively serve the unit."

A. Uh-huh.

Q. I don't think I need to go any further but --

A. Right. 10:36AM

Q. So do you agree with me now that at that point in time, as far as in 1999, the window frames and the doors were a defined element of the unit, correct?

A. The window and the doors, yeah. 10:36AM

Q. And the frames and the casings and the glass?

A. And the question is, what are the frames and the casings and the glass?

Q. Well, they --

A. I consider that to be the window, not what adjoins the window.

Q. I agree, that's what I am saying.

A. Yeah.

Q. We are on the same page. It's the window, 10:37AM okay?

A. Right.

Q. And when I read as far as when the board moved, in June of 1999, to make the unit owner responsible for waterproofing the thresholds around 10:37A

the windows and sliding glass doors, do you agree that's what they did at that point in time?

A. I agree that's what they did. I don't think they had authority to do it if it's not within the scope of what the Master Deed says. 10:37AM

Q. Assuming that it is within the scope of what the Master Deed provides, then the unit owners are responsible for caulking and waterproofing around the windows and sliding glass doors, correct?

A. Well, I don't agree with that. 10:37AM

Q. Well, I understand you don't agree with that but --

A. I mean, based on your assumption that that's included, that's included. But I don't agree that that's a correct assumption. 10:37AM

Q. Well, based upon the board's action, that would be a correct assumption, correct?

A. Well, the board has no authority to do anything other than what's within the Master Deed. So I wasn't on the board, I don't know why they did that, but I would question whether they had authority to do that. 10:38AM

Q. Well, assuming they had authority to do that, okay, you would agree that the unit owners are responsible for waterproofing, sealing and 10:38AM

caulking around --

A. I would agree the board said that.

Q. Okay.

A. That's all.

Q. All right. 10:38AM

A. Not that the owners are responsible.

Q. All right. Well, here's my question to you. Assuming we maintain that the Third Amendment -- window amendment is invalid, but assuming it is valid, when the board took over, when they made -- 10:38AM what I mean by that is, when they took over -- excuse me -- the responsibility when the windows and the sliding glass doors became limited common elements, okay? You agree that's what the window amendment did; it took them -- they were a defined 10:38AM part of the unit, the window amendment made them limited common elements --

A. Right.

Q. -- and made the windows and sliding glass doors the responsibility, repair and maintenance of 10:39AM the association, correct?

A. Right.

Q. Okay. So from the date that the window amendment was recorded in October 16, 2006, from that date forward, the board was responsible for 10:39AM

caulking, waterproofing and sealing around the windows and sliding glass doors, correct? Correct?

A. Correct.

Q. Okay. So any water intrusion damage from August -- I mean, excuse me -- October 16, 2007 up until the present date, it is due to the failure to caulk and waterproof around the windows and sliding glass doors would be the responsibility of the board, it would be due to their negligence, correct? 10:39AM

MS. BOAN: Object to the form.

THE DEPONENT: Not correct.

BY MR. HOWELL BELLAMY:

Q. Explain.

A. You're making an assumption of negligence, and I disagree with that assumption. 10:39AM

Q. Well, let me restate my question. If the board failed to maintain, waterproof, caulk and seal around the windows and sliding glass doors from October 16, 2007 to present day and water intrusion entered the windows under the threshold, around the windows where the windows interfaces with the stucco, the board would be responsible for that or partly responsible for that due to their negligence -- if the board -- let me say this. If 10:40AM 10:40AM

mentioned to me earlier you were not an expert; you weren't an engineer, but now are you becoming an engineer?

A. I am talking not about the absolute who is responsible for what. I am talking about the actions of the board and whether they reasonably should have done -- gone into people's units and checked stuff when they had no complaints. 10:41AM

The board doesn't have an absolute strict liability. 10:42AM

Q. Well, let me read something --

A. The board has the responsibility to act within their business judgment.

Q. Well, let me ask you this about the business judgment rule. Does the business judgment rule protect the board when they fail to act, when they fail to plan for the maintenance and repair of the buildings? 10:42AM

A. Yes, the business judgment rule protects the board in every decision they make. 10:42AM

Q. What if they fail to act? What if -- what it -- for example --

A. Or not act, yes.

Q. If they don't act, do you think the business judgment rule protects them? 10:42AM

A. Absolutely. It depends on the circumstances. Yes, I am a corporate lawyer, and I know the business judgment rule. I disagree with your interpretation.

Q. All right. That's fine. I want to show you something. 10:42AM

(Off-the-record conference.)

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 23 to the deposition of Dr. Leon Jennings, and it is the Shipyard Village Council of Co-Owners, Inc. Special Meeting of the Board of Directors dated March 11, 1994. It's a Notice. And as you flip through that page, and as you'll see, that we received this document from the McNair Law Firm or the K.A. Diehl Management Company, because that's their Bates stamp right there. 10:43AM 10:44AM

Would you agree with that, Leigh?

MS. BOAN: I'm not in...

BY MR. HOWELL BELLAMY: 10:44AM

Q. All right. Well, we received this from the -- K.A. Diehl. And I represent to you, Ms. Bray, this was included in the minutes, and specifically -- hang on a second.

Ms. Bray, what I am doing is I'm 10:45AM

Buildings A and B, he came back and said, I think you may have a problem; this is beyond my pay grade; you need to hire a structural engineer. And the board did not follow his recommendation. They didn't hire a structural engineer. 10:51AM

And my question to you is --

MS. BOAN: I have to object to all -- the form of that.

BY MR. HOWELL BELLAMY:

Q. Well, my question is -- weighing that, my question to you is, is it your position that the board exercised good business judgment by not following his recommendations, by not hiring a structural engineer? 10:51AM

A. You're asking me for a legal opinion in circumstances that I don't know the surrounding circumstances, and I will not answer that question. That is a legal question; it is not a factual question. 10:52AM

Q. What's -- 10:52AM

A. I can't judge what somebody did in 1993. I don't know the circumstances.

Q. Well, the circumstances are set forth in the minutes as set forth in his report.

A. Well, there may have been other 10:52AM

circumstances, and you're asking me for a legal opinion, and I'm not giving it to you.

Q. Well, all right. Generally speaking, do you think it's good business, as far as the business judgment rule, it's good practice, when you hire a particular person to inspect, you know, your buildings, and he says you need to hire a structural engineer and you don't hire a structural engineer, my question is, is that covered under the business judgment rule? 10:52AM

A. I think it depends on a lot of circumstances.

Q. Okay.

MR. HOWELL BELLAMY: Go ahead and mark this. 10:53AM

(Off-the-record conference.)

(PLF. EXH. 14, Responses to Interrogatories, was marked for identification.)

BY MR. HOWELL BELLAMY: 10:53AM

Q. Plaintiff's Exhibit Number 14 is our Responses to Interrogatories. And the question is basically, on Number 1 of our interrogatories, I state -- it says, "Give the names and addresses of persons known to the Defendant or counsel to be 10:54AM

A. 2010, I don't recall.

Q. You would agree that the board did not submit the operating budget or the annual budget for 2010 at the annual meeting of April 2009 of the co-owners, correct? 11:01AM

A. Which budget?

Q. The budget for 2010. So you had an annual meeting in 2009 of the co-owners.

A. We did not submit it at that meeting. We submitted it at the end of the year -- 11:01AM

Q. Okay.

A. -- to all the co-owners.

Q. When you submitted it, did you -- my question is, did you hold a meeting to allow the membership to review it, amend it or vote on it? 11:01AM

A. No, not to my knowledge.

Q. Okay. And the reason why I ask that is, if you would -- let me refer you to the bylaws.

A. Uh-huh. What page?

Q. For the record, Deed Book 201, Page 939. 11:02AM

A. Page 9, what?

Q. 939, Page 11, also.

A. Yes.

Q. Okay. If you would read with me, I'm looking at Section -- it's Article V, Section 5.2 11:02AM

of the bylaws entitled "Budget" provides, "The Board of Directors shall prepare, adopt and present or cause to be prepared and presented, to the Co-Owners at their annual meeting an annual budget (the 'Budget') for the Regime for the next fiscal year."

A. Uh-huh.

Q. Okay. Pursuant to Section 5.2, the board was required to present the budget in an annual meeting to the members or at a subsequent meeting to the members, agree, correct? 11:02AM 11:03AM

MS. BOAN: Object to the form.

THE DEPONENT: Well, it says, "At their annual meeting, an annual budget for the Regime for the Regime for the next fiscal year." 11:03AM

BY MR. HOWELL BELLAMY:

Q. And you didn't present the budget at the annual meeting, correct?

A. What budget? 11:03AM

Q. The budget for 2010.

A. Well --

Q. At the annual meeting of April 2009, y'all did not present the budget, the 2010 budget to the membership, correct? 11:03AM

A. That is correct. That has never been done, because it is impossible to do. And we have interpreted the next fiscal year to mean the fiscal year in which we are -- because this meeting is held early in the year. So we have interpreted the "next fiscal year" to mean the "current fiscal year." 11:03AM

Q. Okay.

A. Because, otherwise, it makes no sense.

Q. Well, in November, did the board see fit to schedule a special meeting of the co-owners to allow them to review the budget and vote on it and possibly -- 11:03AM

A. That has never been done. It's presented at the annual meeting the way the bylaws say. 11:04AM

Q. Okay. You would agree that in 2009, the board did not comply with Section 5.2, Budget --

A. No, I don't agree with that, because I think next fiscal year is subject to interpretation, and we've interpreted it to mean the current fiscal year in which we're operating. 11:04AM

Q. All right.

A. That's when we present the budget. We presented it this week.

Q. All right. Well, let me read this section 11:04AM

right here. Look at Section 5.3, Approval of Budget: "The Budget, as adopted by the Board, may be amended by the motion and affirmative vote of Co-Owners holding two-thirds of the Percentage Interest in the Common Elements." 11:04AM

A. That's correct.

Q. Did I state that correctly?

A. That's correct. It may be amended.

Q. Right.

A. Correct. 11:05AM

Q. You would agree that in 2009, the board did not present the budget to the membership, one; and, two, the membership was never allowed to amend it or given the right to amend it as set forth in Section 5.3, correct? 11:05AM

A. Correct -- incorrect. We presented it at the annual meeting in 2009, and we gave people the opportunity to speak however they wanted to, and there was never an amendment proposed.

Q. I thought you just testified earlier that in April of 2009, you did not present the budget at the annual meeting -- 11:05AM

A. We did; we presented the 2009 budget. You asked me if we presented it in -- you were -- you had different years. 11:05AM

Q. Well, the point I'm saying, in 2009, you're preparing the budget for 2010, correct?

A. No. In the 2009 annual meeting, we present the budget for 2009 and people are given the opportunity to amend it if they want to. 11:06AM

Q. Well, let me ask you this. Almost in 2009, you're already -- the fiscal year has already begun?

A. That's correct.

Q. And you're in April. So how can you adopt a budget when, basically, you're already in that same year for that same year? But... 11:06AM

A. We've already adopted the budget. The board adopts the budget and we adopt the budget at the end of the preceding year. We cannot possibly prepare a budget in April for the coming fiscal year. I mean, it's for the present fiscal year. 11:06AM

Q. Even though the present fiscal year is four months into, you're four months into the fiscal year? 11:07AM

A. Well, we present the budget to the members in either November or December of the preceding year. And then the only thing the members can do at the annual meeting is to amend it. And they have a right to amend it if they're unhappy with 11:07AM

it. They have a right to move that it be amended, and it requires two-thirds. But they do not adopt the budget.

Q. I understand that. But you're supposed to present the budget to them at the annual meeting. 11:07AM

A. That's what we do, every year.

Q. Ms. Bray, I may have missed this, but I've got -- let me go ahead and mark this.

(PLF. EXH. 15, 4/4/09 Meeting Minutes, was marked for identification.)

BY MR. HOWELL BELLAMY:

Q. I've got Plaintiff's Exhibit Number 15, and it's titled Shipyard Village Council of Co-Owners, Inc., 27th Annual Members' Meeting dated April 4, 2009, Minutes. 11:08AM

And I want to ask you to show me in here -- and I may be wrong -- but show me in here where any budget was presented to the membership.

A. It is not -- I imagine it was done in connection with the annual reports, but it does not specifically state that, but that is our practice. 11:09AM

Q. Thank you.

So am I am correct in that there's nothing in the meeting minutes that shows the budget for 2009 was presented to the members in 2009 or that 11:10AM

the 2010 budget was presented to members on that date, correct?

A. That is true.

Q. Thank you.

A. But I am confident that it was presented at the end of 2008. 11:10AM

Q. Okay.

A. But that doesn't mean it didn't happen.

Q. I've got maybe one more question, but let me talk to senior counsel and find out if there's anything else I need to ask because I've got one and then I'll -- 11:10AM

(Off-the-record conference.)

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, you would agree that the board of the Shipyard Village Council of Co-Owners is bound by the Horizontal Property Act, the Master Deed and the bylaws, correct? 11:12AM

A. I would.

Q. Okay. And my final question -- I want to make sure I've got this right. 11:12A

(Off-the-record conference.)

BY MR. HOWELL BELLAMY:

Q. Ms. Bray, I've got Plaintiff's Exhibit Number 2 from the deposition of Jim Poag, and it's 11:12A

dated January 26, 2010, and it is to "Dear Shipyard Village Unit Owner." It's two pages. And then it says on the back, it says, "Sincerely, Board of Directors, Shipyard Village Council of Co-Owners, Inc."

And specifically under the second paragraph -- and I'll hand this to you so you can read it. It's the second sentence from the bottom which states, "Faced with the prospect of two badly distressed, unsafe, and arguably uninhabitable buildings in our regime, your Board instructed the general contractor to move forward with the repairs to be funded as a component of the 2010 and 2011 operating budgets." 11:13AM

And I'll let you read that first, and I'll tell you what my question is. 11:13AM

MS. BOAN: Is that Exhibit 2 from Jennings?

MR. HOWELL BELLAMY: From Jim Poag.

THE DEPONENT: Okay.

BY MR. HOWELL BELLAMY:

Q. And, understand, that's the board's definition of "badly distressed."

And let me make sure I read it correctly, if I can look at it. I want to make sure -- I don't 11:13AM

want to misstate it. This is the board's definition of how they described Buildings A and B; this is not my definition.

"Faced with the prospect of two badly distressed" -- the adjectives, "unsafe, and arguably uninhabitable buildings." 11:14AM

My question is, is that evidence that the board, the present board and the past board of the Shipyard Village Council of Co-Owners, has properly maintained and repaired the common elements, specifically Buildings A and B? 11:14AM

MS. BOAN: Object to the form.

THE DEPONENT: I'm not giving an opinion on evidence. I have no idea who wrote that. 11:14AM

BY MR. HOWELL BELLAMY:

Q. Would it be your position, as a layperson, not as an attorney --

MR. SKEETS BELLAMY: Howell?

MR. HOWELL BELLAMY: Okay.

MR. SKEETS BELLAMY: Who wrote the letter?

BY MR. HOWELL BELLAMY:

Q. The letter was -- I told you, the letter basically is the board of directors. 11:14AM

A. Uh-huh.

Q. And you were on the board at this time?

A. Uh-huh.

Q. Okay. Ms. Bray, is it your position that the board, the current board and the past boards, have always maintained and repaired Buildings A and B in a timely manner? 11:15AM

A. I can't speak to past boards. I have no idea what they did. I think this present board has been very diligent in trying to maintain the buildings. 11:15AM

Q. Okay. And one last question and then I'll stop.

And let me refer you to Deed Book, Page 201 -- I'm sorry, Deed Book 201, Page 942. It's the bylaws. 11:16AM

A. Okay.

Q. And Section 6.3, Default by Co-Owner. Let me read it one more time. "In the event any Co-Owner fails to perform the maintenance required of him by these Bylaws or by any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which unreasonably interferes with the rights of another Co-Owner, or which substantially detracts 11:16AM 11:17AM

board has knowledge that a unit owner has not properly maintained or repaired his unit, shouldn't the board -- well, let me ask you this.

My question basically is this. The board did not individually assess any of the A and B unit owners for failure to maintain and repair the units, correct? 11:18AM

A. We assessed the individual unit owners for cost of the windows.

Q. Only, correct? 11:18AM

A. Correct.

Q. But not for the collateral damage or the water intrusion damage into the interior of the unit?

A. We didn't assess anybody for what happened in the interior of the windows -- of the units. That's the homeowners association -- I mean, that's a homeowner's responsibility. And I don't agree with you that the windows had anything to do with the rest of the damage in the building. I don't agree with you on that. 11:18AM 11:19AM

Q. All right. Then let me ask you this. If it's -- the windows weren't responsible -- then I would assume the water was coming in through the stucco, correct? 11:19AM

COPY

CERTIFICATE OF REPORTER

I, Madonna M. Perkins, Registered Professional Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the deponent, DORIS R. BRAY, was duly sworn by me to testify to the truth, and that the above deposition, Pages 1 through 95, inclusive, was recorded stenographically by me and transcribed through computer-aided transcription by me to the best of my ability.

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

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

IN WITNESS WHEREOF, I have set my hand and seal this 6th day of May, 2012.

Madonna Perkins

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	C/A NO. 2009-CP-22-01655
Richard Fisher, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Shipyard Village Council of Co-Owners, Inc.,	)	
	)	
Defendant.	)	
	)	

EXCERPTS FROM
DEPOSITION OF GARY BRADHAM
DATED MAY 3, 2012

BY MR. SKEETS BELLAMY:

p. 16, lines 20–23

Q. Okay. Did you have an occasion to talk to any members of the present board prior to writing the report?

A. I've never talked to anyone on the board.

p. 17, lines 8–10

Q. All right, sir. Have you ever discussed Elkin's report with Elkin?

A. I have not.

p. 25, line 24 – p. 26, line 11

Q. I take it then by that testimony, you reviewed the entire Master Deed?

A. Yes, sir.

p. 25, line 24 – p. 26, line 11 *(cont'd)*

Q. Okay. And you reviewed the bylaws?

A. Yes, sir.

Q. Okay, sir. And the recorded amendments?

A. That's correct.

Q. All right, sir. Can you be more specific and tell me what sections of the Master Deed you reviewed and you relied upon as a basis for your testimony?

A. Well, I reviewed, in detail, the entire Master Deed, okay?

p. 27, line 14 – p. 29, line 15

Q. Well, you have set out in your report, Exhibit 1, particular sections, and I'm going to go through those in the report.

A. You bet.

Q. You have set out Article XV, Section 15.2, and you relied upon that.

A. Yes.

Q. And then you also said Article I, Section 1.1 defines the Council of Co-Owners.

A. That's correct.

Q. And you said Article II, Section 2.1, Shall act by and through the board.

A. That's correct. That gets to --

Q. What I am doing is, I'm going to go through each section --

A. I understand. I'll give you yes and no.

p. 27, line 14 – p. 29, line 15
(*cont'd*)

Q. -- and you say, on Page 4, that Article II, Section 2.1(g), you relied upon that -- wait a minute, turn over to Page 4.

A. Yeah, 2.2.

Q. No, I dropped down --

A. Okay, I'm sorry.

Q. Article II, Section 2.2, you relied on that section.

A. Yes, sir.

Q. You had -- drop down Article II, Section 2.1(g), okay? Did I skip one?

A. Yes.

Q. Okay.

A. 2.11, I think you skipped that.

Q. Okay, 2.11.

A. And then 2.1(g).

Q. 2.1(g). And then under the bylaws, Article IV, Section 5.2.

A. That's correct.

Q. Any more -- I think I got them all on that page, didn't I?

A. You did, on that page, yes, sir.

Q. All right. Then you have Section 5.3, Approval of the Budget.

A. That's correct.

Q. And then 5.5, Special Assessments.

A. That's correct.

p. 27, line 14 – p. 29, line 15 (*cont'd*)

Q. And then -- as I can tell from looking at the report, those are the specific sections of the Master Deed and bylaws that you relied upon. Take a check and look and see if there's anything else.

A. I will. As it relates to the Master Deed and bylaws, those were the sections.

p. 30, lines 17–21

Q. All right. Well, but you're not going to offer testimony about the amendment, the propriety of the amendment or what it attempted to accomplish?

A. No, sir.

p. 32, lines 5–10

Q. I said -- the question is, as between the Master Deed and the bylaws and the Horizontal Property Act and the South Carolina Property Act, you're not testifying as to when there's a conflict or if there's a conflict between the documents?

A. Oh, no, sir. No, no.

p. 32, lines 20–21

Q. But you haven't talked to Larry Elkins?

A. I have not. . . .

p. 40, lines 6–11

Q. All right, sir. Now, when you started reviewing the minutes of the board from 1982 -- and obviously the board, being the board starting in '82 up to the present time, that there may be changes in people, but the board is the board.

p. 40, lines 6–11 (*cont'd*)

A. That's correct.

p. 44, line 24 – p. 45, line 1

Q. So you would look to Elkins to offer testimony on the adequacy of reserves?

A. Elkins or someone else.

p. 47, lines 5–25

Q. So is there any particular record that would help or assist to form the basis of the opinion?

A. I -- and I'll say it this way. I didn't find any smoking guns, if that's what you're asking, other than Ken Schneider's letter, okay? That, I thought, was a firm interest.

I had already commented on --

Q. What do you mean by that?

A. The exhibit that's in this report.

Q. When you say other than his letter, what do you mean, did it support or not support, that caused you concern?

A. Well, I read through, and it seemed to me that what he was saying to the management agent was, You only have minor problems as it relates to the envelope of the building. The problems -- this was in 2007.

Q. Okay.

A. That the problems that are existing are centered around the windows and openings, and that was what I gleaned from this.

p. 48, lines 15–21

Q. All right. Did you understand that under the Master Deed -- and we'll get to it in a minute, but I'm going to make a general statement -- that the maintenance and upkeep of the windows and doors was the responsibility of the unit owners?

A. I was aware of that when I read the Master Deed.

p. 49, lines 6–10

Q. Okay.

A. Okay? And then I obviously read about the windows, which was only important to me to just know that fact; whether or not it's the problem or not the problem is not for me to decide, you know.

p. 50, lines 10–23

Q. Okay. But there wasn't any question, as you read it and you understood, that the unit owners were responsible for the maintenance of the windows and doors?

A. Unit owners.

Q. Yes, unit owners.

A. That's correct.

Q. Okay. Now, I'm going to go through with you -- yours and Mike Parades about the South Carolina Nonprofit Act or the South Carolina Horizontal Property Act. But as you've already indicated, you're not going to testify as to which one prevailed over the other?

A. Oh, no.

p. 57, lines 1–22

Q. When did you determine that the board hired a structural engineer who will be classified -- you understand that a court qualifies who can be an expert?

A. Right.

Q. Okay. And I think you've told me that maintenance people, whatever, in your opinion, could be experts?

A. Could be technical experts, yes, as relates to the duties of the board.

Q. The duties of the board, okay.

A. That's correct.

Q. But not the building?

A. What I am saying, yes. Now, I did look -- and obviously I believe the timeline that they first brought somebody in was like 2002. And we could look in Elkins' timeline and we'd be able to see that.

Let me see. McGee engaged to study Buildings A and B windows, and then he had offered a report, that's when they found out, that type of thing.

p. 64, line 24 – p. 66, line 5

Q. It says at the bottom of the first paragraph in Page 2, "The board wishes to remind you" -- and this to the Shipyard Village Owners -- "that even through the Association assumed responsibility of the door and window replacement in July 2006, the problems the A and B buildings are currently experiencing just didn't happen last year -- they have been developing over time when the unit owners were responsible for the windows and doors. Those buildings were

p. 64, line 24 – p. 66, line 5 (*cont'd*)

built well over 20 years ago. Studies have shown that repairs made in the past years did not really address the water intrusion issue, but were more cosmetic in nature. We trust owners will support the recommendation by the Board once Mr. Stokes has completed his analysis."

Let me represent I've read it from Exhibit Number 2.

So at this point, the board is telling the membership, the co-owners, that A and B buildings are currently experiencing -- "The problems A and B are currently experiencing just don't happen last year, they've been developing over time when the owners were responsible for their doors and windows."

Well, when you read that, apart from what Mr. Elkins would say -- but when you read those minutes, there was a -- the board was telling the co-owners that there were problems with A and B for some time.

Is that not a fair statement?

A. That is what is written in the letter. However --

p. 67, line 13 – p. 68, line 19

Q. And it goes on, another caption, "Water Problems Associated With Recent Rains" -- still looking at Exhibit Number 2. It says, "The board has been made aware of acute water leaks into the interior of some of the A and B units during recent rains. The question has been raised as to who is responsible for the interiors of the units. Please refer to Article II, Section 5C of the amended Master Deed, a copy of which is attached."

p. 67, line 13 – p. 68, line 19 (*cont'd*)

Did you understand that the board was saying to the unit owners or the co-owners that the windows and doors were the responsibility of the co-owners?

A. At that particular time that that was written, that's what I gleaned from that letter.

Q. And it goes on --

A. However, as you know, that did not follow through. And so just like other issues, where the board was told one thing and as they then delved into it and looking at other sides, they had to make modifications as to what they were -- action they were going to take. That happened as it related to responsibility of the windows. And to their benefit, they went through this process as many times as it took to try to get to, how are we going to deal with this?

Q. But it was ultimately -- in the 1982 Master Deed involving Buildings A and B -- it was the responsibility of the unit owners in Buildings A and B to maintain and keep up the windows and the doors?

A. That's correct.

p. 73, lines 14–19

Q. The amendment to take away the responsibility for the windows and doors from the unit owners was to make those unit owners -- those windows and doors a part of the common elements and limited common elements.

A. That answer, I can say yes.

p. 74, lines 9–15

Q. Okay. Well, obviously the amendment did not pass. And as we sit here today, the amendment is ineffective. Do you know that?

p. 74, lines 9–15 (*cont'd*)

MR. MILLS: Object to the form of the question.

THE DEPONENT: I know that the amendment did not pass.

p. 77, line 3 – p. 78, line 2

Q. -- was the unit -- the unit was the -- the windows and doors were the responsibility of the unit owners.

A. Correct.

Q. All right, sir. Then turn with me to Section 4.3, Maintenance and Repair on Page 12.

A. Okay.

Q. Maintenance and Repair. Take a minute and read that, please, for me, Gary.

A. Do you want me to read it out loud?

Q. Just read it to refresh your memory.

A. Okay.

Q. All right. Now, 4.3 in the Master Deed provides that, "Every Co-Owner (except for timesharing)" -- until this lawsuit started, I didn't know there was timeshares in this building -- "should be responsible for his own expense in maintaining, repairing. . ." and it goes on down. And it basically says in the middle, ". . . without written notice of intended modifications, painting, alterations shall be given by the board."

So you had to get board permission?

A. Board permission, yes, for those things that were additions, improvement, structural modifications or alterations, that's correct.

p. 82, lines 3–11

Q. All right, sir. Now, basically -- and listen to my question, if you've got any questions, stop me. When there is a question about your duties and responsibilities as a board -- I'm talking about a board right now -- the documents that you would go to, to gain advice and assistance and direction would be the Master Deed and the bylaws?

A, That is correct.

p. 85, line 10 – p. 86, line 17

Q. Okay. And then let's turn to Page 40. Look at 16.2, Gary, for me.

A. Yes, sir.

Q. 16.2, Compliance. "Each co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed or in the deed to the unit of such Co-Owners. Failure to comply with any of the same shall be grounds for an action to recover sums due, or damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council . . .", and then it says, "or in a proper case, by an aggrieved Co-Owner.

A. Yes, sir.

Q. So it sets out the responsibility of the co-owners. Is that a fair statement?

A. That is a fair statement.

Q. All right, sir. And in the event that -- and it talks about recovering from the co-owners

p. 85, line 10 – p. 86, line 17 (*cont'd*)

the expenses in enforcing their compliance. Is that a fair statement?

A. It is, because it says --

Q. Okay.

A. Uh-huh.

Q. Now, it goes on to say, "or in a proper case by an aggrieved co-owner." So it also, in a proper case, gives the co-owners the right to sue the association in a proper case.

A. That's correct.

p. 86, line 18 – p. 87, line 9

Q. Okay. Now turn to Page 41, Section 16.10, Failure to Enforce. Take a minute and read that.

A. I've read it.

Q. It says, "No terms, obligations, covenants, conditions, restrictions, rules, regulations or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur."

Now, let me tell you what I think that says, and you tell me if you agree with me or don't agree with me.

A. All right.

Q. It just says the board does not waive the right if it doesn't enforce it against you for a violation, or subsequent people or anybody?

A. That is correct.

p. 89, line 15 – p. 90, line 24

Q. All right, sir. Now, that 1.3 deals with voting.

A. That's correct.

Q. And it says, "A Co-Owner's voting rights and the vote required" -- and we are talking about the bylaws now.

A. Uh-huh.

Q. And the copy indicates where they're also recorded in Georgetown County, up at the top up there; is that correct?

A. That is correct.

Q. It says, "A Co-Owner's voting rights and the vote required to adopt decisions shall be set out in Article VII and Exhibit C and D of the Master Deed. Holders of 51 percent or more of the value of the Regime Property as a whole must vote affirmatively to adopt any matter before the Council. Votes can be cast only at meetings of the Council of Co-Owners [sic] in accordance with the Bylaws, and in the absence of valid proxy, an individual shall act on his behalf, a corporation shall act by its officers . . ." and so on.

So that section, as I read it, says that you can vote -- can only be -- voting can only be at a meeting at the Council of Co-Owners?

A. Unless there's been -- the meeting has been postponed and if it's done within 48 hours. But that's not listed here.

Q. But that's not listed here?

A. Yeah.

Q. Okay. So it's at a meeting?

A. At a meeting.

p. 89, line 15 – p. 90, line 24 (*cont'd*)

Q. Yes, sir.

A. That's correct.

p. 92, lines 4–11

Q. Okay. 1.10 says, "All meetings of the Council shall be held upon the Regime Property or at such other convenient place as the President of the Council or the Board of Directors may direct."

And that says on the "Regime Property." So that could be at one of the buildings, A, B, C or D?

A. Or the pool, a common area.

p. 95, lines 10–18

Q. The reason you presented it at the annual meeting is to afford anybody that has a standing -- such as a member of the Council of Co-Owners, the right to question what's in the budget and the amount of the budget?

A. Yes, and qualify -- the co-owners had the right to amend the budget any and every year with the percentage vote of two-thirds of the percent of ownership.

p. 95, line 25 – p. 96, line 13

Q. Well, my question is this. If C and D's percentage total was less than two-thirds, then obviously -- and if -- let me ask a better question.

If A and B's total vote was 54 percent of the vote --

A. Right.

p. 95, line 25 – p. 96, line 13 (*cont'd*)

Q. -- and C and D's total vote was 46 percent --

A. Right.

Q. -- effectively looking at the percentage, C and D would never have the ability to amend the budget unless the A and B people voted with them.

A. By the Master Deed -- yes.

p. 100, line 5 – p. 101, line 5

Q. Okay. It really defines, "In its discretion as required by the Act, the Master Deed, and these Bylaws, the Board of Directors shall provide the following."

It doesn't say "may," it says "shall"; does it not?

A. That is correct.

Q. All right, sir. So that's a directive?

A. Correct.

Q. Okay. And in Item 1 where it says, ". . . the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same."

Did I read that correctly?

A. You did.

Q. All right. And then under Item 6 it says, "To enforce the terms of the Master Deed, these Bylaws and Regulations promulgated pursuant to the Bylaws."

p. 100, line 5 – p. 101, line 5 (*cont'd*)

Now, let me just ask you kind of a common sense question.

A. Uh-huh.

Q. That section tells me that they're charged with enforcing the Master Deed and the bylaws. That's not discretionary; they shall enforce it.

A. That is correct.

p. 104, line 15 – p. 106, line 12

Q. We have marked Exhibit Number 3, which is a -- what purports to be -- and I'm no expert on e-mails -- but purports to be from Kellie Diehl sent Tuesday, September 18, 2007, to what I later understand to be members of the board and Richard Bennett, who is a maintenance guy.

You've never seen this Exhibit 3 until today?

A. I don't recall. I don't recall the e-mail.

Q. Okay. That's fair.

A. You know, that's one of the problems with e-mails; you don't know if what's sent was received and you don't know if, you know, it actually went or not. So I really don't know. I don't see any indications with -- usually an e-mail would have -- at least the ones I'm familiar with -- have the routing document and all of that stuff.

Q. Well, let me represent to you this was a document produced by the other side, the board or the association, in discovery.

A. All right.

p. 104, line 15 – p. 106, line 12 *(cont'd)*

Q. And I'm going to read this because it says, "Hello all. Richard" -- do you know who Richard Bennett is?

A. I've never met him, I've only read about him.

Q. But he was a maintenance man?

A. Right.

Q. Okay. "Richard is working on leaks in A and B from recent rains. Please understand that many, many of these units were leaking previously and because windows were the owner's responsibility, the issue was thrown back on the owners who most ended up doing nothing and now this is the association's responsibility, owners are impatient, especially Karen Davis, who handles many multiple owner units -- we know she is being hit from all sides and wants a resolution but she must be patient and go through the process. If anyone wants more specifics on this, please call Richard. Most of you were not on the board to remember but I tried to bring this up after I was here for awhile and I got my hand slapped big time by Bob Warner and some board members because this was the owner's responsibility. (Bobby Warner only did cosmetic stucco repairs to these buildings for 20-plus years and kept pushing back to the owners -- who clearly could not handle the needed help)."

. . .

p. 108, line 16 – p. 109, line 21

Q. Well, let me represent to you the president of the association, Don Johnson, has testified that it is a closed issued; it never passed. I'll represent to you on the record -- let the record reflect -- now, before the amendment passed, it

p. 108, line 16 – p. 109, line 21 (*cont'd*)

was -- listen to my question; if I need to clarify, I'll do it -- it was the responsibility of A and B unit owners in Building A and B to maintain and keep up the windows and doors. All right?

A. (Moves head up and down.)

Q. Do you see anything in the minutes where the board, when it brought on Sutton-Kennerly & Associates, which is the ultimate engineering group, asked Sutton-Kennerly to go back and assess what damages the failure to maintain the windows and doors contributed to damages to the common elements?

Have I made that clear?

A. You have.

Q. Okay. Do you see anything where the board took that action to ask that that be assessed?

A. I --

MR. MILLS: Object to the form of the question.

THE DEPONENT: I don't recall seeing anything like -- specific like that. Although I do recall them then sending out a modified special assessment charging the windows to the Building A and B. So whether they had any kind of discussions and who they had them with, I frankly don't know.

p. 112, line 20 – p. 113, line 13

A. I don't know the legalities of that vote as it relates to the other votes that was presented. That was, I felt, a legal issue and one I wasn't interested in because that was going to be resolved

p. 112, line 20 – p. 113, line 13 (*cont'd*)

in the court, whether or not the original amendment that the management company told the board had passed and had been done in such a way, that that would then make those windows the responsibility of the association, I didn't know.

Q. I hear what you're saying. I hear what you're saying.

A. Yeah. And so I didn't offer an opinion, and I don't opine to that opinion as it relates to try and marry those two thoughts together.

Q. All right. Let me see if I can clarify where I'm going. I know you said you're not trying to give an opinion on the validity or invalidity of the amendment.

A. Correct.

p. 114, lines 4–18

Q. . . .

Did they have a fiduciary duty to go back and look and see what A and B should be assessed?

A. I don't want to opine on something that is hypothetical as it relates to the decision -- that decision not being affirmative, that it was going to hold. They already had one amendment that they said was going to make it the association. Now they have another vote -- I mean, excuse me, they already had one vote that was making it the association; they're now having another vote that's making it the owners'. And in there, I don't know what the legal folks were telling them and what advice they were getting, so to know whether or not they had a fiduciary responsibility. I do not want to make an opinion on that.

p. 115, line 2 – p. 116, line 13

Q. Did the board, prior to the proposal of the amendment -- because as I understand your expertise, you talk about duties and responsibilities that boards have.

A. Uh-huh.

Q. Was it the responsibility of the board to go back and assess from A and B unit owners the cost of the damages causally connected with the failure to maintain the windows and doors?

MR. MILLS: Object to the form of the question. You can answer, subject to my objection.

THE DEPONENT: Yes, from the viewpoint of the policy of the board that I saw and read all through up to that point was the windows were the responsibility of the owners. They were given direction and letters repeatedly saying, Hey, we have an issue and this is -- you're the one who's supposed to handle it. The dilemma that then everyone was faced with was, how do you, operationally, execute that? Because of the fact that the windows were such an integral part of the envelope of the building, you know, they were trying to then go down that road.

So the board was trying to work every avenue to get to a solution that matched the requirement to the resources in a way to fund it. And that required them, under duty of care, to seek advice from these experts, which could be legal experts in, how do we go about doing that?

p. 115, line 2 – p. 116, line 13 (*cont'd*)

So they were trying to deal with the situation, but they had not come to anything conclusive, other than the original policy was still in place.

p. 117, lines 16–25

Q. They have the responsibility, under the Master Deed, to enforce the provisions of the Master Deed and the bylaws, okay?

A. Yes.

Q. All right. And as peculiar as the Master Deed is, it put the responsibility for the windows and doors, in 1982 up to 1998, with the A and B unit owners for the windows and doors. They were responsible for the maintenance; is that correct?

A. That's correct.

p. 121, line 12 – p. 122, line 18

Q. Under 6.3, let me read this to you and see if I read it right. "In the event that the Co-Owner fails to perform the maintenance required by him of these Bylaws or any lawful Regulation, and such failure creates or permits a condition which is hazardous to life, health, or property, or which reasonably interferes with rights of another Co-Owner, or which substantially detracts from the value or appearance of the Regime Property, the Board of Directors shall" -- and I add emphasis to that -- "after giving such Co-Owner reasonable notice an opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of doing to such Co-Owners of an Individual Assessment."

Did I read that correctly?

p. 121, line 12 – p. 122, line 18 (*cont'd*)

A. You did.

Q. Okay, sir. And then Expenses, under 6.4, it says, "The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors, including losses by storm, fire or other casualty insured by the Council shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Co-Owner to perform the maintenance required by these Bylaws or by any lawful Regulation, or (2) the willful act, neglect, or abuse by the Co-Owner, they shall be charged to such Co-Owner as an individual assessment."

Did I read that correctly?

A. You read it correct.

p. 123, lines 9–16

A. So it would be a process. And it could come down to interpretation. If it comes down to interpretation, then it comes down to the legal interpretations of what these two paragraphs state.

Q. Okay. So that would be up to the judge. You're not trying to say what the legal interpretation is.

A. That's correct.

p. 126, line 16 – p. 127, line 14

Q. How about the soft costs associated?

A. You know, that one, I'm not an expert on soft costs, but I can tell you from my experience that you're going to expend design costs, whether you take those windows out and replace them or whether you put the existing windows back in. It is such a -- have you been out

p. 126, line 16 – p. 127, line 14 (*cont'd*)

there, sir? And I know maybe I'm not supposed to ask you, but if you see that building and you see the windows that we are talking about and how they fit in with the envelope of the building, I don't see how someone would be able to separate the soft costs to the window compared to the cost they would have had to expend anyway.

Q. But that's not your job and you're not going to testify --

A. And I'm not.

Q. All right. But if an expert, such as an engineer --

A. Such as Larry Elkins, who said soft costs --

Q. All right. Or Steve Geiger?

A. Or whatever.

Q. Then that would be a question of what the soft costs is?

p. 134, line 8 – p. 135, line 19

Q. Okay. Let me read it. 7.3, Enforcement. "The board of directors shall" -- it doesn't say "may," does it? It says "shall."

A. No.

Q. ". . . enforce the terms of the Act, the Master Deed and these Bylaws and Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violation. In addition to any other remedy to which the Council or any Co-Owner may be entitled, the Board of Directors may impose against a Co-Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of

p. 134, line 8 – p. 135, line 19
(*cont'd*)

Directors and consistently applied for any violation of the terms of the act, the Master Deed, or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be controlled [sic] by Individual Assessments. Each day when a violation occurs or continues may be deemed a separate offense."

This provision directs that the board shall, not discretionarily, take these actions?

A. And as I answered you earlier --

Q. And answer me yes or not, then you can explain it.

A. As I answered earlier, I can't say yes or no because I cannot come up with a logical way they could comply with that without trying to seek some professional expert help. And I think that that help would be coming through the legal side of things --

Q. All right.

A. -- and I'm not privileged what those discussions were, how they're going to come out, what state of mind -- and the Judge would prevail, as I have been looking at this scenario. So I haven't and am not going to opine on something the Judge is going to decide on.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen (CONTINUED)

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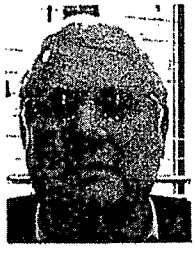
DATE: Wednesday, May 3, 2012

TIME: 9:16 a.m. through 1:58 p.m.

LOCATION: McNAIR LAW FIRM
11019 Ocean Highway
Pawleys Island, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

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



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Plaintiff(s),

vs.

Shipyard Village Council of Co-Owners, Inc.,

Defendant(s).

CIVIL ACTION NO. 2009-CP-22-01655

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your report. And, of course, I want to go into with you how you assembled it and who gave it to you, who did you talk to.

A. You bet.

Q. Where did the information for your report come from? 09:27AM

A. The information, as far as the specifics like the Master Deed --

Q. No, I'm talking about the individual. What individual, who gave you the information? 09:27AM

A. The information that I have listed here --

Q. On what page?

A. -- the Master Deed and so forth all came from McNair. They came from records, association records that had to do with this lawsuit. 09:27AM

Q. All right. So the information that you used for your report was given to you by the McNair Law Firm?

A. That's correct.

Q. Okay. Did you have an occasion to talk to any members of the present board prior to writing the report? 09:27AM

A. I've never talked to anyone on the board.

Q. All right, sir. You were aware that we have deposed the members of the board that the 09:28A

association has designated as possible witnesses at trial?

A. (Moves head up and down.)

Q. So you haven't had a chance to read those. Have you been told what they testified to in their deposition? 09:28AM

A. No, sir.

Q. All right, sir. Have you discussed Elkin's report with Elkin?

A. I have not. 09:28AM

Q. All right, sir. How about Schneider's report with Schneider?

A. I have not.

Q. Okay, sir. Have there been any memorandums or letters from the McNair Law Firm to you outlining the scope of your testimony? 09:28AM

A. No, sir.

Q. All right, sir. Have you discussed with them the scope of your testimony?

A. No, not the scope of my testimony. 09:29AM

Q. All right.

A. I've had discussions obviously about the case and engagement.

Q. Well, when you were employed -- when were you employed? 09:29AM

and national security, and that was through the National Defense College -- or University, I'm sorry. So it's related to management logistics and that type of thing, okay?

Q. But -- go ahead. 09:38AM

A. I also have several certificates from AFIT, which was the Air Force Institute of Technology, for various hospitality managements and so forth. And I had a year-long program in the hospitality arena with ARA Services early in my Air Force 09:38AM career.

Q. Are you retired from the Air Force?

A. I am.

Q. Okay. How many years did you serve?

A. 25 years. 09:38AM

Q. 25 years.

A. Yes, sir.

Q. Good.

You have indicated in your report, which is Exhibit Number 1 to your deposition, that you 09:38AM reviewed the Master Deed and the recorded amendments.

A. Yes.

Q. I take it then by that testimony, you reviewed the entire Master Deed? 09:39A

A. Yes, sir.
Q. Okay. And you reviewed the bylaws?
A. Yes, sir.
Q. Okay, sir. And the recorded amendments?
A. That's correct. 09:39AM
Q. All right, sir. Can you be more specific and tell me what sections of the Master Deed you reviewed and you relied upon as a basis for your testimony?
A. Well, I reviewed, in detail, the entire 09:39AM
Master Deed, okay?
Q. Okay.
A. And as far as specifics, what I honed in on was trying to see and look at what were described as any unique duties that were in the Master Deed 09:39AM
as it related to the issues of assessments and as it related to budgeting and as it related to board duties and responsibilities. Those were some primary sections that I looked at.
I also read the entire Master Deed because, 09:40AM
as you know, some of those things are very difficult to read, unlike an Air Force regulation, everything is standardized, they're all fairly different.
This particular Master Deed was written in, 09:40AM

I think, 1982 by a firm that was outside of this area. So, you know, I wasn't sure and wasn't familiar with the total layout of that Master Deed.

Q. Do you know who prepared the Master Deed?

A. I think David told me it was a firm out of Greenville, and I think it was Hiller. I can't look at him, I'm sorry. But Hiller -- because I commented once, I thought he was an architect, you know, but -- 09:40AM

Q. Well, he is, I think. 09:40AM

A. Yeah. But he's also an attorney, apparently, and that made me feel, you know, that's who wrote the Master Deed.

Q. Well, you have set out in your report, Exhibit 1, particular sections, and I'm going to go through those in the report. 09:41AM

A. You bet.

Q. You have set out Article XV, Section 15.2, you relied upon that.

A. Yes. 09:41AM

Q. And then you also said Article I, Section 1.1 defines the Council of Co-Owners.

A. That's correct.

Q. And you said Article II, Section 2.1, Shall act by and through the board. 09:41A

A. You did, on that page, yes, sir.

Q. All right. Then you have Section 5.3, Approval of the Budget.

A. That's correct.

Q. And then 5.5, Special Assessments. 09:42AM

A. That's correct.

Q. And then -- as I can tell from looking at the report, those are the specific sections of the Master Deed and bylaws that you relied upon. Take a check and look and see if there's anything else. 09:43AM

A. I will. As it relates to the Master Deed and bylaws, those were the sections.

Q. All right. And those sections formed a basis of your opinion in this Exhibit Number 1?

A. That's correct, yes, sir. 09:43AM

Q. All right, sir. Now, we'll go back and go through the Master Deed. You also looked at the recorded amendments. Which ones are you talking about here?

A. As you know, it was a phased project, and so as each phase came in, that had to be recorded and amended, and those were what I looked at it related to bringing in Buildings C and D. There was also an amendment as it related to some changes, Amendment 3 that had been brought forward and 09:44AM 09:44AM

recorded, but it was in dispute as to that particular amendment.

Q. Okay. Did you review that amendment?

A. I only read it. And I realize, you know, there's a lot of opinions about those kind of things. It looked like a legal issue to me, and until that issue was dealt with, I didn't spend any time to focus on whether or not there's -- 09:44AM

Q. All right. Was or wasn't?

A. Was or wasn't. 09:44AM

Q. Okay. So you --

A. I read it from a process viewpoint and trying to then relate what was trying to be done and then reading that back and looking at the Master Deed to say -- just to, myself, form a process that makes sense. 09:45AM

Q. All right. Well, but you're not going to offer testimony about the amendment, the propriety of the amendment or what it attempted to accomplish? 09:45A

A. No, sir.

Q. Okay. Anything else other than the recorded amendments you told me about?

A. As far as the Master Deed and bylaws is concerned, that's correct. 09:45A

control?

A. I looked obviously to see what was in --

Q. Listen to my question.

A. Okay. Yes, sir.

Q. I said -- the question is, as between the Master Deed and the bylaws and the Horizontal Property Act and the South Carolina Property Act, you're not testifying as to when there's a conflict or if there's a conflict between the documents? 09:46AM

A. Oh, no, sir. No, no. 09:46AM

Q. All right. Let's go on down, and if I try to cut you off, you stop me.

A. No, it's fine.

Q. Okay. Larry Elkins, you looked at his report. 09:47AM

A. That's correct.

Q. And you decided to make it a part of your report.

A. (Moves head up and down.)

Q. But you haven't talked to Larry Elkins? 09:47AM

A. I have not. And the reason why I did that, obviously his report had a timeline of things that were outside of my scope of knowledge, plus my scope of engagement, and so I used that, not as just a function of this is what he had, and as I 09:47AM

anything that dealt with the percentage differential between Buildings A and B and C and D.

A. That's correct.

Q. All right.

A. I figured that was laced in the documents. 09:54AM

Q. All right, sir. Now, when you started reviewing the minutes of the board from 1982 -- and obviously the board, being the board starting in '82 up to the present time, that there may be changes in people, but the board is the board. 09:54AM

A. That's correct.

Q. All right. And --

A. And to be honest with you, that was part of the -- I'll say difficulty or challenge that I had, was that obviously 30-year history, and since this 09:55AM lawsuit was dealing with all the association through that entire history, that's why I needed to read through all of the minutes and try to figure out what was going on.

Q. So you were looking for a timeline? 09:55A

A. Timeline, you know, players and that type of thing.

Q. And what the board did or didn't do?

A. I obviously did that as well, trying to get a sensing for activity that they did in this 09:55

A. The only comments I'm going to make about the reserve schedule is just how did I see those? How did they compare to my experiences?

Q. Okay.

A. As an example, in the first five years, 12 to 15 percent was being set aside for reserves. I was reflecting back to my experience. When I came and went to work for Ally Management, we were building up associations, a lot were being brought on. And we had done a lot of work in terms of budgets and reserves and things like that. And I was using my experience to see, you know, how did that kind of marry up. 09:58AM 09:59AM

Q. Okay. Do you have an opinion as to the adequacy of the reserve schedules from '82 forward? 09:59AM

A. No, because the only requirement that I found was that it be a reasonable amount for replacement from time to time. Reasonable makes that kind of subjective.

I looked then to what is the expert guys who do this for a living, like Larry Elkins, and how did he feel about reserves and components and life of components and things like that. 09:59AM

Q. So you would look to Elkins to offer testimony on the adequacy of reserves? 09:59A

A. Elkins or someone else.

Q. All right.

A. Okay. I would also look to what the management companies had done.

Q. Okay. 10:00AM

A. And then as well as what objections, if any, were available as it related to the reserves to try to get a sensing as to, you know, did the members, the co-owners, and the board feel like the management company was presenting a reasonable plan 10:00AM that they were then presenting forward to the membership.

Q. Obviously you haven't had an opportunity to read Dr. Leon Jennings' deposition because it hasn't been transcribed. 10:00AM

A. Yeah, I have not.

Q. But let me represent to you that he testified, with regard to Waccamaw, that they were discharged for cause; and, two, that he did not think they had done an adequate job of reporting to 10:00A the board. Has anybody told you that?

A. No, sir.

MR. MILLS: Object to the form of the question.

MR SKEETS BELLAMY: All right, sir. 10:01

Q. All right. Well, are there any particular records that you relied upon that you have not attached as an exhibit?

A. No.

Q. So is there any particular record that would help or assist to form the basis of the opinion? 10:02AM

A. I -- and I'll say it this way. I didn't find any smoking guns, if that's what you're asking, other than Ken Schneider's letter, okay? That, I thought, was a firm interest. 10:02AM

I had already commented on --

Q. What do you mean by that?

A. The exhibit that's in this report.

Q. When you say other than his letter, what do you mean, did it support or not support, that caused you concern? 10:02AM

A. Well, I read through, and it seemed to me that what he was saying to the management agent was, You only have minor problems as it relates to the envelope of the building. The problems -- this was in 2007. 10:02AM

Q. Okay.

A. That the problems that are existing are centered around the windows and openings, and that was what was I gleaned from this. 10:03AM

Q. Okay.

A. And that it would be something that could reasonably be repaired and taken care of, because they initially weren't going to do any destructive testing or anything like that. 10:03AM

So it kind of led me to believe, as he was going through here, that at least in 2007, from this particular expert, he was thinking that, you know, it's the windows and the doors, and that they had just come to their useful life. 10:03AM

And I looked back to see what Larry thought was the useful life on windows and so forth, and that was about the same. So I was making some connectivity to those two things.

Q. All right. Did you understand that under the Master Deed -- and we'll get to it in a minute, but I'm going to make a general statement -- that the maintenance and upkeep of the windows and doors was the responsibility of the unit owners? 10:03AM

A. I was aware of that when I read the Master Deed. 10:04AM

Q. Okay.

A. And I saw the uniqueness that this Master Deed had in several areas, and especially uniqueness as it would relate to a phase type 10:04AM

process. And to be honest with you, I covered that in the beginning of my report. You know, as I read through looking for what was unique to Shipyard, I found a couple of things as it related to responsibility and accountability. 10:04AM

Q. Okay.

A. Okay? And then I obviously read about the windows, which was only important to me to just know that fact; whether or not it's the problem or not the problem is not for me to decide, you know. 10:04AM

Q. Okay.

A. But just to be able to say, Hey, this -- and so I could understand the minutes when they were talking about sending letters to the owners telling them that their responsibility -- the board sending 10:05AM out information and other people in the minutes of the board who said, Hey, I was having a leak and those leaks were addressed and they would be fixed. I was just trying to determine where was the problem? 10:05AM

Q. Okay.

A. And I really think that that is part of -- and if you've looked at the design on that building, the windows are such an integral part of the envelope. I was wondering and thinking to 10:05A

myself, how is the board dealing with this, with it constantly, Number 1, trying to figure out what the problem was, and then whose responsibility was it, and then how do you put a plan out to the group that was going to take care of it? 10:05AM

But obviously I knew that the Master Deed was what it was and that they had to deal with that. And I saw them dealing with it in this whole 30-year process.

Q. Okay. But there wasn't any question, as you read it and you understood, that the unit owners were responsible for the maintenance of the windows and doors? 10:06AM

A. Unit owners.

Q. Yes, unit owners. 10:06AM

A. That's correct.

Q. Okay. Now, I'm not going to go through with you -- yours and Mike Parades about the South Carolina Nonprofit Act or the South Carolina Horizontal Property Act. But as you've already indicated, you're not going to testify as to which one prevailed over the other? 10:06AM

A. Oh, no.

Q. All right, sir.

A. It is specific in the Acts and in the Master 10:06AM

Q. When did you determine that the board hired a structural engineer who will be classified -- you understand that a court qualifies who can be an expert?

A. Right.

10:14AM

Q. Okay. And I think you've told me that maintenance people, whatever, in your opinion, could be experts?

A. Could be technical experts, yes, as relates to the duties of the board.

10:14AM

Q. The duties of the board, okay.

A. That's correct.

Q. But not the building?

A. What I am saying, yes. Now, I did look -- and obviously I believe the timeline that they first brought somebody in was like 2002. And we could look in Elkins' timeline and we'd be able to see that.

10:14AM

Let me see. McGee engaged to study Buildings A and B windows, and then he had offered a report, that's when they found out, that type of thing.

10:15AM

Q. Listen to my question now. Is that the first time that a true expert had been employed by a board, was in 2002?

10:15A

A. Right.
Q. Let me just read it to you --
A. Sure.
Q. -- and you verify.
MR. MILLS: Let me stop right here. I want a copy of the document in front of the witness. 10:21AM
MR. SKEETS BELLAMY: Well, I thought he was going to bring his documents with him today. And my understanding was he was going to bring the documents that he relied upon in his report. 10:22AM
MR. MILLS: He brought his report. Let's just make a copy of the document you are going to cross-examine him on, if that's fair.
MR. SKEETS BELLAMY: Well, I'm going to read it, and then I'm going to let him look at it, okay?
MR. MILLS: That's fair, too. 10:22AM
MR. SKEETS BELLAMY: That's what I'm going to do.
BY MR. SKEETS BELLAMY:
Q. It says at the bottom of the first paragraph in Page 2, "The board wishes to remind you" -- and 10:22AM

this to the Shipyard Village Owners -- "that even though the Association assumed responsibility of the door and window replacement in July 2006, the problems the A and B buildings are currently experiencing just didn't happen last year -- they have been developing over time when the unit owners were responsible for the windows and doors. Those buildings were built well over 20 years ago. Studies have shown that repairs made in the past years did not really address the water intrusion issue, but were more cosmetic in nature. We trust owners will support the recommendation by the Board once Mr. Stokes has completed his analysis."

10:22AM

10:22AM

Let me represent I've read it from Exhibit Number 2.

10:23AM

So at this point, the board is telling the membership, the co-owners, that A and B buildings are currently experiencing -- "The problems A and B are currently experiencing just don't happen last year, they've been developing over time when the owners were responsible for their doors and windows."

10:23AM

Well, when you read that, apart from what Mr. Elkins would say -- but when you read those minutes, there was a -- the board was telling the

10:23AM

co-owners that there were problems with A and B for some time.

Is that not a fair statement?

A. That is what is written in the letter. However -- 10:23AM

Q. Okay.

A. -- there was a lot going on at that time. That makes reference to the fact that that amendment that's up for question passed. And they were making a clarification as to what are we going to do, you know, if we have this? And it's -- and they had been bounced in and out from windows, cracks in stucco, roofs, HVACs. So a lot had taken place as it related to water intrusion and various other reports about what was going on. 10:24AM 10:24AM

And I think, again, not having anything else to review other than those exact words, I wasn't there to understand whatever all the other things they were being fed in, other than to know the amendment that they referenced didn't pass. And 10:24AM it's part of the legal -- you know, I mean, the objection, and it was voted on again and then didn't pass, okay.

Q. Well, you notice in May of -- March of 2009, it was voted on for the third time, and it didn't 10:24AM

carry?

A. Right.

Q. Okay.

A. And that's what I am saying. So at the time I read that, I didn't know what else and all was going on. That's why I didn't make that any attachment to my report. I wasn't relying on anything there. It wasn't my place to rely on that because the issue that they're referencing as to ownership was macht nichts -- 10:25AM

Q. All right.

A. -- it didn't matter.

Q. And it goes on, another caption, "Water Problems Associated With Recent Rains" -- still looking at Exhibit Number 2. It says, "The board has been made aware of acute water leaks into the interior of some of the A and B units during recent rains. The question has been raised as to who is responsible for the interiors of the units. Please refer to Article II, Section 5C of the amended Master Deed, a copy of which is attached." 10:25AM 10:25AM

Did you understand that the board was saying to the unit owners or the co-owners that the windows and doors were the responsibility of the co-owners? 10:26AM

A. At that particular time that that was written, that's what I gleaned from that letter.

Q. And it goes on --

A. However, as you know, that did not follow through. And so just like other issues, where the board was told one thing and as they then delved into it and looking at other sides, they had to make modifications as to what they were -- action they were going to take. That happened as it related to responsibility of the windows. And to their benefit, they went through this process as many times as it took to try to get to, how are we going to deal with this? 10:26AM 10:26AM

Q. But it ultimately -- in the 1982 Master Deed involving Buildings A and B -- it was the responsibility of the unit owners in Buildings A and B to maintain and keep up the windows and the doors? 10:26AM

A. That's correct.

Q. All right, sir. And it goes on to say in Exhibit Number 2, "This document explains only that the sliding glass doors and the windows are the responsibility of the association. The rest of the unit is the responsibility of the owner and the maintenance company hired by the owner and not the 10:26AM 10:27AM

THE DEPONENT: I don't know what Jennings was trying to do.

BY MR. SKEETS BELLAMY:

Q. That's all that the board was trying to do. Was the board trying -- that was the purpose of the amendment, wasn't it? 10:30AM

A. The board was trying to now put together the procedure that was going to take them forward from the policy that they had been told had been approved by the management company. 10:30AM

Q. All right. That's not responsive to my question.

A. I thought I said --

Q. The amendment to take away the responsibility for the windows and doors from the unit owners was to make those unit owners -- those windows and doors a part of the common elements and limited common elements. 10:31AM

A. That answer, I can say yes.

Q. Okay. That's all I was trying to get, okay? Now -- 10:31AM

A. But I was confused, and I guess I -- and I tried to clarify, when I said I don't know what Jennings was trying --

Q. Okay.

A. I was trying to get to what really was your question. I'll try to be more specific. I don't understand it. All I'm trying to do is --

Q. Stop.

A. -- communicate with you. 10:31AM

Q. Yes, stop me if you don't understand a question.

A. You bet.

Q. Okay. Well, obviously the amendment did not pass. And as we sit here today, the amendment is ineffective. Do you know that? 10:31AM

MR. MILLS: Object to the form of the question.

THE DEPONENT: I know that the amendment did not pass. 10:31AM

BY MR. SKEETS BELLAMY:

Q. Okay. Now, let me move on.

A. However, I know that it is part of this lawsuit, and I wasn't going to be the one to determine that. 10:32A

Q. That's fair. That's fair. Good.

Let me --

MR. HOWELL BELLAMY: Those are the March 11, 1994 --

MR. MILLS: Mr. Bellamy, we've been at 10:32A

3.6(c)(i) --

A. Right.

Q. -- was the unit -- the unit was the -- the windows and doors were the responsibility of the unit owners. 10:40AM

A. Correct.

Q. All right, sir. Then turn with me to Section 4.3, Maintenance and Repair on Page 12.

A. Okay.

Q. Maintenance and Repair. Take a minute and read that, please, for me, Gary. 10:40AM

A. Do you want me to read it out loud?

Q. Just read it to refresh your memory.

A. Okay.

Q. All right. Now, 4.3 in the Master Deed provides that, "Every Co-Owner (except for timesharing)" -- until this lawsuit started, I didn't know there was timeshares in this building -- "should be responsible for his own expense in maintaining, repairing..." and it goes on down. 10:40AM 10:41AM And it basically says in the middle, "...without written notice of intended modifications, painting, alterations shall be given by the board."

So you had to get board permission?

A. Board permission, yes, for those things that 10:41AM

7.4, were they not?

A. That is correct.

Q. All right, sir. Now, basically -- and listen to my question, if you've got any questions, stop me. When there is a question about your duties and responsibilities as a board -- I'm talking about a board right now -- the documents that you would go to, to gain advice and assistance and direction would be the Master Deed and the bylaws? 10:47AM 10:48AM

A. That is correct.

Q. All right, sir. Then if we could turn, Gary, to --

A. May I also state, though --

Q. Sure. 10:48AM

A. -- if they're incorporated, okay? Like this states then, the South Carolina Nonprofit Act also has some provisions of board duties that are listed there.

Q. I understand. 10:48AM

A. Okay.

Q. 9.4 on Page 23, Covenant to Comply With Restrictions and Obligations. Do you follow me?

A. Yes, sir.

Q. "Each Co-Owner, by acceptance of a deed or 10:49AM

Co-Owners of two-thirds of the total interest in the Common Elements subject to the following conditions: No amendment by the Co-Owners shall be in violation of the Act and no amendment shall alter the dimensions of a unit or the Percentage Interest of the Common Elements appurtenant thereto without the consent of Co-Owners of such unit." 10:51AM

Did I read that correctly?

A. You did.

Q. Okay. And then let's turn to Page 40. Look at 16.2, Gary, for me. 10:51AM

A. Yes, sir.

Q. 16.2, Compliance. "Each co-owner shall comply strictly with the Bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed or in the deed to the unit of such Co-Owners. Failure to comply with any of the same shall be grounds for an action to recover sums due, or damages or injunctive relief, or both, maintainable by the Manager or the Board of Directors on behalf of the Council...", and then it says, "or in a proper case, by an aggrieved 10:52AM 10:52AM

Co-Owner."

A. Yes, sir.

Q. So it sets out the responsibility of the co-owners. Is that a fair statement?

A. That is a fair statement. 10:52AM

Q. All right, sir. And in the event that -- and it talks about recovering from the co-owners the expenses in enforcing their compliance. Is that a fair statement?

A. It is, because it says -- 10:53AM

Q. Okay.

A. Uh-huh.

Q. Now, it goes on to say, "or in a proper case by an aggrieved co-owner." So it also, in a proper case, gives the co-owners the right to sue the association in a proper case. 10:53AM

A. That's correct.

Q. Okay. Now, turn to Page 41, Section 16.10, Failure to Enforce. Take a minute and read that.

A. I've read it. 10:53A

Q. It says, "No terms, obligations, covenants, conditions, restrictions, rules, regulations or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches 10:54A

may occur."

Now, let me tell you what I think that says, and you tell me if you agree with me or don't agree with me?

A. All right. 10:54AM

Q. It just says the board does not waive the right if it doesn't enforce it against you for a violation, or subsequent people or anybody?

A. That is correct.

Q. Okay. Now, that completes the Master Deed. 10:54AM Let's turn to Page -- it's Exhibit C, Gary.

A. Yes.

Q. It sets out in the Master Deed the percentage interest assigned per the Horizontal Property Act to the various -- and the adjustments 10:54AM as to the various phases. Is that a fair statement?

A. That is.

Q. And then on Exhibit D it sets out, on Buildings A and B, the percentage interest assigned 10:54AM to each unit. If you total all those up, it determines the total vote at that time --

A. That is correct.

Q. And sometimes you'd have to have 100 percent to change certain provisions, sometimes 2/3 percent 10:55AM

A. 1998, I read 30 in each, 30 and 30.
Q. So there would be 60 --
A. 60 units --
Q. -- in C and D.
A. -- in C and D.
Q. And 80 in Buildings A and B?
A. That is correct.
Q. Okay. Now, in the bylaws -- look with me at the bylaws on Page 1. It's not numbered.
A. Right. 10:56AM
Q. But it's under 1.3, Voting.
A. Yes.
Q. Okay. Take a minute and read that.
A. Yes, sir.
Q. All right, sir. Now, that 1.3 deals with 10:57AM voting.
A. That's correct.
Q. And it says, "A Co-Owner's voting rights and the vote required" -- and we are talking about the bylaws now. 10:57AM
A. Uh-huh.
Q. And the copy indicates where they're also recorded in Georgetown County, up at the top up there; is that correct?
A. That is correct. 10:58AM

Q. It says, "A Co-Owner's voting rights and the vote required to adopt decisions shall be set out in Article VII and Exhibit C and D of the Master Deed. Holders of 51 percent or more of the value of the Regime Property as a whole must vote affirmatively to adopt any matter before the Council. Votes can be cast only at meetings of the Council of Co-Owners [sic] in accordance with the Bylaws, and in the absence of valid proxy, an individual shall act on his own behalf, a corporation shall act by its officers..." and so on. 10:58AM 10:58AM

So that section, as I read it, says that you can vote -- can only be -- voting can only be at a meeting at the Council of Co-Owners? 10:58AM

A. Unless there's been -- the meeting has been postponed and if it's done within 48 hours. But that's not listed here.

Q. But that's not listed here?

A. Yeah. 10:58AM

Q. Okay. So it's at a meeting?

A. At a meeting.

Q. Yes, sir.

A. That's correct.

Q. Okay. And then -- then turn with me, 10:59AM

A. Okay.

Q. Look at that a minute.

A. Yes.

Q. Okay. 1.10 says, "All meetings of the Council shall be held upon the Regime Property or at such other convenient place as the President of the Council or the Board of Directors may direct." 11:00AM

And that says on the "Regime Property." So that could be at one of the buildings, A, B, C or D? 11:00AM

A. Or the pool, a common area.

Q. That's a good point, yeah.

And then look at Page 4, Order of Business.

A. Let me back up. It then has another qualifier that says it could be at anyplace, "other convenient place as the president or the council of the board directs." 11:01AM

So they could say, Hey, we are going to do it now down at the hotel or something like that.

Q. Or your office? 11:01AM

A. Or my office.

Q. Okay, I agree.

Then under Section 1.2 on Page 4?

A. I don't see a 1.2. You mean 2.1?

Q. No, 1.12, excuse me, I apologize. 11:01AM

Q. Okay. Well, the records would reflect whether or not a budget was presented for consideration by those in attendance, in person or by proxy, at the annual meeting.

A. The records would say whether or not it was an agenda item, the presentation of the budget. 11:04AM

Q. All right, sir. Now -- and this is a practical kind of question.

A. Uh-huh.

Q. The reason you presented it at the annual meeting is to afford anybody that has a standing -- such as a member of the Council of Co-Owners, the right to question what's in the budget and the amount of the budget? 11:04AM

A. Yes, and qualify -- the co-owners had the right to amend the budget any and every year with the percentage vote of two-thirds of the percent of ownership. 11:04AM

Q. All right.

A. And then at that point, then the budget that had previously been mailed would become the budget. It would be the budget until such time as the managing company and the board would resolve any disconnect and come back to presenting the budget. 11:05AM

Q. Well, my question is this. If C and D's 11:05AM

percentage total was less than two-thirds, then obviously -- and if -- let me ask a better question.

If A and B's total vote was 54 percent of the vote -- 11:05AM

A. Right.

Q. -- and C and D's total vote was 46 percent --

A. Right.

Q. -- effectively looking at the percentage, C and D would never have the ability to amend the budget unless the A and B people voted with them. 11:05AM

A. By the Master Deed -- yes.

Q. Okay. Go ahead.

A. And by the Master Deed, the entire A, B, C and D represent the co-owners, and the voting is then outlined, and it says two-thirds. So every time -- just like with C and D -- A and B would need members of C and D in order to amend the budget, because the budget is for the entire -- all four buildings; it's considered as one. 11:06AM 11:06AM

Q. All right. Now, obviously we know, in point of time, that the amendment to the windows and doors didn't pass. Let me walk you through chronologically. 11:06AM

A. Right.

Q. Okay? Take a minute and familiarize yourself.

A. Yes.

Q. Okay. It really defines, "In its discretion and as required by the Act, the Master Deed, and these Bylaws, the Board of Directors shall provide the following." 11:10AM

It doesn't say "may," it says "shall"; does it not? 11:11AM

A. That is correct.

Q. All right, sir. So that's a directive?

A. Correct.

Q. Okay. And in Item 1 where it says, "...the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same." 11:11AM

Did I read that correctly?

A. You did.

Q. All right. And then under Item 6 it says, "To enforce the terms of the Master Deed, these Bylaws and Regulations promulgated pursuant to the Bylaws." 11:11AM

Now, let me just ask you kind of a common sense question. 11:11AM

A. Uh-huh.

Q. That section tells me that they're charged with enforcing the Master Deed and the bylaws. That's not discretionary; they shall enforce it.

A. That is correct. 11:12AM

Q. All right, sir.

A. And to go on further, enforce it as the Master Deed and bylaws has outlined that enforcement would take place.

As an example, on all these things that require two-thirds, then the enforcement is two-thirds, whether it's for amending the budget, approving the amendment and so forth. 11:12AM

Q. I understand.

Then Item 7, "The general administration of the Council and the Regime on behalf and for the benefit of all Co-Owners." 11:12AM

A. Yes.

Q. Now, let me ask you a question here.

A. Uh-huh. 11:12AM

Q. You have not been able to sit in on Dr. Jennings' deposition or Ms. Bray's deposition, who happens to be a lawyer.

A. No.

Q. The fact that they were unit owners in 11:12AM

then we'll go from there.

A. Yes, I've read it.

Q. All right. Let me mark it, and then we'll talk about it.

A. Okay. "Read it" meaning I read it right now. 11:17AM

Q. Oh, okay. I'm going to let you explain what --

A. Sure.

Q. Okay. 11:17AM

(PLF. EXH. 3, 9/18/07 E-mail from Kellie Diehl, was marked for identification.)

BY MR. SKEETS BELLAMY:

Q. We have marked Exhibit Number 3, which is a -- what purports to be -- and I'm no expert on e-mails -- but purports to be from Kellie Diehl sent Tuesday, September 18, 2007, to what I later understand to be members of the board and Richard Bennett, who is a maintenance guy. 11:17AM 11:17AM

You've never seen this Exhibit Number 3 until today?

A. I don't recall. I don't recall the e-mail.

Q. Okay. That's fair.

A. You know, that's one of the problems with 11:18AM

e-mails; you don't know if what's sent was received and you don't know if, you know, it actually went or not. So I really don't know. I don't see any indications with -- usually an e-mail would have -- at least the ones I'm familiar with -- have the routing document and all of that stuff. 11:18AM

Q. Well, let me represent to you this was a document produced by the other side, the board or the association, in discovery.

A. All right. 11:18AM

Q. And I'm going to read this because it says, "Hello all. Richard" -- do you know who Richard Bennett is?

A. I've never met him, I've only read about him. 11:18AM

Q. But he was a maintenance man?

A. Right.

Q. Okay. "Richard is working on leaks in A and B from recent rains. Please understand that many, many of these units were leaking previously and 11:18AM because windows were the owner's responsibility, the issue was thrown back on the owners who most ended up doing nothing and now this is the association's responsibility, owners are impatient, especially Karen Davis, who handles many multiple 11:19AM

Q. But the ultimate responsibility rests with the board, does it not?

A. Of course.

Q. Okay.

A. The responsibility does. 11:20AM

Q. All right, sir.

A. What, though, I have a problem here, even after you hear, and reading it again, you know, this talks about being the responsibility of the board, which must mean she was making these 11:20AM statements based upon that amendment that didn't pass.

Q. Okay.

A. And then she was trying to formulate what are we going to do and that type of thing. And so 11:21AM I am -- you know, I'm not sure what the validity of this whole e-mail was about and what was her train of thought. I'm not sure who Karen is. Is Karen a rental agent?

Q. I think she works with K.A. Diehl, but I'm 11:21AM not sure.

A. Yeah. Because it sounded like she was a rental agent and that she was -- but I don't know that for sure, but only because she said she's got a lot of units and people are calling and wanting 11:21AM

owner units -- we know she is being hit from all sides and wants a resolution but she must be patient and go through the process. If anyone wants more specifics on this, please call Richard. Most of you were not on the board to remember but I tried to bring this up after I was here for awhile and I got my hand slapped big time by Bob Warner and some board members because this was the owner's responsibility. (Bobby Warner only did cosmetic stucco repairs to these buildings for 20-plus years and kept pushing back to the owners -- who clearly could not handle the needed help)." 11:19AM 11:19AM

Now, this is the managing agent. And this is Exhibit 3. And what I am asking you is, under -- you can certainly look at it. 11:20AM

A. I can --

Q. Good.

A. Okay.

Q. But under the authorities and duties of the board, they can contract -- but listen to my question because I don't want to -- I want to be sure that I don't misrepresent it to you. 11:20AM

Under Section 4.3, the manager works at the pleasure of the board.

A. (Moves head up and down.) 11:20AM

to know an answer. So she's basically saying, we have this amendment, and I guess it was being challenged, obviously, okay? Now, what are we going to do? We need to meet and do something with it. 11:21AM

Q. Now, let me ask you this question and see if you understand it.

A. Okay.

Q. We now know that the amendment never passed.

A. Yes. 11:21AM

Q. It is ineffective. And let me represent to you --

MR. MILLS: Object to the form of that question.

BY MR. SKEETS BELLAMY: 11:22AM

Q. Well, let me represent to you the president of the association, Don Johnson, has testified that it is a closed issued; it never passed. I'll represent to you on the record -- let the record reflect -- now, before the amendment passed, it was 11:22AM -- listen to my question; if I need to clarify, I'll do it -- it was the responsibility of A and B unit owners in Building A and B to maintain and keep up the windows and doors. All right?

A. (Moves head up and down.) 11:22AM

Q. Do you see anything in the minutes where the board, when it brought on Sutton-Kennerly & Associates, which is the ultimate engineering group, asked Sutton-Kennerly to go back and assess what damages the failure to maintain the windows and doors contributed to damages to the common elements? 11:23AM

Have I made that clear?

A. You have.

Q. Okay. Do you see anything where the board took that action to ask that that be assessed? 11:23AM

A. I --

MR. MILLS: Object to the form of the question.

THE DEPONENT: I don't recall seeing anything like -- specific like that. Although I do recall them then sending out a modified special assessment charging the windows to the Building A and B. So whether they had any kind of discussions and who they had them with, I frankly don't know. 11:23AM 11:23AM

BY MR. SKEETS BELLAMY:

Q. So there's nothing you find from the records that indicate that -- because what we are talking about is -- in this suit -- is what should be C and 11:23A

did not pass, leaving then the responsibility with the owners. However, it was also --

Q. When you say "owners," you mean A and B?

A. If those were the windows that were being replaced. If it was in C and D, it would be C and D would be responsible for their windows, okay? 11:26AM

Q. All right.

A. However --

Q. Okay.

A. -- you know, what the dilemma was, whether or not -- and I still don't know, because I've heard y'all talking, you know, if the amendment is resolved in the lawsuit and goes the other way, that it was an allowance for them to go back and readjust the assessment. 11:26AM 11:27AM

Q. All right. But at least based on the vote, the amendment failed on March 9, 2009.

A. Based at that vote, it did.

Q. All right.

A. I don't know the legalities of that vote as it relates to the other votes that was presented. That was, I felt, a legal issue and one I wasn't interested in because that was going to be resolved in the court, whether or not the original amendment that the management company told the board had 11:27AM 11:27AM

passed and had been done in such a way, that that would then make those windows the responsibility of the association, I didn't know.

Q. I hear what you're saying. I hear what you're saying. 11:27AM

A. Yeah. And so I didn't offer an opinion, and I don't opine to that opinion as it relates to try and marry those two thoughts together.

Q. All right. Let me see if I can clarify where I'm going. I know you said you're not trying 11:28AM to give an opinion on the validity or invalidity of the amendment.

A. Correct.

Q. But assume, for purposes of my question, that on March 9, the membership, at a vote -- of a 11:28AM meeting, a meeting -- voted down the amendment. And the minutes will reflect that, and you read that. And I think that's a fair representation, that it was voted down.

A. Yes. 11:28AM

Q. At that time, knowing that A and B were at least as of that date, responsible or still responsible for the windows and doors, did the board have a fiduciary duty at that time, Gary, to go back and assess whatever damages that the common 11:28AM

elements and the interior of the units sustained as a result of the failure of A and B to maintain the windows and doors? Broad question.

Did they have a fiduciary duty to go back and look and see what A and B should be assessed? 11:29AM

A. I don't want to opine on something that is hypothetical as it relates to the decision -- that decision not being affirmative, that it was going to hold. They already had one amendment that they said was going to make it the association. Now 11:29AM they have another vote -- I mean, excuse me, they already had one vote that was making it the association; they're now having another vote that's making it the owners'. And in there, I don't know what the legal folks were telling them and what 11:29AM advice they were getting, so to know whether or not they had a fiduciary responsibility. I do not want to make an opinion on that.

Q. All right. Let me -- we'll back it in another way. 11:30AM

A. Okay.

Q. Prior to the proposal for the amendment to change the responsibility for the windows and doors to the association, prior to that -- and that occurred in 2006, as I recall. 11:30AM

A. Prior, yeah.

Q. Did the board, prior to the proposal of the amendment -- because as I understand your expertise, you talk about duties and responsibilities that boards have. 11:30AM

A. Uh-huh.

Q. Was it the responsibility of the board to go back and assess from A and B unit owners the cost of the damages causally connected with the failure to maintain the windows and doors? 11:30AM

MR. MILLS: Object to the form of the question. You can answer, subject to my objection.

THE DEPONENT: Yes, from the viewpoint of the policy of the board that I saw and read all through up to that point was the windows were the responsibility of the owners. They were given direction and letters repeatedly saying, Hey, we have an issue and this is -- you're the one who's supposed to handle it. The dilemma that then everyone was faced with was, how do you, operationally, execute that? Because of the fact that the windows were such an integral part of the envelope of the 11:31AM 11:31AM 11:31A

building, you know, they were trying to then go down that road.

So the board was trying to work every avenue to get to a solution that matched the requirement to the resources in a way to fund it. And that required them, under duty of care, to seek advice from these experts, which could be legal experts in, how do we go about doing that? 11:31AM

So they were trying to deal with the situation, but they had not come to anything conclusive, other than the original policy was still in place. 11:32AM

BY MR. SKEETS BELLAMY:

Q. Well, we have gone through -- 11:32AM

A. Does that make sense?

Q. Well, let me see if I can clarify it, because that sort of doesn't answer it. But let's just say --

A. Okay. 11:32AM

Q. -- we have gone through the provisions of the Master Deed that says the board shall enforce the provisions of the Master Deed.

A. Right.

Q. We agree with that? 11:32AM

A. That's correct.

Q. They have this responsibility, this legal responsibility to do so. They don't have the right to deviate from the directions of the Master Deed and the bylaws, do they? 11:32AM

A. No. They have the right to put the -- to put a procedure in place from the policy, okay?

Q. All right.

A. And then the members have the right to either approve or disapprove of that, depending on 11:33AM if it's a special assessment or if it is a budget based on the percentages listed there.

Q. Well, I'm trying to be more specific with my question. I'm not trying to be general.

A. No, I hear you. 11:33AM

Q. They have the responsibility, under the Master Deed, to enforce the provisions of the Master Deed and the bylaws, okay?

A. Yes.

Q. All right. And as peculiar as the Master 11:33AM Deed is, it put the responsibility for the windows and doors, in 1982 up to 1998, with the A and B unit owners for the windows and doors. They were responsible for the maintenance; is that correct?

A. That's correct. 11:33AM

what?

BY MR. SKEETS BELLAMY:

Q. 6.3.

A. Okay, go ahead.

Q. Take a minute and familiarize yourself with it. 11:37AM

A. All right. I've read that.

Q. Now, under 6.3, it's Default By Co-Owner, and it's contained in the Master Deed at Page 14 of the recorded document of Georgetown County. 11:38AM

A. Right.

Q. Under 6.3, let me read this to you and see if I read it right. "In the event that the Co-Owner fails to perform the maintenance required by him of these Bylaws or any lawful Regulation, 11:38AM and such failure creates or permits a condition which is hazardous to life, health, or property, or which reasonably interferes with rights of another Co-Owner, or which substantially detracts from the value or appearance of the Regime Property, the 11:38AM Board of Directors shall" -- and I add emphasis to that -- "after giving such Co-Owner reasonable notice an opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such 11:39AM

Co-Owners of an Individual Assessment."

Did I read that correctly?

A. You did.

Q. Okay, sir. And then Expenses, under 6.4, it says, "The expenses of all maintenance, repair and replacement provided by the Manager or the Board of Directors, including losses by storm, fire or other casualty insured by the Council shall be Common Expenses, except that when such expenses are not fully reimbursed by insurance proceeds and when they are necessitated by (1) the failure of a Co-Owner to perform the maintenance required by these Bylaws or by any lawful Regulation, or (2) the willful act, neglect, or abuse by the Co-Owner, they shall be charged to such Co-Owner as an individual assessment." 11:39AM 11:39AM 11:39AM

Did I read that correctly?

A. You read it correct.

Q. All right. Now, that system provides that, generally, the common expenses are assessed to everybody. 11:40AM

A. That's correct.

Q. And when the board finds that it is an expense that shouldn't be assessed to everybody, this section provides how they go about doing it. 11:40AM

A. It offers a means, a way. And part of this requires you to determine, first of all, did they take any actions or not take actions --

Q. Okay.

A. -- and is there any specific liability that would be negligent on their part that would require other costs. 11:40AM

Q. Okay.

A. So it would be a process. And it could come down to interpretation. If it comes down to interpretation, then it comes down to the legal interpretations of what these two paragraphs state. 11:40AM

Q. Okay. So that would be up to the judge. You're not trying to say what the legal interpretation is. 11:41AM

A. That's correct.

Q. But in advising a board, such as Shipyard where a situation came in under default by co-owners, and it provides in 6.3 that the board shall, after giving notice to perform reasonable -- to perform the maintenance, that the board can do such maintenance and charge the reasonable expenses back to the co-owners. So if the unit owners doesn't act, the board has a backup plan, we'll go fix it at your experience and charge it to you. 11:41AM 11:41AM

after giving such Co-Owner reasonable notice and opportunity to perform the maintenance, caused such maintenance to be performed and charged all reasonable expenses."

So the question is, the owners couldn't do it, the board could have done it and charged it to him, under this section? 11:44AM

A. A reasonable cost, they could have done that.

Q. All right, sir. 11:44AM

A. Which is what they're doing now. They are, in fact, replacing the windows and charging those owners in A and B for those windows.

Q. For the actual cost of the windows.

A. That's correct. 11:44AM

Q. How about the soft costs associated?

A. You know, that one, I'm not an expert on soft costs, but I can tell you from my experience that you're going to expend design costs, whether you take those windows out and replace them or 11:45AM whether you put the existing windows back in. It is such a -- have you been out there, sir? And I know maybe I'm not supposed to ask you, but if you see that building and you see the windows that we are talking about and how they fit in with the 11:45AM

envelope of the building, I don't see how someone would be able to separate the soft costs to the window compared to the cost they would have had to expend anyway.

Q. But that's not your job and you're not going to testify -- 11:45AM

A. And I'm not.

Q. All right. But if an expert, such as an engineer --

A. Such as Larry Elkins, who said soft costs -- 11:45AM

Q. All right. Or Steve Geiger?

A. Or whatever.

Q. Then that would be a question of what the soft costs is?

A. And should it be included or not. And the 11:46AM Judge would have to rule on that.

Q. Okay. There we go, there we go.

Now, let me see if there's anything else in the bylaws here. It's getting on a quarter to 12:00. Do y'all want to break at about 12:00 for 11:46AM lunch or keep on going?

MR. MILLS: It's your show. We'll push through if you like. Whatever you want to do.

(Off-the-record conference.) 11:46AM

And for -- from an operational guy who's had to do these same type of things in several other associations, you have to come up with a solution, a way to marry the requirement to the resource.

Q. All right. Look at, then, Page 16 of the bylaws, 7.3 on Enforcement. 11:56AM

A. Uh-huh, yes.

Q. Okay. Let me read it. 7.3, Enforcement. "The board of directors shall" -- it doesn't say "may," does it? It says "shall." 11:56AM

A. No.

Q. "...enforce the terms of the Act, the Master Deed and these Bylaws and Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violation. In addition to 11:56AM any other remedy to which the Council or any Co-Owner may be entitled, the Board of Directors may impose against a Co-Owner reasonable fines not to exceed an amount per day to be determined annually by the Board of Directors and consistently 11:57AM applied for any violation of the terms of the act, the Master Deed, or these Bylaws or of the Regulations promulgated pursuant hereto. Such fines shall be controlled [sic] by Individual Assessments. Each day when a violation occurs or 11:57AM

continues may be deemed a separate offense."

This provision directs that the board shall, not discretionarily, take these actions?

A. And as I answered you earlier --

Q. And answer me yes or no, then you can explain it. 11:57AM

A. As I answered earlier, I can't answer yes or no because I cannot come up with a logical way they could comply with that without trying to seek some professional expert help. And I think that that help would be coming through the legal side of things -- 11:58AM

Q. All right.

A. -- and I'm not privileged what those discussions were, how they're going to come out, what state of mind -- and the Judge would prevail, as I have been looking at this scenario. So I haven't and am not going to opine on something the Judge is going to decide on. 11:58AM

Q. Okay. That's fine. And obviously let me represent to you -- 11:58AM

A. Yes, sir.

Q. -- I haven't been notified, nor Howell, that they received any legal advice with regard to these things; they claim that to be confidential. 11:58AM

CERTIFICATE OF REPORTER

I, Madonna M. Perkins, Registered Professional Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the deponent, GARY CURTIS BRADHAM, was duly sworn by me to testify to the truth, and that the above deposition, Pages 1 through 172, inclusive, was recorded stenographically by me and transcribed through computer-aided transcription by me to the best of my ability.

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

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

IN WITNESS WHEREOF, I have set my hand and seal this 17th day of May, 2012.

Madonna Perkins

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

Spectrum Engineering Services, Inc.

FIELD REPORT

490 Garlington Road, Greenville, SC 29615
864-289-0431 (Corporate office) 864-289-0428 (Fax number)

DATE OF VISIT: 10.29.08
TIME OF VISIT: 08:00
SITE LOCATION: Pawley's Island SC
INDIVIDUALS PRESENT:
Russ Lockwood, Bill Boone, Roy Simmons

JOB NUMBER: 08529
PROJECT NAME: Shipyard Village

WEATHER: Fair, Breezy **TEMP.** 32 °F

REASON FOR VISIT: Walkdown of Existing Damage for Budgetary Estimate
COMMENTS:

A walkdown was held to document the existing visual damage at Buildings A and C at Shipyard Village. No testing was done. A photographic diary was kept to document the progress of the walkdown.

Both buildings are comprised of three sections. One is facing the Northeast, the second due East and the third the Southeast. The buildings have a ground level parking deck and five stories of units above ground. Per Russ the buildings were constructed in 1982 and were the first high rise multifamily dwellings in the area. Per Russ problems started being noticed in 2005. Construction is hollow core prestressed slabs supported on poured beams. Some walls are poured shear walls, some masonry walls and others are stuccoed wood-frame walls. The entire exterior except for the undersides of most prestressed slabs is covered in stucco with a high relief. Per Russ, previous engineers have performed some borings and found water pockets in the hollow cores. These borings were evident during the walkdown. All elevated walkways and lanais are covered in a jute back carpet which is directly glued to the slabs. Some windows are single units but most are multi-panel storefront installed in ceiling-to-floor openings in the walls. Windows have no setback and no brows or ledges.

The walkdown started at the Northeast corner of Building A and proceeded around the sea side in a counterclockwise direction. After the sea side was completed the courtyard side was reviewed starting at the Southeast wing and going up floor by floor. This procedure was then repeated on Building B. In the afternoon Russ provided entry into 5 units to look at damaged areas and some repair concepts that have been applied. Both roofs were included in the walkdown. The following are the specific results of the work. Drip edges are not apparent anywhere at window openings. Drip edges on slabs are non-contiguous and uneven.

1. A 6-inch rain had occurred on Saturday the 26th. On the morning of the walkdown at 08:15 SESI noted water running out of the concrete wall that supports the Southwest lanais in Building A. This meant that water had infiltrated during the rain and was still running out three days later. The amount of dripping was significant with a large drop falling every ten seconds.
2. Rebar is exposed and severe corrosion can be seen where the stucco has fallen off the poured concrete that supports the lanais. Close inspection shows coverage over the rebar and ties at less than ½-inch. This is well below standards even in 1982.
3. Some lanai slabs are cracked approximately 16 inches back from the outside edge. The cracks run in the long axis of the slab. There is a four inch concrete capture beam at the outside edge of each lanai so the crack is actually 12 inches from the edge of the slab. Some cracks shows signs of water leakage. The capture beam does not have a drip edge.

The majority of damaged lanai slabs are on the lower two floors with the number decreasing as height increases. Building B lanai slabs are more severely damaged than Building A. Some slabs have spalled areas two to three feet in length exposing the prestress tendons. In the wider spalled areas the slabs show a pour pattern of multi-pass pouring. This created weaker slabs since bonding between nonhomogenous areas is less than the homogenous individual pour.

4. The concrete walls that support the lanais show signs of long-term water damage. Repaired areas are evident up the entire height of the walls. Areas of mold can be seen at and below each lanai floor in shaded areas. This means that water from the lanais is seeping through the walls. Standing water on the lanai is the probable cause. Damage has occurred above the fifth floor elevation which means the roof or roof flashing is leaking.

5. In the garage area, masonry doorways and other openings have cracks running horizontally over the centers and in some cases propagating up from the edges. The center cracks are about 2 inches up from the bottom of the masonry. The edge cracks track at a 30 degree from vertical angle upward and outward. This is the stress cone from the supported weight bearing on the lintel. This means that the lintels are falling. SESI found one area where the lintel bottom in Building B had collapsed. The lintel was formed from hollow cement block which should have had rebar installed inside and been poured with 3000 psi or better concrete. Rebar can bee seen in the lower portion but brick mortar was used instead of concrete as a fill material. The mortar had a low percentage of mortar mix verses sand so the mixture was not strong enough to be used for the application. The mortar was "dabbed in" which did not completely surround the rebar nor bond to all surfaces. The falling mortar can be broken between the thumb and the forefinger. A repair will need to be implemented for all masonry openings to prevent wall sections from collapsing.

6. Windows are horizontal and vertical sliding glass in aluminum frames with the majority being horizontal. Severe staining can be seen at edges where ferrous fasteners have been used and the rust is leaching out onto the stucco. This means that water is intruding into the edges and damaging the fasteners. Severe staining has also occurred where water is captured in the sliding frame and drips down from unit to unit. Flashing is scarce and there are no drip edges on any window. The flat flashing that exists over each window does not cover the entire wall opening but only the window glass area. This leaves gaps making the storefront frame the only barrier to water. The highest damage is on the East side windows but all others show similar but less severe degradation. Russ reported damage has occurred in all units due to driven rain bypassing the slider seals and entering the units.

7. All of the above noted damage is repeated on all sea side units. The damage is most severe on the North facing lanais and is less on the East and even less on the South. This is probably due to the prevailing North wind forcing more rain onto the North side and the thermal ability of the sun to dry the units on the South side.

8. The beams which support the courtyard walkways are cantilevered from the unit walls. They are poured concrete. Major failing can be seen in these beams on both sides of the slabs where the building ells change direction. This is due to differential thermal growth and differential movement of the ell wings due to wind loading.

9. Carbon steel expansion joints were installed at the meeting points of the building slabs where the building ells change direction. The joints have delaminated and are raised above the slab surface. In some areas these have raised over an inch above the slabs. The slab sections bear on different areas of beam based on the specific joint. The Building A North joints are West of the centerline of the beam. The Building A South joint centerlines are completely off from the West side of the beam. Some areas have been patched but the patches have cracked and fallen away allowing moisture to be trapped and further corrode the rebar.

10. Many areas of the slabs over the courtyard walkways have spalled off the concrete that covers the tendons similar to the lanai slabs. Tendons are exposed and severely corroded. Building B has more of this type of damage than Building A. Like the beams, some areas have been patched. Patches have cracked and fallen away allowing moisture to be trapped and further corrode the tendons. The lack of a rain lip has accelerated the decay because

rain water and condensation trail back along the slab areas in lieu of dropping to the ground. In one area (A24) a tendon has failed with its end exposed.

11. Courtyard windows at (A24) and (A34) have undergone galvanic corrosion. This is evident at edges where the metal has developed holes and jagged edges. The windows most affected are those closest to the gap between the North and East building ells. This would indicate that the sea breeze blowing between the two buildings is creating a static charge that forces accelerated movement of ions from the windows to the metals in the stucco. Future window installations in these areas should have a polymer coating applied to the stucco or the window bottom before installation to prevent the reaction.
12. All rail posts have been pocketed into the capture beams and main beams. This has allowed water to stand and seep into the concrete. All rail pockets will need to be filled with a qualified filler and mounded to force water away from the existing indention.
13. The rail centers on the guardrails are now 5 inches between bars. The 1982 SSBC will have to be reviewed to verify compliance with the regulations in force during unit construction. Handrails now have gaps greater than 1 inch in many places. OSHA codes have always dictated that handrails be "continuous". Present solutions to gaps between sections of handrails can be employed to meet the past code requirement.
14. Units with experimental repairs to the lanais were reviewed. The repairs consisted of installing a lift that slopes the surface of the lanai from a high point at the sliding doors down approximately 1-inch to 1.5-inch to the edge. The lift had a non-porous coating applied to prevent water intrusion into the slab below. The coating was lapped 4 inches up on the sides of the lanai walls to stop water ingress into the wall structure. On one unit the sliding door assembly had been replace with a new unit that was installed at a higher bottom elevation than the previous doors. In the other units a metal form has been installed in lieu of raising the door assembly. The metal form presents a significant tripping hazard which will have to be addressed in detailed design. The headers above the doors reviewed were of stud construction. This is favorable in that they can be reworked as shorter headers allowing the door assemblies to be raised to prevent water intrusion and still us standard door assemblies. In all the repaired lanais look to be working well and the concept with a few alterations need to be applied throughout the complex.
15. Of the five units walked down on the interior all have seen interior water damage. Most damage was at the ceiling above the sliding door and on the walls adjacent to all windows. This includes the units on the fifth floor. Replacement of all window assemblies and sliding door assemblies will be required to alleviate this problem. The one fifth floor transom that has been replaced should not be copied. The transoms do need to be replaced but the structural ability of a single glass transom to meet hurricane wind requirements is very questionable. The transoms should have one or three mullions to carry load from the lower header up to the roof header. Note that the roof header carries all of the roof and ceiling load, both dead load and negative wind load, for the entire unit living room and thus needs to be structurally sound to prevent severe damage should the window be shattered by hurricane borne projectiles that would expose the dormer roof to wind uplift. This needs to be carefully reviewed as part of detailed design.
16. A review of the roof areas found the following:
    a. The roof is a flat roof construction with edge flashing that is raised 1-inch over the roof level on all edges. This creates a 1-inch pond on the roof during a rainfall in excess of the carry-away capacity of the roof drains.
    b. The roofing material is a rolled roofing and tar combination. This type of roofing materials is not designed for a flat roof. Rolled roofing is essentially a large shingle that is meant for a sloped surface. Only the tar provides sealing and tar is very susceptible to cracking due to thermal growth constriction. Tar applied on a hot day will constrict and crack at the rolled roofing joints. Tar applied on a cold day will expand and heave creating cracks. The tar also dries out over time and cracks. Cracks may not be visible at all times but are still there.
    c. The roofing construction is a large part of the water problem in the walls and ceilings. The existing roof needs to be reworked as a membrane roof which will seal all edges from water intrusion.
    d. The roof segments between the three building ells on Building A have expansion joints.

This allows the different ell segments to move without restriction and without damaging the roof. The Building B roof does not have expansion joints.

e. The existing roof drains are acceptable as installed but are too few in number.

f. The waste vent stacks are too short since they are restricted do to adjacent obstructions. These should be raised approximately 1 foot to allow 360 degrees clearance for wind stripping of sewer gas. Wind will create a chimney effect that will keep the top of the stack at a slight negative pressure. This will protect against gas intrusions into wall spaces, slabs, under roofing, etc. should the PVC vents leak.

g. The HVAC unit supports have been reworked within the last few years and are a very good design. The tie-downs from the supports to the condenser housings are not code compliant. Code requires these to be able to hold the condenser units through a 130 mph wind. The straps are now a bent piece of flashing screwed to the condenser body with eight sheet metal screws. A code compliant tie-down system needs to be constructed and installed to prevent units from flying away in a high wind.

h. The condenser line and power and control wiring roof sleeves are a poor design. The design is a straight piece of pipe open at the top. A makeshift rain hood has been tarred to the cable and condenser lines. This needs to be replaced with a weather hood or a gooseneck that will not allow rain ingress. The height of the gooseneck must keep the condenser lines and cabling out of ponding water.

i. The dormer roof sheeting over the fifth floor lanais needs to be reviewed when the roof is redone. All are spongy at the point that the dormer meets the flat roof indicating a thin plywood or other material was used which deflects when being walked on. This creates stress on the roofing which could cause premature failure. Stiffer sheeting will eliminate this flexing and make the roofing last longer. On some dormers the truss pattern can be seen so the sheeting has either been wet and begun to delaminate or has settled due to dead load. In either case the sheeting is no longer in acceptable condition to support eh roofing.

FILE NO. # 08529FR.001 Signed: Roy Simmons, Bill Boone

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Exhibit "A"

SKA CONSULTING ENGINEERS

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October 1, 2008

Board of Directors of the Shipyard Village Council of Co-Owners
c/o: K. A. Diehl & Associates, Inc.
Managing Agent
P. O. Box 2537
Murrells Inlet, SC 29576

Attention: Vicki Gallagher, CMCA, AMS (via vickigal@sccoast.net)
Vice President
K. A. Diehl & Associates, Inc.

Reference: Review of Condition Assessments, Specifications and Details for Shipyard Village - Repairs and Restoration for Shipyard Village Condominiums at Litchfield by the Sea Pawleys Island, South Carolina SKA Job No. 080489.0

Dear Ms. Gallagher:

At the request of the Shipyard Village Council of Co-Owners Board of Directions, SKA visited the subject site and completed a cursory review of the provided documentation concerning the condition assessments and proposed repair and rehabilitation strategies, drawings and details, and specifications for the Shipyard Village Condominiums at Litchfield by the Sea, Pawleys Island, SC. SKA visited the subject site on September 4, 2008 to briefly review existing conditions. SKA has reviewed the following documents:

1. "Preliminary Concrete Inspection" dated October 22, 2007 prepared by Procon & Associates, Inc.
2. "Corrosion Condition Assessment: Shipyard Village" dated January 17, 2008 prepared by Tourney Consulting Group (TCG), L.L.C.
3. "Shipyard Village Condominiums Repair/Recondition Project Specifications" in the "Request for Proposal: Shipyard Village Condominiums Repair/Recondition Project" dated May 13, 2008 prepared by HICAPS, Inc.
4. Project Drawings and Details:

a. Architectural and Structural Drawings and Details by Gary Freeman Architect, Inc., MEC Engineering Services and Kyzer &Timmerman Engineers, Inc. dated at or about May 13, 2008
b. Galvanic Cathodic Protection Details prepared by Tourney Consulting Group, L.L.C. dated February 20, 2008

In general, parts of the design drawings lack detail and provide conflicting information. They should be revised prior to construction. Additionally, construction sequencing is not apparent through design documents. A plan of action should be required with a detailed sequence of specific events so that potential issues can be resolved prior to construction.

Concrete Repairs and Cathodic Protection:

SKA believes that the methodology to evaluate the degree of corrosion and level of contamination within the structural elements was technically sound; however, SKA has several concerns regarding the appropriateness of the proposed repair methodology and the completeness of contract documents. SKA believes that the measured level of contamination and atmospheric conditions do necessitate structure-wide repair and selective protection as indicated in the findings of the report prepared by TCG.

It is SKA's opinion that the possibility of replacing the prestressed precast hollow core slabs should be evaluated. The TCG report indicated that there were tendons with reduced cross-sectional area and relaxed tensile stresses. TCG indicated that many panels had longitudinal cracks from corrosion of prestressing strands. In addition to possible economic benefits from removal and replacement of the precast hollow core slabs, the removal of some or most could be highly desirable from a structural or serviceability standpoint depending upon the severity of corrosion in any individual panel from known or hidden conditions. New panels could be made with concrete proportioned to be highly durable in coastal environments.

In the event that repairs proceed approximately as outlined, SKA recommends the following items be addressed by the designers prior to proceeding.

1. Repair and Cathodic Protection of the Prestressed Hollow-Core Panels:

   a. **SKA has concerns regarding the addition of #6 mild reinforcing steel bars where prestressed steel strands have deteriorated, especially if repairs become extensive and several strands and/or long lengths of strands have deteriorated in localized areas. We feel that it is not an appropriate repair in this situation.**

      The addition of #6 mild bars will not restore the full functional capacity offered by virgin prestressing steel. Prestressing strands provide high tensile capacity and precompress the concrete. Because prestressing strands are highly stressed during fabrication of hollow core slabs, reduction in cross-section could overstress the strands and lead to yielding and possibly catastrophic fracture of individual strands.

      The plans are not clear as to limitations of #6 bar addition with regards to acceptable length or locations of repair or the acceptable number of corroded tendons within a slab before more extensive measures must be taken. As indicated in the contract drawings, coatings and carpet could hide a significant amount of distress. This might make the scope of repair become infeasible or unsafe. If a large portion of concrete is removed, concrete at anchorage points or bonded locations could rupture, leading to a potentially unsafe condition. Also, if large surface areas require removal, a significant amount of serviceable and structural capacity could be compromised. Chipping into prestressed panels is highly specialized. Inadvertently chipping into prestressed steel can significantly reduce capacity and pose potential imminent safety concerns. The report by TCG indicated locations where the prestressing steel had significant reduction in tendon

cross-sectional area and "corroded prestressing tendons with no remaining tension" were evident. Addition of mild steel in the small confined space offered in 6" deep hollow core slabs would be difficult to implement satisfactorily while achieving necessary bond and lap. When supplemental bars are added, bond between the repair and base material and load transfer to steel reinforcement is essential to maintain structural capacity. Lap lengths on each side of a repair must be sufficient to develop the added mild reinforcing steel bar. Provided details do not guarantee this.

Demolition to 0.75 to 1 inch clear around the bar, as indicated in construction documents, in areas of repair would be very difficult without breaking through into the cores if done prior to grouting. There is a potential for fracturing a considerable amount of base material and otherwise damaging the panels. The sequencing of construction will have a significant impact on this repair. Cores will likely be filled last, but this will add dead load after repairs that might cause more distress depending upon the severity of corrosion and amount of repair. Scheduling for this is important and should be laid out prior to construction.

b. **SKA has concerns that the increased dead load from pumping hollow cores full with grout could adversely affect safe load-carrying capacity and/or serviceability. SKA also has concerns with bond performance and electrical conductivity between the grout and concrete when little or no surface preparation is done prior to application without mock-ups and appropriate testing.**

Filling hollow cores will add extra dead load (approximately 50 percent added dead load) and reduces allowable live load capacity that must be verified. Extra dead load could lead to serviceability issues such as increased deflection that could be aesthetically unacceptable and/or promote ponding water or added

cracking, especially with a reduction in effective prestressing from corroded strands. Depending upon the severity of corrosion, this load might provide significant deflections during repair, leading to further distress. Shoring may be necessary, depending upon the severity of corrosion and construction sequencing.

It is imperative that there is good bond between the grout and concrete substrate to provide an electrical path for the galvanic anodes to protect against corrosion. There is a potential that the cells in the slab will be dirty, dry, smooth and/or contaminated. These conditions could lead to a reduced bond between the grout and substrate concrete. Additionally, grout materials should be shown through mock-ups to have sufficiently low bleed and low heat generation. Sika 212 is marketed as low bleed and low heat, but data sheets do not provide test results to confirm. Materials should be shown to have low differential shrinkage. Although the indicated grout indicates an expansion at 28 days, length change over time should be evaluated.

c. **Information in the Repair Mortar Schedule and at other locations on S1.0 in text is conflicting. Some repair mortars listed are difficult to implement in galvanic protection repairs.**

The designers should clarify between the use of materials listed in the middle column, the right column and in the Repair Mortar Schedule. Some listed materials would not easily be implemented in areas subjected to cathodic protection and if their use is intentional, strict requirements and guidelines must be offered in specifications. Even if clarified and specified correctly, a contractor might have difficulty in successfully using high resistivity patch materials in areas adjacent to the necessary low resistivity repair mortars and parent concrete. S1.0 lists a Repair Mortar Schedule that includes Sika Monitor 611. SKA is unaware of a Sika product with this name. Sika Monotop 611, Sika 122 Plus and Sika 123

Plus (the latter two indicated in the right column and again on subsequent pages) have relatively high resistivity. Sika 1000 reportedly has a 28-day ASTM C 1202 result less than 1500 Coulombs and is not in compliance with part of TCG's requirements on CP1, although it is marketed as a low resistivity material. These materials should be carefully evaluated by the cathodic protection system designer in areas that will be protected.

2. Repair and Cathodic Protection of Cantilevered Beams:

   a. Although the documents give criteria for amount of acceptable cross-sectional loss and the contractor is instructed to consult with the Engineer for loss greater than the criteria, no details are provided for repair in this event.

   b. Specifics regarding the cantilever beams are unknown, but drilling 2-inch diameter holes on a 2 x 8 grid into the beams can reduce shear capacity. Repairs must ensure that this is taken into account and that proper shoring is implemented if necessary.

3. Migrating Corrosion Inhibitors:

   a. It appears that migrating corrosion inhibitors (MCI's) are to be used on areas with hairline cracking in areas subjected to galvanic protection, in addition to the tops of the topping slabs. A specification for the application of MCI's was not observed in the provided documentation. It is unclear why an MCI is only used in areas of small cracks. This would seemingly include areas with cathodic protection. The use of migrating corrosion inhibitors such as Ferroguard 903 can be a questionable approach in coastal environments with constantly increasing amounts of chlorides. Topping slabs were shown by TCG to have very high chloride concentrations that might or might not be too high for Ferroguard 903. Sika indicates that the maximum acceptable chloride concentration when using

Ferroguard 903 is 6 lbs/yds^3 (1500 ppm) with a potential of increasing to 10 lbs/yds^3 (2500 ppm) in certain circumstances. Values in the topping slab were indicated to be about 2000 ppm.

b. The possibility of using a surface applied migrating corrosion inhibitor as a less expensive solution for corrosion mitigation in the precast hollow-core slabs was considered by SKA. However, SKA does not believe the application is the best strategy for corrosion control in this particular application due to the type of construction, condition of the structure, level of chlorides, exposure conditions, difficulty in thorough application and level of testing completed to assess the structure.

c. TCG data showed that the level of chlorides at the depth of reinforcing steel in the beams was in a range where migrating corrosion inhibitors might provide temporary benefit; however, more testing would be required to assess the typical level of chlorides if this route is chosen. Chloride levels are more important if MCI's are used than if galvanic protection is used. All faces of the beam would require application of MCI's. A breathable surface waterproofing coating would also be required over the beams to inhibit further chloride ingress. If chlorides exceed the corrosion inhibitor threshold, corrosion would occur, possibly at a faster rate. Additionally, there is the lack of historical long-term performance data for corrosion inhibitors. The proposed procedure for protecting the beams is likely acceptable as long as cores do not compromise the structural capacity.

Review of Window, Door , Cladding, Waterproofing and Handrail Repairs:

1. Overall the information on the plans is lacking detail.

   a. The drawings are lacking in information to properly understand the complete scope and in some cases do not match other enlarged plans. Additional notes for

scope clarification, detail information, and proper hatching would help to ensure no confusion of materials. Some partial plans and enlarged plans do not match regarding hatch patterns and could be misinterpreted.

b. Sections are also lacking notation to ensure installation of the details is proper. Many details and sections are unclear or do not coordinate from one sheet to the other based upon materials or location of the materials in relation to other materials.

2. SKA believes that the removal and replacement of the existing windows and doors to correct the water intrusion, appears to be necessary based upon the age and condition of the windows and doors. However, some of the details observed and information provided within the contract documents are lacking in technical information and approach. See the following list of comments.

   a. Window pans should not discharge to the exterior of the building facade; the pans should discharge into the drainage cavity of the cladding. Discharging to the exterior as detailed allows for the bottom of the pan flashing assembly to take on water and also allows for the lower area of the window and pan to be fully pressurized during a wind/rain event. It is also difficult to seal the exterior corner transition of the pan to jamb as detailed with the ends extending to the exterior. Additionally the isometric details on A7 do not match the sections shown based upon the jamb to sill intersection if the jamb end dam extends to the exterior as shown on section 9/A6.

   b. SKA does feel that the door should have a separate pan flashing. However, as detailed, it is unclear if the door is to be secured into and through the pan flashing or if the rear clip is to be used for securement. SKA does not recommend the attachment through the pan flashing. In addition, it has been SKA's experience that the rear clip only will not calculate for wind loading in the negative direction.

The fabrication for the metal pan flashing should be installed into a reglet that is full of sealant. This installation will allow the pan flashing to be terminated into a material that will allow for a proper transition of the new deck coating into the pan flashing. This will create a monolithic transition.

c. The pan flashing as detailed will allow for the bottom of the door and pan flashing assembly to take on water and also allows for the lower area of the window and pan to be fully pressurized during a wind/rain event. Additionally, there is no information on the drawings regarding how the rear of the door is sealed to the pan flashing. This condition is difficult and should be reviewed carefully by the design team. If the jamb to sill transition and the rear of the pan flashing to door is not all properly configured and sealed, this area will be a source of water intrusion.

d. Most manufacturers' details require a sub-sill (or pan) below the lower extrusion, with end dams that secures the door extrusion and tank. This sub-sill does not appear to be present in the detail as illustrated. The installation of the sub-sill and its integration into the door/flashing assembly can be critical to the performance of the assembly (see item "c" above).

e. It appears that the deck coating is turning into the opening below the sill pan flashing. As stated within the item "b" above, a monolithic transition onto the top of the pan is preferred to provide continuity of the deck coating with the front leg of the sill pan flashing set into a cut reglet. However, if the deck coating is installed as illustrated under the pan, the use of a metal pan could possibly be eliminated. This consideration is only acceptable if, the deck coating is properly turned into the door opening and detailed up at the rear and up at the jambs to create a monolithic pan flashing. This design should only be considered as an option if cutting of the reglet cannot be achieved.

f. The isometric at the door does not match the profile shown in the section at the lower corner. There should be a jog in the pan if fabricated as shown in the section at the sill. Is the exterior leg is in line with the stucco?

g. Also the curb should step in and out at the door. It is unclear in the documents if this curb is new or existing.

h. There is little or no information regarding the metal fabrication requirements, securement or material information. Regarding pan fabrication, pans should turn up as detailed; however, the vertical pan height is not shown and is critical in the design unless the pan is to be sealant dependent.

i. The anchorage locations on the doors and windows are not shown in the sections and details. Although the size and number of fasteners are typically the window and door manufacturers' responsibility, the location can be shown and should be shown to ensure proper location for fastener edge distances in the substrate as well as the window or door component. This can be very critical and in some case could result in a detail or section being shown that cannot be installed.

j. It appears that none of the window and door details is shown with sub-frames as noted in the specifications. The extrusions shown in the details also do not have sealant extrusion returns to capture the sealant bead bonding leg as required for a properly designed and installed sealant bead. The sealant cannot be bonded to only the thin edge of the extrusion as shown in many of the details.

k. There is no visible provision to prevent water intrusion (flashing) or for vertical movement in the window frames at detail 4/A9. Presently, the panel runs continuously by this area with the panel outboard covering the face of the slab. Shouldn't this area be drained? How will water be evacuated that enters this area?

3. SKA believes that the stucco details are also lacking information to properly install the material.

   a. SKA strongly recommends (2) layers, not one, of weather barrier (felt). One 30# layer and one 15# layer should be installed. This is also recommended by most nationally recognized organizations. One layer is primarily for protection and one is truly for weather protection. The exterior sacrificial layer will also provide benefit regarding weather protection but experience shows that the stucco will be pushed up against the felt during the installation of the scratch coat and somewhat close the "drainage" area.

   b. The stucco tie-in details are unclear. The existing material against the existing CMU typically will be bonded fairly well and be difficult to remove. The details do not address what to do at these areas nor is there any actual tie-in detail regarding the "feathering back" or tie-in of the existing lath to new lath. There is no information regarding the aesthetic issues of the difference in textures.

   c. All stucco tie-in conditions are noticeable unless separated by a sealant joint or transition at a corner. This is due to the change in texture, not color. Although color will mask some of the tie-in, the texture will be different and will never completely match. SKA strongly recommends this be clearly understood prior to beginning this project or provisions be provided to modify tie-ins. Please ensure that all expectations regarding tie-ins are clearly understood.

   d. Additionally, the dimension shown for some of the tie-ins is 4" (and is not called out at all on others) from the new unit or floor. This dimension is almost the length of the accessory alone and will not allow for "appropriate" tie-in or installation of field lath beyond the accessory. As noted within this report, there is no information on the lath (new to existing) tie-in and if not present could result, if not addressed, in future cracking.

e. There is no indication where control joints should be installed on the drawings and there is no indication of any joints between changes in back-up materials shown on the drawings, although the specifications call out for both requirements. SKA recommends this be shown on the drawings to ensure that these conditions and details are properly incorporated to prevent cracking of the cladding and to ensure that the flashing is properly installed between transitions.

4. The following are concerns regarding the waterproofing and sealant items.

   a. There does not appear to be any backing materials at the sealant joints. This is not in accordance with most sealant manufacturers' recommendations and industry standards and, in most cases, will result in three-sided adhesion resulting in a sealant failure.

   b. Some of the materials need (*i.e.*, waterproofing, metal, flexible flashings, etc.) additional information regarding length or location to ensure that the materials are properly lapped vertically or horizontally.

   c. There are no transition details for any of the metal flashings regarding horizontal laps, inside corners or outside corner.

   d. Deck coating transitions are critical to ensure that the system will perform as designed to prevent water intrusion. Deck coating transitions should be properly detailed with all materials called out to prevent improper installation. As shown, the lower transition of the stucco has a piece of metal flashing with a bead of sealant below the metal that cannot be installed without extreme difficulty if at all. In addition, the waterproofing as illustrated appears to have three transitions within less than 1". This is very difficult with the recommendation of a 45-degree bead of sealant at transitions as recommended by most urethane manufacturers and could create an installation issue resulting in a waterproofing failure.

5. The existing hand/guardrail details are unclear regarding co-ordination between the base bid, contract document drawings and specifications. See the following comments and the specifications section of this report:

    a. The hand/guardrail detail is noted to be removed, reworked and reinstalled in the base bid under the "General Notes and Scope Of Work" on sheet A1. However, there is no clear direction on how or what to do with the old anchors in repair detail 5/A9. Will the handrails be moved inward with new anchors? Will the old anchors be reused? SKA recommends that a reinstallation detail be provided for clarification between the new hand/guardrail installation and existing hand/ guardrail re-installation.

    b. Hand/guardrail detail 5/A9 appears to be the alternate bid to install a new hand/guardrail. SKA is concerned with the installation of anchors with the existing plank reinforcement. The embedment length, size, material, etc., should be clearly specified. Additional information should be provided for fabrication of the rail.

6. The following are other general items that were observed that lacked information regarding installation, materials, fabrication, etc.

    a. How does the interior drywall tie-in and attachments occur?

    b. None of the wood blocking is called out for attachment, size of material, etc. If pressure-treated blocking is used, as noted in the specifications, then ensure that the corrosion protection of the wood and fasteners is coordinated to prevent corrosion of the fasteners with the preservatives of the wood. In addition, no edge distances for securement of the wood blocking are noted. This is critical in design for the window and door attachments if the doors and windows are secured into the wood blocking.

Specifications:

1. The hand/guardrail section does not match the details shown for attachment. The specification section refers to sleeved connections.

2. There is no anchorage information for wood blocking attachment regarding embedment, spacing, size, etc. Who is to design this connection of the blocking to the structure?

3. The sealant section of the specification only lists Sonneborn NP-1 which is a urethane sealant. This is appropriate at the locations where the urethane deck coating is installed. However, why not use a silicone at the windows, doors, vertical joints, etc., to ensure compatibility with the wall coating that is silicone based? If urethane sealants are used with a silicone coating, the sequence of installation is critical. Urethane sealant will not adhere to silicone coating substrates.

4. The sealant section also requires or notes using backing material but no specific material is called out or specified in the drawings or specifications.

5. Why are the door warranty requirements less than the requirements for the window warranty?

6. It is our opinion that G-60 coating on stucco accessories within this environment is not acceptable. The use of 99% zinc accessories, however, would be a better design choice in this corrosive environment rather than G-60 coating.

7. It appears that two finish systems are specified. Which system is being used to achieve texture?

8. Within the "Portland Cement Plaster" section 3.6, a designation is shown for "cutting and patching". However, the location, detail, amount, or authorized person to designate locations of repair is not called out or shown. This information is critical to any crack,

blister, delamination or spall repair and could result in change orders if tie-ins are not neat, existing stucco areas are extremely cracked or not properly monitored. Is this to be done on a T&M per lineal foot and under whose direction?

9. In addition, if the crack repair option is to route and seal then these areas (crack repairs) will be highly visible through the new coating. Has this approach been approved?

10. Is it clear to all the owners and HOA that all Portland repairs that are properly ground back and properly tied in with lath will not match regarding texture and be visible? Please ensure that all expectations regarding tie-ins are clearly understood.

Regards,

SUTTON-KENNERLY & ASSOCIATES, INC.
Building Investigation and Diagnostic Department

David G. Tepke, EI

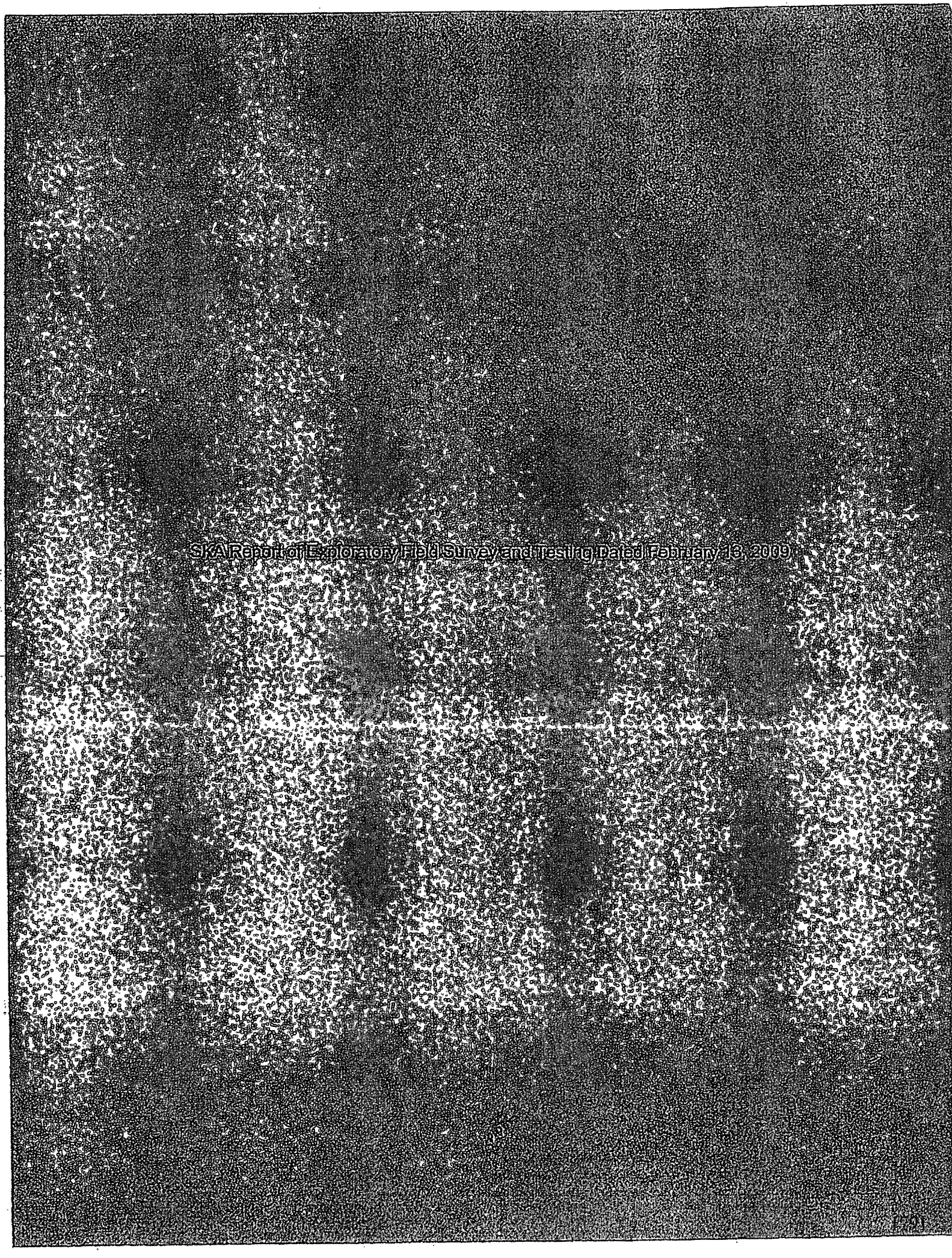
Timothy Norton, Senior Designer

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cc: Shipyard Village - Tim Cassidy (via tmcassidv@optonline.net)
SKA - SPR

SOUTH CAROLINA
SUTTON-KENNERLY & ASSOCIATES, INC.
No. C00699
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
No. 13747
CHARLES LEE ERNEST, JR.


SKA Report of Exploratory Field Survey and Testing Dated February 13, 2009

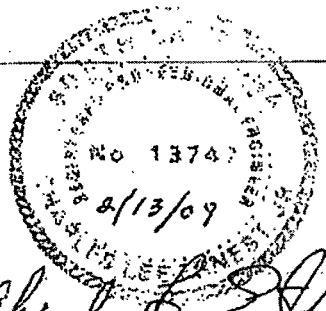
SKA
CONSULTING ENGINEERS

EXPLORATORY FIELD SURVEY AND TESTING

SHIPYARD VILLAGE CONDOMINIUMS
AT LITCHFIELD BY THE SEA
PAWLEY'S ISLAND, SOUTH CAROLINA

SKA Project Number 080489.1

February 13, 2009



Stephen P. Robinson, P.E.

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TABLE OF CONTENTS

	PAGE
Introduction and Objectives	1
Scope of Exploratory Work	1
Conclusions	2 - 5
Recommendations	6 – 7
Opinion of Construction Costs	8

APPENDICES

- Summary of Observations
- Results of Chloride Tests
- Selected Photographs

Conclusions

After considering the results of our testing, considering the structural composition of the building, and considering the conditions we observed during our field work, SKA has concluded the following:

1) The existing "privacy walls" at each end of each balcony are load-bearing walls that are composed of grout filled concrete masonry units (nominal 8" masonry) with steel reinforcement. There is typically little or no distress within the privacy walls. There are no cantilevered concrete beams within the privacy walls except the cantilevered beams that support the base of the privacy walls (below level one).

   There is no apparent reason to replace the walls unless doing so would provide a more economic method of replacing the balcony floor slabs. The information provided to us by a qualified contractor indicates that there is no economic incentive to remove the privacy walls during replacement of the balcony slabs.

2) During a visual survey of the balconies from ground level, cracking was observed in all eight stacks within Building A and within seven of the eight stacks in Building B. The chloride tests from Tourney Consulting Group reflect chloride levels at the depth of prestressing steel within the balcony slabs that are above the values that are typically recognized as conducive of corrosion. The observed cracking consisted typically of longitudinal cracks at the approximate location of the reinforcing tendons.

   Some balcony floor slabs have experienced severe corrosion and obvious damage that is structurally detrimental. Based on our observations (from ground level), it is our opinion that additional cracking would likely become visible if the coatings on the bottom surfaces of the balconies were removed. Furthermore, it is our opinion that the cracks are indicative of corrosion of the pre-stressed tendons and that the presence of corrosion on the tendons raises serious concerns about the integrity of the tendons.

   In general, the presence of chlorides in pre-stressed concrete members (such as hollow core panels) is a major concern because the corrosion of pre-stressed tendons is a very serious threat to the integrity of a pre-stressed member. Prestressed tendons are composed of wires that are wound together to form a cable-like tendon. Corrosion damage of the individual wires can significantly reduce the capacity of the tendon and the capacity of the structural member, whereas corrosion of a conventional steel reinforcing bar requires the loss of more material (i.e. more corrosion) before the same reduction in capacity occurs. Relatively minor distress from corrosion in prestressing tendons can be a serious problem where staining, spalling or other serviceability issues generally appear conventional reinforced concrete long before significant capacity is reduced.

replaced. The final decision of where arc spraying is appropriate should be made after reviewing the undersides of the slabs after the coatings have been removed. The roof system will have to be replaced at any location where roof panels are replaced.

7) There are many reported leaks in the windows and doors at the balconies and sidewalls. The windows at the walkways also reportedly leak. We observed many glass panels in the window system where the seals have broken and condensation had occurred with the glass panes. We also observed numerous locations where sealants had been applied on the exterior window frames in an apparent attempt to address leaks. In general, we did not observe any conditions that indicated that the windows and doors should be retained.

Our previous experience with windows and doors of similar age in similar environments indicates that replacement is a more economical and feasible solution than attempting to repair the existing windows and doors. All balcony doors would have to be removed in order to replace the balcony slabs. Removal of the balcony doors would also facilitate the replacement of the decayed wall framing adjacent to the doors.

8) At the floor slab edges between the typical windows, we observed limited distress at the underside of level one. Distress was not apparent at other locations because the floor edges are covered with stucco. Chloride tests at random locations reflected an elevated level of chlorides, thus indicating that is appropriate to either replace the slab edges or provide a reliable means of controlling future corrosion. Due to the considerable amount of labor required to remove the stucco, perform concrete repairs, install a cathodic protection system, and then install new stucco, we feel that the most cost effective long-term solution is to replace the slab edges. This can be accomplished while the windows are removed.

9) Underneath level one (above the parking spots), there are a limited quantity of distresses shown on the previous repair drawings at the hollow core slabs that compose the floor slabs for the units at level one. SKA has not taken powder samples from these areas and has not evaluated these distresses. These areas should be evaluated and addressed during repairs to the building.

10) There will be some miscellaneous concrete repairs at sporadic locations throughout the project that should be addressed by establishing unit prices in the base bid. Establishing unit prices in the base bid allows the pricing for such repairs to be established under competitive conditions although the exact quantities of the repairs are not known.

Recommendations

It is clear that Building A and Building B have significant problems that should be addressed in the near future in order to prevent more extensive damage and consequences of the on-going corrosion. In this regard, SKA has developed the following recommendations:

1) Proceed with repairs to Building A and Building B. The first step in this process would be the preparation of Bid Documents. Bid Documents should include drawings, specifications, and other documents as required for qualified contractors to prepare bid proposals for the work.

2) Based on our findings to date, the general scope of the repairs should include:

   A) Replacement of all balcony floor slabs at levels 1-5 with new cast-in-place floor slabs.

   B) Replacement of the walkway slabs at areas adjacent to stacks 4 and 5.

   C) Replacement of the walkway and balcony roof slabs at areas adjacent to stacks 4 and 5. This will require replacement of the roof system at these areas.

   D) Installation of zinc arc spray cathodic protection system at all walkway floor slabs to remain - this would include walkways adjacent to stacks 1, 2, 3, 6, 7, and 8 in the base bid scope.

   E) Installation of zinc arc spray cathodic protection system at all walkway and balcony roof slabs to remain - this would include walkway and balcony roof slabs adjacent to stacks 1, 2, 3, 6, 7, and 8 in the base bid scope.

   F) Replacement of the cantilevered concrete beams at the walkway areas at stacks 3, 4, 5 and 6 and the balconies at stacks 4 and 5.

   G) Installation of a cathodic protection system at the cantilevered concrete beams that support the privacy walls at (just below) level one.

   H) The removal and replacement of the concrete floor edges located between the strip windows. Recommended areas to be replaced are approximately 6" wide by 9" deep.

   I) Unit prices for various miscellaneous concrete repairs at sporadic locations not addressed by other repairs.

   J) Replacement of all windows and doors (including windows at the walkways).

K) Replacement of the exterior walls adjacent to the sliding glass doors (from the door jam to the privacy wall).

L) Installation of new rails at all balconies and walkways.

M) Installation of new waterproofing systems at all balconies and walkways.

N) Power washing the exterior of the building and the application of a new coating system on the exterior wall surfaces to remain.

O) Optional alternates to replace the walkway floor slabs, the walkway roof slabs, and the balcony roof slabs – all at stacks 3 and 6 if tendons are found structurally deficient.

3) Schedule the project to proceed such that the Bid Documents are completed no later than July 1, 2009. It will take approximately three months to prepare the Bid Documents. As soon as possible in the process of preparing Bid Documents, determine which of the buildings will be repaired first and determine if any temporary shoring will be required in either building to maintain safe conditions until both are repaired. Plan to receive bid proposals for a contract to include both buildings.

4) Schedule the project to proceed such that bid proposals (each to include Building A plus Building B) are received no later than August 1, 2009.

5) Schedule the project to proceed such that construction begins at Building A or Building B (as determined in item 3) no later than September 14, 2009, and that the repairs to that building are completed no later than May 28, 2010. The repairs for the remaining building should be scheduled to start no later than September 13, 2010, and be completed no later than May 27, 2011. This schedule will allow those that receive rental income from their property to receive the rental income from the prime rental season.

It is important to note that it will be very beneficial to the project if the construction contract is established 4 weeks or more prior to the start of construction. The additional time would allow the contractor to prepare shop drawings and order windows. Providing this additional time would likely require that the schedule listed in this report be accelerated.

6) Plan for each building to be unoccupied during construction. The individual units will typically not be accessible during the project.

Shipyard Village
Litchfield by the Sea
Pawley's Island, South Carolina

Phase 1 (One Building): September 2009 to May 2010

Phase 2 (One Building): September 2010 to May 2011

Preliminary and Refined Opinion of Construction Costs

	Preliminary Average	Adjustment	Refined Opinion
Replace and/or Protect Slabs and Beams (includes replacement/arc spraying of roof panels, roofing replacement at new roof panels, arc spraying of panels to remain, reduction of floor panels replaced)	$1,780,000	$85,520	$1,865,520
New Windows and Doors (includes addition of walkway windows)	$2,234,000	$225,000	$2,459,000
Wall Systems (adjustment: replacement of privacy walls removed from project)	$577,000	-$421,000	$156,000
Stucco and Flashings (adjustment: replacement of privacy walls removed from project)	$370,000	-$270,000	$100,000
Waterproofing and Coatings	$497,000		$497,000
New Handrails	$352,500		$352,500
Other Concrete Repairs (adjusted to include replacement of slab edges between windows, cathodic protection system at beams below level one)	$200,000	$179,000	$379,000
Interior Finishes and Temporary Walls	$326,000		$326,000
Miscellaneous Repairs	$82,500		$82,500
Mobilization, General Conditions & Scaffolding (adjusted to eliminate crane / heavy rigging for precast panels)	$1,490,500	-$125,000	$1,365,500
Overhead and Profit (~10%)	$790,000	-$31,698	$758,302
Total:	**$8,699,500**	**-$358,178**	**$8,341,322**
Alternative Additional Slab Replacement (includes additional costs for slab replacements at 3 and 6 stacks)	$0	$315,039	$315,039
Additional Overhead and Profit for Alternative (~10%)	$0	$31,504	$31,504
Total Including Additional Slab Replacement:	**$8,699,500**	**-$11,635**	**$8,687,865**

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Summary of Observations

Exploratory Openings

Our findings at the exploratory openings are summarized as follows:

No.	Location	Key Findings
1	Stack 05 End Wall: Level 3 Window Upper west jamb	o Cladding is 2" thick EIFS. o Concrete masonry is stack bond and is filled with grout. o Wood blocking beside window is exposed and painted. o Wood blocking is damp and discolored. o Ants were present. o The floor edge is covered with direct applied 7/8" thick Portland cement plaster (stucco). o Window frame sits directly on the floor slab. o A steel plate (tee?) is present over the window; however, the exact configuration is not visible without removing the window. The lintel is corroded at the edge.
2	Stack 05 End Wall: Level 3 8" x 8" Rib Just east of window	o Rib is composed of concrete masonry and is filled with grout. o The floor edge and the rib are covered with direct applied 7/8" thick Portland cement plaster (stucco). o No concrete column or beam present – the cantilevered beam at the balcony does not extend to the rib. o Concrete masonry is present below the floor edge and is filled with grout.
3	Stack 05 End Wall: Level 3 Cantilever Beam Wall Corner	o The beam is composed of concrete and is covered with direct applied 1/2" to 5/8" thick Portland cement plaster (stucco). o No concrete column is present at the building corner – the cantilevered beam bears on the concrete masonry. o The concrete masonry is filled with grout. o The cantilevered beam is approximately 24" deep. o Top of floor to top of floor height is 8'-8".

4	Stack 05 End Wall: Roof Cantilever Wall Corner	o The beam is composed of concrete and is covered with direct applied Portland cement plaster (stucco). o No concrete column is present at the building corner – the cantilevered beam bears on the concrete masonry. o The concrete masonry is filled with grout. o The cantilevered beam is approximately 16.5" deep. o The distance from the bottom of the beam to the top of the roof is approximately 78".
5	Stack 06 End Wall Level 2	o No cantilever beam is present within the privacy wall. o All concrete masonry below slabs is filled with grout except one cell where a void was discovered. o The cell with the void contained reinforcing steel. The size of the steel bars was at least #6 bars (viewed through a hole).
6	Unit A14 Balcony Wall (top) South	o No cantilever beam is present within the privacy wall. o All concrete masonry below slabs is filled with grout. o Tendons in bottom of level 2 balcony slab are severely corroded – there are cracks over all tendons.
7 & 8	Unit A14 Balcony Wall Door Jamb Head and Sill	o Metal lath is not corroded. o One layer of #15 building felt is present. o It appears that the stucco has been replaced and is the not original cladding at areas directly adjacent to the door.

The exploratory openings and holes indicate that the building structure (at level one and above) is primarily composed of load bearing concrete masonry that is filled with grout and selectively reinforced. Occasional voids (partial fill) in the grout fill were found. Concrete beams cantilever from the main structure to support the walkway slabs and selected balcony slabs (at one end of stack 04 and stack 05 only). The concrete beams are embedded an undetermined distance into the load bearing masonry walls and are not supported (at either end) by concrete columns or walls. The stair landing slabs are composed of reinforced concrete. The concrete beams that support the privacy walls (just below level one) are concrete. The construction at Building B was found to generally mirror the findings at Building A.

Shipyard Village (080489.1) - Chloride Content Test Results

Acid soluble chloride content measured by the RCT method

TABLE 1. CALIBRATION

%CL(vol)	0.005	0.020	0.050	0.500	Generally accepted acid soluble chloride threshold to initiate corrosion is approximately 0.03 to 0.06 percent by mass of concrete, but can vary depending on a variety of factors.
mV	106	75.2	52.7	-4.7	
	102	73.4	52.5	-3.7	
Avg. mV	104.00	74.30	52.60	(4.20)	

TABLE 2. MEASUREMENT RESULTS FOR CANTILEVER BEAMS AND SLAB EDGES

Sample #	mV(1)	mV(2)	Avg. mV	%Cl (wt of conc)	Comments
1a	109.0	112.1	110.6	0.0036	Bldg. "A" floor line between strip windows (floor of Unit A58) (0" to 1/2")
1b	90.5	86.7	88.6	0.0100	Bldg. "A" floor line between strip windows (floor of Unit A58) (1/2" to 1")
2a	58.8	58.6	58.7	0.0380	Bldg. "A" Level 5 floor line between strip windows at Unit A53 (0" to 1/2")
2b	70.0	71.0	70.5	0.0230	Bldg. "A" Level 5 floor line between strip windows at Unit A53 (1/2" to 1")
3a	49.2	51.1	50.2	0.0510	Bldg. "A" Cantilever beam under Unit A18 (west end) (0" to 1/2")
3b	61.5	63.0	62.3	0.0330	Bldg. "A" Cantilever beam under Unit A18 (west end) (1/2" to 1")
4a	70.6	68.4	69.5	0.0240	Bldg. "A" Cantilever beam under Unit A15 (closest to ocean) (0" to 1/2")
4b	61.1	59.0	60.1	0.0350	Bldg. "A" Cantilever beam under Unit A15 (closest to ocean) (1/2" to 1")
5a	63.3	67.9	65.6	0.0280	Bldg. "B" Cantilever beam under Unit B14 (closest to ocean) (0" to 1/2")
5b	75.5	79.7	77.6	0.0170	Bldg. "B" Cantilever beam under Unit B14 (closest to ocean) (1/2" to 1")
6a	63.9	67.8	65.9	0.0280	Bldg. "B" Cantilever beam under Unit B11 (farthest from ocean) (0" to 1/2")
6b	42.3	43.9	43.1	0.0660	Bldg. "B" Cantilever beam under Unit B11 (farthest from ocean) (1/2" to 1")
7a	102.0	106.8	104.4	0.0047	Bldg. "B" Floor edge at floor level 4 floor between strip windows (0 to 1/2")

7b	91.1	92.4	91.8	0.0086	Bldg. "B" Floor edge at floor level 4 floor between strip windows (1/2" to 1")
8a	77.9	79.2	78.6	0.0160	Bldg. "B" Level 4 floor line between strip windows at Unit B46
8b	96.0	95.7	95.9	0.0071	Bldg. "B" Level 4 floor line between strip windows at Unit B46

*Testing performed in accordance with RCT manual of the testing equipment manufacturer (Germann Instruments).

1/30/2009
JTH

Shipyard Village (080489.1) - Chloride Content Test Results

Acid soluble chloride content measured by the RCT method

TABLE 1. CALIBRATION

%CL(vol)	0.005	0.020	0.050	0.500
mV	108.7	75.3	52.4	-5.2
	102.5	72.6	49.9	-5.2
Avg. mV	105.60	73.95	51.15	(5.20)

Generally accepted acid soluble chloride threshold to initiate corrosion is approximately 0.03 to 0.06 percent by mass of concrete, but can vary depending on a variety of factors.

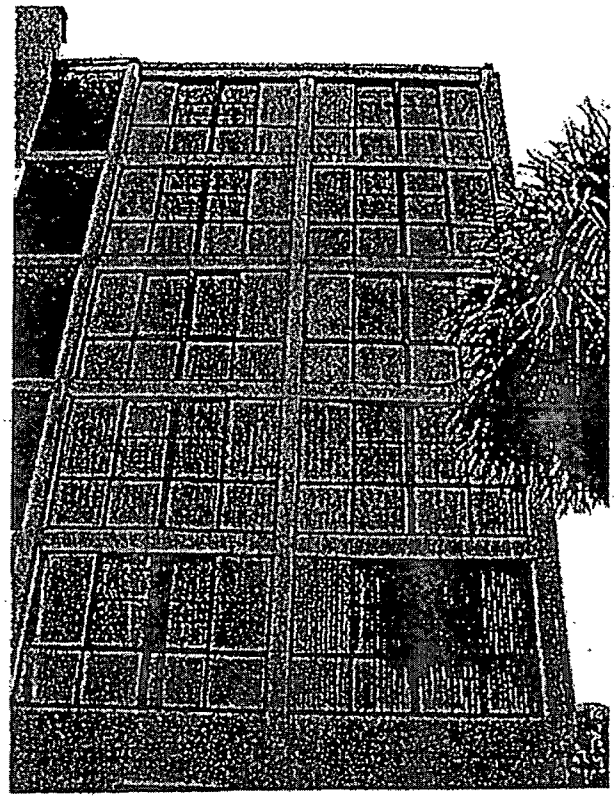
TABLE 2. MEASUREMENT RESULTS FOR BALCONY AND WALKWAY SOFFITS

Sample #	mV(1)	mV(2)	Avg mV	% Cl (wt of conc)	Comments
9a	106.0	106.0	106.0	0.0048	Bldg. "A" Walkway soffit outside unit A17 near elevator (1/4" to 3/4")
9b	100.3	105.1	102.7	0.0055	Bldg. "A" Walkway soffit outside unit A17 near elevator (3/4" to 1 1/2")
10a	100.4	104.5	102.5	0.0055	Bldg. "A" Walkway soffit outside unit A51 (1/4" to 3/4")
10b	129.9	139.1	134.5	0.0030	Bldg. "A" Walkway soffit outside unit A51 (3/4" to 1 1/4")
11a	25.6	26.3	26.0	0.1350	Bldg. "A" Balcony soffit outside unit A54 (1/4" to 3/4")
11b	34.2	35.7	35.0	0.0940	Bldg. "A" Balcony soffit outside unit A54 (3/4" to 1 1/4")
12a	100.9	101.6	101.3	0.0059	Bldg. "A" Walkway soffit between units A57and A58 (1/4" to 3/4")
12b	119.7	122.1	120.9	0.0030	Bldg. "A" Walkway soffit between units A57and A58 (3/4" to 1 1/4")
12c	142.5	145.1	143.8	0.0030	Bldg. "A" Walkway soffit between units A57and A58 (1 1/4" to 2")
13	70.6	72.0	71.3	0.0210	Bldg. "A" Balcony soffit outside unit A58 (1/4" to 3/4")
14a	50.3	51.9	51.1	0.0500	Bldg. "B" Balcony soffit outside unit B53 (1/4" to 3/4")

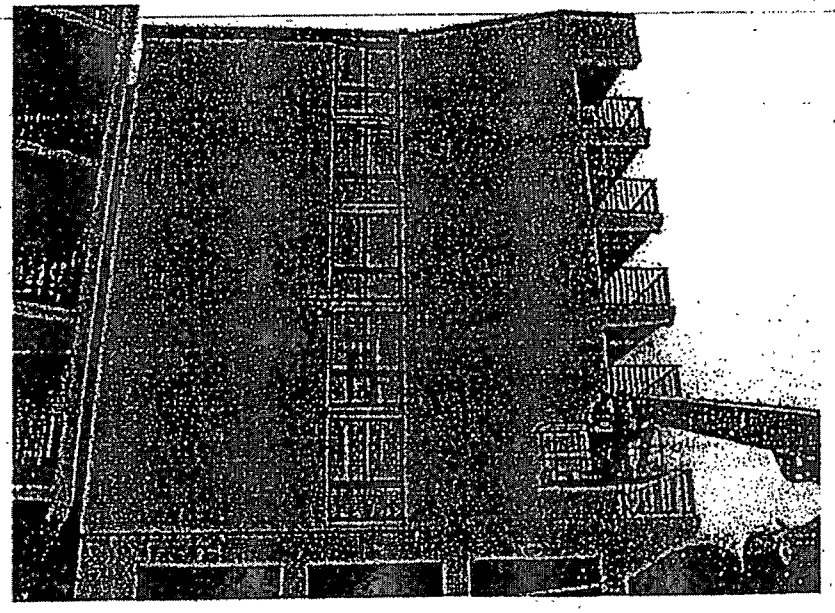
14b	70.5	71.6	71.1	0.0210	Bldg. "B" Balcony soffit outside unit B53 (3/4" to 1 1/4")
15a	25.0	25.9	25.5	0.1400	Bldg. "B" Balcony soffit outside unit B55 (1/4" to 3/4")
15b	84.7	85.8	85.3	0.0120	Bldg. "B" Balcony soffit outside unit B55 (3/4" to 1 1/4")
16a	37.4	38.0	37.7	0.0820	Bldg. "B" Walkway soffit outside unit B55 (1/4" to 3/4")
16b	96.7	99.1	97.9	0.0066	Bldg. "B" Walkway soffit outside unit B55 (3/4" to 1 1/4")
17a	79.4	82.6	81.0	0.0140	Bldg. "B" Walkway soffit outside unit B58 (1/4" to 3/4")
17b	126.8	133.1	130.0	0.0030	Bldg. "B" Walkway soffit outside unit B58 (3/4" to 1 1/4")

*Testing performed in accordance with RCT manual of the testing equipment manufacturer (Germann Instruments).

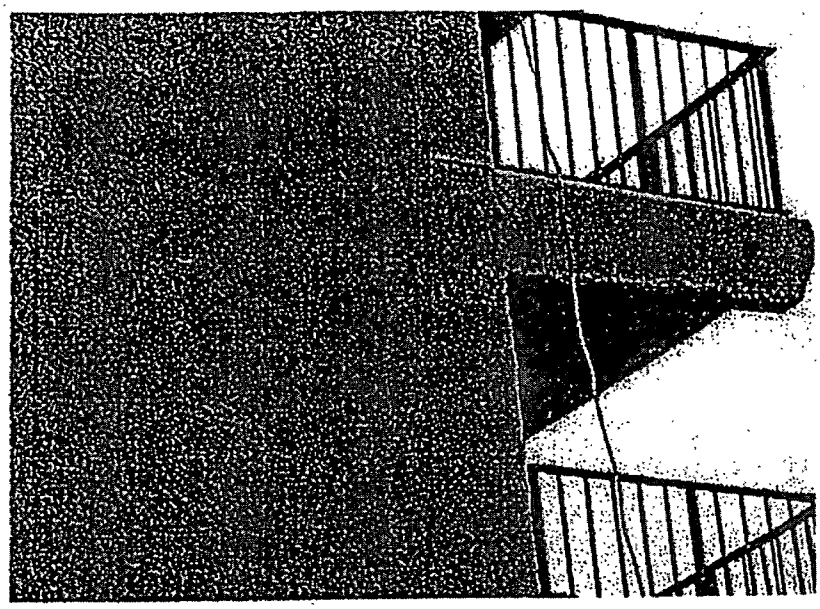
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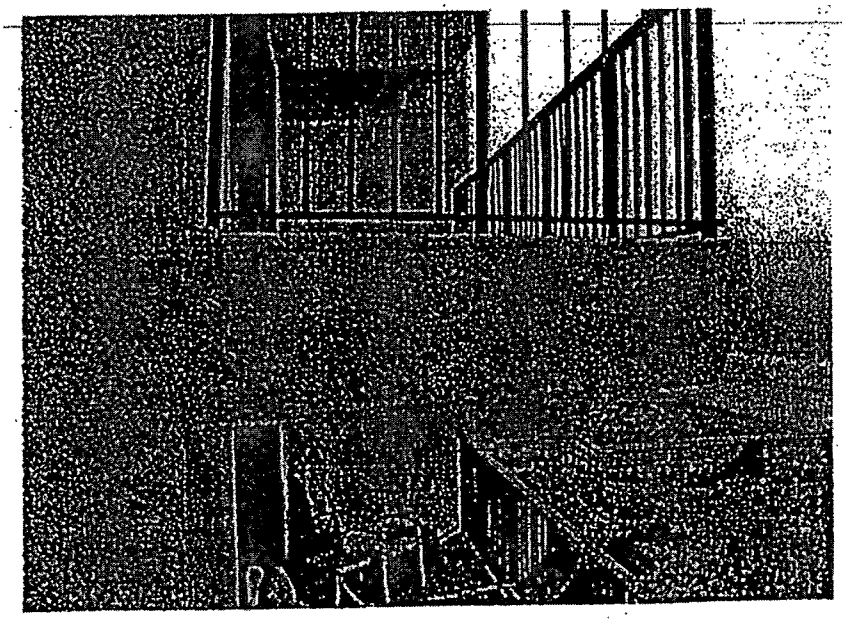
Windows at Stack 8



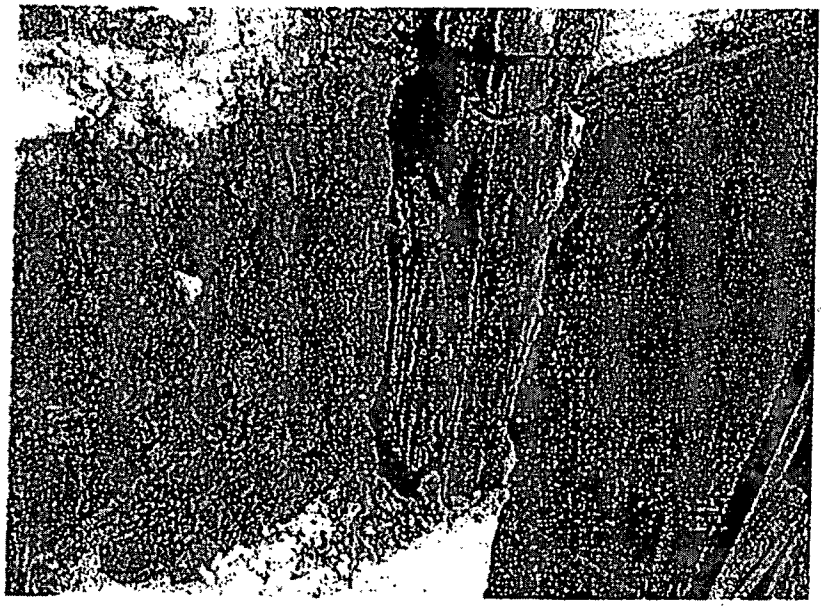
End Wall at Stack 5



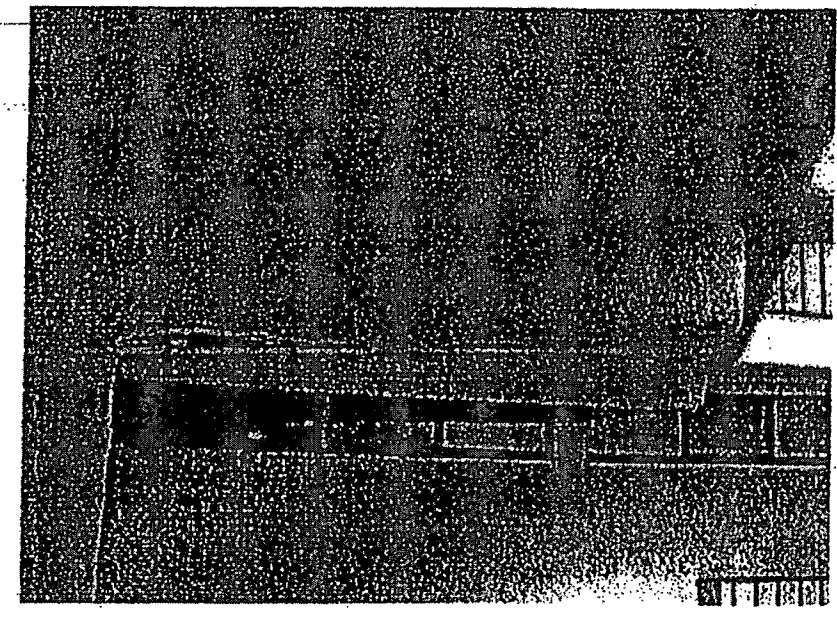
Test Cut at Cantilever Balcony Beam



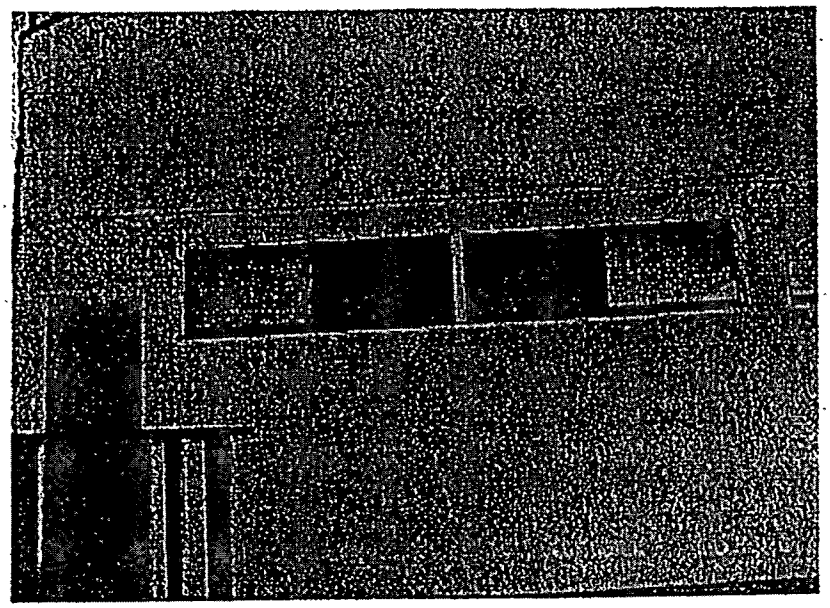
Crack in Stucco at Balcony Beam



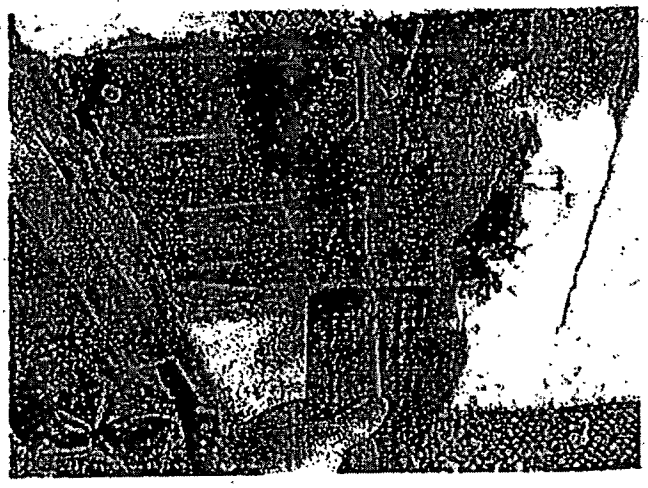
Test Cut at Window in End Wall



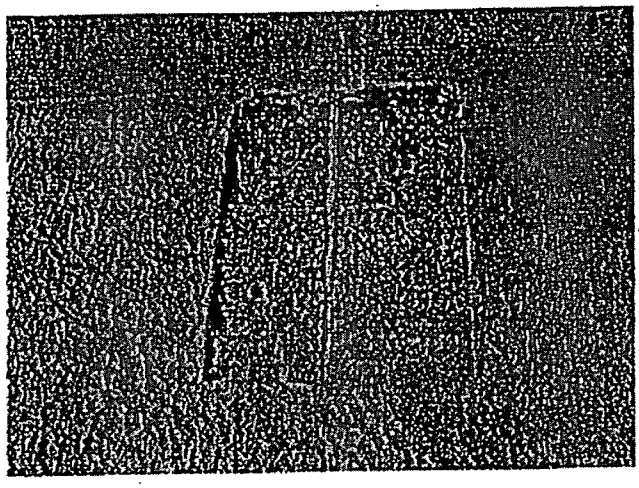
Walkway Beam with Corrosion Damage



Typical Walkway Beams Near Stack 4



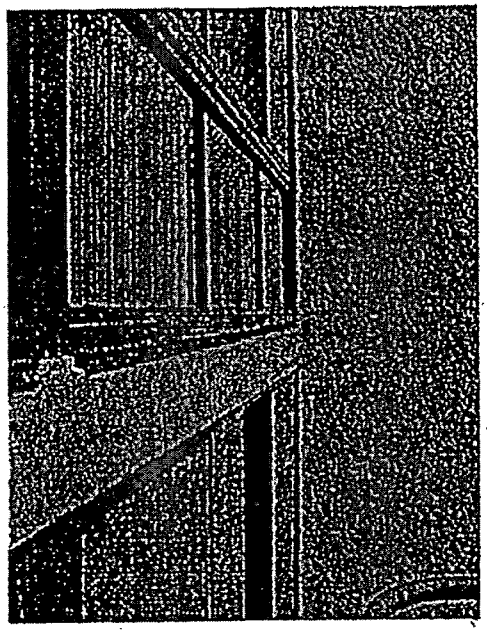
Test Cut in Stucco Adjacent to Balcony Door



Test Cut in Stucco at Privacy Wall



Severe Corrosion Damage Visible from A14 Balcony



Typical Floor Edges between Strip Windows



Cantilever Beam below Level One

SKA CONSULTING ENGINEERS

Sutton-Kennerly & Associates, Inc.
300 Pomona Drive
Greensboro, NC 27407-1620

Telephone 336 855 0993
Fax 336 855 6066
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To: Ms. Vicki Gallagher, CMCA, AMS (vicki.gallagher@kadiehl.com) KA Diehl

From: Stephen P. Robinson

CC: file, cle, thn, dgt, spr - SKA

Date: July 30, 2009

Re: Structural and Facade Repairs for Shipyard Village – Buildings "A" & "B"
SKA Project No. 080489.3

Ms. Gallagher,

Per the request of the Council of Co-owners, SKA has generated the following response to the question "*Why are the windows and doors being replaced?*" with regard to the Structural and Facade Repairs for Shipyard Village – Buildings "A" & "B":

1. The balcony doors must be removed in order to repair the concrete slab at the balconies and to replace the stud walls adjacent to the balcony doors. The individual windows in the sidewalls must be removed in order to repair the exposed wood blocking at the perimeter of the window that is decaying. The window walls must be removed in order to repair the floor slab edges. The current Building Code requires impact resistant glass in all new windows and doors. The original windows do not comply with this requirement. The Building Code official will require all windows and doors that are removed during the project to be upgraded to meet the current Code before being reinstalled. It is not technically feasible to upgrade the original window and door units; therefore, any window or door that is removed will have to be replaced in order to meet the Building Code requirements.

2. Aside from Building Code issues, it is not reasonable or feasible to remove and reinstall the existing units during this repair project because:

    a. The original windows and doors are approximately 20-25 years old and have reached the reasonable service life for coastal environments. There is considerable visual evidence to support the need for replacement:

        - Corrosion and deterioration of the securement (fasteners, nailing flanges, etc.)
        - Leaking as evidenced by interior staining, cracking / split gypsum, peeling gypsum
        - Corroded frames
        - Corroded sill tracks
        - Deterioration of wood blocking



- Insect infiltration at the perimeters
- Voids and holes
- Failed glazing

b. Even if the Building Code would allow removal and reinstallation of the existing windows and doors, an undetermined number of windows and door units would still have to be replaced due to decay and/or other conditions that would not be discovered until construction is underway. There is a very significant lead-time required for fabrication of new windows (8 to 12 weeks). It is not reasonable to expect a contractor to commit to a firm completion date (for the project) with an unknown number of windows and doors to be replaced. The condition of the windows and doors would change the schedule of the project dramatically. The risks associated by this approach will make knowledgeable general contractors less likely to bid the work.

c. Even if the Building Code would allow removal and reinstallation of the existing windows and doors, damage would occur to the existing units during the removal and reinstallation process (even with a careful window subcontractor). Aged gaskets and seals will crack or fail during this process, frames will rack and/or warp, etc. The damage may not be apparent until construction is completed. This potential for damage will cause the subcontractors to exclude all window and door assemblies from warranties and to be less likely to enter a bid proposal for the work. There would be a significant risk that new leaks would be introduced into the building due to damage that occurred during the removal and reinstallation process. The potential for dispute would be significantly increased.

d. It is considerably more expensive (on a per window/door unit basis) to purchase and replace windows and doors in limited quantities. There are fixed costs for set-up for fabrication, show drawings, etc. that dramatically increase the cost on a per window/door unit basis. Secondly, general contractors and subcontractors (if choosing to bid) will increase their labor costs significantly (on a per window/door unit basis) due to the risks described previously.

e. Even with new structural repairs, coatings, sealants, etc. an envelope system is only as good as its weakest link. The windows and door openings play a critical role in the building envelope of a structure and how it performs. If not replaced, then leakage will continue.

f. If only portions of the windows and doors were to be replaced, the aesthetic effect on the building could be significant due to the variation in the appearance of the window and door systems.

3. Other key information to consider when addressing window and door issues:

   a. Window and door units are only part of the concern with regard to window and door systems. The perimeter flashing is a part of the window and door system. If either the window/door unit or the perimeter flashing are compromised, then leakage can occur. It is critical that the perimeter flashing system be coordinated with the window and door systems so that the window/door units and perimeter flashing perform as an effective system.

   b. Overall, it is very important to realize that the windows and doors are the most sophisticated components of the exterior wall cladding system. The performance of the window and door systems is a major contributor to the performance of the wall cladding system. In order to provide an effective cladding system, it is critical that the window and door systems (with all associated flashings and water barriers) be coordinated with the cladding system.

   c. The most reasonable method for coordinating the window and door systems (with all associated flashings and water barriers) with the cladding system is to have a qualified professional design and review the installation of these systems. This allows for a design to be developed that coordinates the water barriers within the cladding systems with the perimeter flashing system, coordinates the perimeter flashing system with the window/door unit, and provides specific criteria for the window/door units to insure compliance with appropriate Code requirements.

We hope this information is helpful. Please let us know if we can be of further assistance.

CONSTRUCTION SCIENCE AND ENGINEERING, INC.
FORENSIC AND STRUCTURAL ENGINEERING • CONSTRUCTION SCIENCE • ROOF CONSULTING

ATTORNEY/CLIENT PRIVILEGE

CSE File No. 209.09
August 3, 2009

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

Re: Review of Shipyard Village Documents
Pawleys Island, SC

Dear Mr. Bellamy:

I have received correspondence from your office dated June 12 and 30, 2009. The correspondence included various attached documents regarding the above-referenced property. Pursuant to your request, Construction Science & Engineering, Inc. (CSE) reviewed the attached documents for purposes of developing opinions regarding the three (3) issues presented at the end of your correspondence. This report provides a summary of our findings for each issue based on work performed to date.

DESCRIPTION

The subject structures are five (5) story, ocean-front, residential mid-rise condominium buildings designated as Buildings "A" and "B" located in Litchfield Beach on Pawleys Island, South Carolina. The subject structures are similar in construction. Specifically, the structures are supported by concrete walls, columns and elevated slabs; non-load bearing walls are constructed from concrete masonry units (CMU). The exterior walls are clad with conventional stucco. The roof construction consists of a low-slope configuration. According to file information reviewed to date, the original construction was completed in 1985.

BACKGROUND

The subject buildings are currently in need of significant repairs. Cost estimates generated to date range from $10M to more than $11M. Based on the reported date of construction, the subject buildings have been in service for approximately 24 years.

218 EAST MAIN STREET • WESTMINSTER, SOUTH CAROLINA 29693
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During the entire 24 year service life of the subject buildings, only one (1) other significant repair scope has been undertaken, other than repairs associated directly with storm damages. This repair included minor repairs to corroded steel reinforcement, caulking and painting. This repair was performed for a cost of approximately $300k in 1999, fourteen (14) years into the service life of the subject buildings.

ISSUE "A"

Is there sufficient evidence to establish that the Board of Directors of Shipyard Village Council of Co-Owners breached a fiduciary obligation/duty to the individual unit owners in failing to adequately fund the reserves for the maintenance and repair of buildings "A" and "B"?

Based on the file information reviewed to date, it is our opinion that the Board of Directors (BOD) breached their fiduciary obligation/duty to the individual unit owners in adequately fund the reserves for the maintenance and repair of Buildings "A" and "B". Our opinion is based on the information summarized below.

1. In 1995 (10 years into the service life of the subject buildings) the BOD had an annual general reserve budget of approximately $35k and an annual Painting/Waterproofing budget of approximately $25k (see 10-25-95 BOD minutes).

   Based on CSE's experience working on numerous, similarly-sized multi-family buildings located in aggressive coastal environments, similar to the conditions in which the subject buildings are located, the general reserve and paint/waterproofing budget are considered to be inadequate to fund the reasonable and expected maintenance required for the subject buildings.

2. 1999 (14 years into the service life of the subject buildings) the BOD accepted a painting and waterproofing bid of approximately $300k. The scope of repair was not established by a building professional (i.e. contractor, architect or engineer). Rather, the BOD accepted the advice of a representative of Waccamaw Management (Bobby Warner) that an engineer was not necessary for a "*basic waterproofing job*" and that rebar (steel reinforcing bar) problems were a small part of the overall job (see 4-10-99 Annual Members Meeting minutes).

   Given the 14 year age of the subject buildings, it is considered unreasonable for the BOD to not engage the services of a building professional to accurately assess the conditions of the subject buildings and to prepare a proper repair scope. In fact, evidence of stucco cracks and rebar stains should have warranted a condition assessment by a building professional that would have likely identified original construction defects that served to exacerbate the deterioration of the subject buildings. If the BOD had acted in a timely manner, these construction defects

would have likely been eligible for litigation (similar to Buildings "C" and "D") such that the membership may have received monetary compensation to assist with the repair costs that are now necessary.

3. Due to the absence of available reserves in 1999 (14 years into the service life of the subject buildings), the BOD voted to special assess the membership in the amount of $216,400 for the approximately $300k cost to perform exterior waterproofing and stucco repair and painting of the railings (see 7-12-99 BOD minutes).

   It is clear the BOD did not fund the necessary reserves for the selected repair scope that was performed in 1999. Based on the significant repair scope that is considered to be currently necessary, it is clear that the 1999 repair scope was INADEQUATE. Therefore, it is reasonable to assert that the BOD did not fund the necessary reserves for an ADEQUATE repair scope that should have been prepared by a building professional with adequate knowledge of proper repair procedures, expected service life of various building components and required maintenance. It is the opinion of CSE that a properly executed repair scope in 1999 would have significantly reduced the cost of the repair scope that is considered to be currently necessary.

4. In 2000 (15 years into the service life of the subject buildings) the BOD changed the estimated service life of painting and waterproofing from 6 years to 10 years, based on an "*established maintenance program*" consisting of washing the subject buildings every two (2) years with a low-pressure wash (see 4-8-2000 Annual Members Meeting minutes). Additionally, the 2000 reserve analysis was adjusted for the increased service life and decrease in yearly contributions, thereby reducing future reserves.

   Given the coastal environment in which the subject buildings are located, and the associated deterioration that is continuous and cumulative, it is considered unreasonable for the BOD to increase the service life of the painting and waterproofing component of its maintenance plan. In fact, if the BOD had engaged the services of a building professional, the service life of the painting and waterproofing would likely have been DECREASED due to the increasing age of the buildings and the inability of these components to perform adequately over the aging substrate. In other words, the expected service life of the painting and waterproofing is inversely proportional to the age of the building.

5. The BOD recently proposed a special assessment of $11M to cover repair costs for the subject buildings (see 7-8-09 NOTICE to Shipyard Village Homeowners).

   The need for such a large special assessment is a direct indication that the BOD breached their fiduciary obligation/duty to the individual unit owners in failing to

adequately fund the reserves for the maintenance and repair of the subject buildings. Breaching this obligation/duty over an extended period of time (approximately 24 years) has resulted in a significant financial burden on the individual unit owners to essentially make up for lost time in which the BOD failed to perform the necessary due diligence to properly maintain and repair the subject buildings. The absence of adequate maintenance and repairs to the subject buildings over their 24 year service life has resulted in "*severe corrosion of cantilever beams and various floor panels*" and significant concrete spalling damages such that safety hazards now exist and "*extensive repairs*" must be performed. However, these damages have developed slowly over time, showing outward signs of distress that the BOD failed to properly address until the subject buildings were significantly compromised.

ISSUE "B"

Is there sufficient evidence to establish that the Board of Directors of Shipyard Village Council of Co-Owners knew or should have known that buildings "A" and "B" were structurally defective and unsafe as far back as 1998-2000, and failed to properly repair, maintain, and prevent future damages to the buildings "A" and "B"?

Based on the file information reviewed to date, it is our opinion that the Board of Directors (BOD) knew or should have known that buildings "A" and "B" were structurally defective and unsafe as far back as 1998-2000, and failed to properly repair, maintain, and prevent future damages to the buildings "A" and "B". Our opinion is based on the information summarized below.

1. 1999 (14 years into the service life of the subject buildings) the BOD accepted a painting and waterproofing bid of approximately $300k. The scope of repair was not established by a building professional (i.e. contractor, architect or engineer). Rather, the BOD accepted the advice of a representative of Waccamaw Management (Bobby Warner) that an engineer was not necessary for a "*basic waterproofing job*" and that rebar (steel reinforcing bar) problems were a small part of the overall job (see 4-10-99 Annual Members Meeting minutes).

   Given the 14 year age of the subject buildings, it is considered unreasonable for the BOD to not engage the services of a building professional to accurately assess the conditions of the subject buildings and to prepare a proper repair scope. In fact, evidence of stucco cracks and rebar stains should have warranted a condition assessment by a building professional that would have likely identified original construction defects that served to exacerbate the deterioration of the subject buildings. If the BOD had acted in a timely manner, these construction defects would have likely been eligible for litigation (similar to Buildings "C" and "D") such that the membership may have received monetary compensation to assist with the repair costs that are now necessary.

ISSUE "C"

Is there any evidence to establish that the Board of Directors of Shipyard Village Council of Co-Owners breached a fiduciary obligation by failing to collect sufficient funds to adequately maintain and repair the common areas of the Shipyard Village association as defined by the Master Deed?

Based on the file information reviewed to date, it is our opinion that the Board of Directors (BOD) breached a fiduciary obligation by failing to collect sufficient funds to adequately maintain and repair the common areas of the Shipyard Village association as defined by the Master Deed. Our opinion is based on the information summarized below.

1. In 1995 (10 years into the service life of the subject buildings) the BOD had an annual general reserve budget of approximately $35k and an annual Painting/Waterproofing budget of approximately $25k (see 10-25-95 BOD minutes).

   Based on CSE's experience working on numerous, similarly-sized multi-family buildings located in aggressive coastal environments, similar to the conditions in which the subject buildings are located, the general reserve and paint/waterproofing budget are considered to be inadequate to fund the reasonable and expected maintenance required for the subject buildings. Proper repair and maintenance of the subject buildings would have required the BOD to collect additional funds.

2. 1999 (14 years into the service life of the subject buildings) the BOD accepted a painting and waterproofing bid of approximately $300k. The scope of repair was not established by a building professional (i.e. contractor, architect or engineer). Rather, the BOD accepted the advice of a representative of Waccamaw Management (Bobby Warner) that an engineer was not necessary for a *"basic waterproofing job"* and that rebar (steel reinforcing bar) problems were a small part of the overall job (see 4-10-99 Annual Members Meeting minutes).

   Given the 14 year age of the subject buildings, it is considered unreasonable for the BOD to not engage the services of a building professional to accurately assess the conditions of the subject buildings and to prepare a proper repair scope. In fact, evidence of stucco cracks and rebar stains should have warranted a condition assessment by a building professional that would have likely identified original construction defects that served to exacerbate the deterioration of the subject buildings. If the BOD had acted in a timely manner, these construction defects would have likely been eligible for litigation (similar to Buildings "C" and "D") such that the membership may have received monetary compensation to assist with the repair costs that are now necessary. By not collecting additional funds, the BOD has NEVER (with the exception of when the buildings were new) been in a position

to provide adequate repair or maintenance for the subject buildings. By not collecting adequate funds, the BOD has allowed the subject buildings to significantly deteriorate, causing the buildings to become unsafe and require substantial and costly repairs.

3. Due to the absence of available reserves in 1999 (14 years into the service life of the subject buildings), the BOD voted to special assess the membership in the amount of $216,400 for the approximately $300k cost to perform exterior waterproofing and stucco repair and painting of the railings (see 7-12-99 BOD minutes).

   It is clear the BOD did not fund or collect the necessary reserves for the selected repair scope that was performed in 1999. Based on the significant repair scope that is considered to be currently necessary, it is clear that the 1999 repair scope was INADEQUATE. Therefore, it is reasonable to assert that the BOD did not fund or collect the necessary reserves for an ADEQUATE repair scope that should have been prepared by a building professional with adequate knowledge of proper repair procedures, expected service life of various building components and required maintenance. It is the opinion of CSE that a properly executed repair scope in 1999 would have significantly reduced the cost of the repair scope that is considered to be currently necessary.

4. In 2000 (15 years into the service life of the subject buildings) the BOD changed the estimated service life of painting and waterproofing from 6 years to 10 years, based on an "*established maintenance program*" consisting of washing the subject buildings every two (2) years with a low-pressure wash (see 4-8-2000 Annual Members Meeting minutes). Additionally, the 2000 reserve analysis was adjusted for the increased service life and decrease in yearly contributions, thereby reducing future reserves.

   Given the coastal environment in which the subject buildings are located, and the associated deterioration that is continuous and cumulative, it is considered unreasonable for the BOD to increase the service life of the painting and waterproofing component of its maintenance plan. In fact, if the BOD had engaged the services of a building professional, the service life of the painting and waterproofing would likely have been DECREASED due to the increasing age of the buildings and the inability of these components to perform adequately over the aging substrate. In other words, the expected service life of the painting and waterproofing is inversely proportional to the age of the building. Therefore, the BOD's decision to increase the service life of the painting and waterproofing resulted in less money being collected for repairs and maintenance issues that increase in cost over time, causing a larger and larger gap between the available funds and the needed funds.

5. The BOD recently proposed a special assessment of $11M to cover repair costs for the subject buildings (see 7-8-09 NOTICE to Shipyard Village Homeowners).

   The need for such a large special assessment is a direct indication that the BOD breached their fiduciary obligation/duty to the individual unit owners in failing to adequately collect the necessary reserves for the maintenance and repair of the subject buildings. Breaching this obligation/duty over an extended period of time (approximately 24 years) has resulted in a significant financial burden on the individual unit owners to essentially make up for lost time in which the BOD failed to perform the necessary due diligence to properly maintain and repair the subject buildings. The absence of adequate maintenance and repairs to the subject buildings over their 24 year service life has resulted in "*severe corrosion of cantilever beams and various floor panels*" and significant concrete spalling damages such that safety hazards now exist and "*extensive repairs*" must be performed. However, these damages have developed slowly over time, showing outward signs of distress that the BOD failed to properly address until the subject buildings were significantly compromised.

The opinions expressed above are provided with a reasonable degree of engineering certainty. All opinions are based on the specific file information provided by your office to date, enumerated in the referenced correspondence. We reserve the right to amend the opinions expressed in this letter in the event that additional relevant file information is produced that is contrary to the information reviewed to date. Copies of referenced file documents are attached to this report for reference. Please feel free to call me if you have any questions regarding the information in this report or if you require additional assistance.

Sincerely,

CONSTRUCTION SCIENCE AND ENGINEERING, INC.

Derek A. Hodgin, P.E.

209.09 shipyard village rpt 2009-07-23

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

January 8, 2012
(Amended)

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

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

Gentlemen:

ECS Carolinas, LLP (ECS) is pleased to be of continued support your clients relative to their claim in connection with the Shipyard Village Buildings A and B (herein after referred to as the "project"). The Plaintiff's include 42, three-bedroom Co-Owners and 8, four-bedroom Co-Owners. Additional information has been made available to ECS since the issuance or our original report dated April 25, 2011. Furthermore, the Plaintiff's have since retained Mr. Michael Parades as an expert in the area of community associations, governance and financial management.

The basis for the professional opinions expressed in this amended report include, but are not limited to, the information contained in the reviewed documents, reviewed electronic media, discussions with Plaintiff's representatives, discussions with other persons pertinent to and familiar with the project, observations of the project construction and our past experience. The opinions expressed in this amended report are presented with a reasonable degree of engineering certainty and we reserve the right to further amend our opinions as additional information is made available.

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

Respectfully submitted,
ECS CAROLINAS, LLP represented by;

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

I:/geotech/reports/5800/5831/14-5831report01082012amended.doc

TABLE OF CONTENTS

ECS CAROLINAS LLP AND STEPHEN J. GEIGER BACKGROUND

PROJECT DESCRIPTION

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

SUMMARY OF MASTER DEED AND AMENDMENTS

SUMMARY OF HISTORIC RESERVES FUNDING

SUMMARY OF HISTORIC RESERVES ACCOUNT EXPENDITURES

REVIEW OF CORRESPONDENCE

EVALUATIONS OF BUILDINGS A AND B PRIOR TO 2006

EVALUATIONS OF BUILDINGS A AND B SINCE 2006

SUMMARY OF CONSULTANTS FINDINGS

SUMMARY OF ECS OBSERVATIONS

REPAIR ALTERNATIVES AND COSTS

PROPOSED ASSESSMENT OF CONSTRUCTION AND DESIGN FEES

PROFESSIONAL OPINIONS

RE-ALLOCATION OF ASSESSMENTS

CLOSING

ATTACHMENTS

ECS CAROLINAS LLP AND STEPHEN J. GEIGER BACKGROUND

ECS Firm Overview

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

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

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

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

Stephen J. Geiger, P.E. Experience Overview

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

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

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

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

PROJECT DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

Board of Directors

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

Managing Agents

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

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

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

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

SUMMARY OF MASTER DEED AND AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF HISTORIC RESERVES FUNDING

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

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

SUMMARY OF HISTORIC RESERVES ACCOUNT EXPENDITURES

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

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

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

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

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

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

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

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

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

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

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

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

REVIEW OF CORRESPONDENCE

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

1983

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

1985

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

1986

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

1987

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

1988

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

1989

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

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

1990

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

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

1991

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

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

1992

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

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

1993

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

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

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

1994

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

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

1995

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

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

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

1996

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

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

1997

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

1998

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

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

1999

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

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

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

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

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

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

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

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

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

2000

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

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

2001

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

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

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

2002

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

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

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

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

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

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

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

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

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

2003

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

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

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

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

2004

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

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

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

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

2005

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

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

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

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

2006

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

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

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

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

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

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

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

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

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

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

2007

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

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

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

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

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

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

2008 and 2009

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

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

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

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

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

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

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

EVALUATIONS OF BUILDINGS A AND B PRIOR TO 2006

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

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

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

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

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

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

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

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

EVALUATIONS OF BUILDINGS A AND B SINCE 2006

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

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

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

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

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

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

SUMMARY OF CONSULTANTS FINDINGS

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

Structural

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

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

Building Envelope

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

Interiors

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

Roofing

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

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

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

SUMMARY OF ECS OBSERVATIONS

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

Structural

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

Building Envelope

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

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

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

Structural

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

Building Envelope

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

Interiors (Building A only)

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

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

Ancillary Items

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

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

REPAIR ALTERNATIVES AND COSTS

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

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

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

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

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

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

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

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

Phase I – Building B

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

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

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

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

Phase 2 – Building A

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

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

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

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

PROPOSED ASSESSMENT OF CONSTRUCTION AND DESIGN FEES

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

In summary, the proposed special assessment requires payment of $88,398 from each Unit Owner in Buildings A and B, $64,868 from each three bedroom Unit Owner in Buildings C and D and $68,471 from each four bedroom Unit Owner in Buildings C and D. The allocations are based upon the respective Unit's interest in the project as follows; all Units in Buildings A and B – 0.6751%, three bedroom Units in Buildings C and D – 0.75949% and four bedroom Units in Buildings C and D - 0.80168%. The special assessment funding is proposed as follows:

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

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

PROFESSIONAL OPINIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RE-ALLOCATION OF ASSESSMENTS

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

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

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

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

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

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

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

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

CLOSING

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

ATTACHMENTS

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

Aerial Photograph

Site Plan

January 2010 Shipyard Village Photographs

October 18, 2010 Shipyard Village Building A Exterior Photographs

October 18, 2020 Shipyard Village A Interior Photographs

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

Reserves Funding Summary

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

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

Assessment Allocation Summary

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

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

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

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

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

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

REPRESENTATIVE EXPERIENCE:

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

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

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

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

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

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

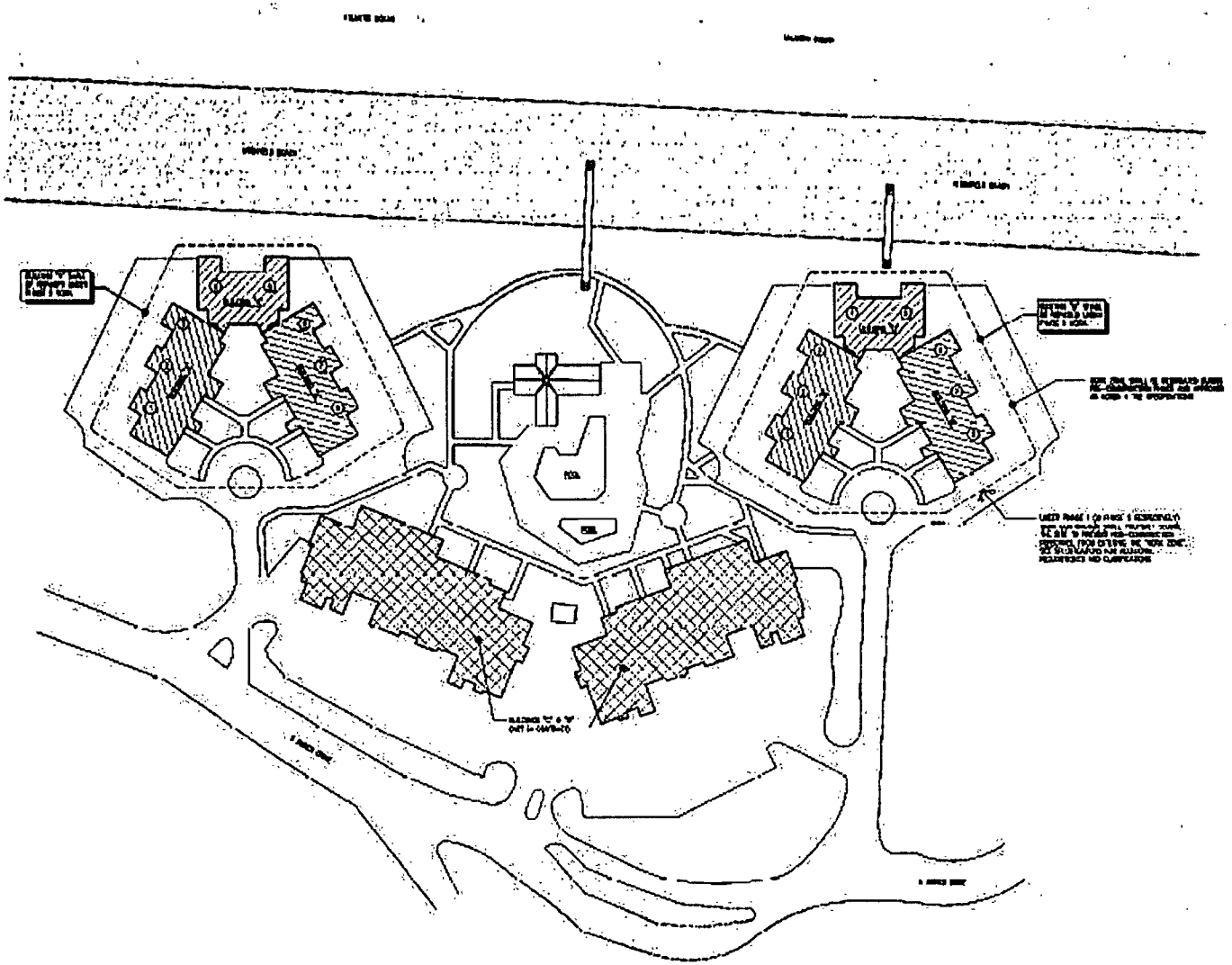
Aerial Photograph

Aerial Photograph



AERIAL PHOTOGRAPH

Site Plan



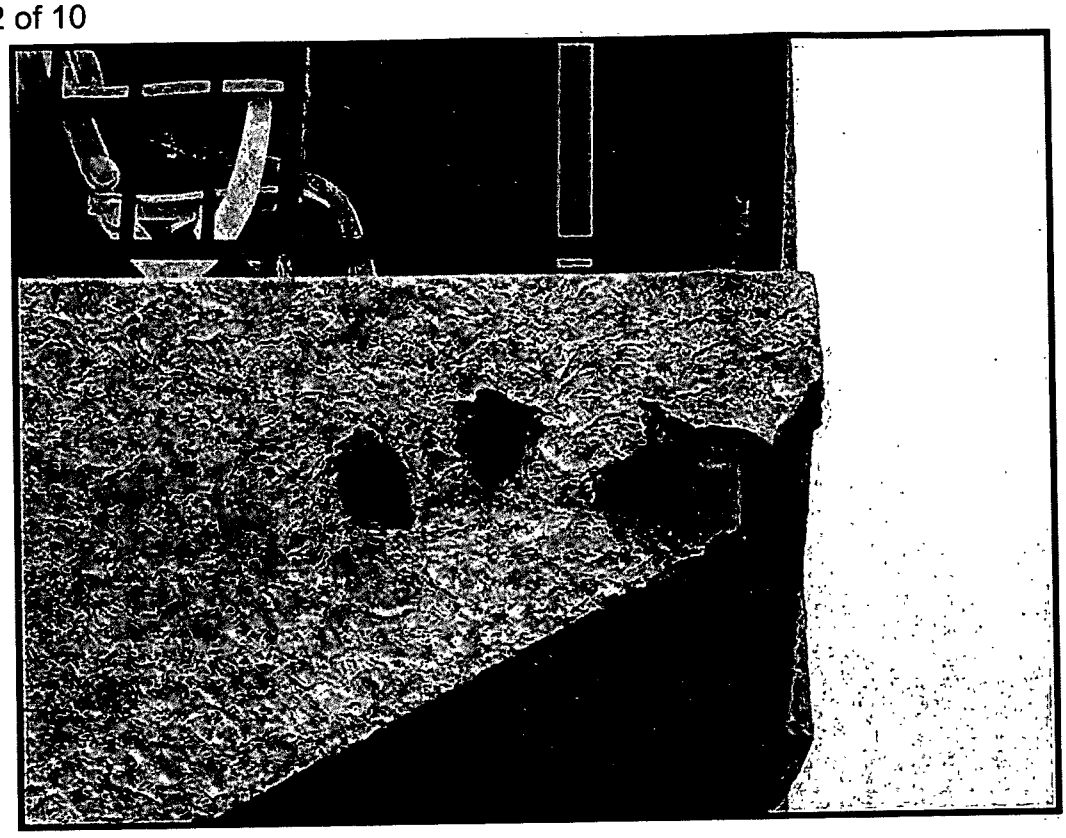
SITE PLAN

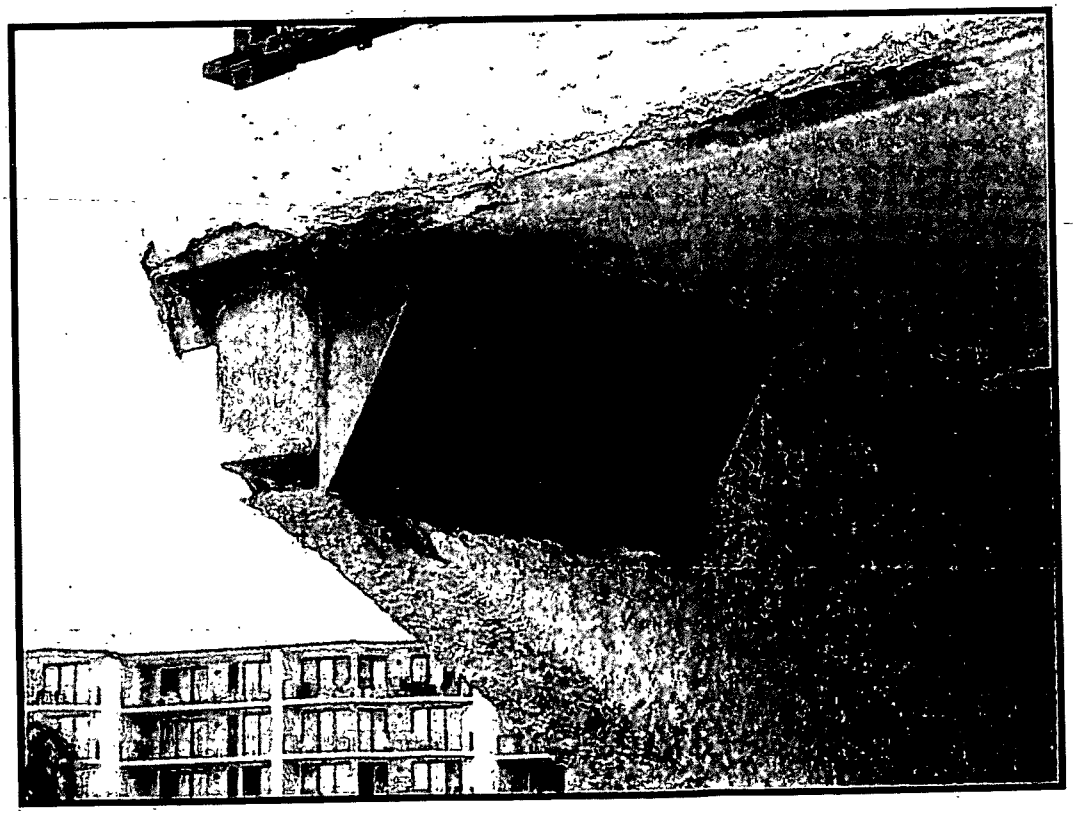
January 2010 Shipyard Village Photographs

Shipyard Village
January 2010 Site Photographs







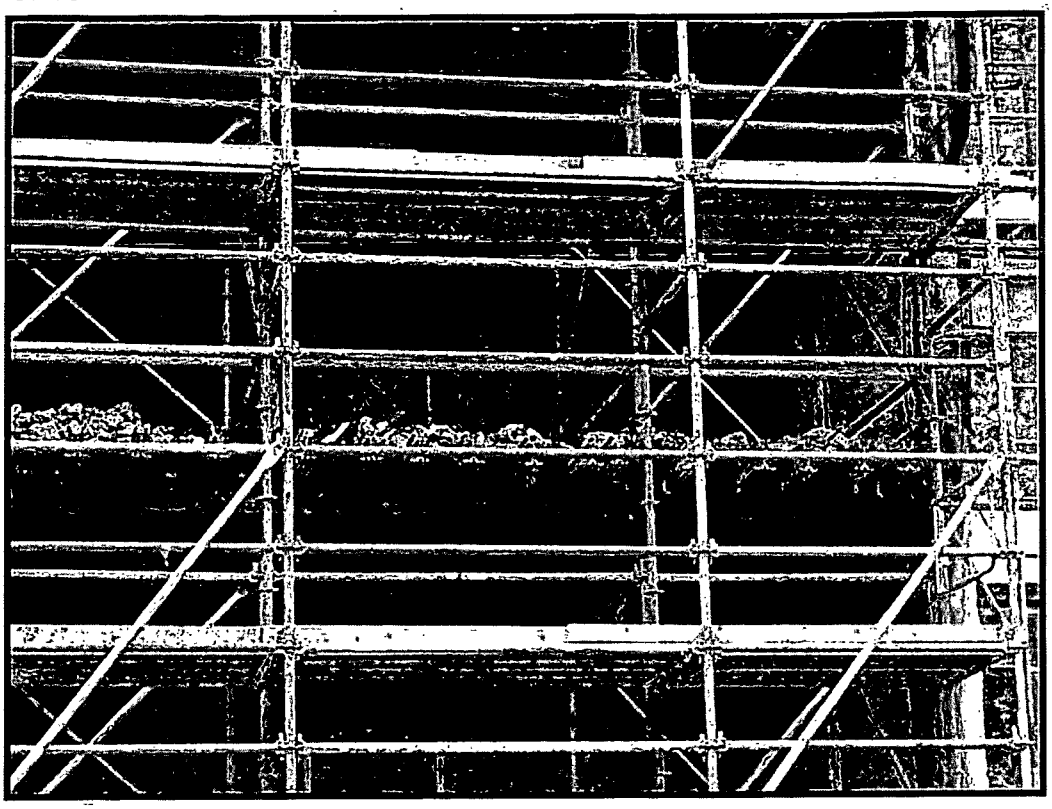




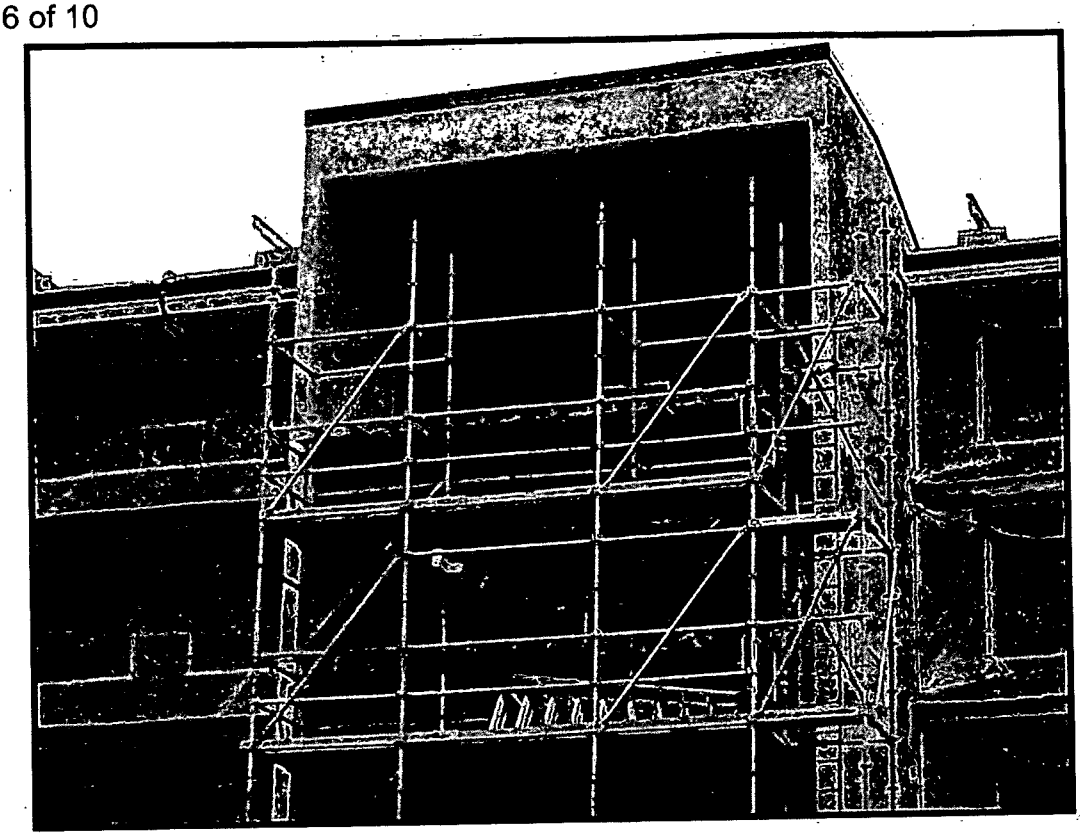

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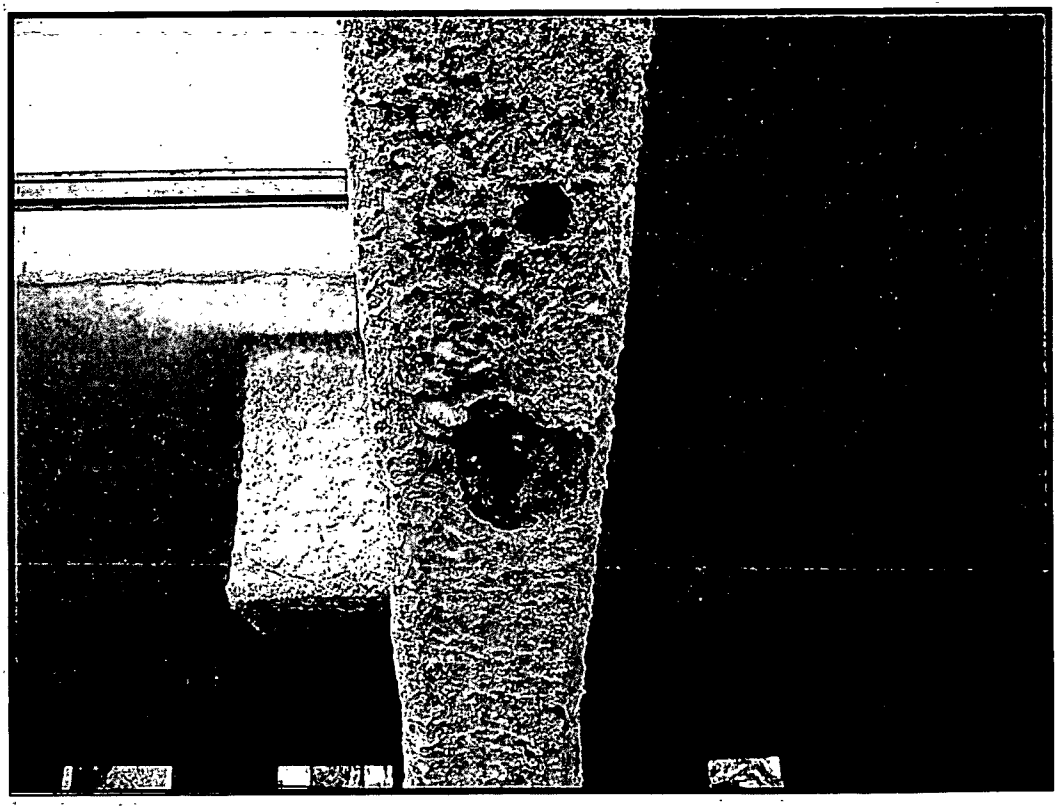


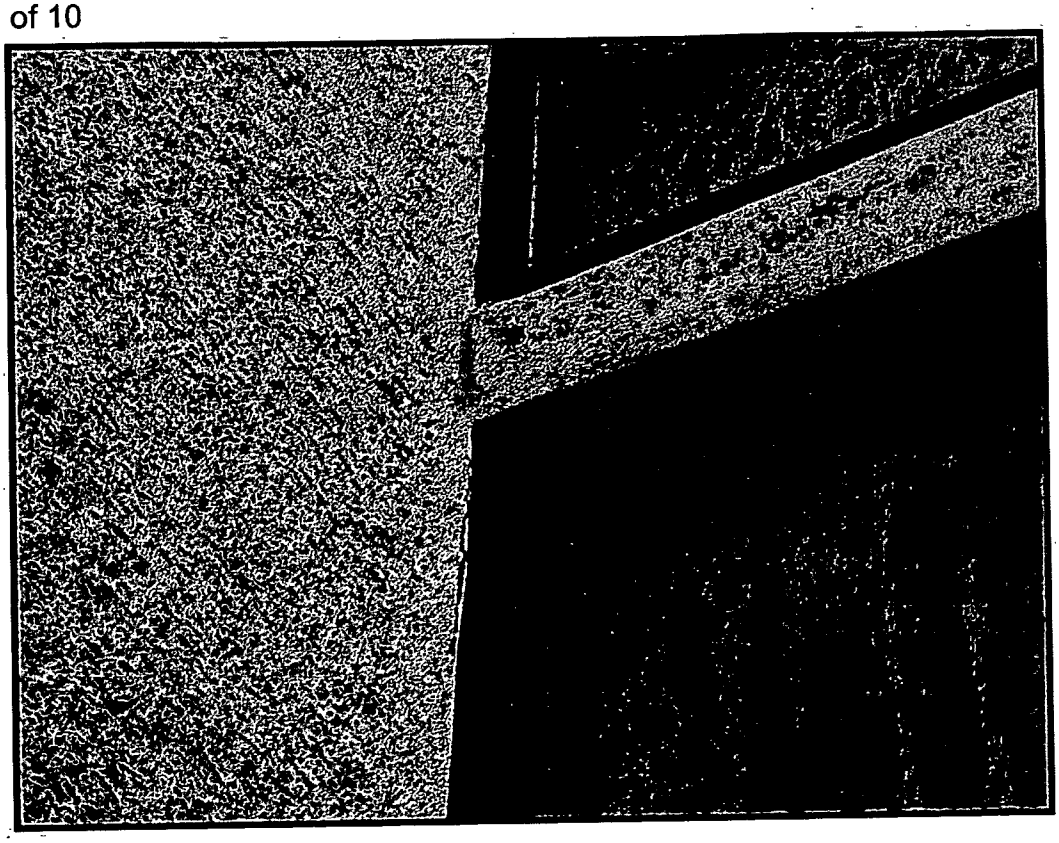


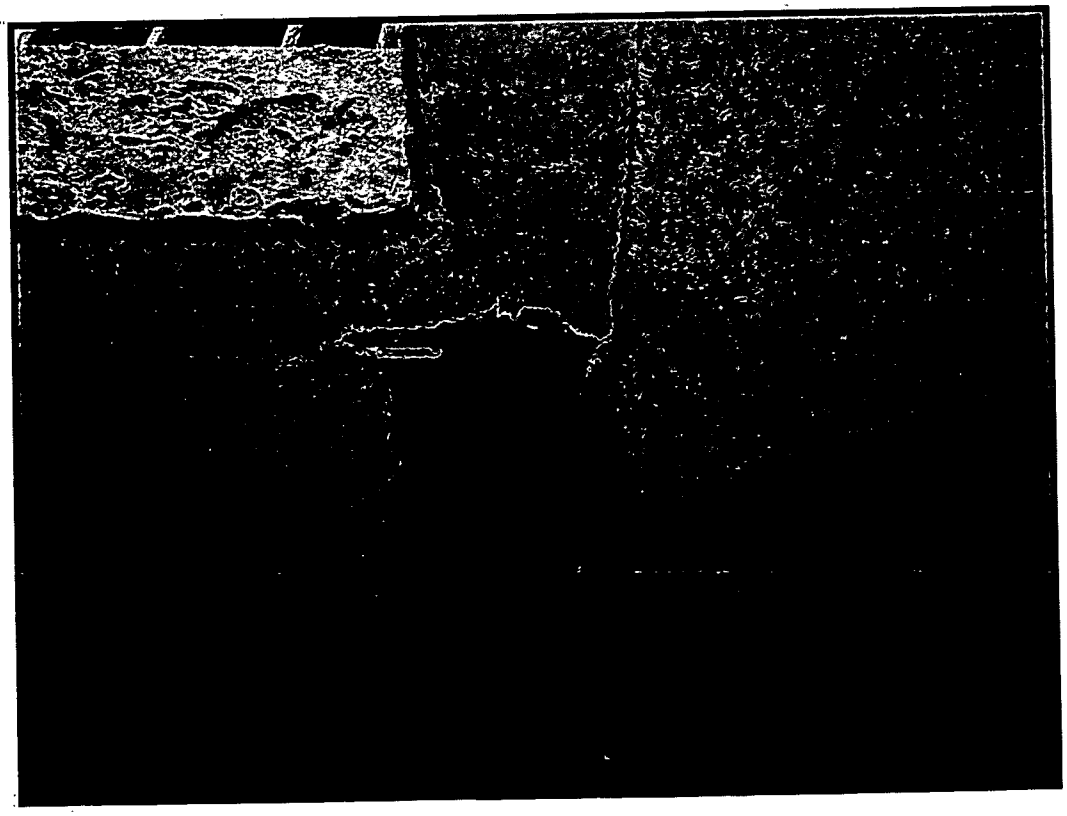




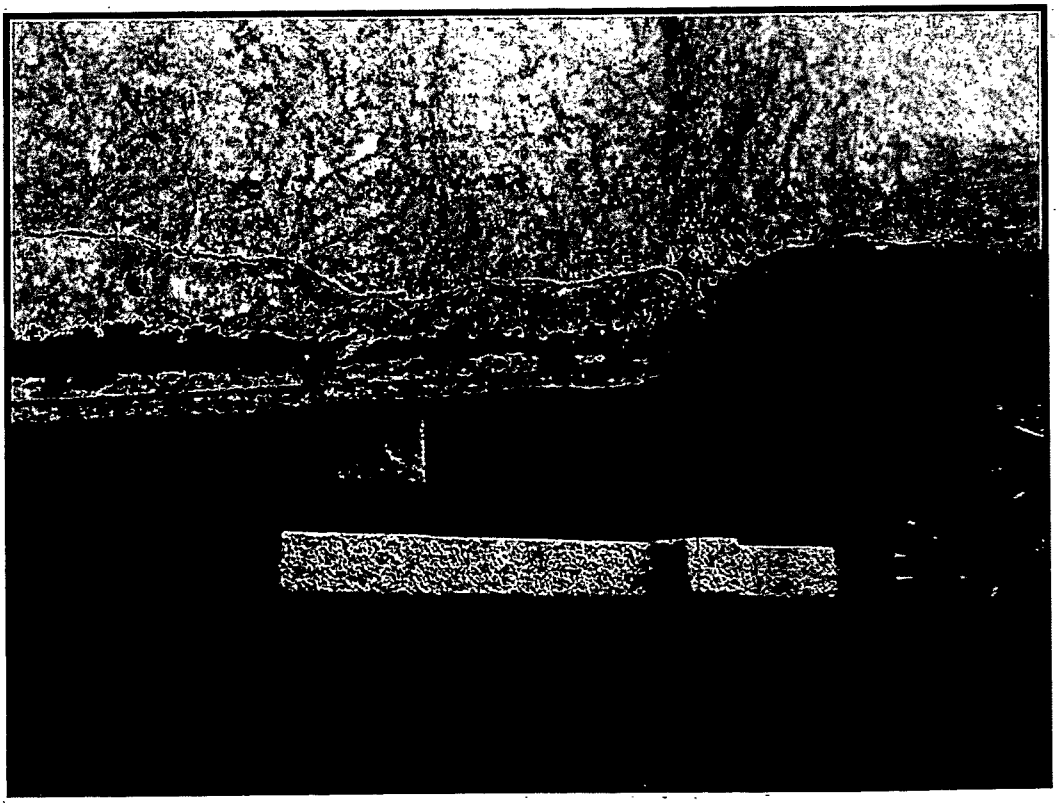


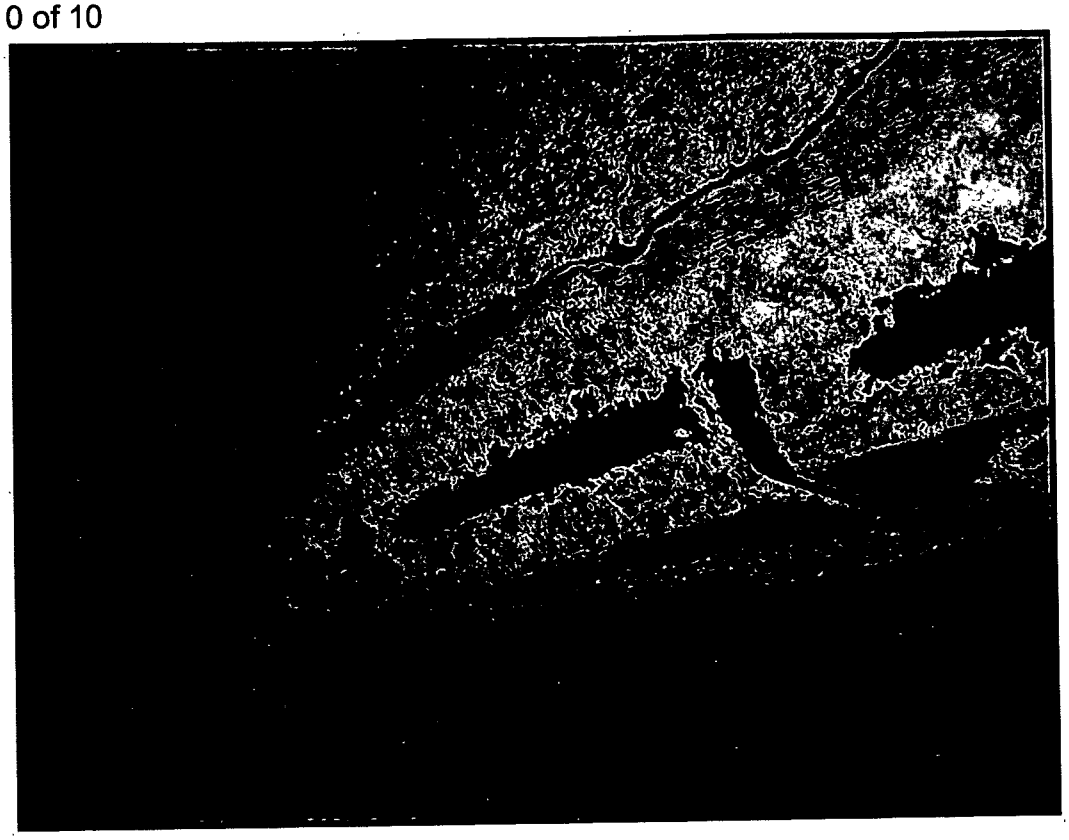




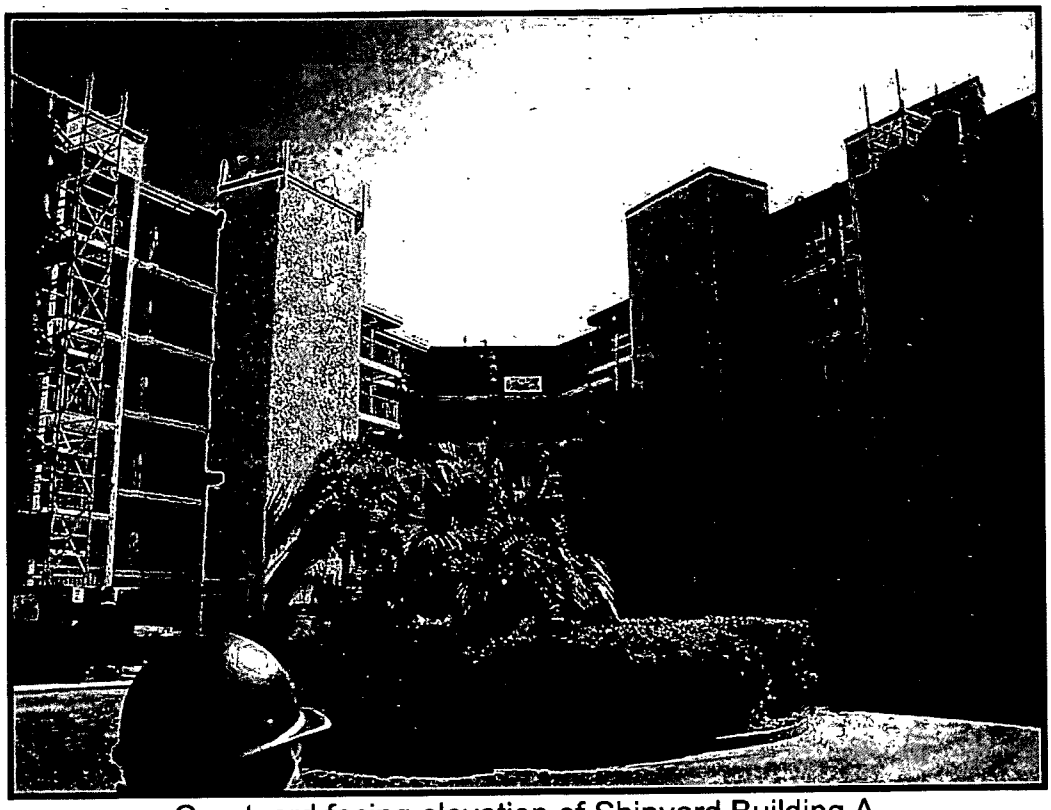








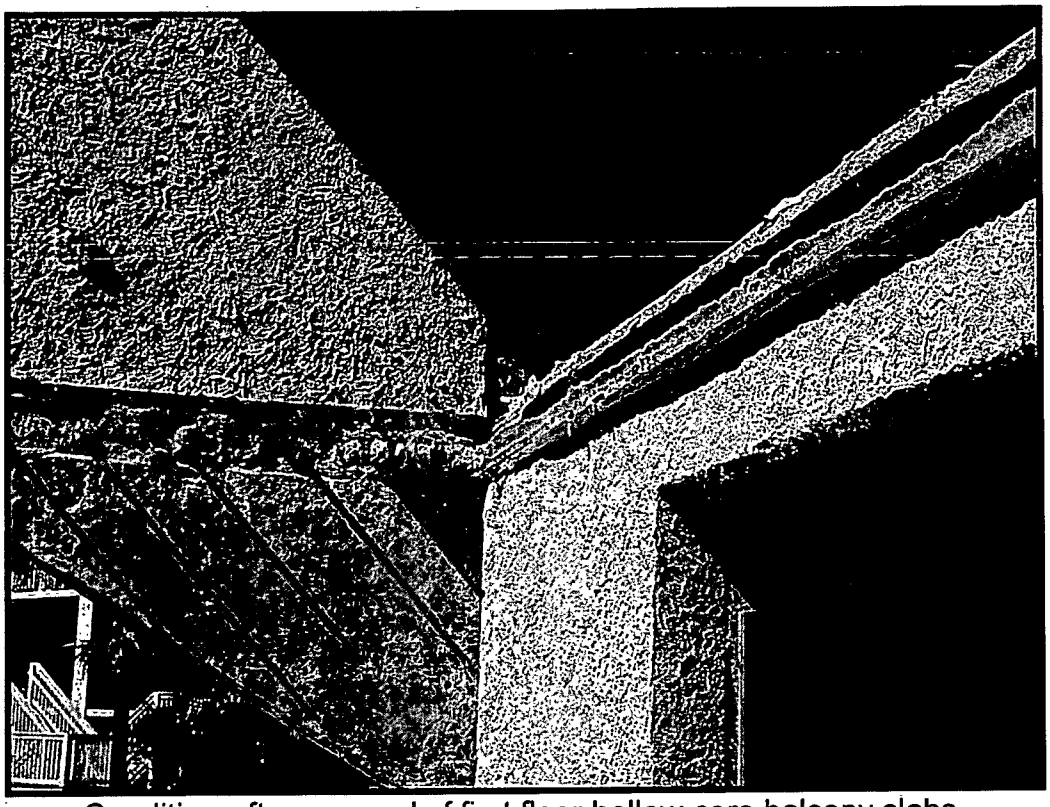
October 18, 2010 Shipyard Village Building A Exterior Photographs



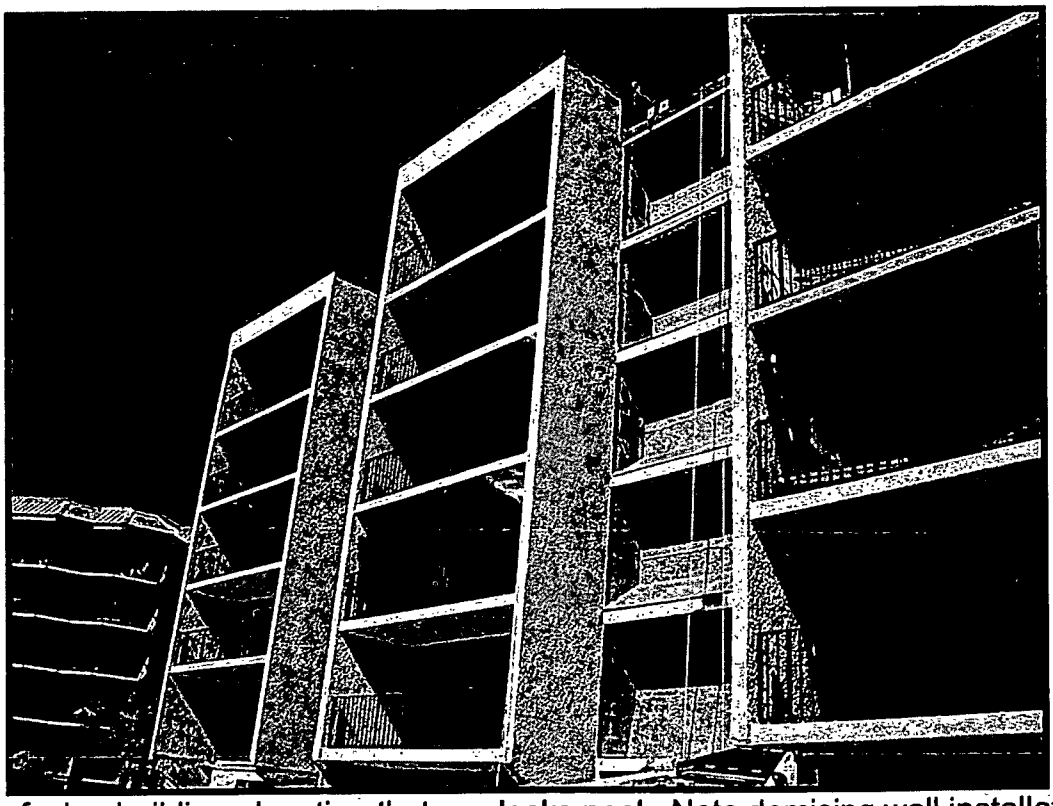
Courtyard facing elevation of Shipyard Building A.



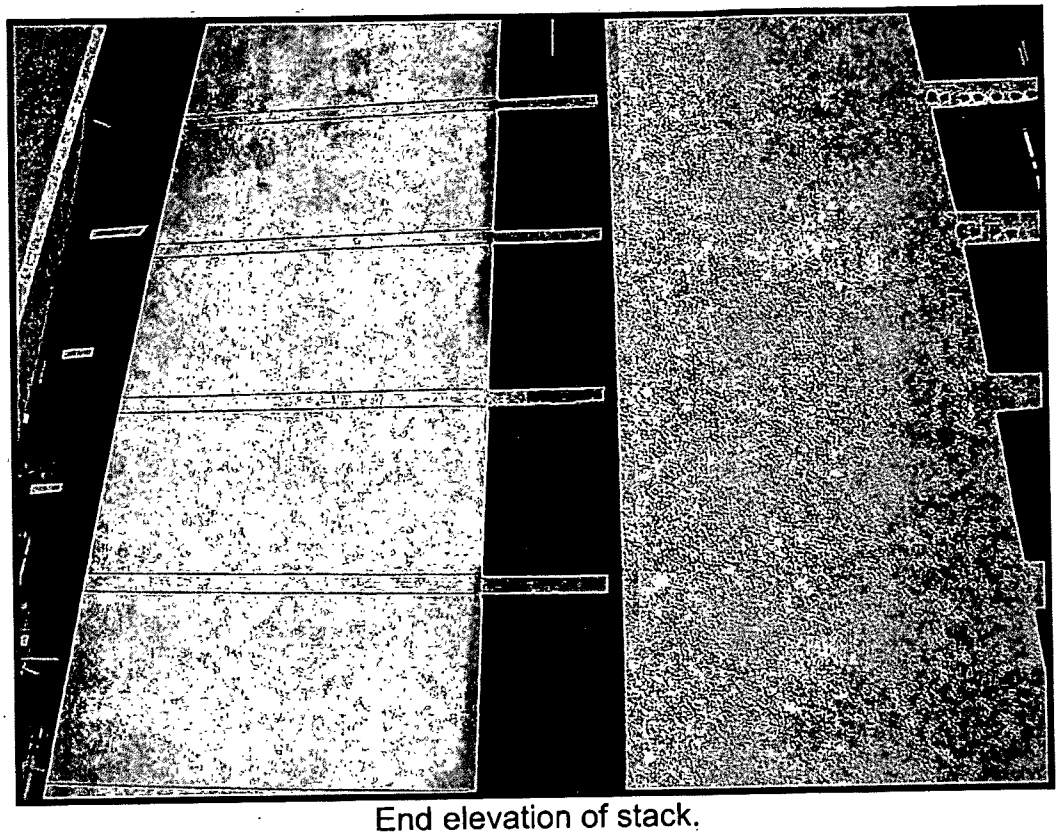
Hollow core balcony slabs stored in on-site dumpster.



Condition after removal of first floor hollow core balcony slabs.



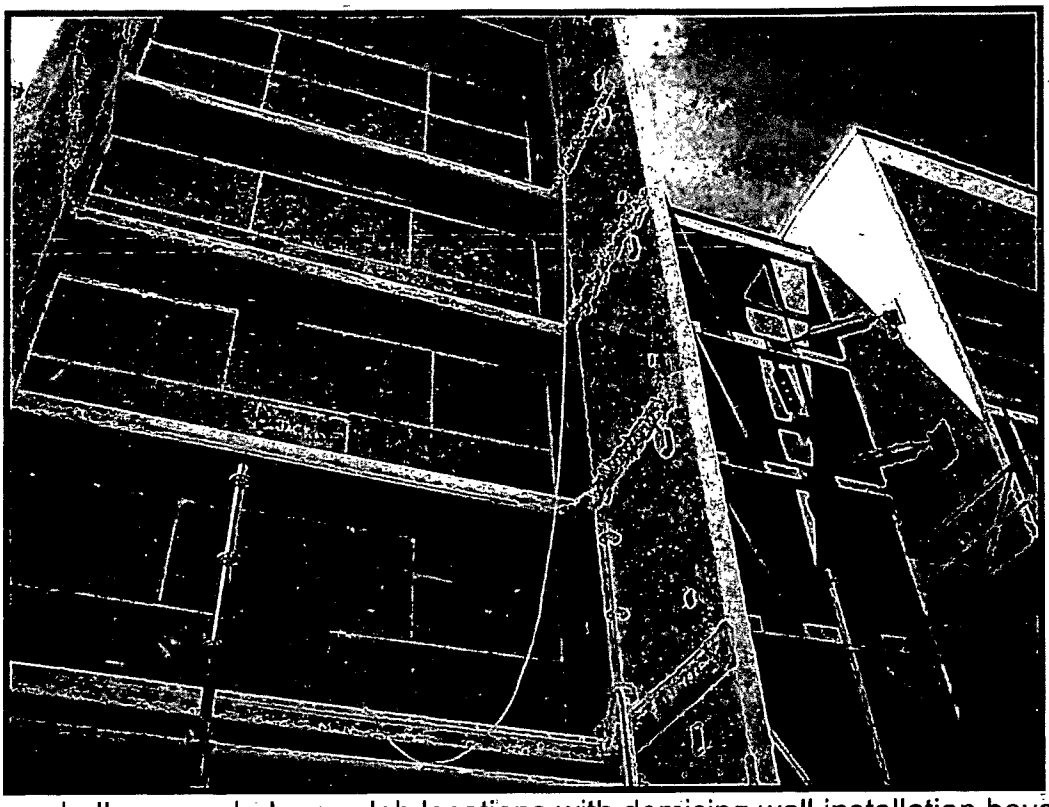
Ocean facing building elevation that overlooks pool. Note demising wall installation at master bedroom window openings.



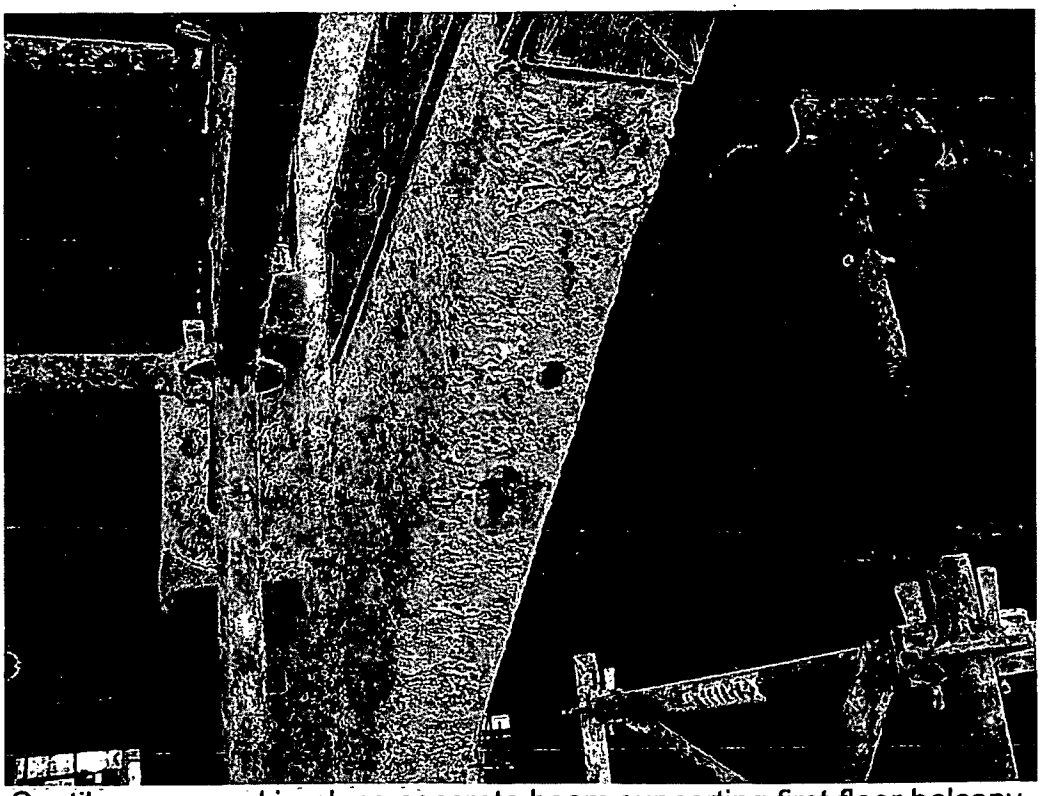
End elevation of stack.



False work, scaffolding and temporary structural members associated with lower level ocean facing balconies.



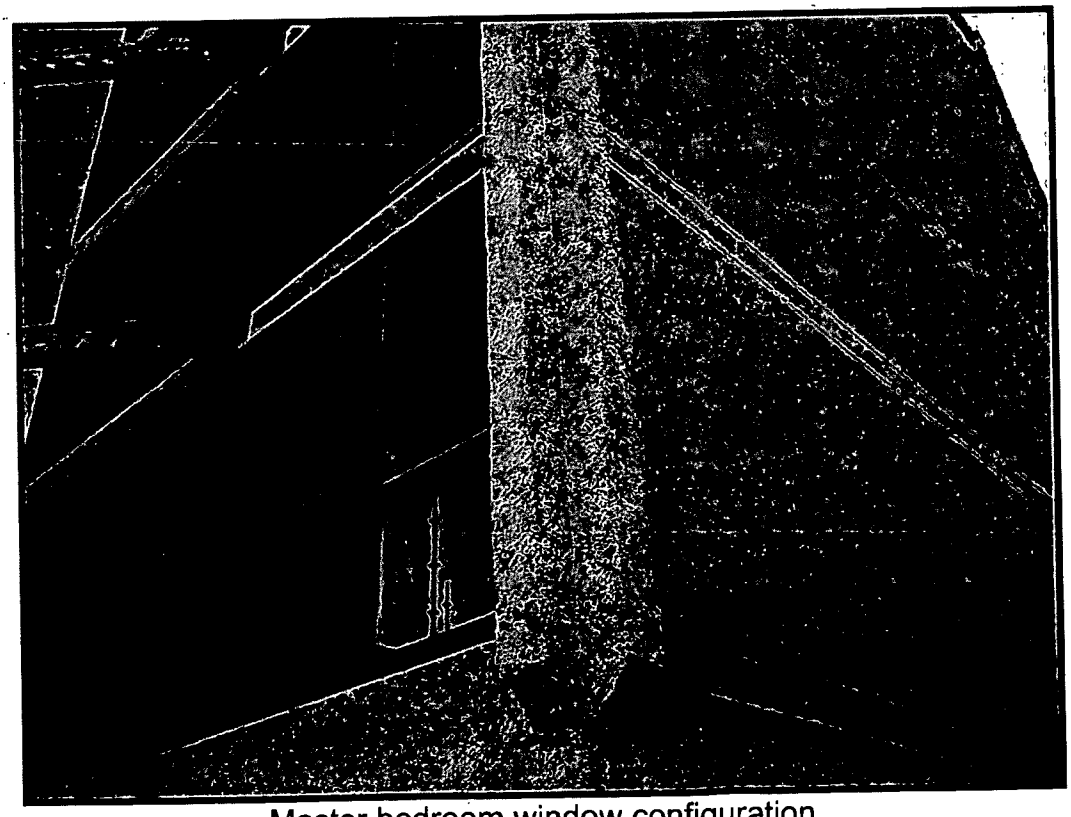
Former hollow core balcony slab locations with demising wall installation beyond.



Cantilever poured in-place concrete beam supporting first floor balcony.

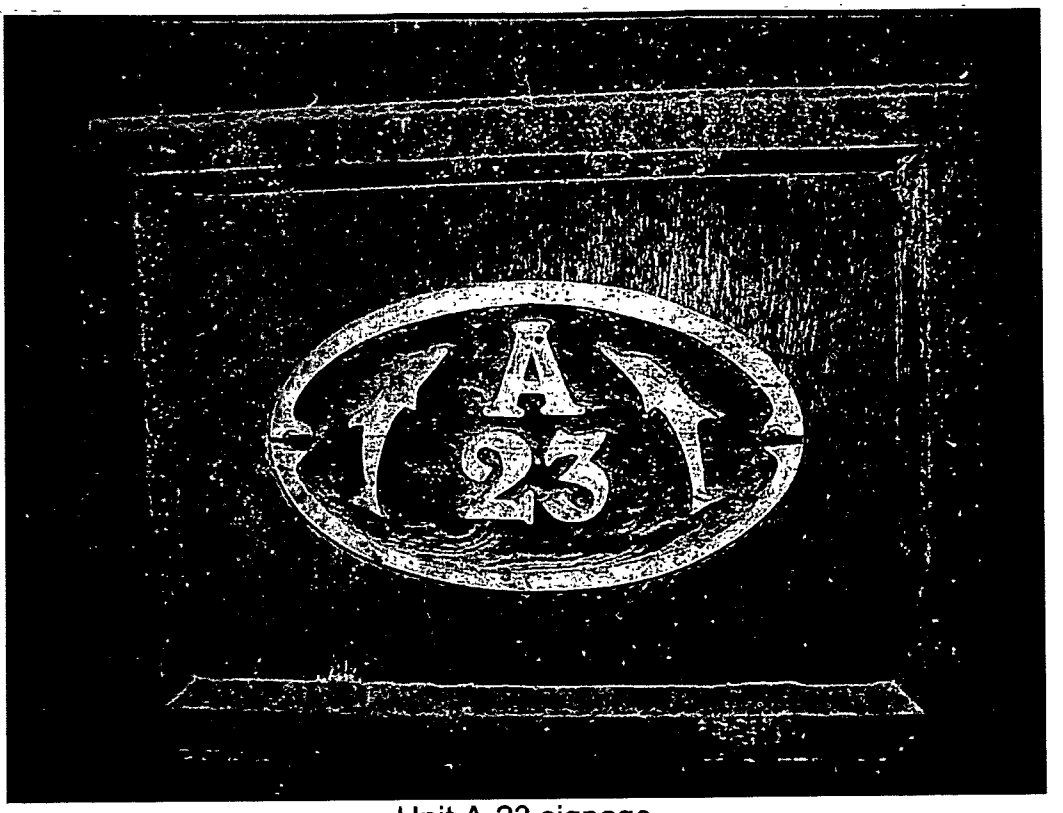


Progression of hollow core balcony slab removal.

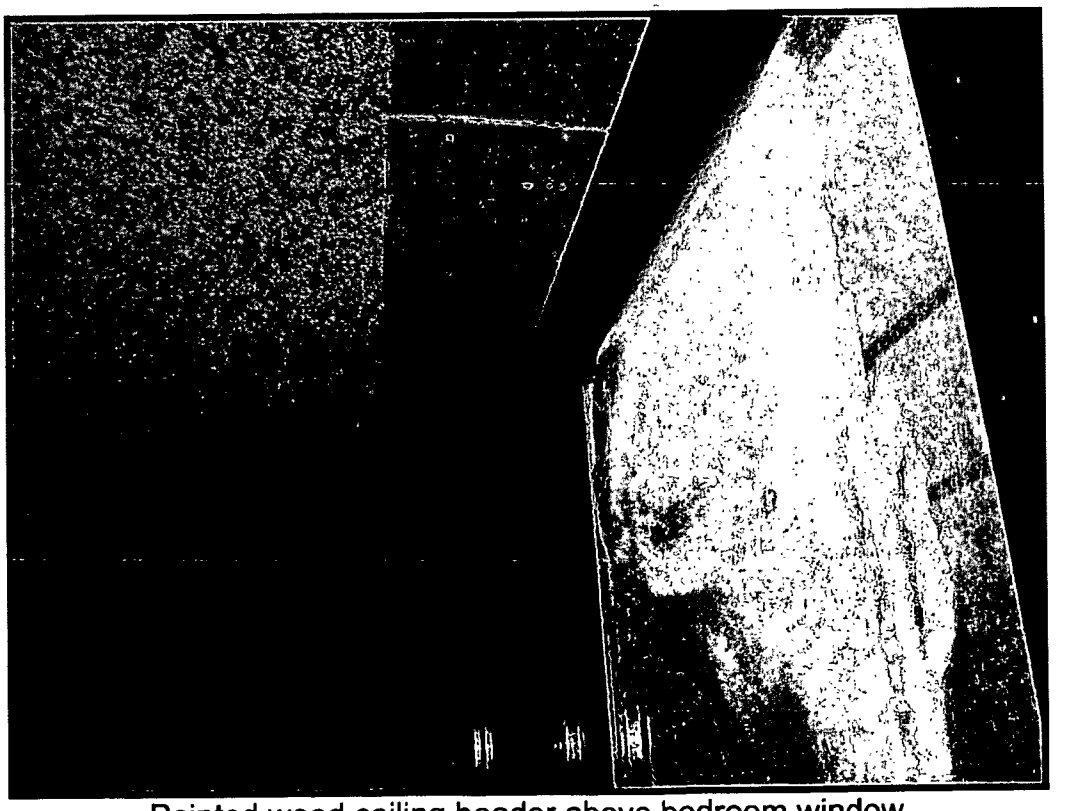


Master bedroom window configuration.

October 18, 2020 Shipyard Village A Interior Photographs



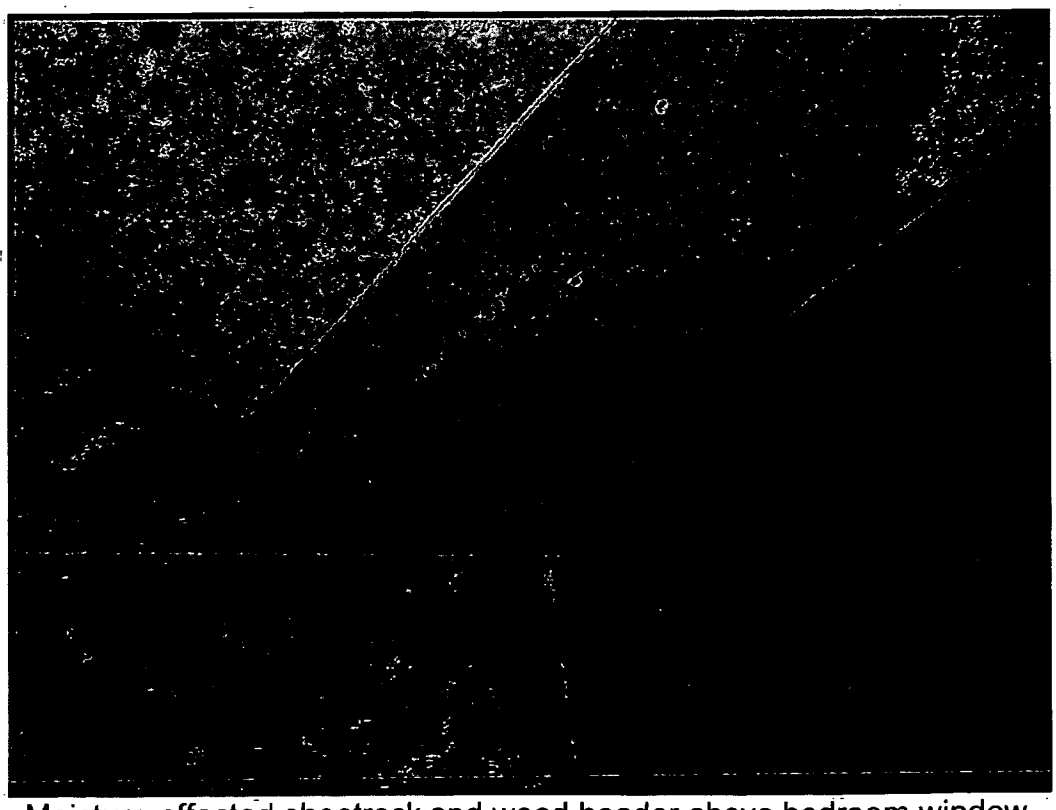
Unit A-23 signage.



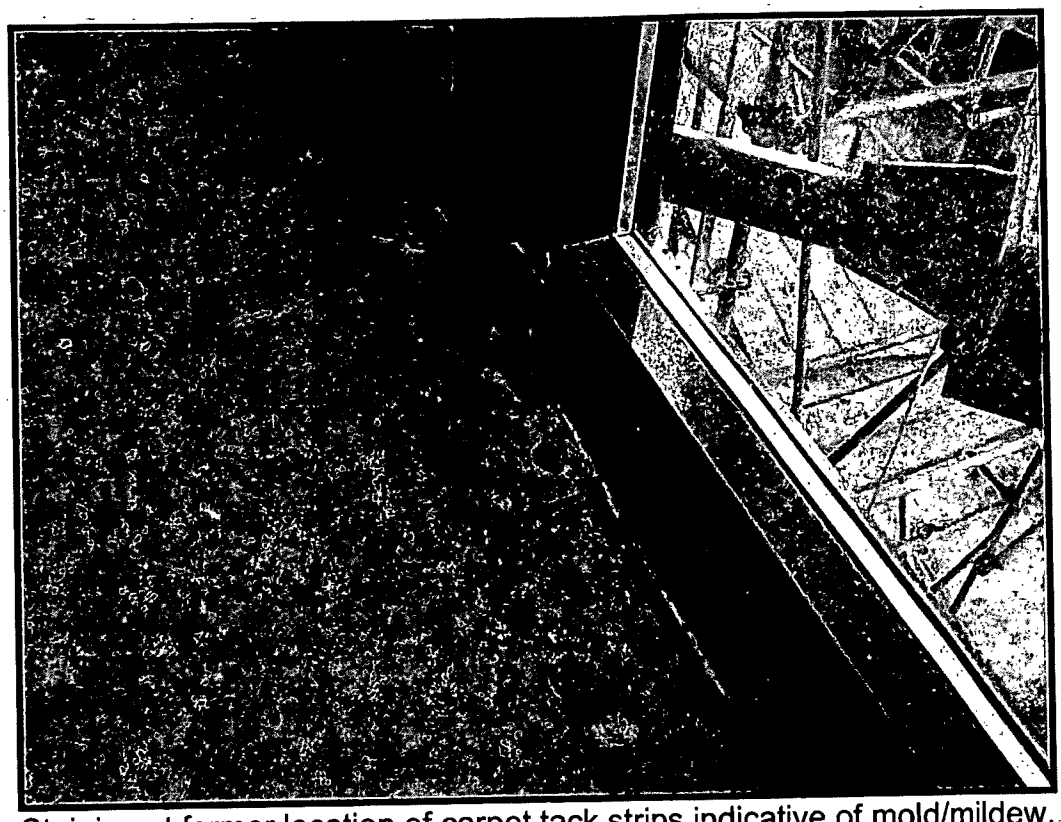
Painted wood ceiling header above bedroom window.



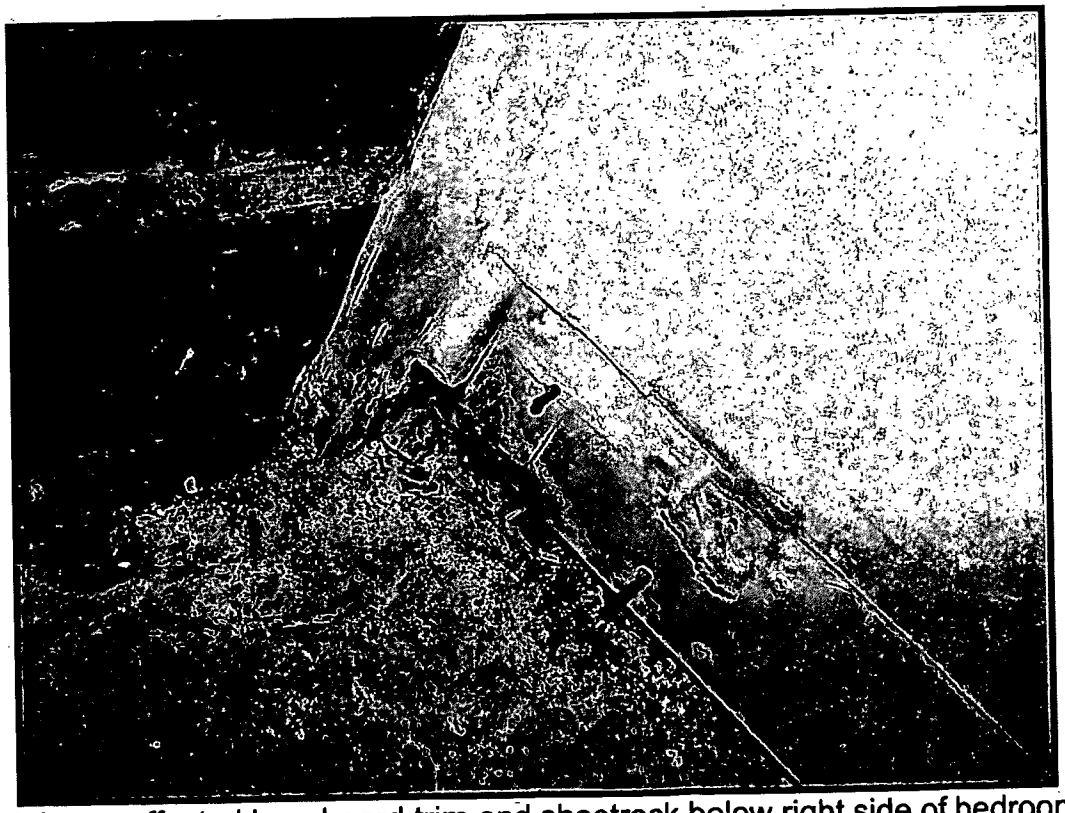
Moisture affected sheetrock and baseboard trim left of bedroom window.



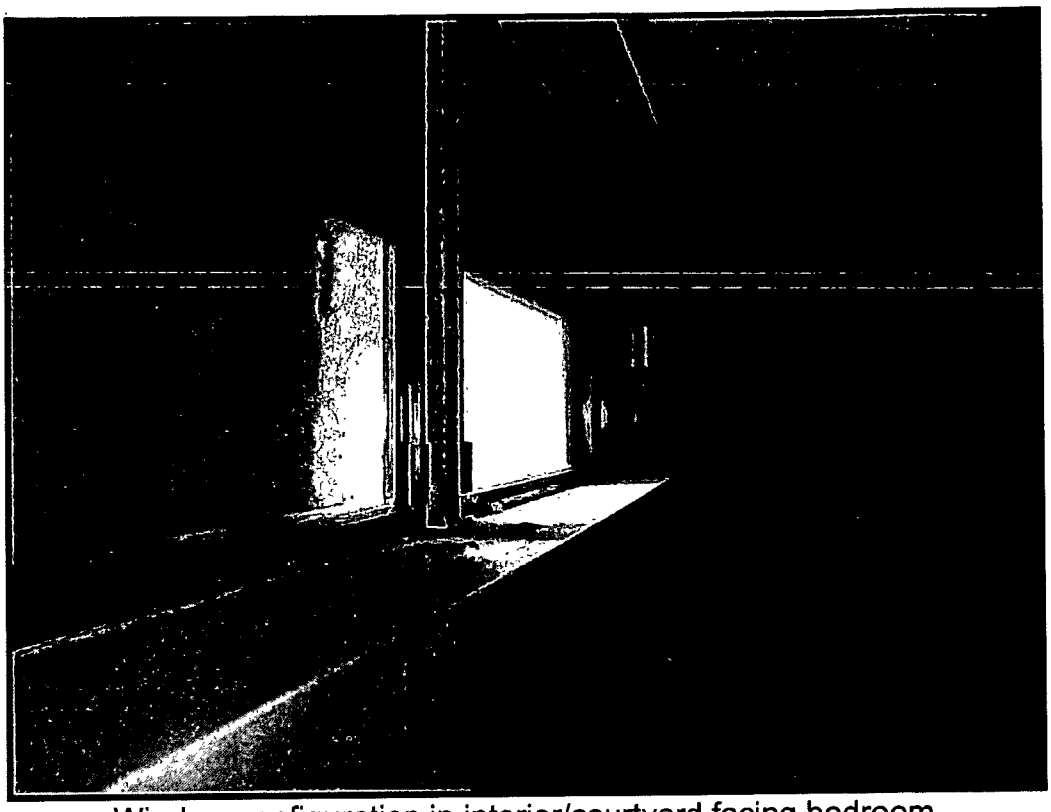
Moisture affected sheetrock and wood header above bedroom window.



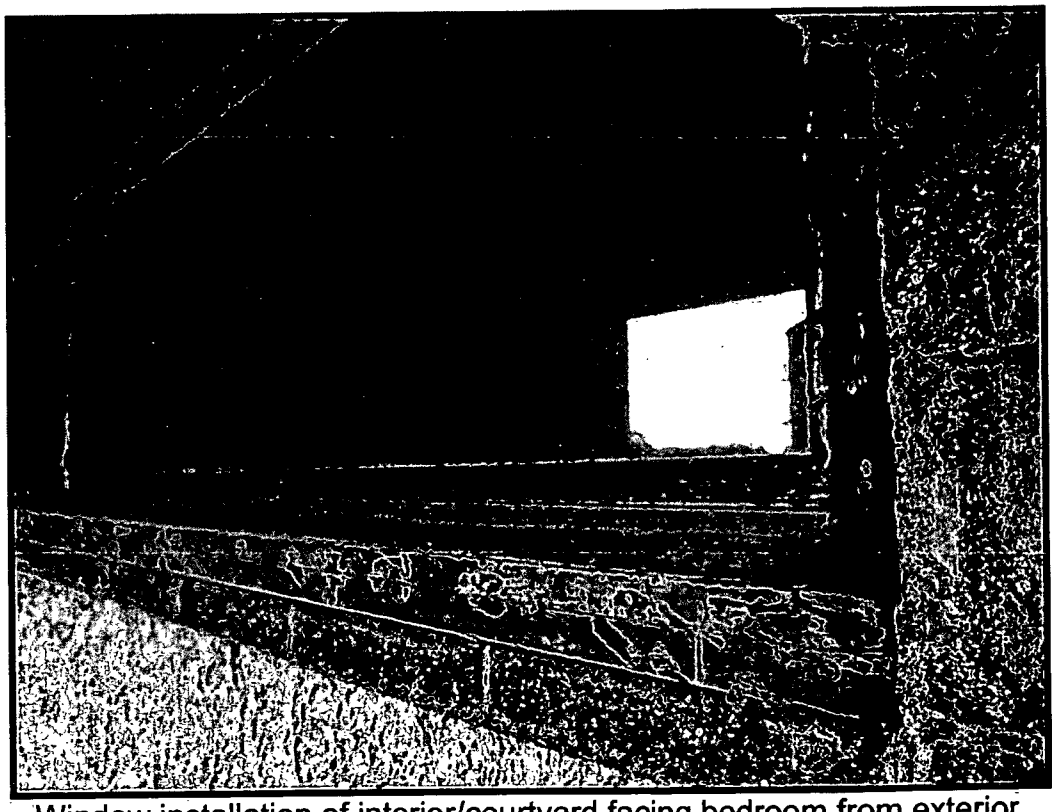
Staining at former location of carpet tack strips indicative of mold/mildew.



Moisture affected baseboard trim and sheetrock below right side of bedroom window. Note mold/mildew staining.



Window configuration in interior/courtyard facing bedroom.



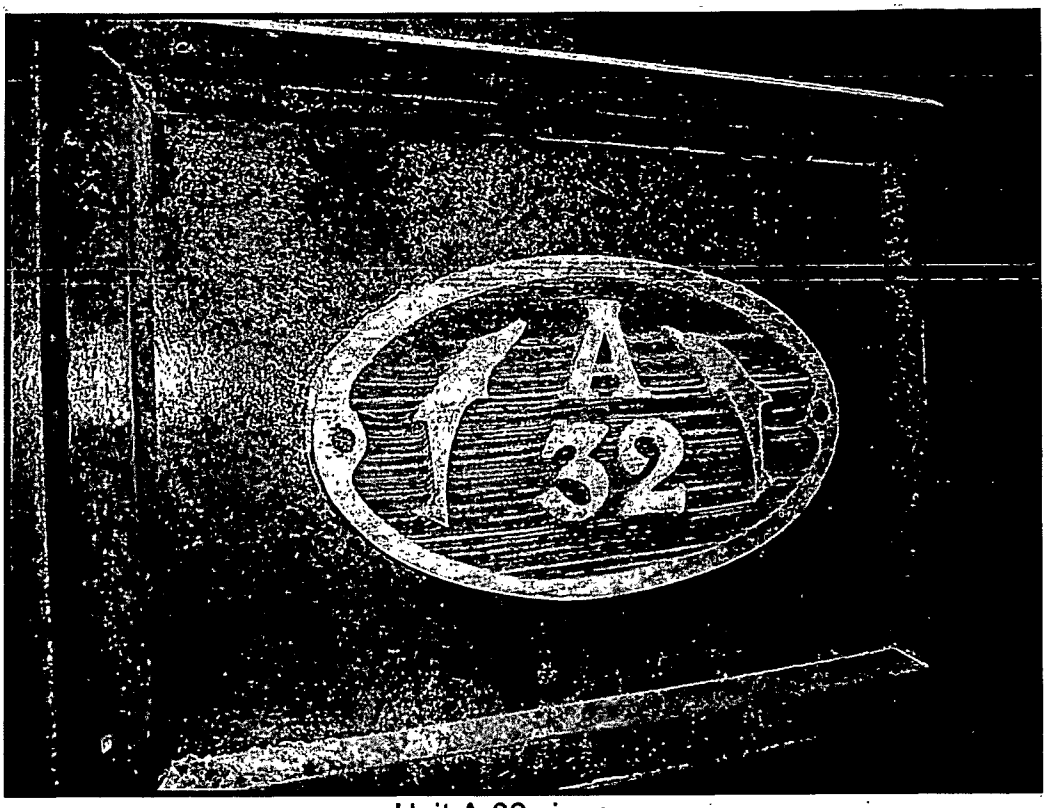
Window installation of interior/courtyard facing bedroom from exterior.



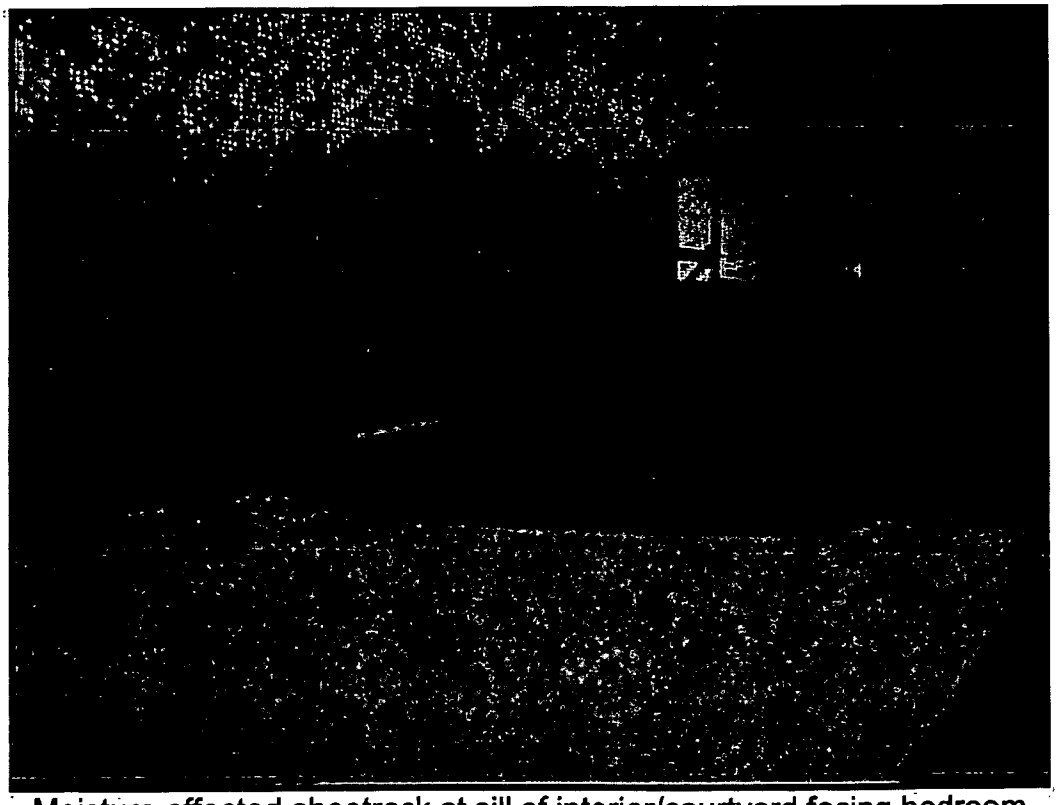
Window installation configuration at CMU interface from exterior.



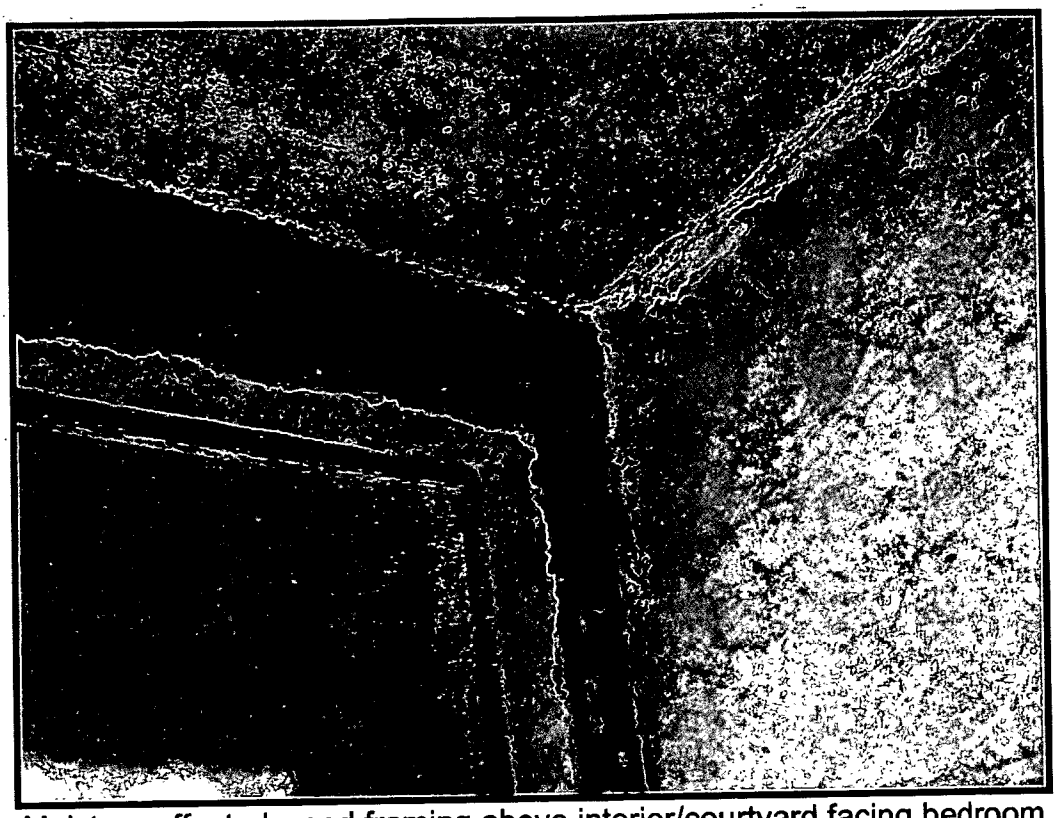
Corroded nail heads and sealant/caulk at flange associated with interior window installation from exterior.



Unit A-32 signage.



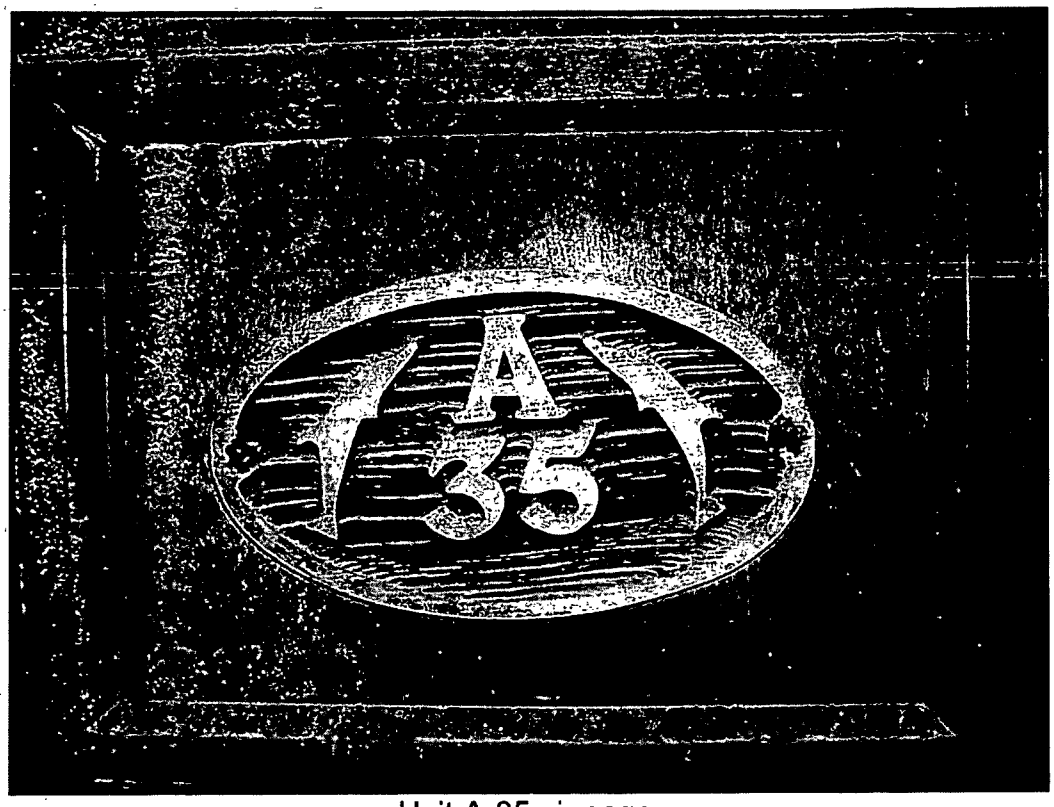
Moisture affected sheetrock at sill of interior/courtyard facing bedroom window.



Moisture affected wood framing above interior/courtyard facing bedroom window from exterior.



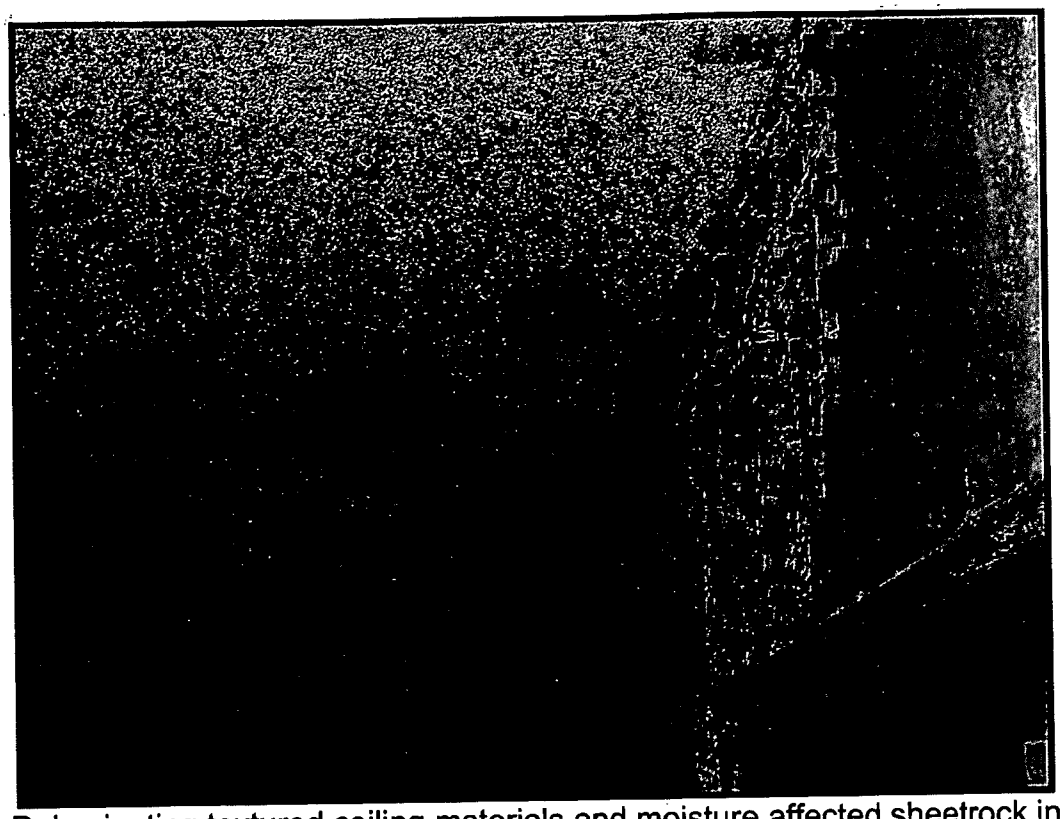
Wood header between bedroom window and hollow core slab above. Note openings and separation.



Unit A-35 signage.



Moisture affected sheetrock and baseboard trim below dining area window. Note staining.



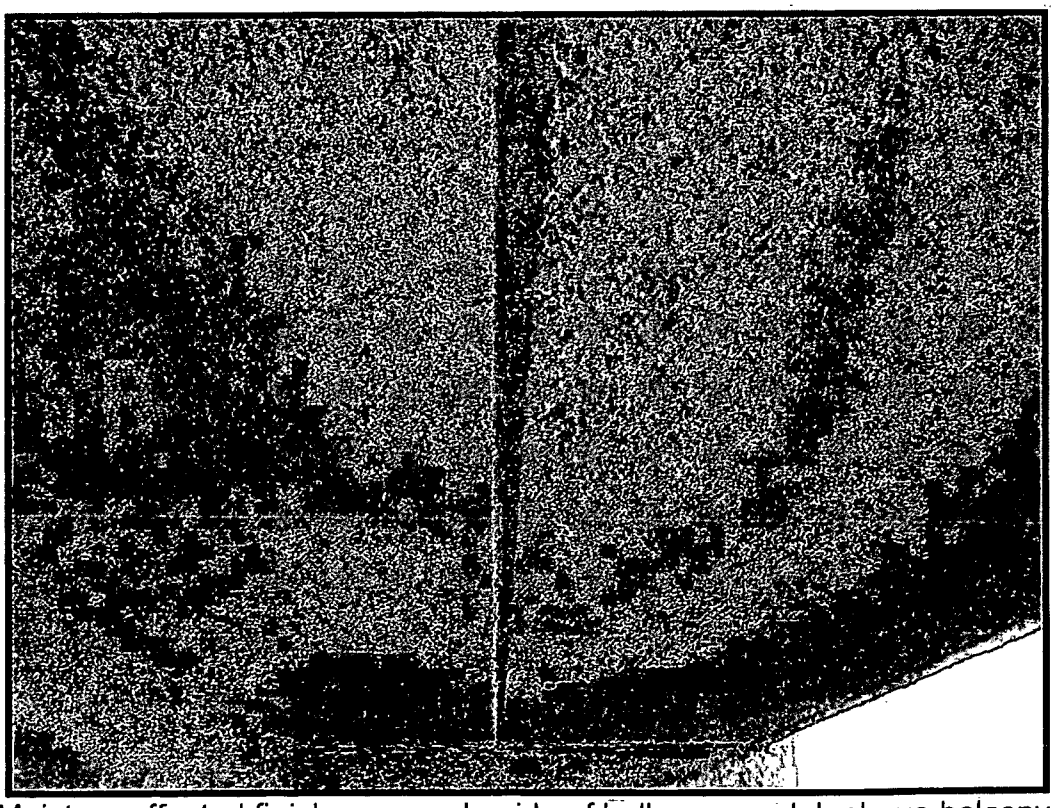
Delaminating textured ceiling materials and moisture affected sheetrock in living area above slider.



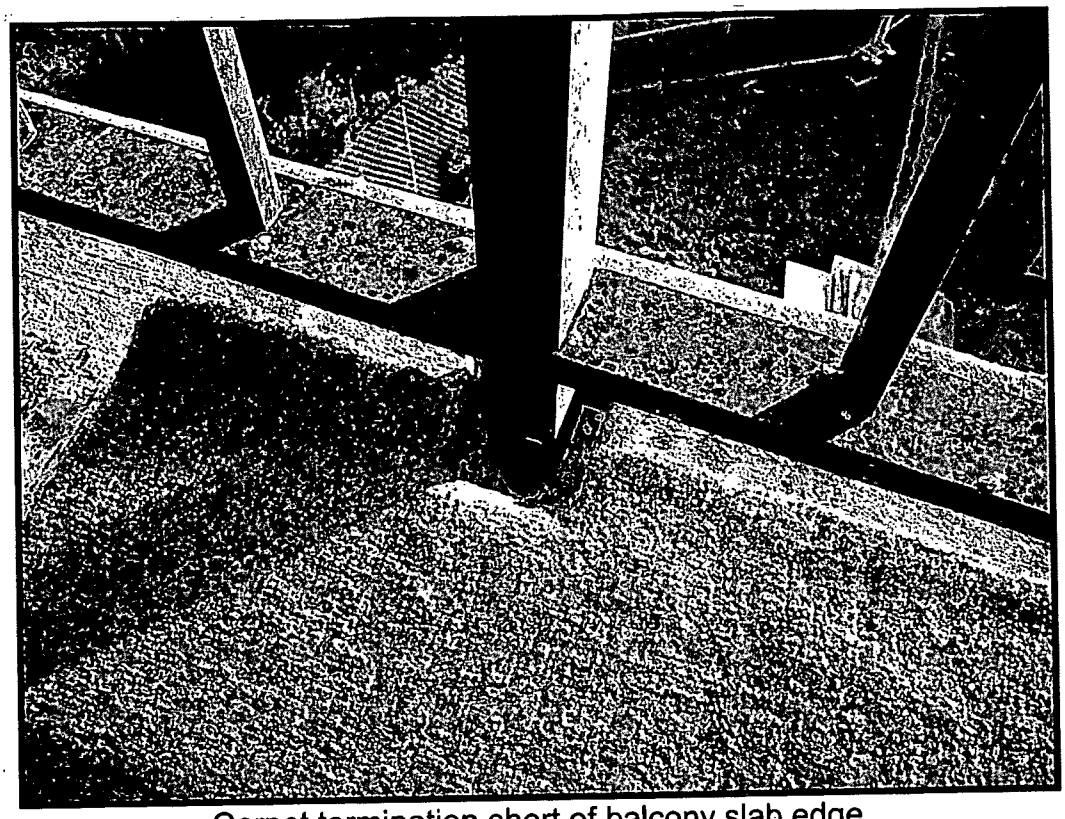
Cracked hollow core slab of balcony above Unit A-35 balcony.



Temporary structural steel member and cracked hollow core slab of balcony above Unit A-35 balcony.



Moisture affected finishes on underside of hollow core slab above balcony.



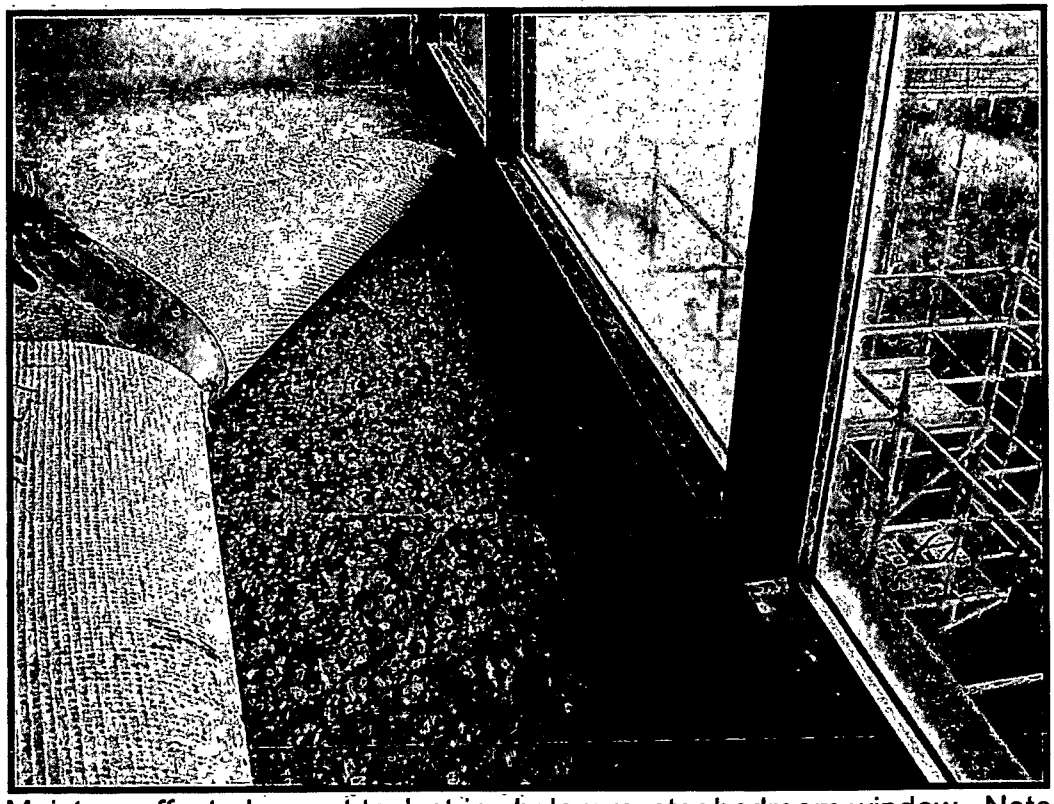
Carpet termination short of balcony slab edge.



Moisture affected carpet tack strips below master bedroom window. Note mold/mildew staining.



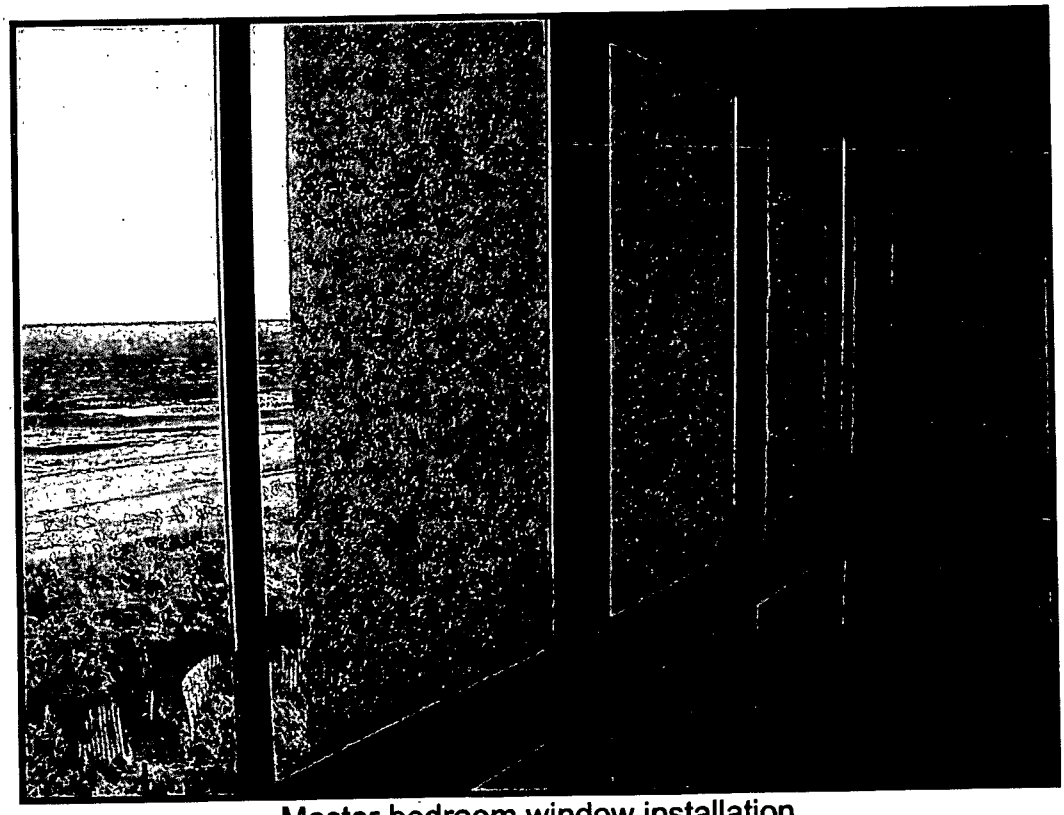
Moisture affected carpet tack strips below master bedroom window. Note mold/mildew staining.



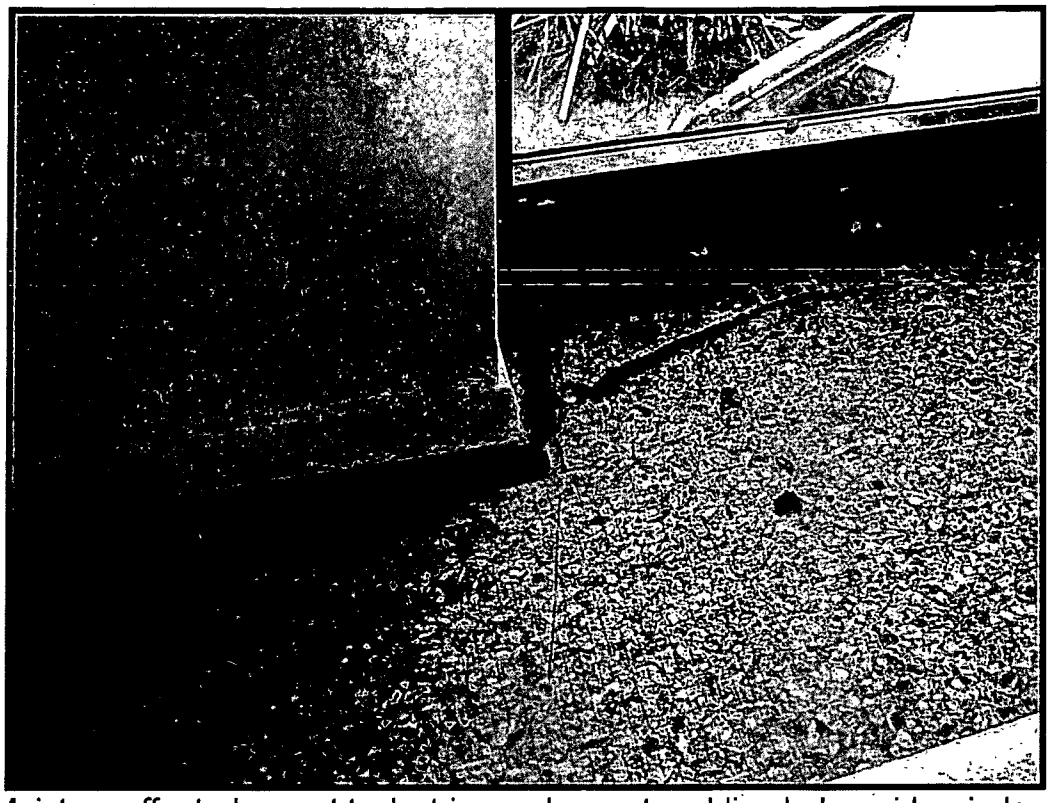
Moisture affected carpet tack strips below master bedroom window. Note mold mildew staining.



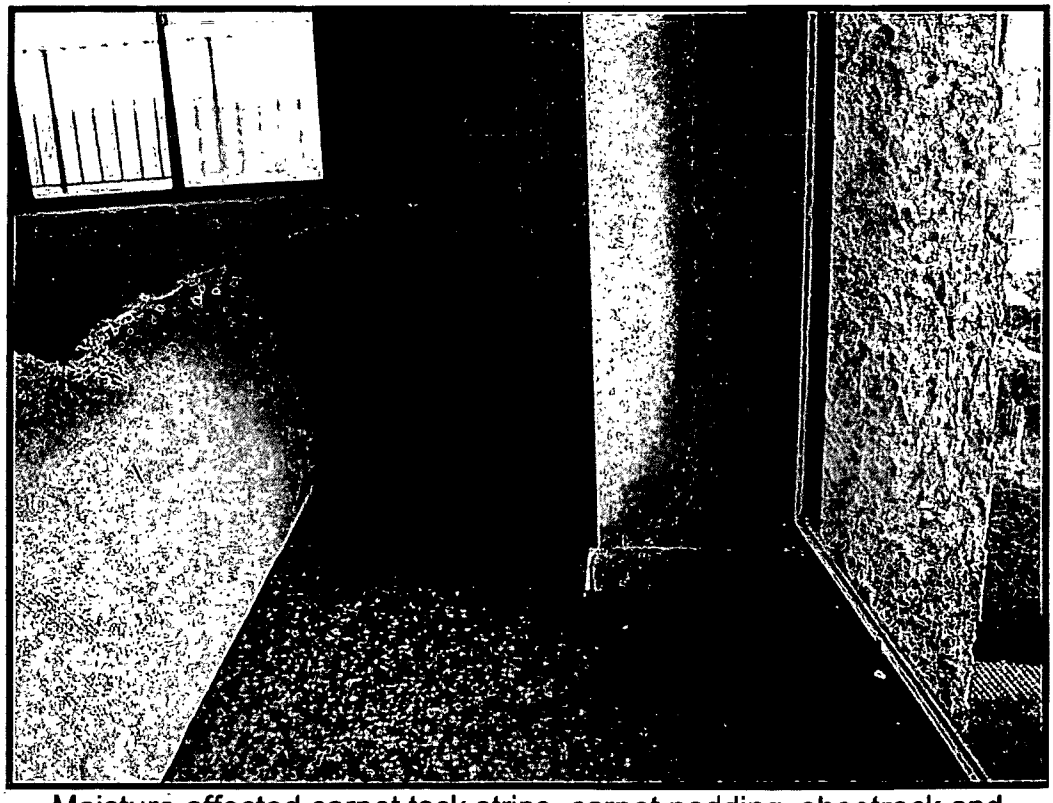
Moisture affected sheetrock and wood header above master bedroom window.



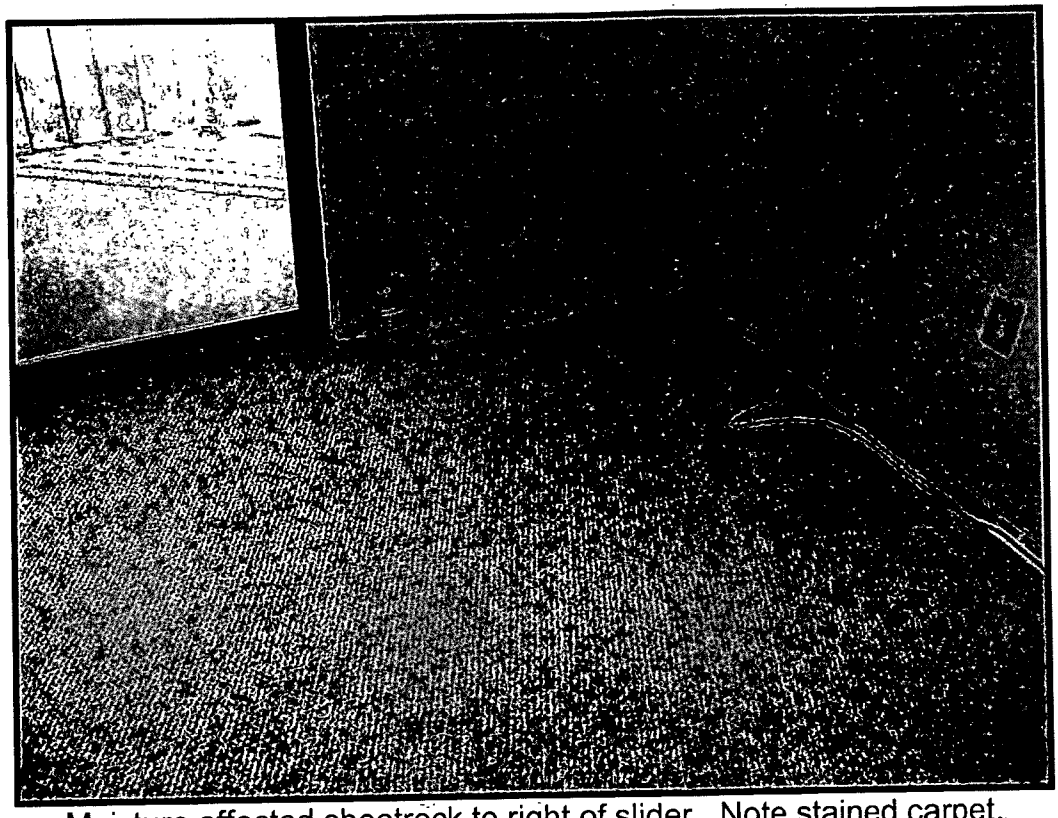
Master bedroom window installation.



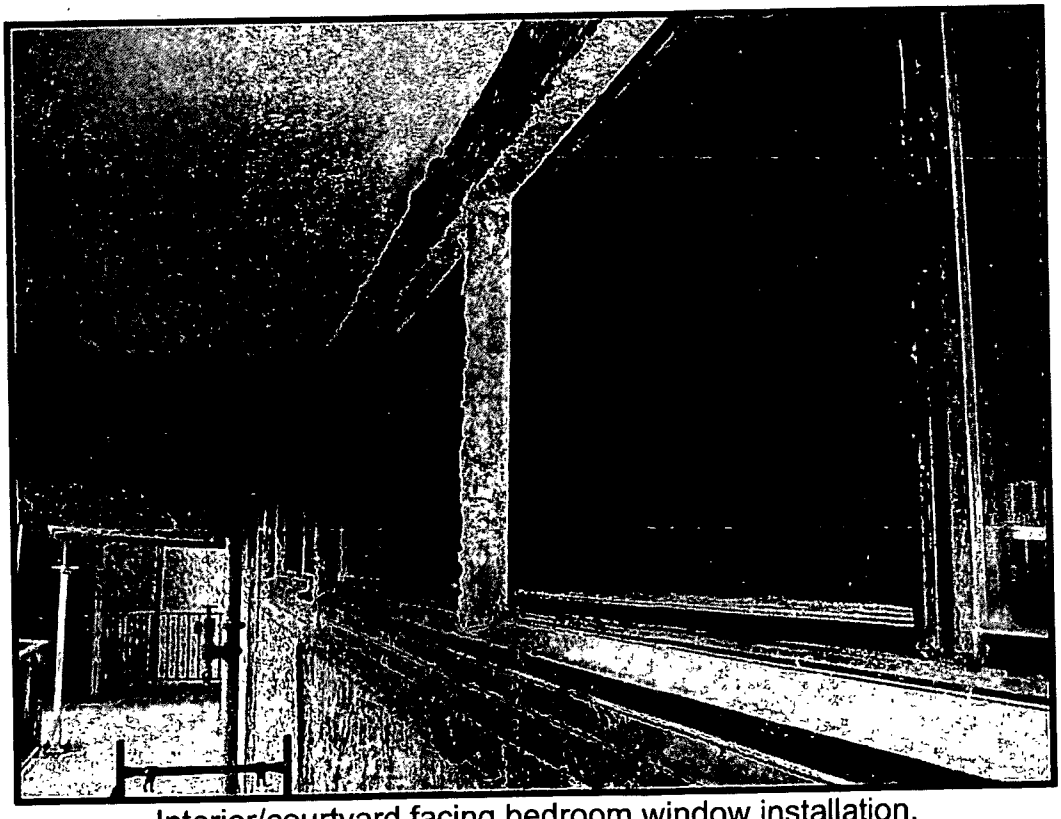
Moisture affected carpet tack strips and carpet padding below side window.



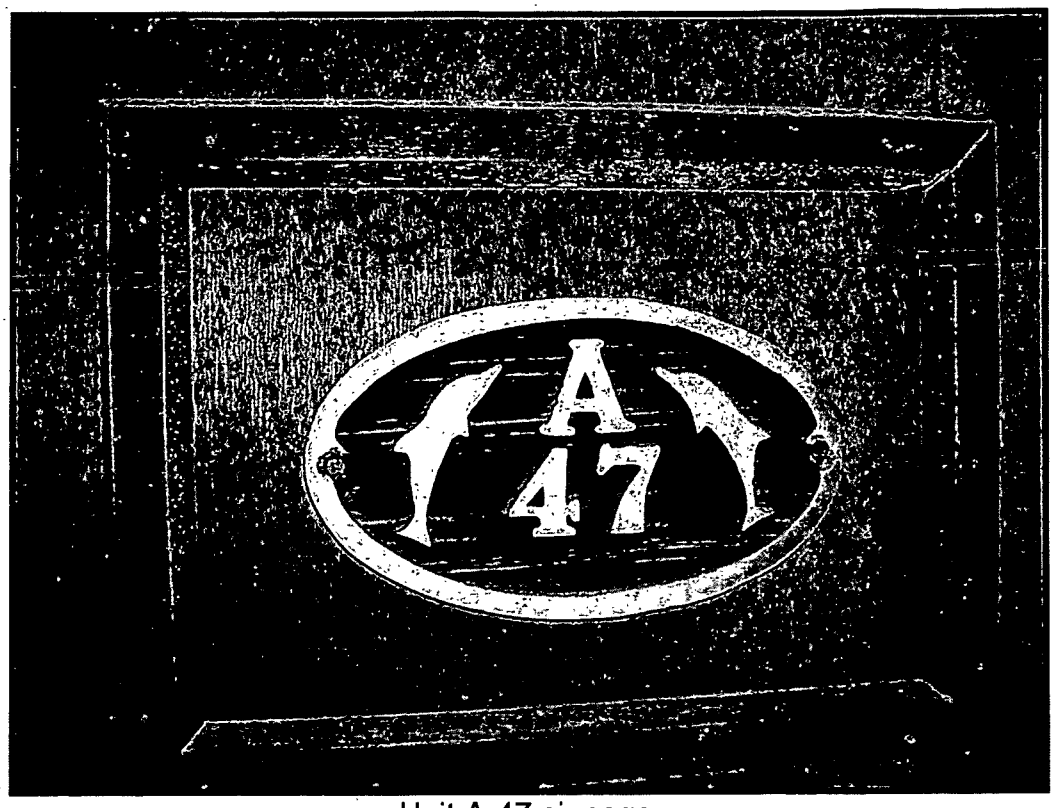
Moisture affected carpet tack strips, carpet padding, sheetrock and baseboard trip below side window.



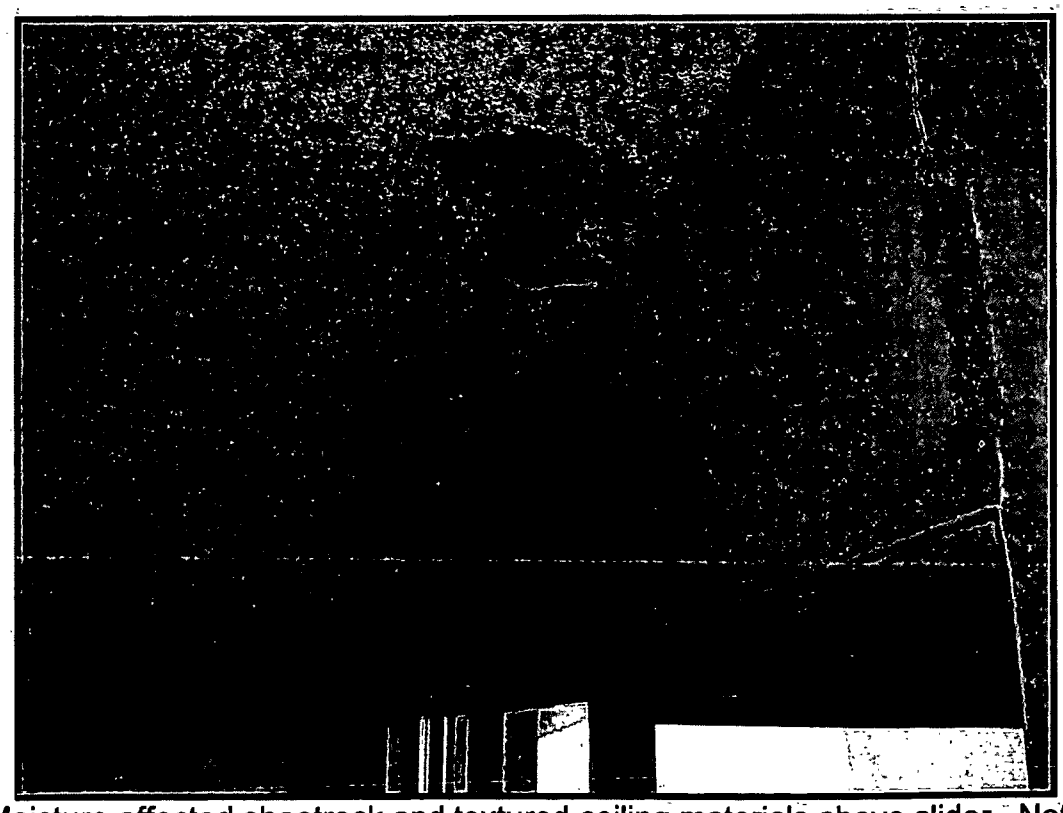
Moisture affected sheetrock to right of slider. Note stained carpet.



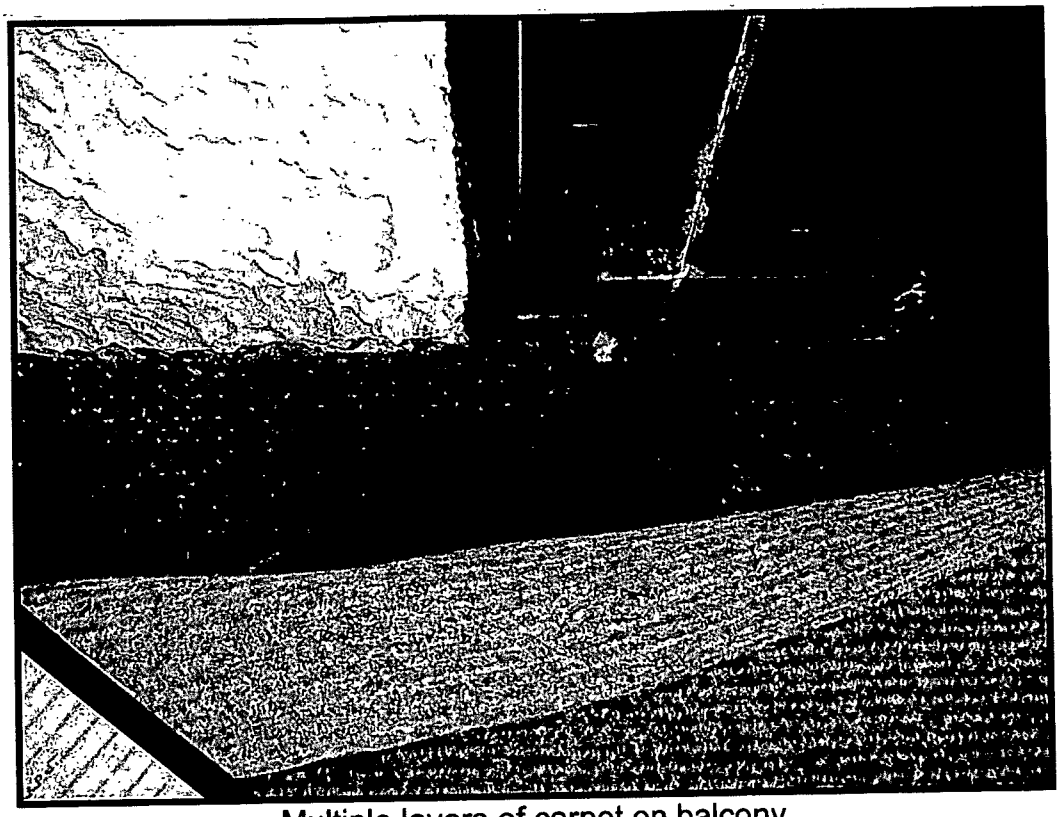
Interior/courtyard facing bedroom window installation.



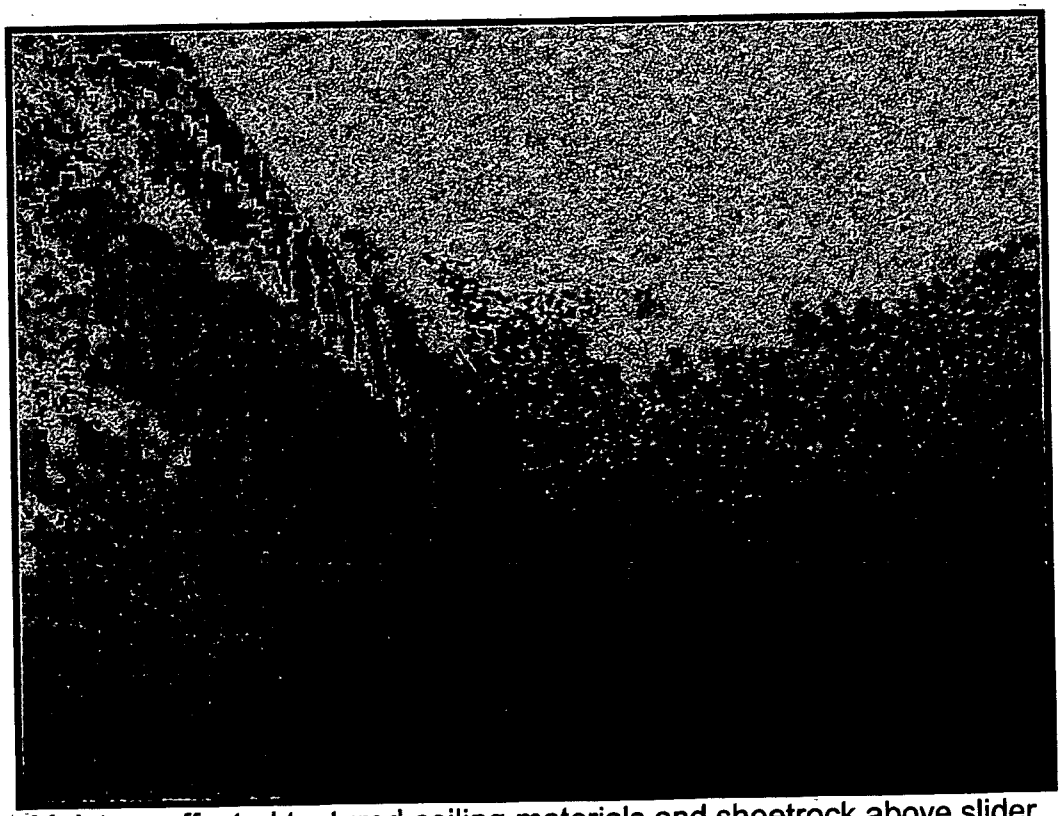
Unit A-47 signage.



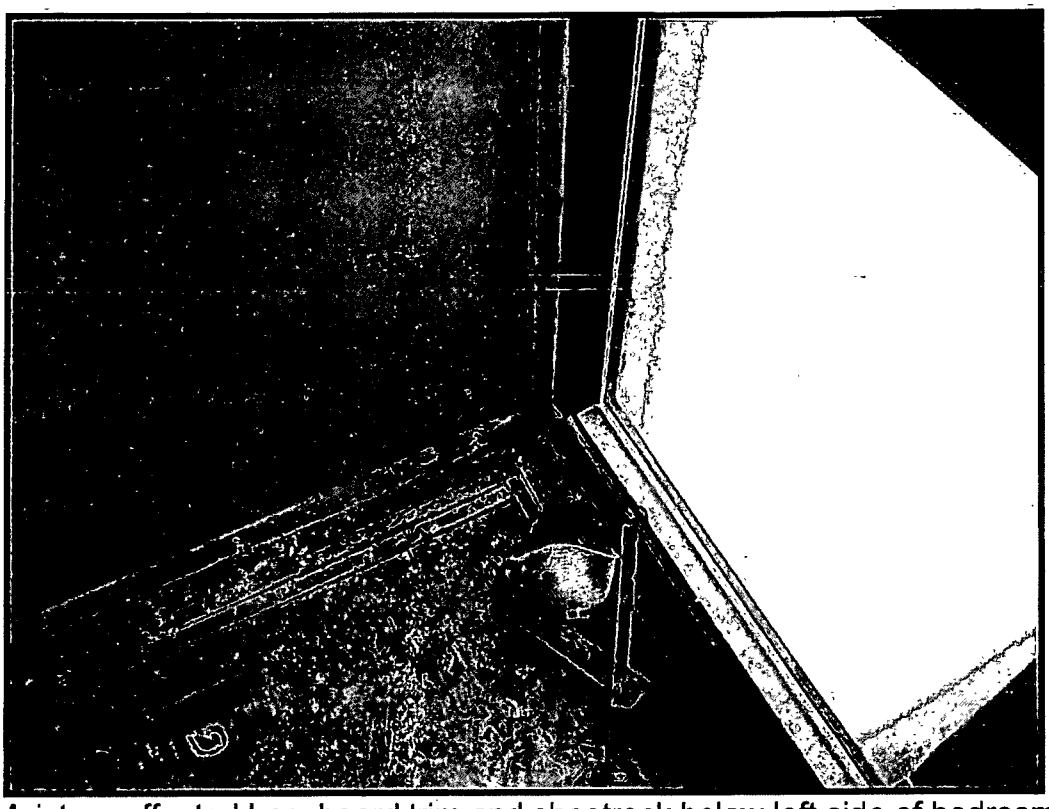
Moisture affected sheetrock and textured ceiling materials above slider. Note mold/mildew staining.



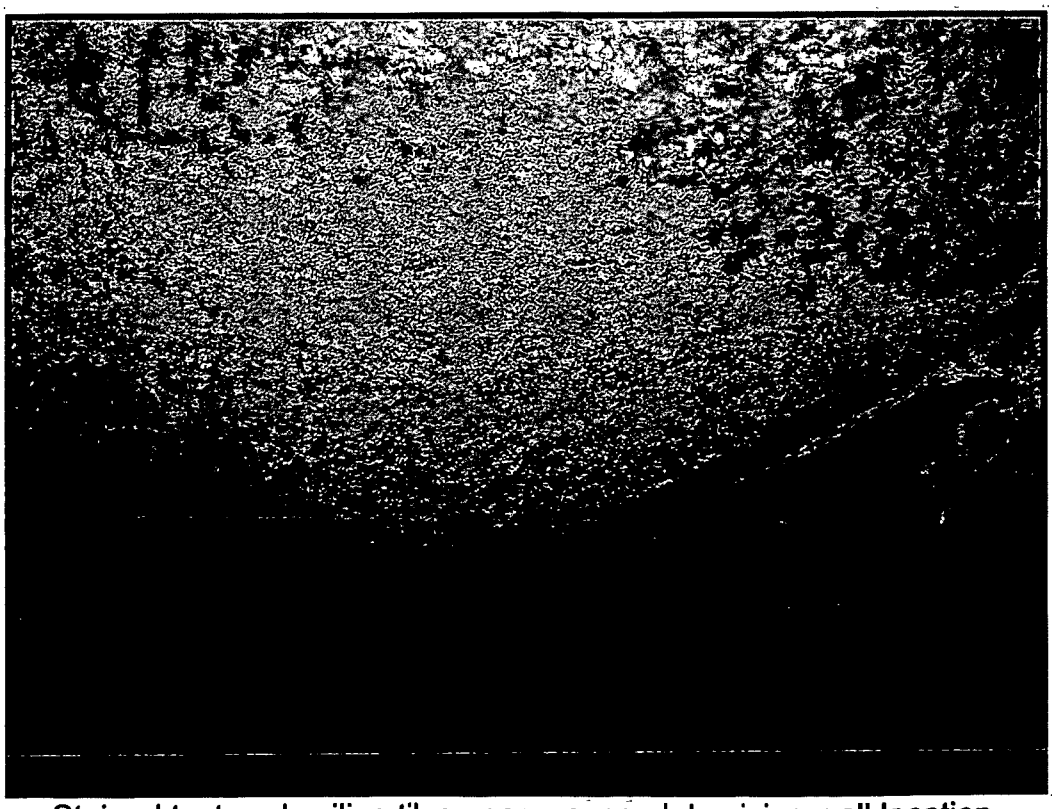
Multiple layers of carpet on balcony.



Moisture affected textured ceiling materials and sheetrock above slider.



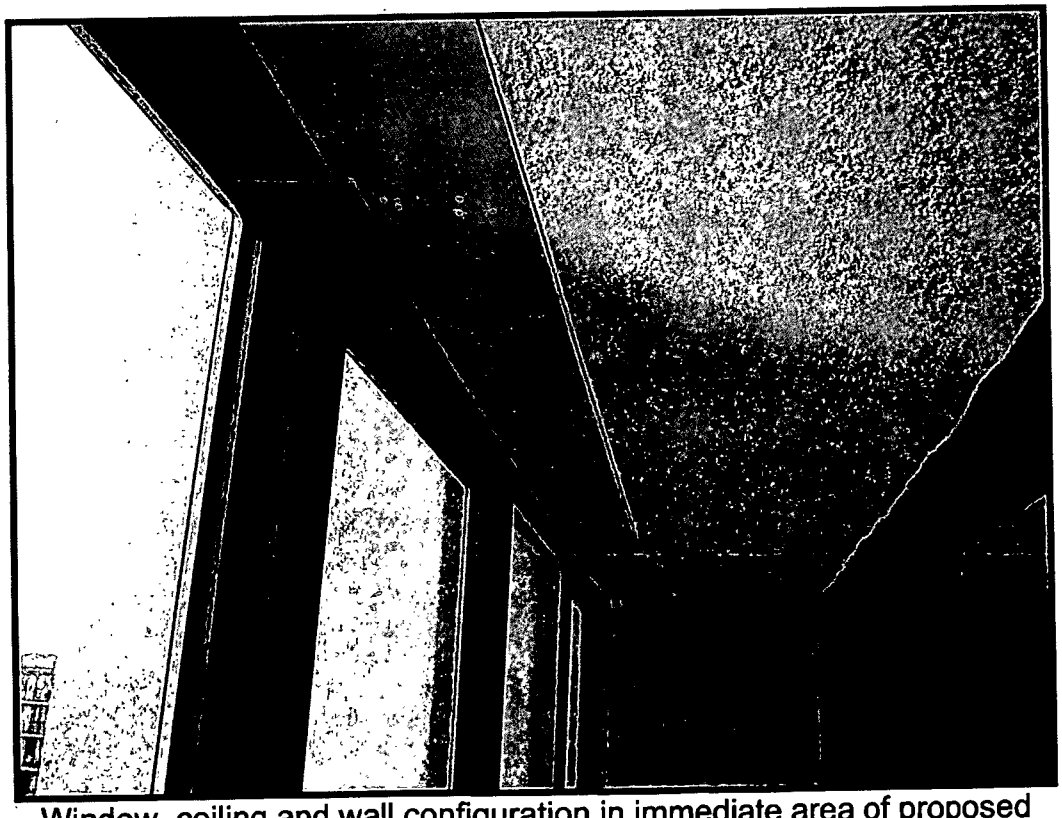
Moisture affected baseboard trim and sheetrock below left side of bedroom window.



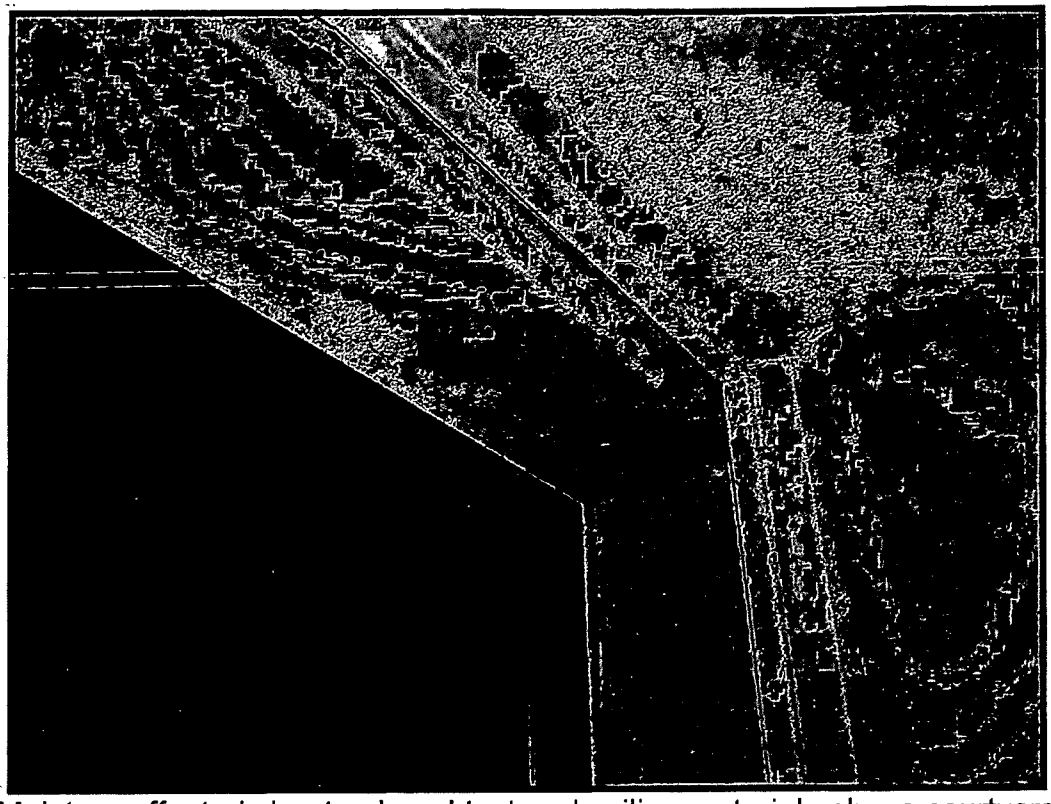
Stained textured ceiling tiles near proposed demising wall location.



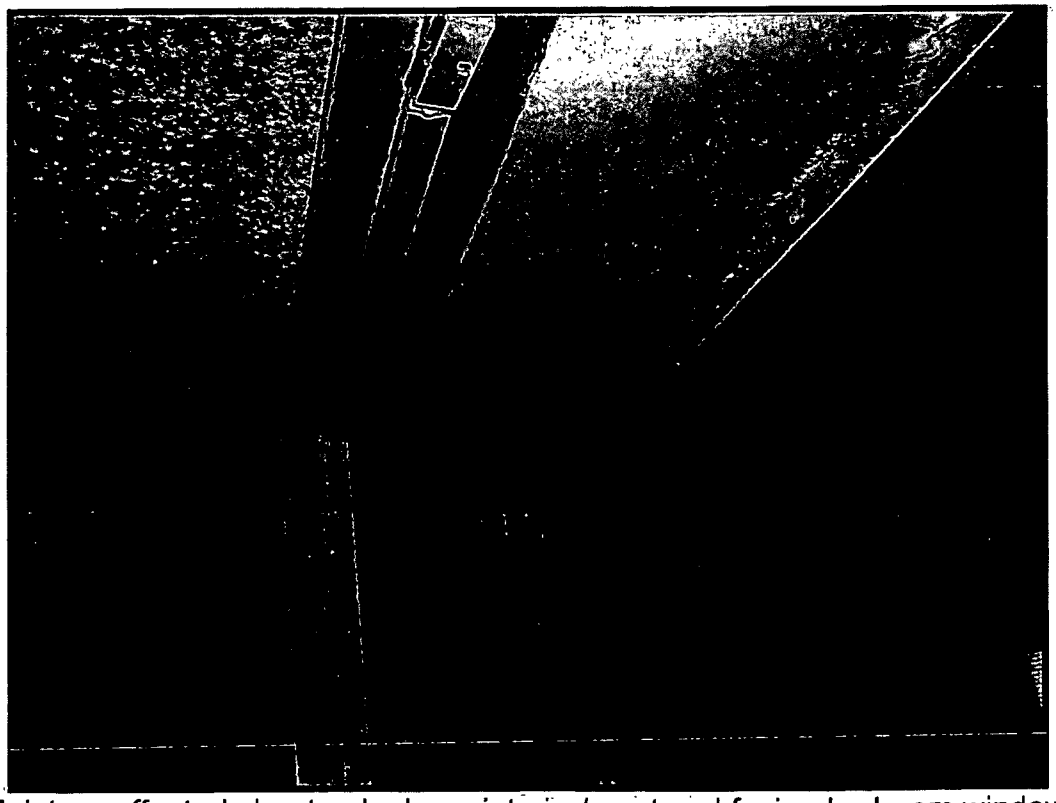
Moisture affected carpet tack strips below front bedroom window.



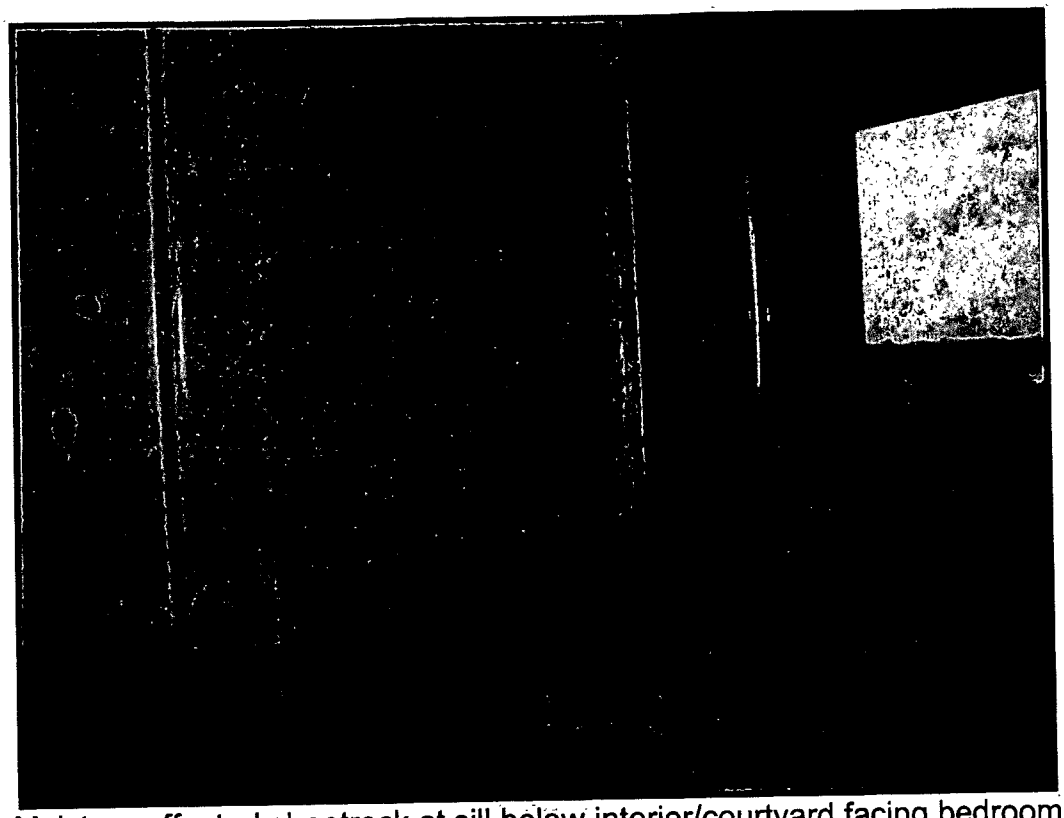
Window, ceiling and wall configuration in immediate area of proposed demising wall location.



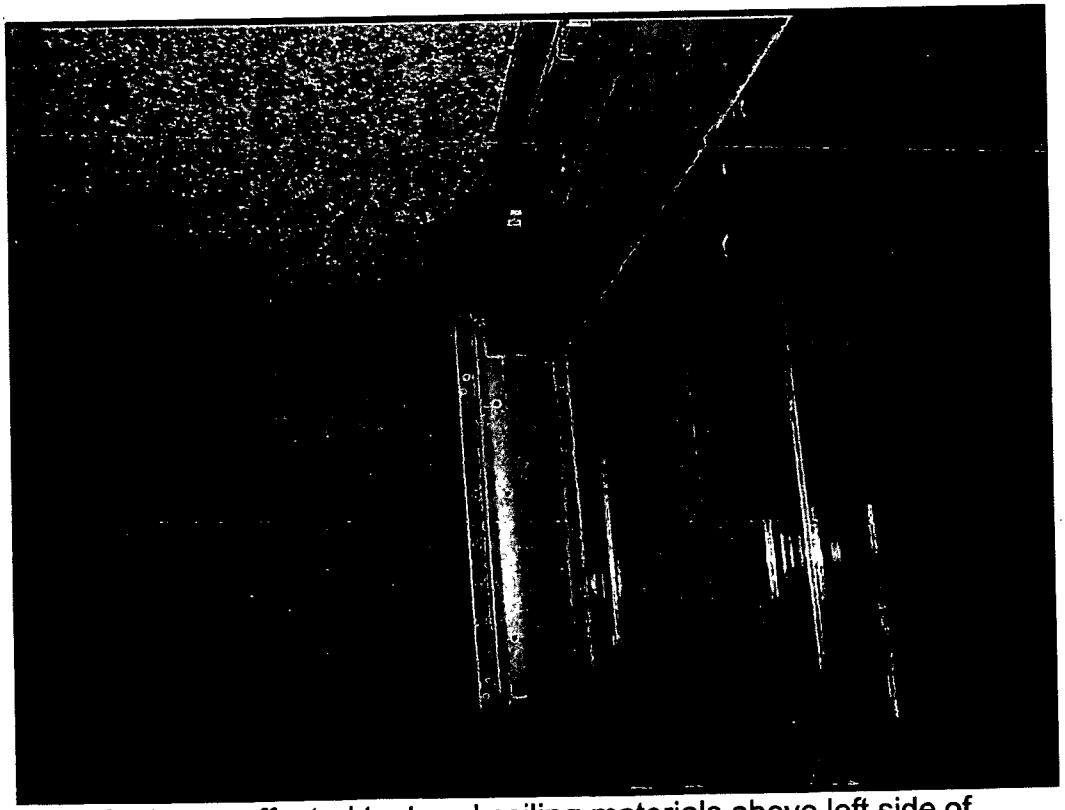
Moisture affected sheetrock and textured ceiling materials above courtyard facing bedroom window.



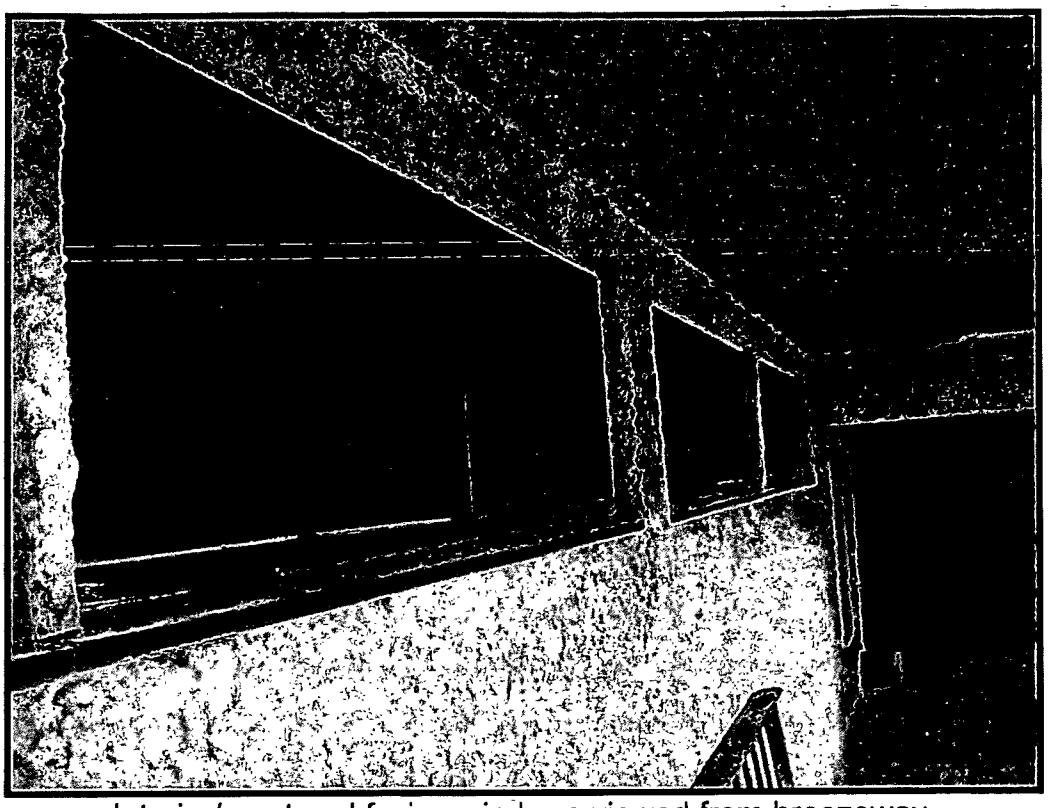
Moisture affected sheetrock above interior/courtyard facing bedroom window.



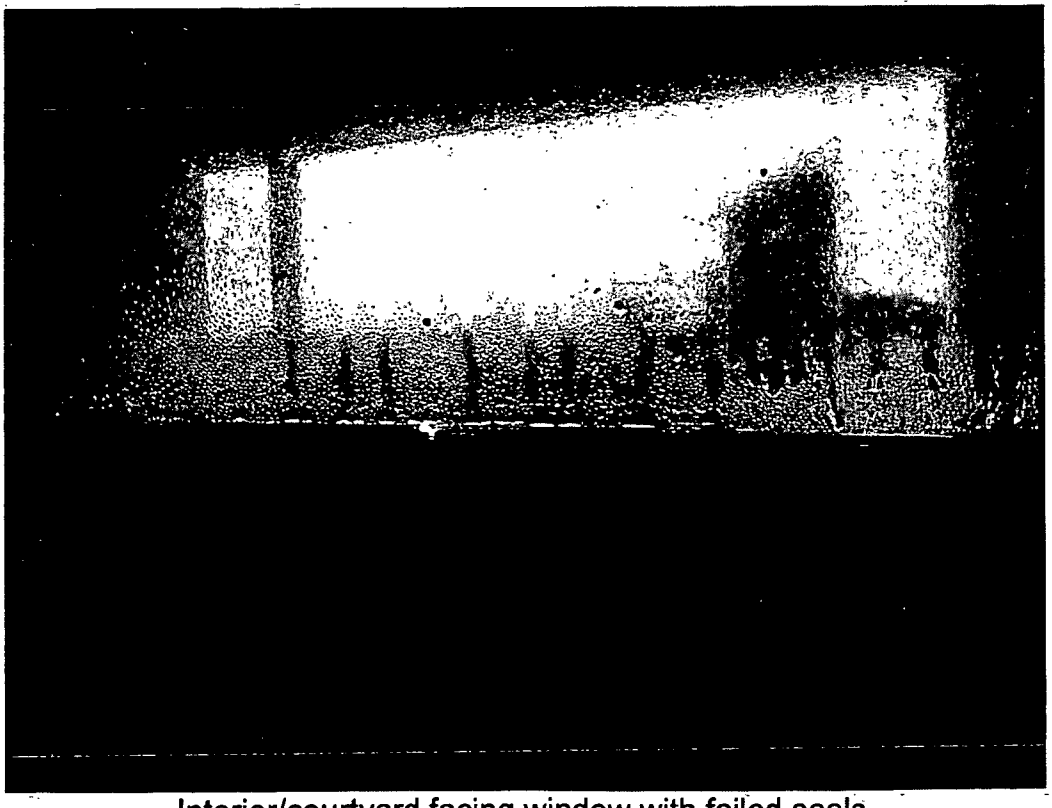
Moisture affected sheetrock at sill below interior/courtyard facing bedroom window.



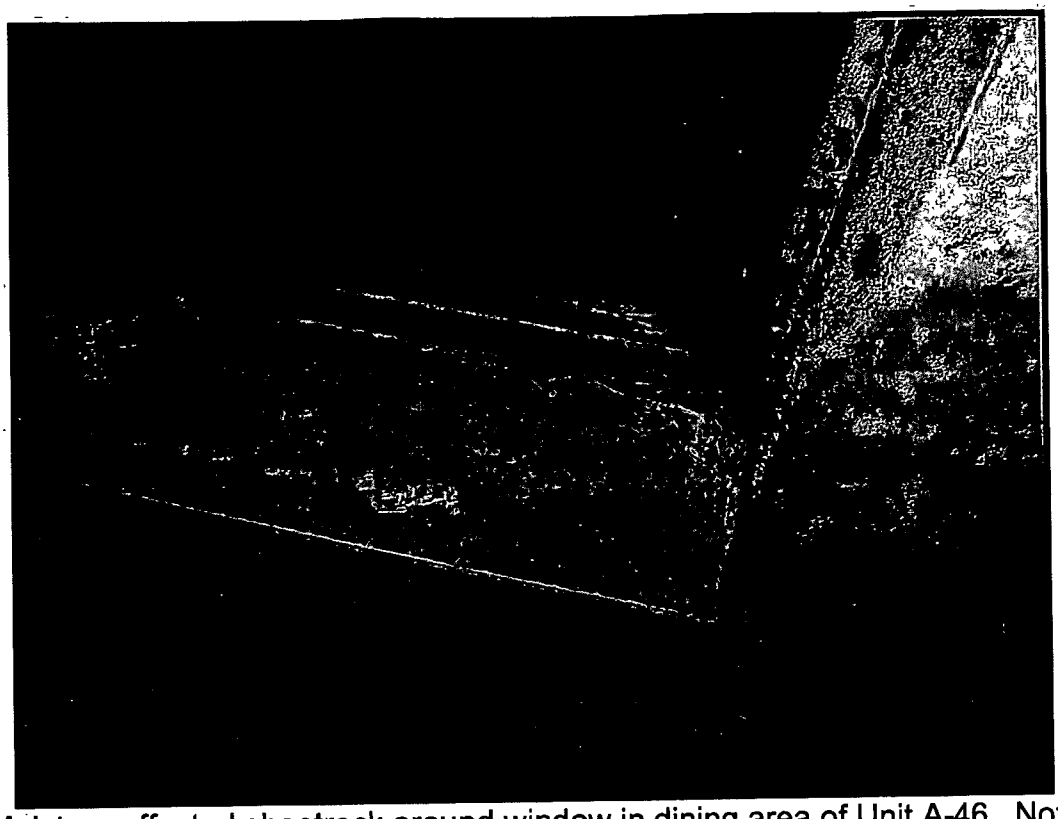
Moisture affected textured ceiling materials above left side of interior/courtyard facing bedroom window.



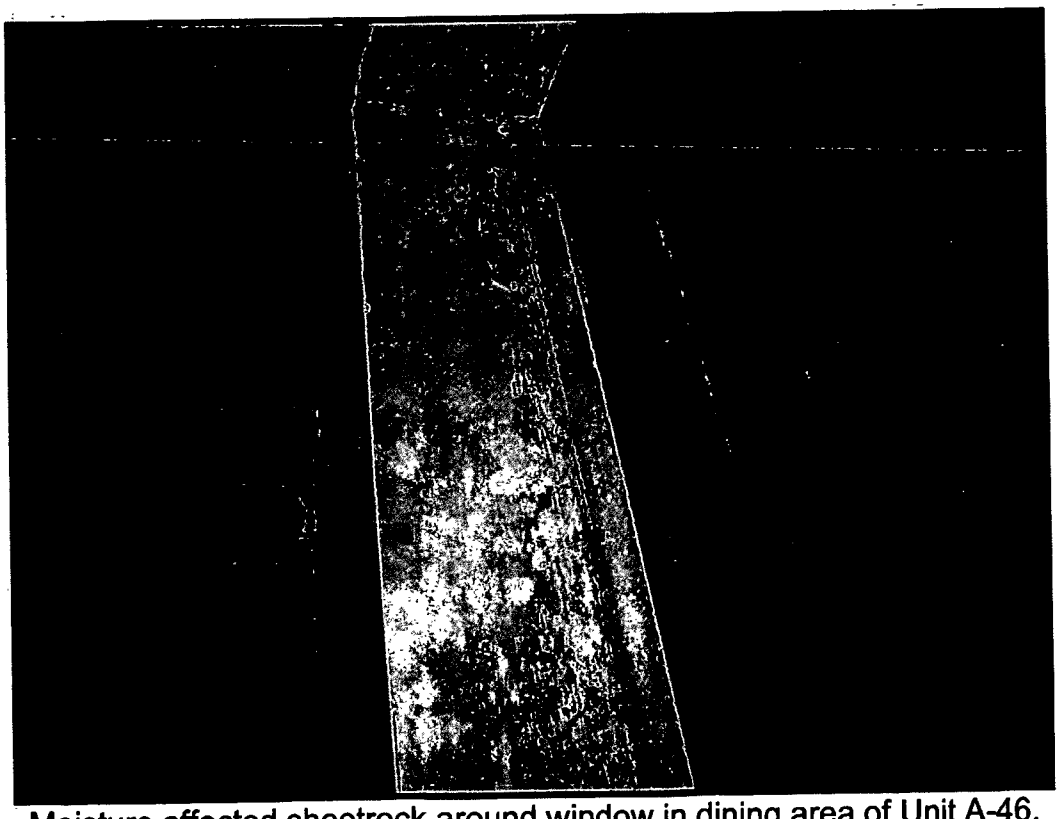
Interior/courtyard facing windows viewed from breezeway.



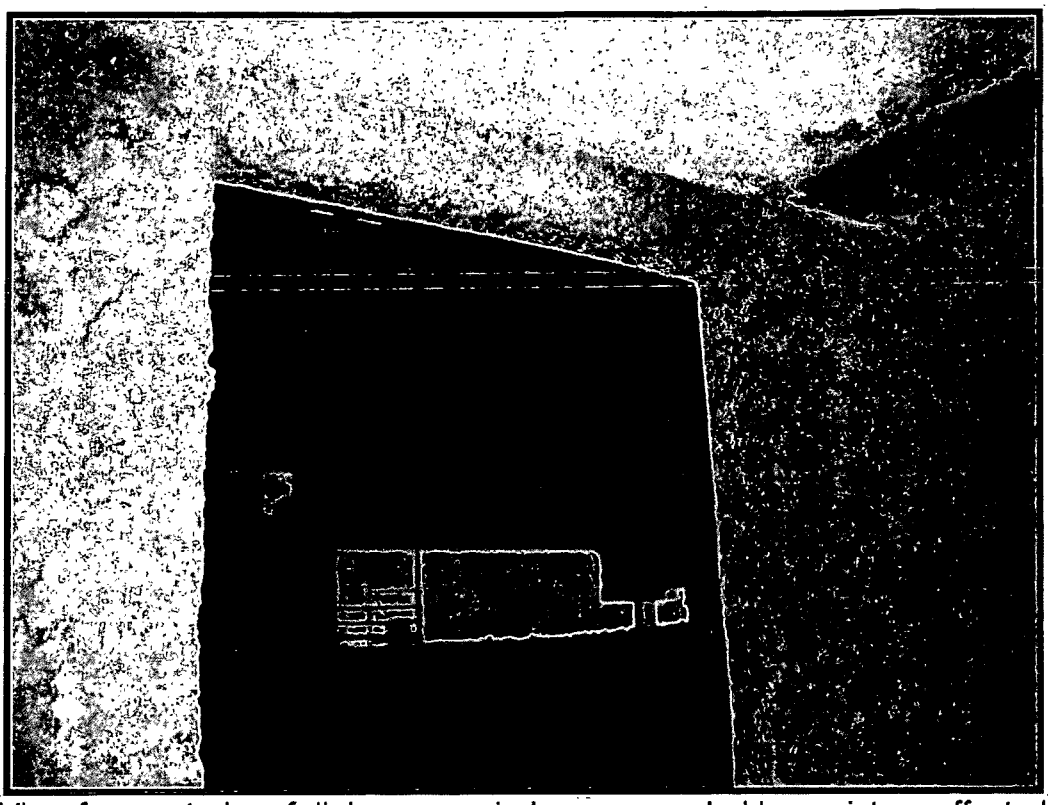
Interior/courtyard facing window with failed seals.



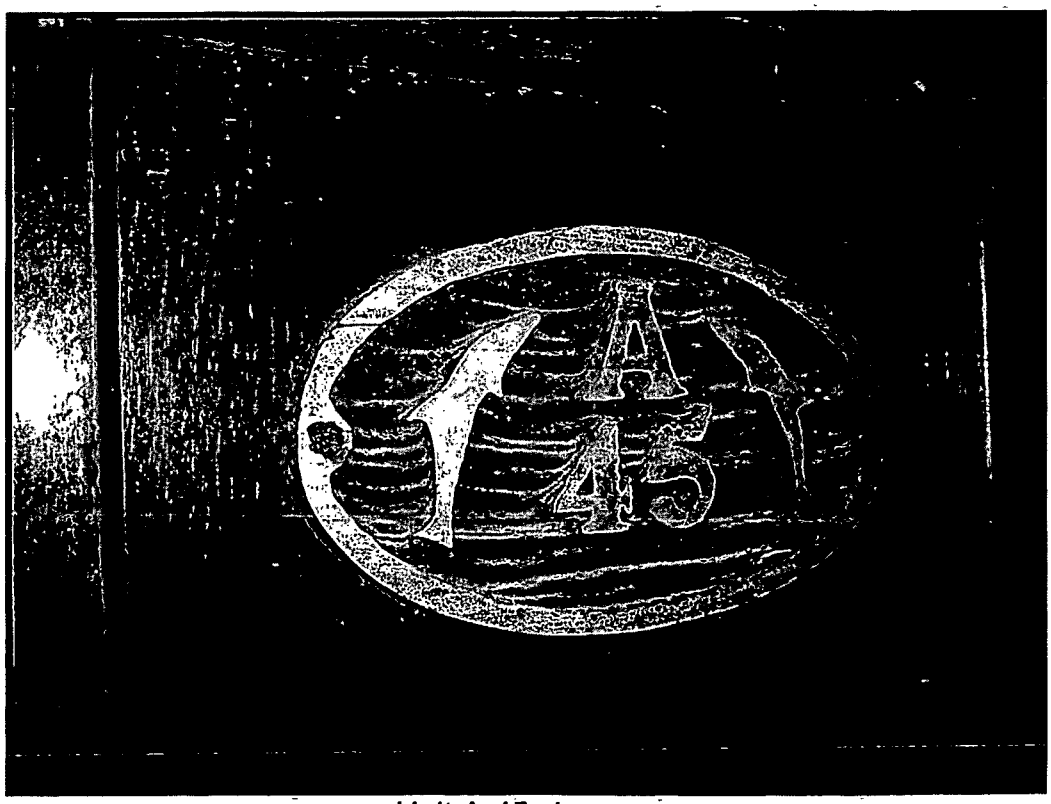
Moisture affected sheetrock around window in dining area of Unit A-46. Note mold/mildew staining.



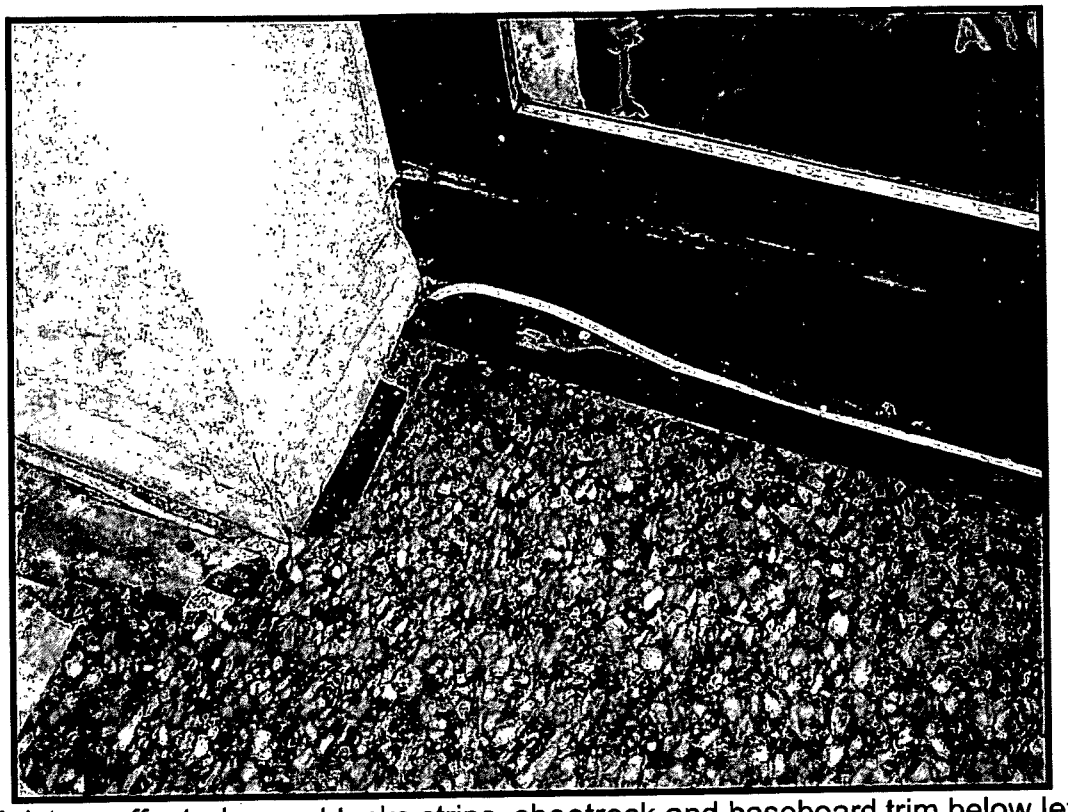
Moisture affected sheetrock around window in dining area of Unit A-46.



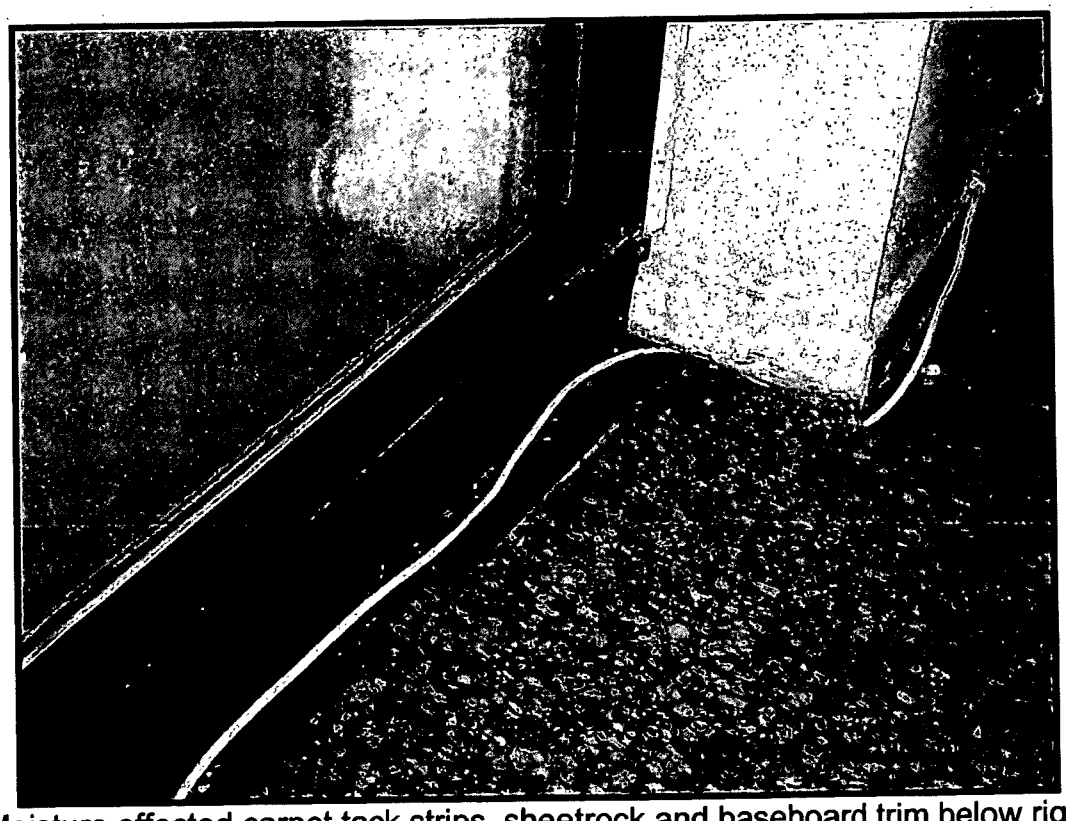
View from exterior of dining area window surrounded by moisture affected sheetrock of Unit A-46.



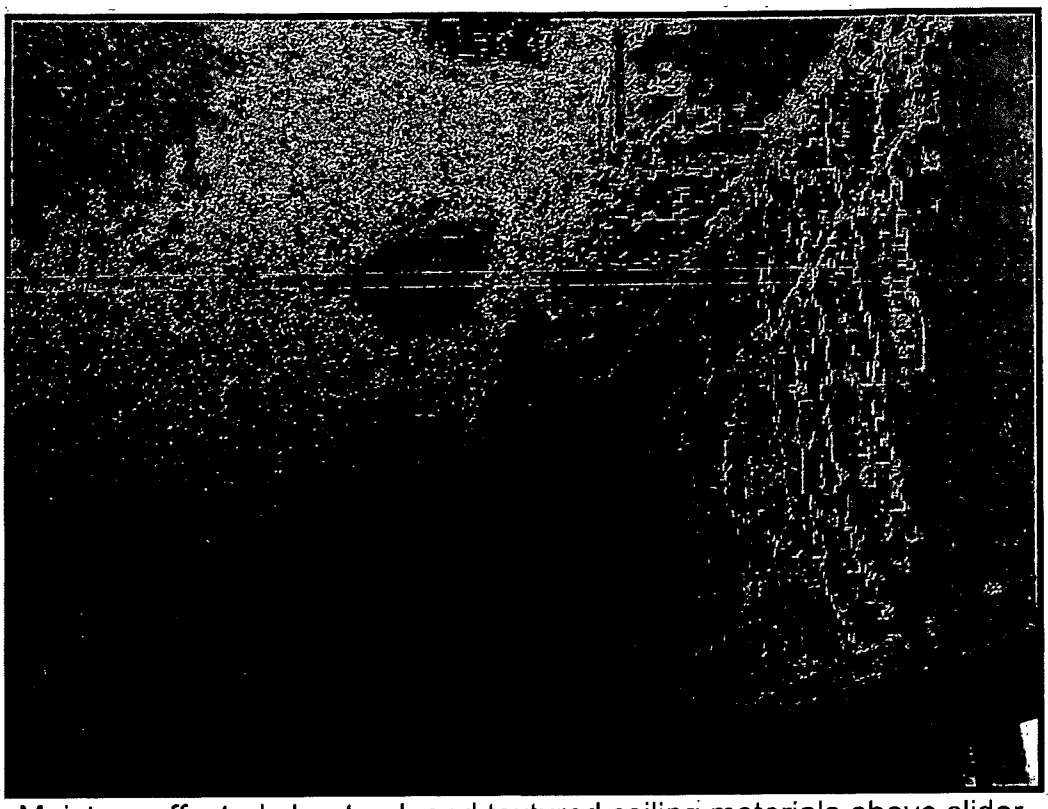
Unit A-45 signage.



Moisture affected carpet tacks strips, sheetrock and baseboard trim below left side of dining area window.



Moisture affected carpet tack strips, sheetrock and baseboard trim below right side of dining area window



Moisture affected sheetrock and textured ceiling materials above slider.



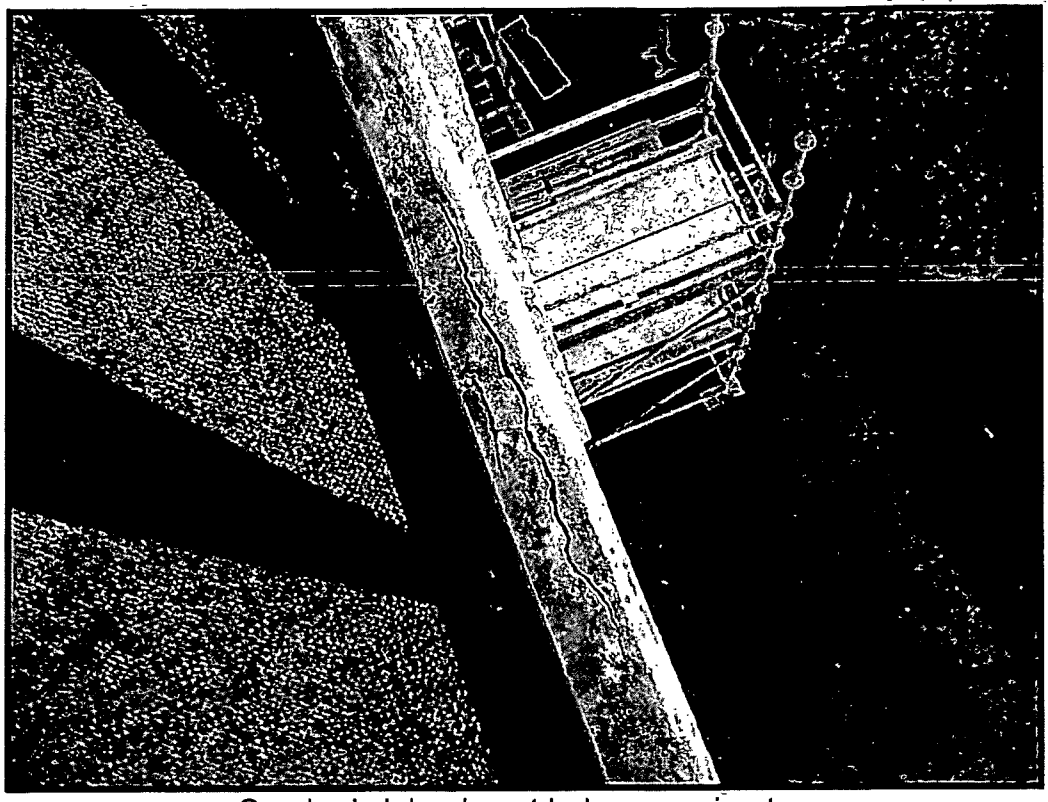
Corroded fasteners on furring strips associated with ceiling materials.



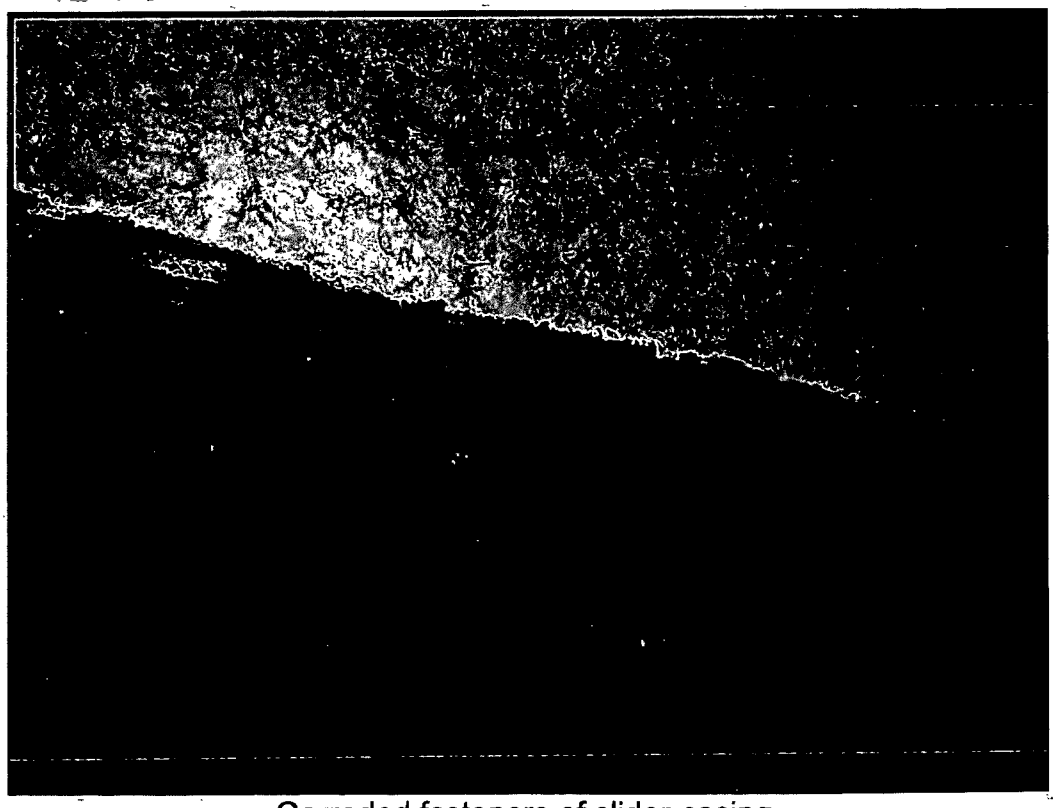
Temporary structural steel framing supporting distressed hollow core slabs above balcony.



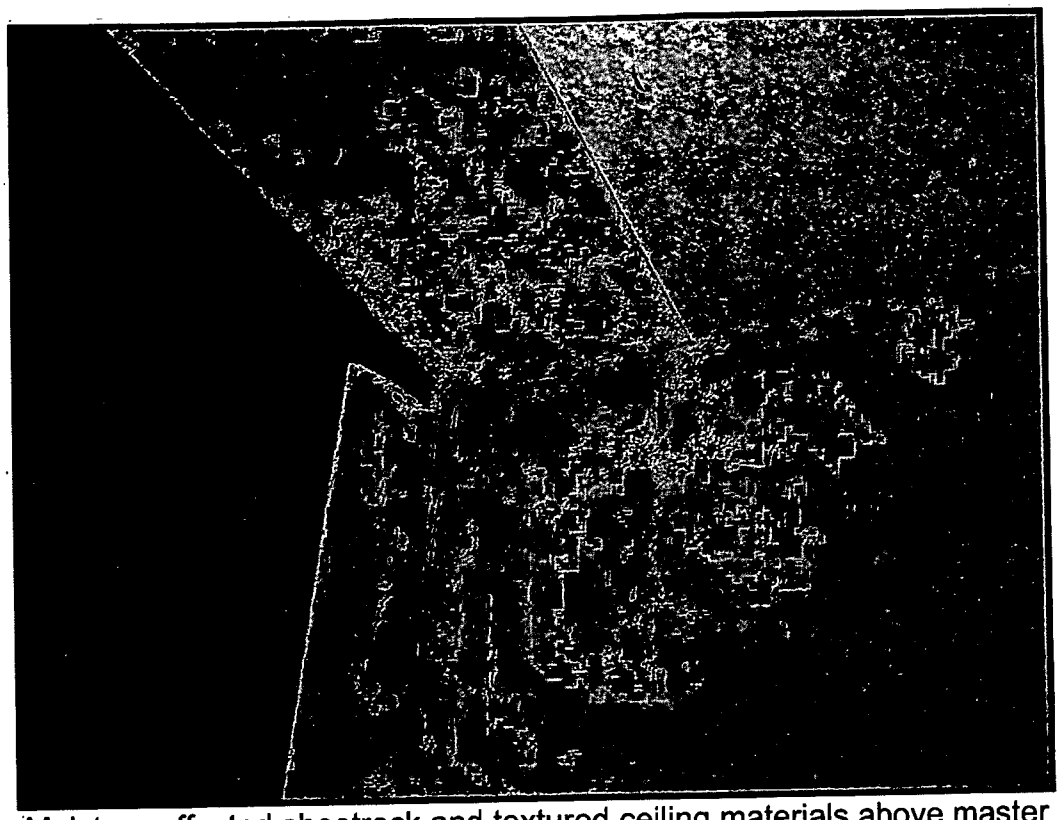
Corroded reinforcing steel of cantilever beam and hollow core slab above balcony.



Cracked slab edge at balcony perimeter.



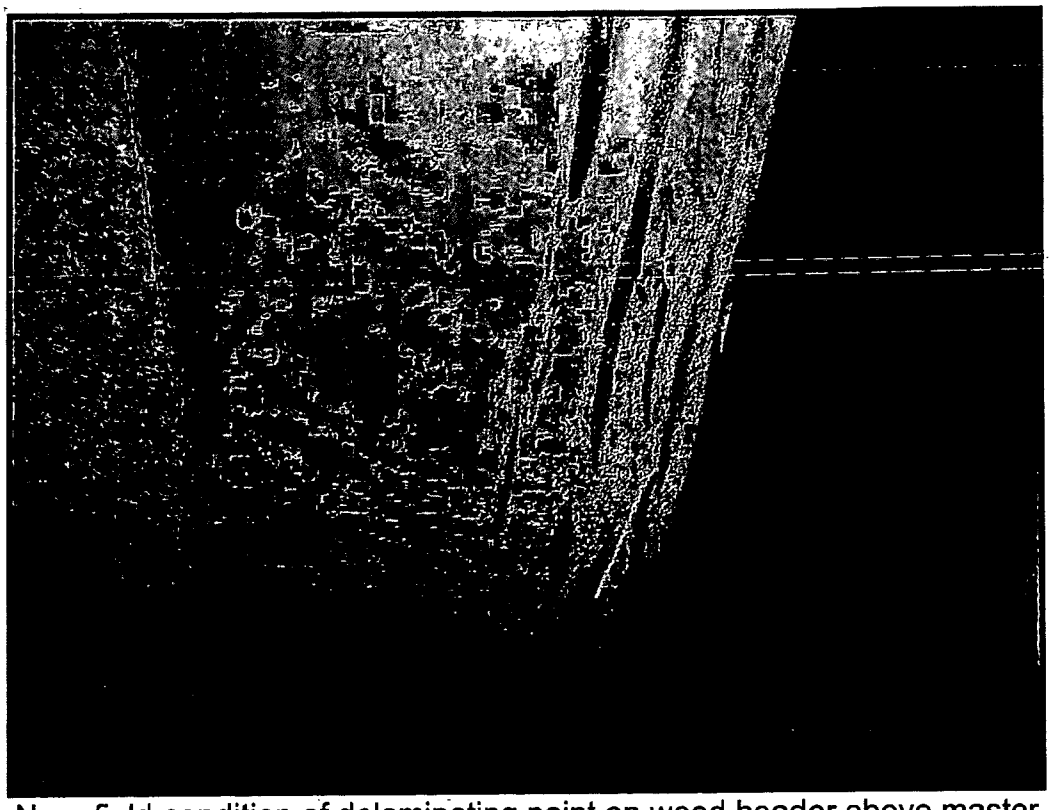
Corroded fasteners of slider casing.



Moisture affected sheetrock and textured ceiling materials above master bedroom window.



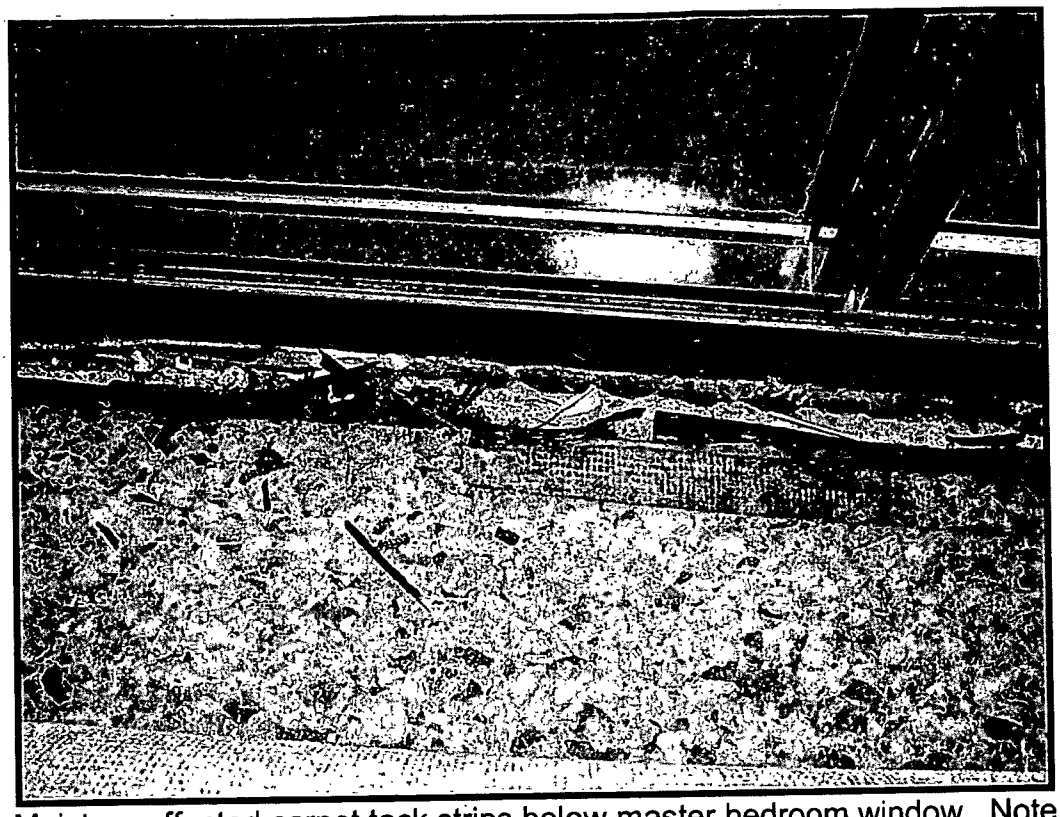
Delaminating paint on wood header above master bedroom window.



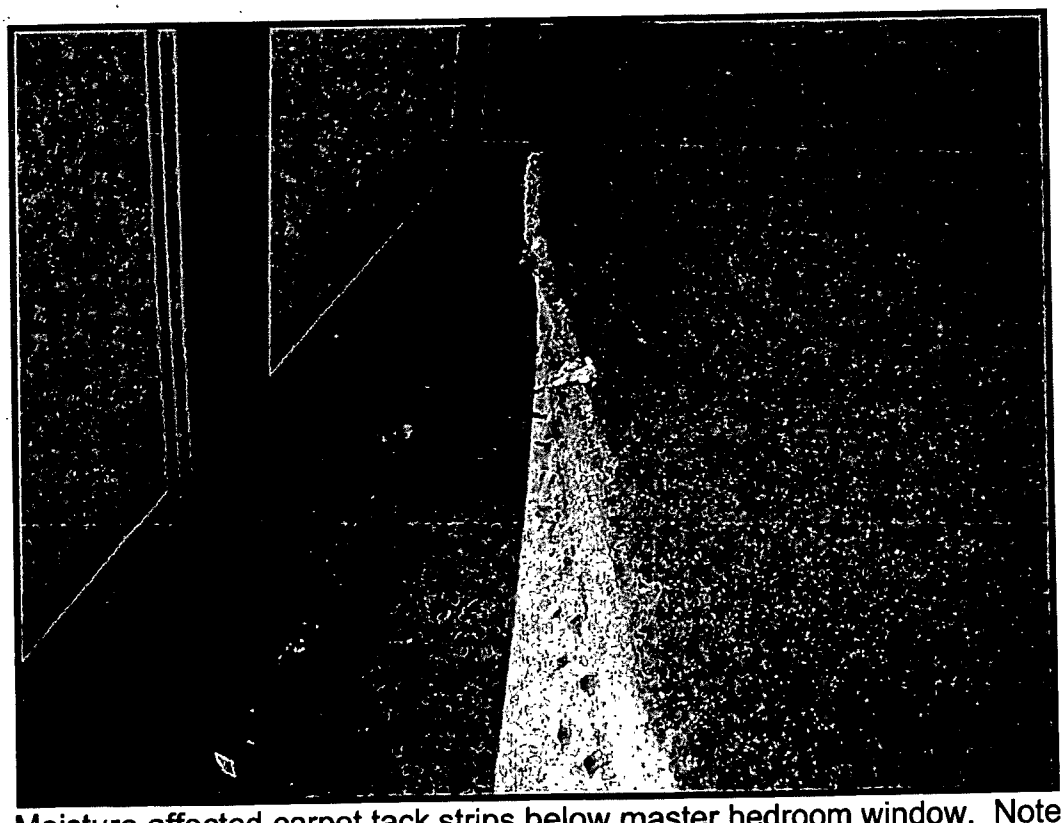
Near field condition of delaminating paint on wood header above master bedroom window.



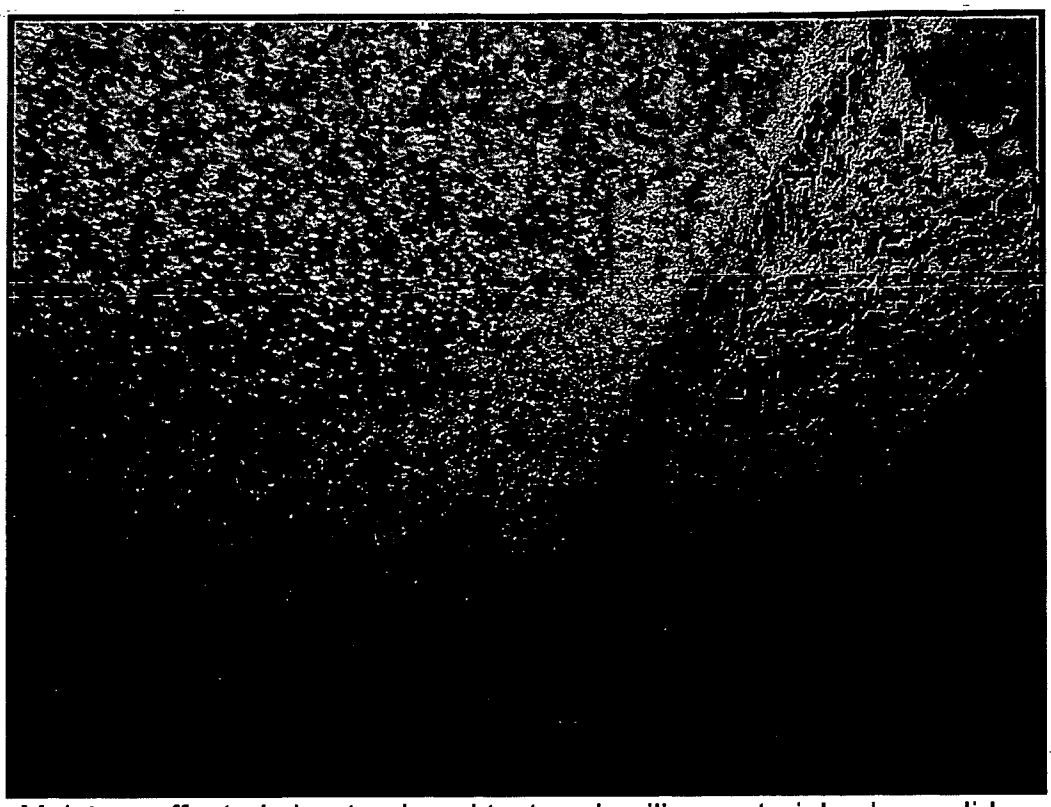
Moisture affected carpet tack strips, padding, sheetrock and baseboard trim below left side of master bedroom window.



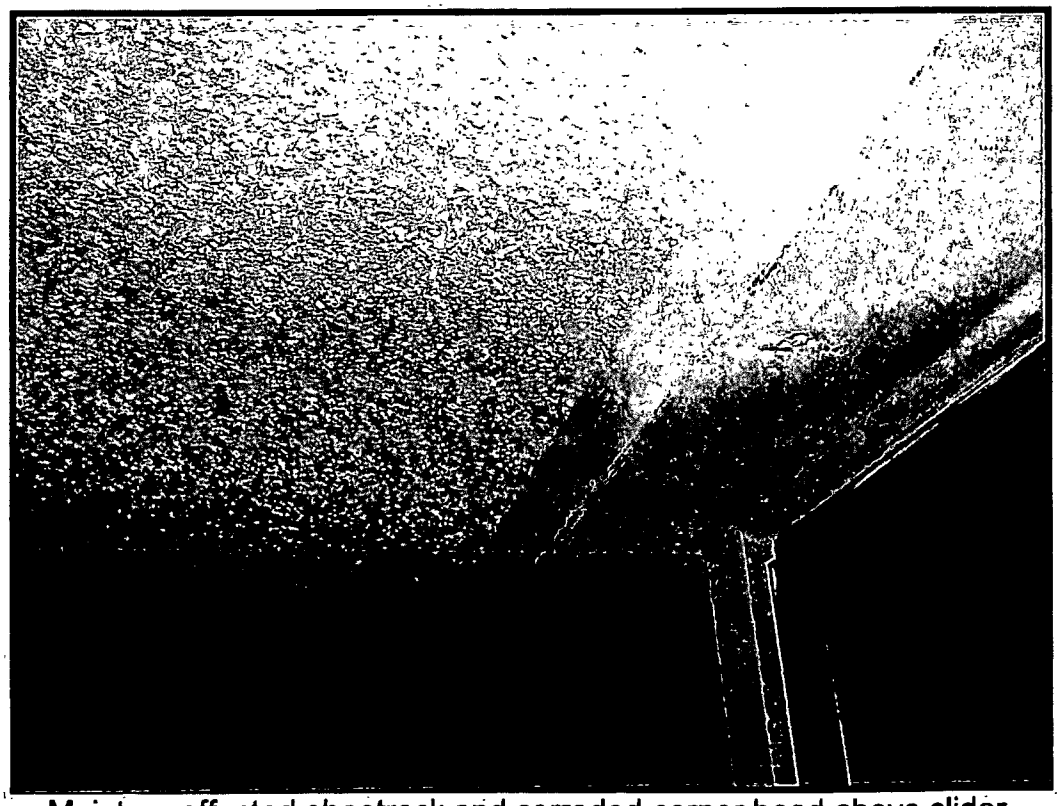
Moisture affected carpet tack strips below master bedroom window. Note mold/mildew staining.



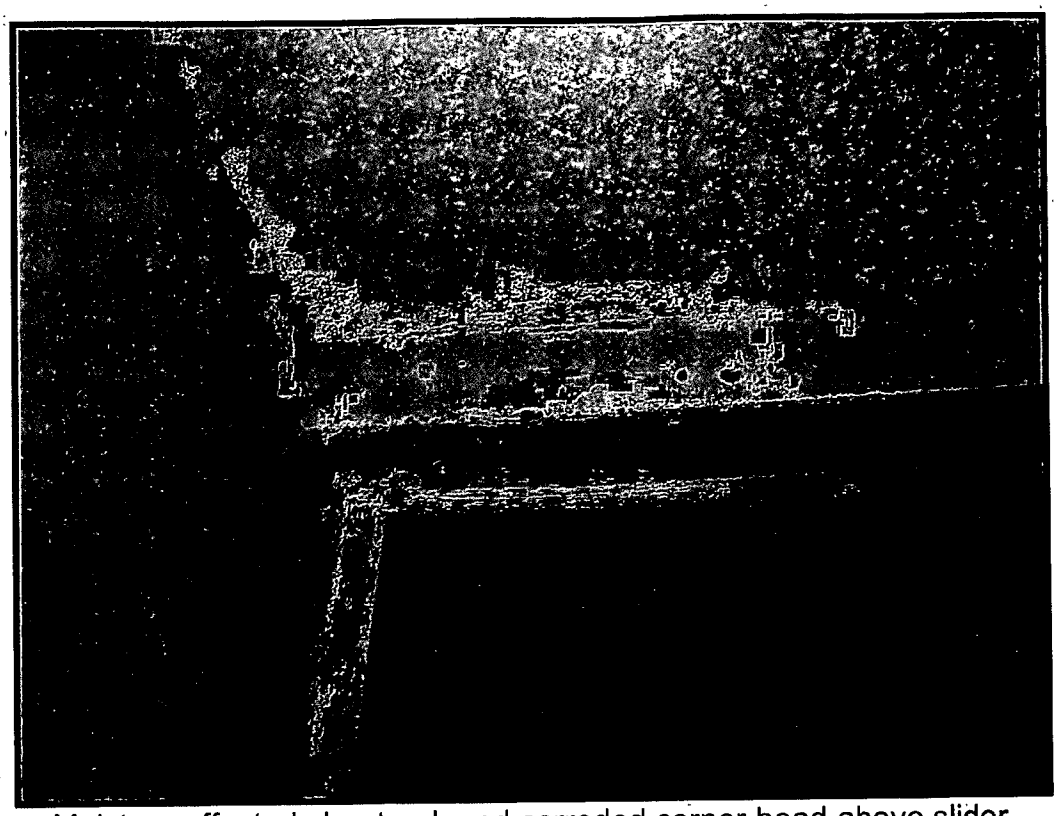
Moisture affected carpet tack strips below master bedroom window. Note mold mildew staining.



Moisture affected sheetrock and textured ceiling materials above slider.



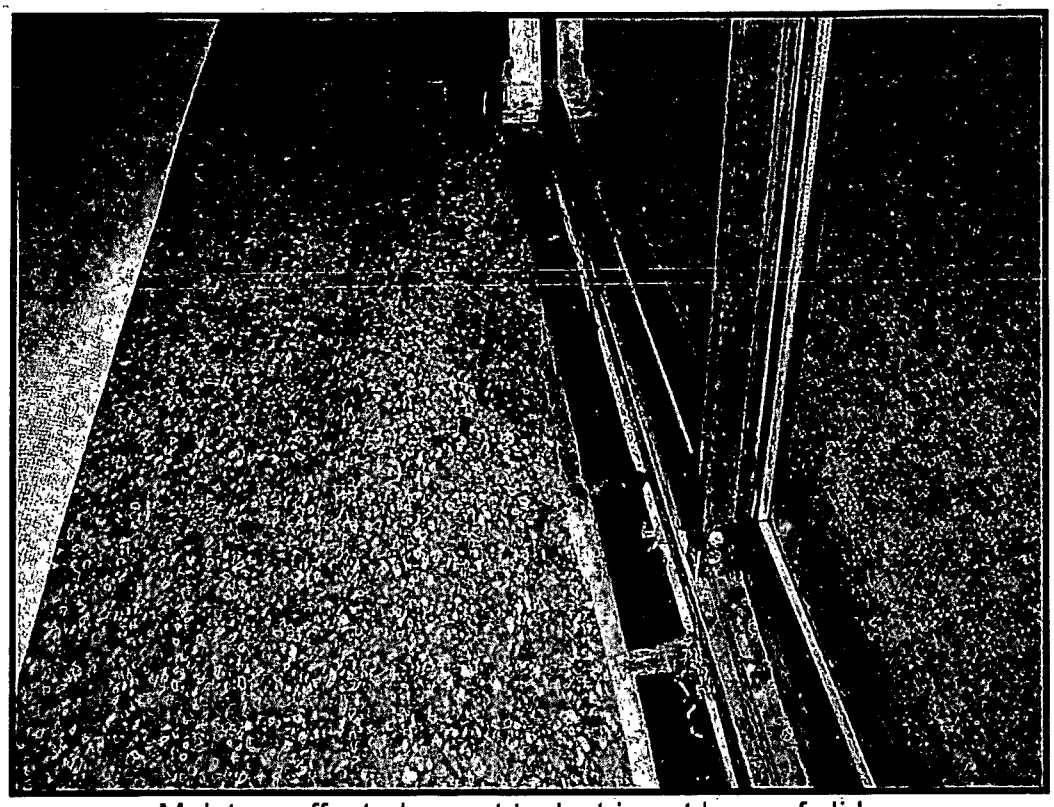
Moisture affected sheetrock and corroded corner bead above slider.



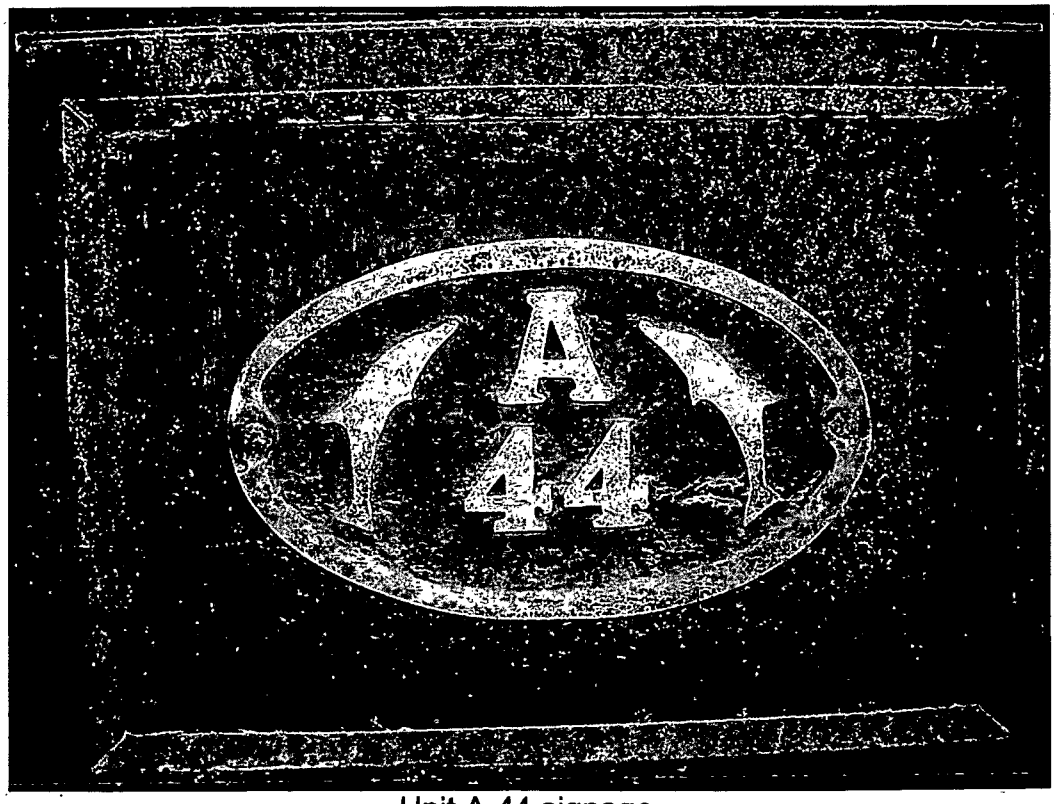
Moisture affected sheetrock and corroded corner bead above slider.



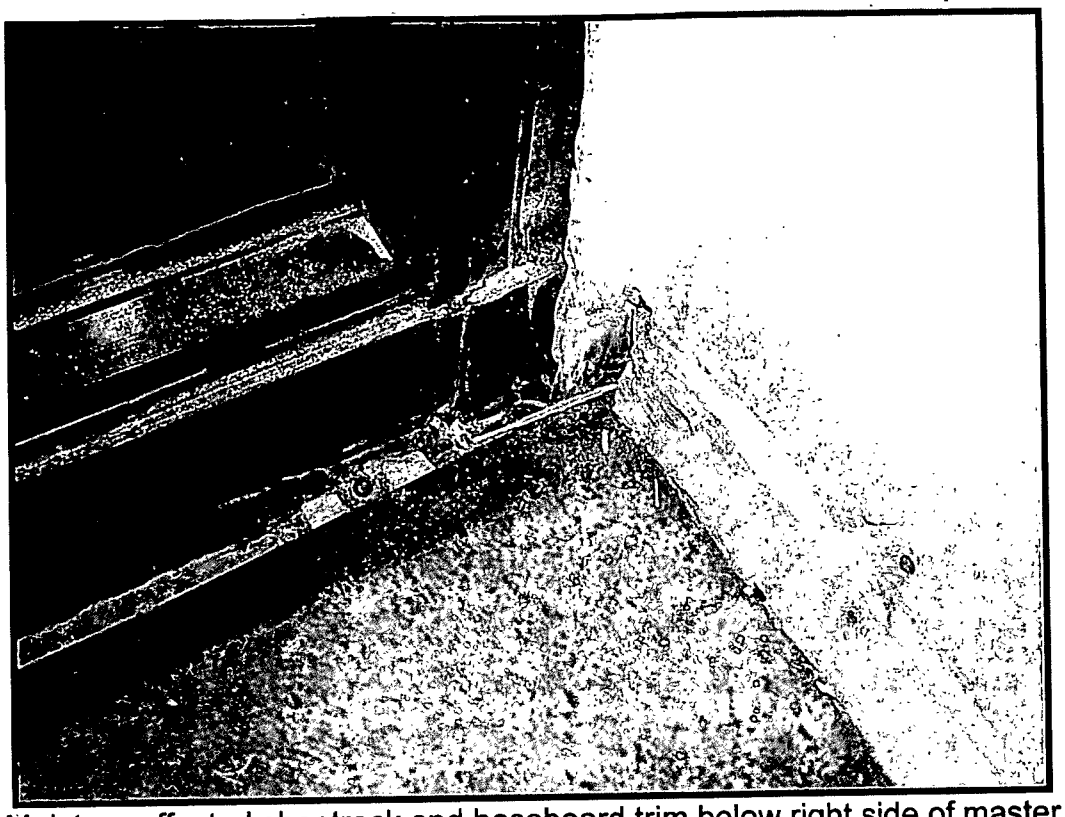
Corrosion and failed seals in dining area window.



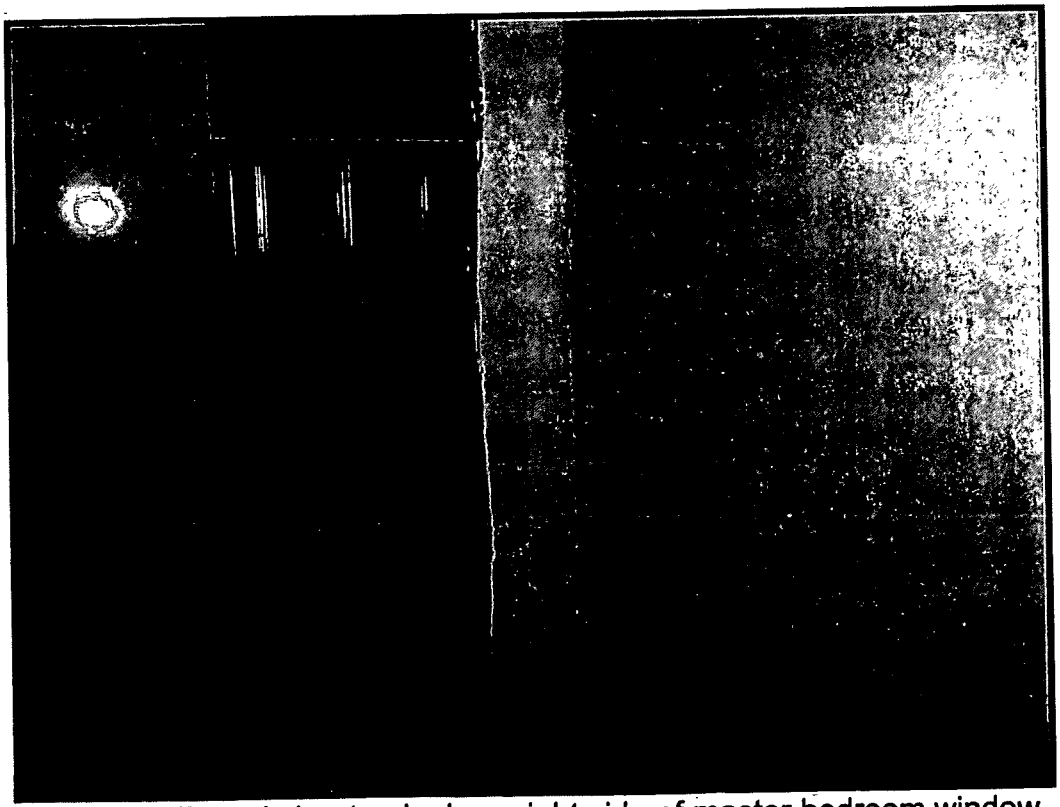
Moisture affected carpet tack strips at base of slider.



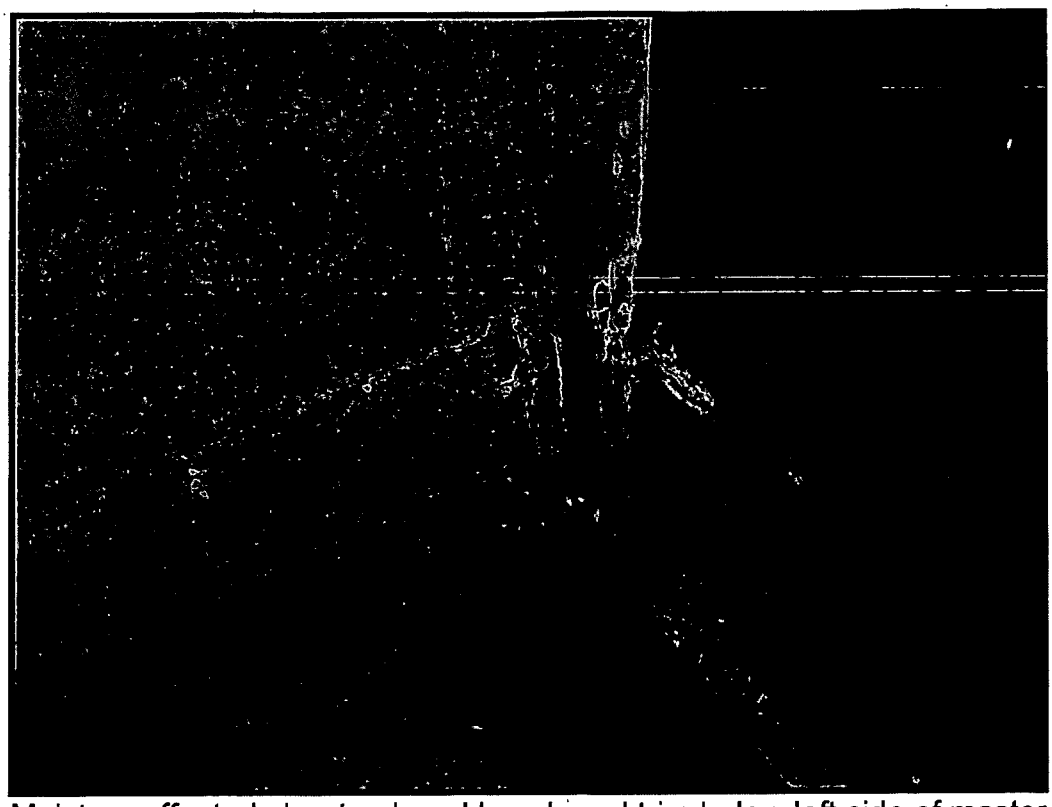
Unit A-44 signage.



Moisture affected sheetrock and baseboard trim below right side of master bedroom window.



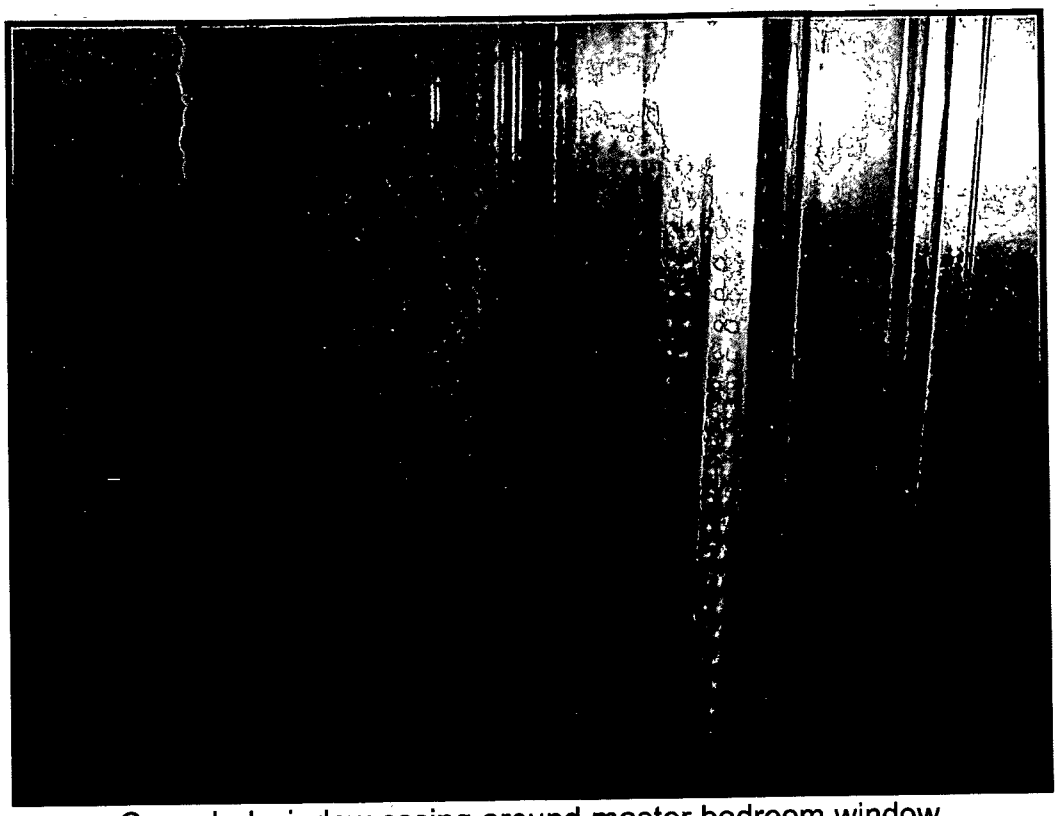
Moisture affected sheetrock along right side of master bedroom window.



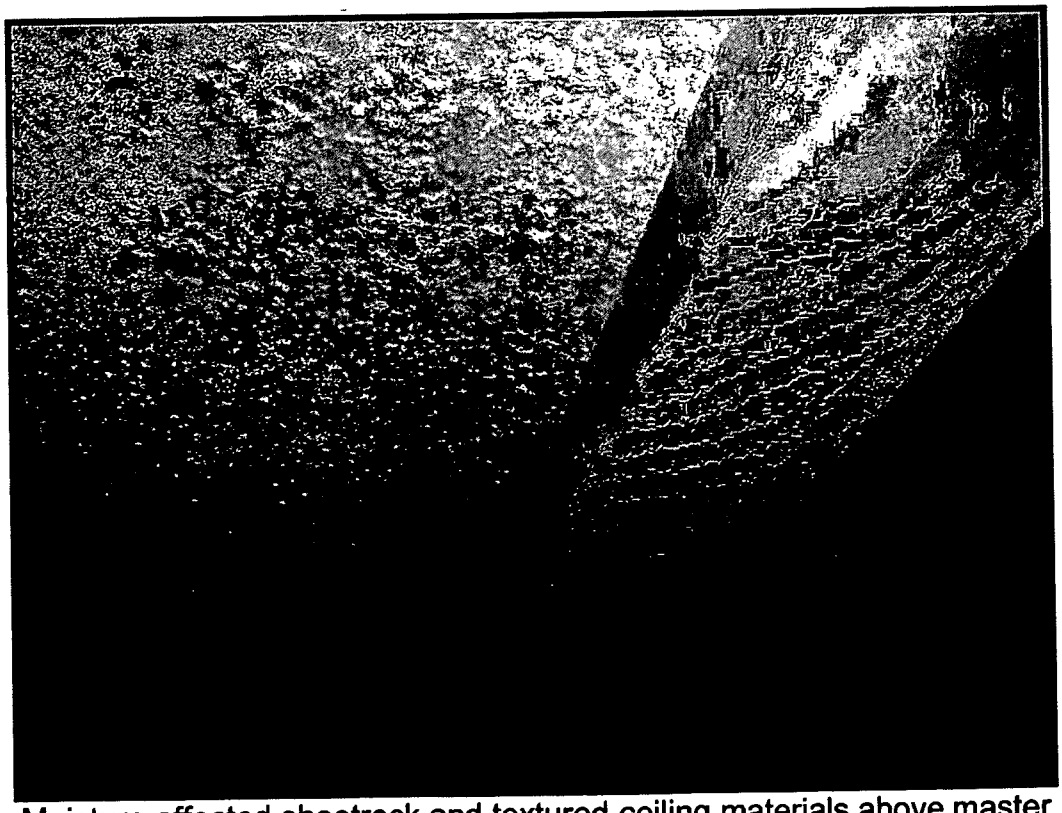
Moisture affected sheetrock and baseboard trim below left side of master bedroom window.



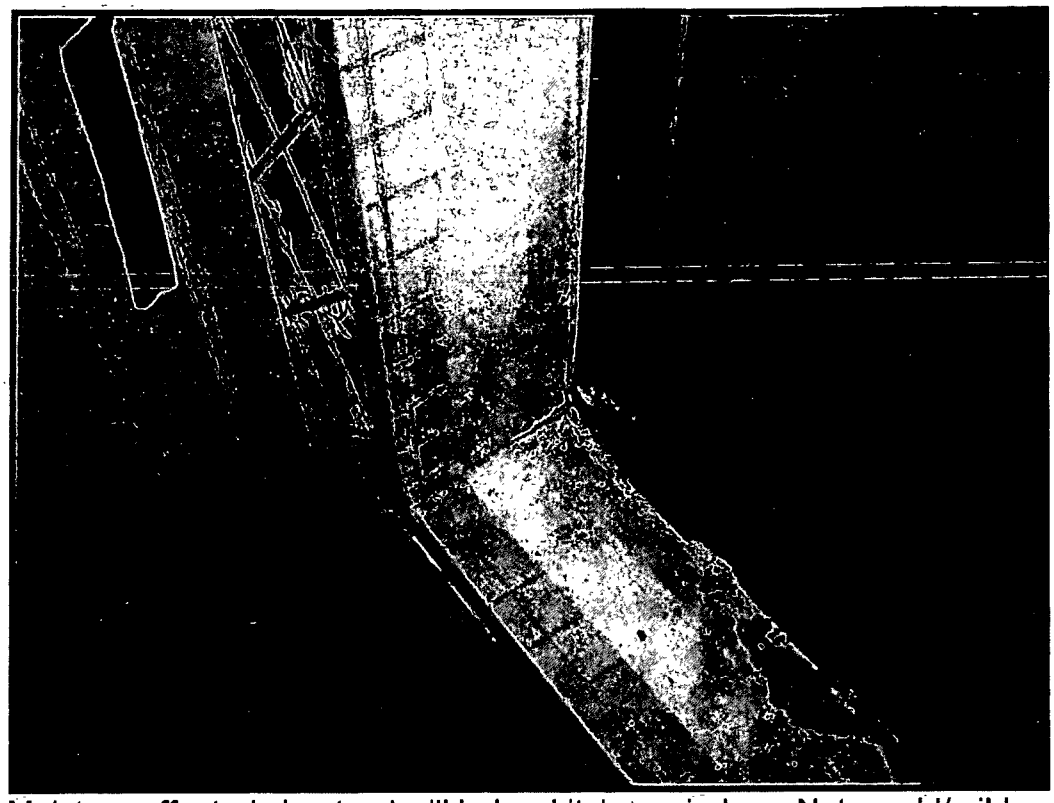
Corroded window casing of master bedroom window.



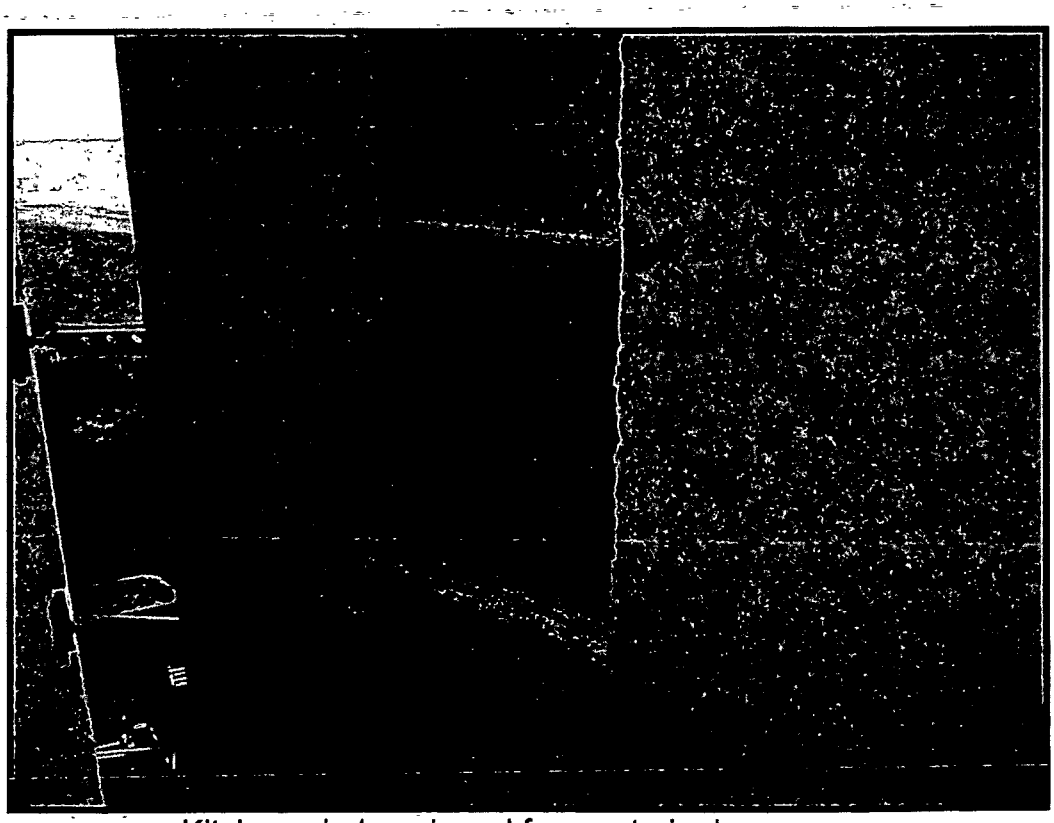
Corroded window casing around master bedroom window.



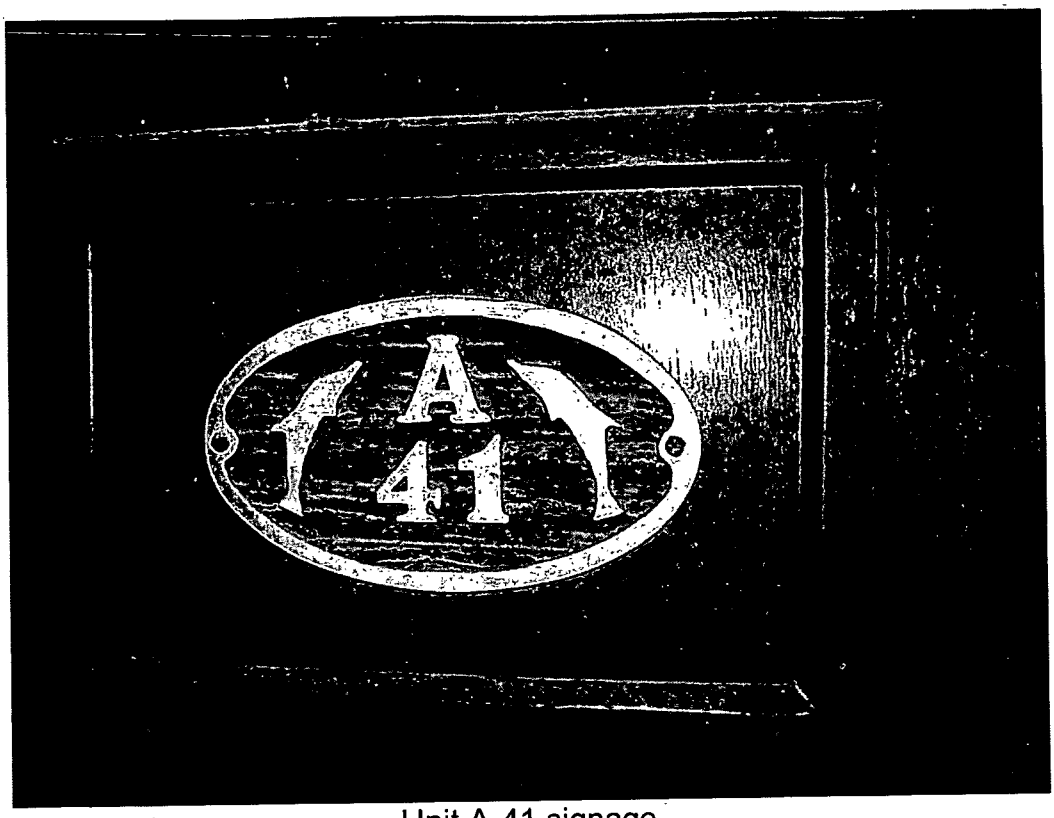
Moisture affected sheetrock and textured ceiling materials above master bedroom window.



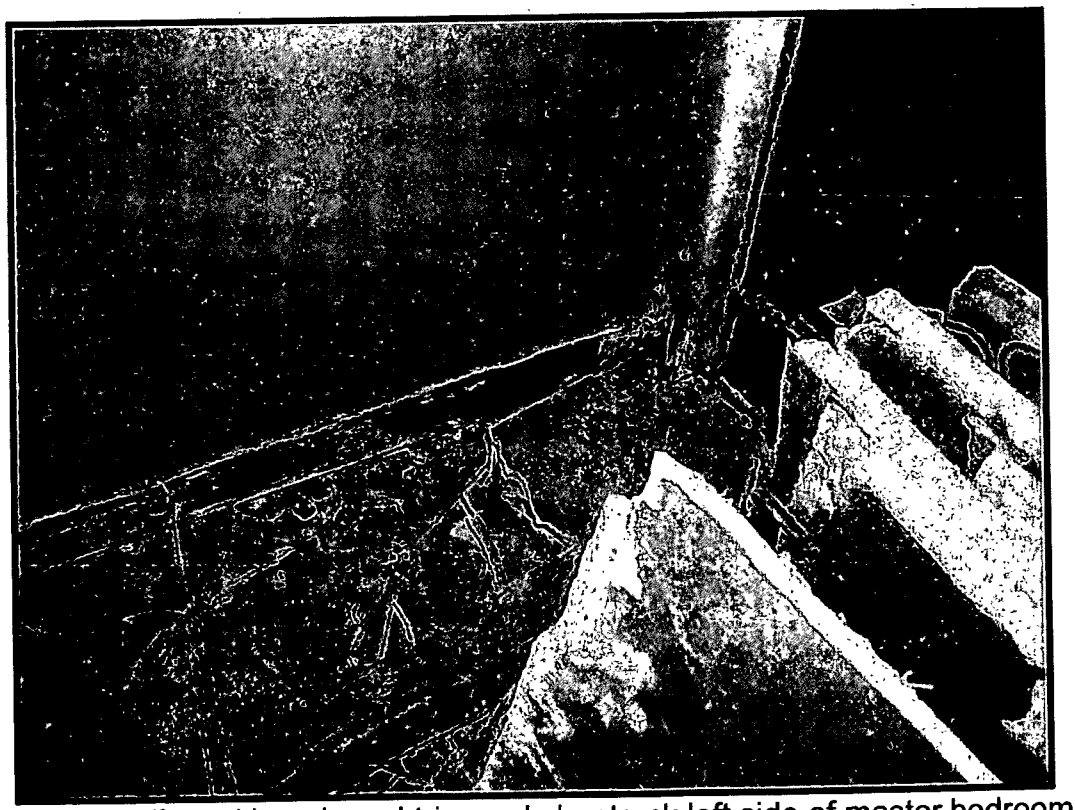
Moisture affected sheetrock sill below kitchen window. Note mold/mildew staining.



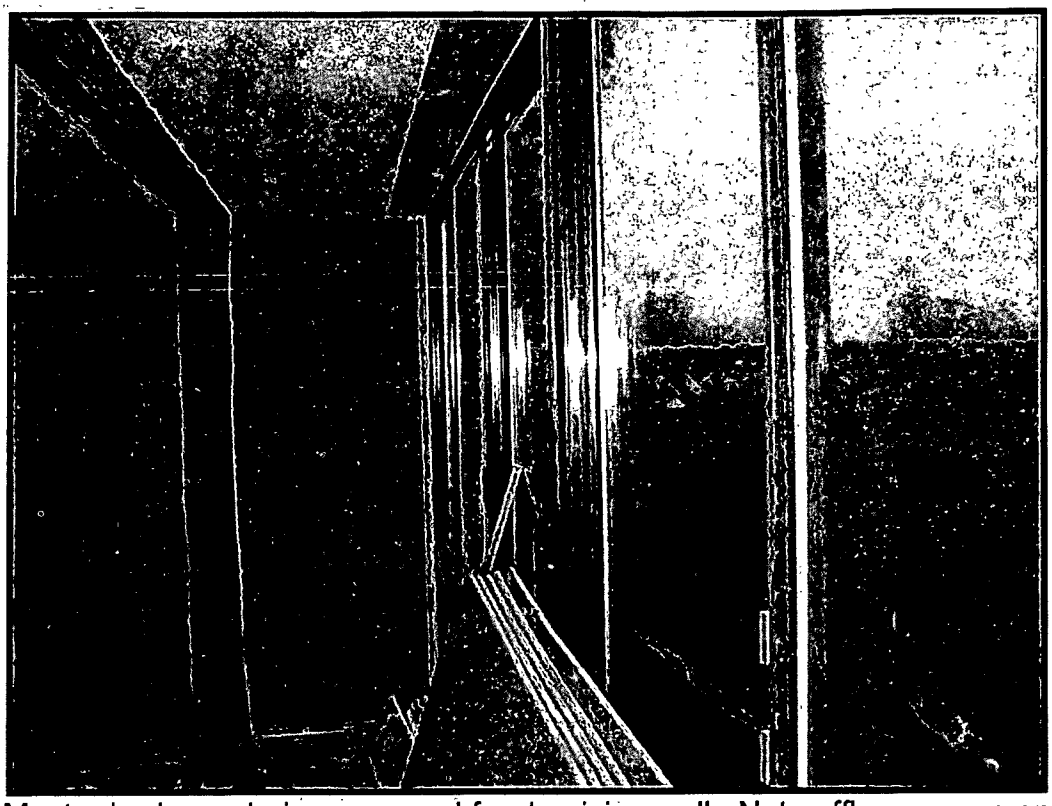
Kitchen window viewed from exterior breezeway.



Unit A-41 signage.



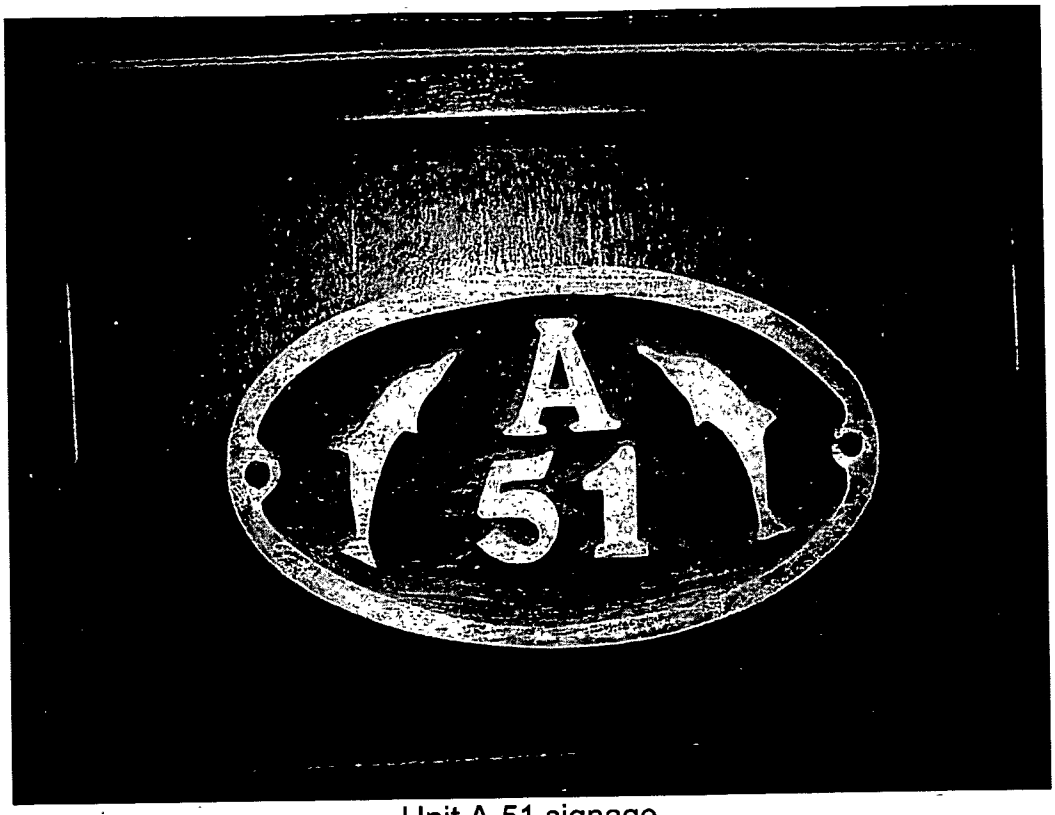
Moisture affected baseboard trim and sheetrock left side of master bedroom window.



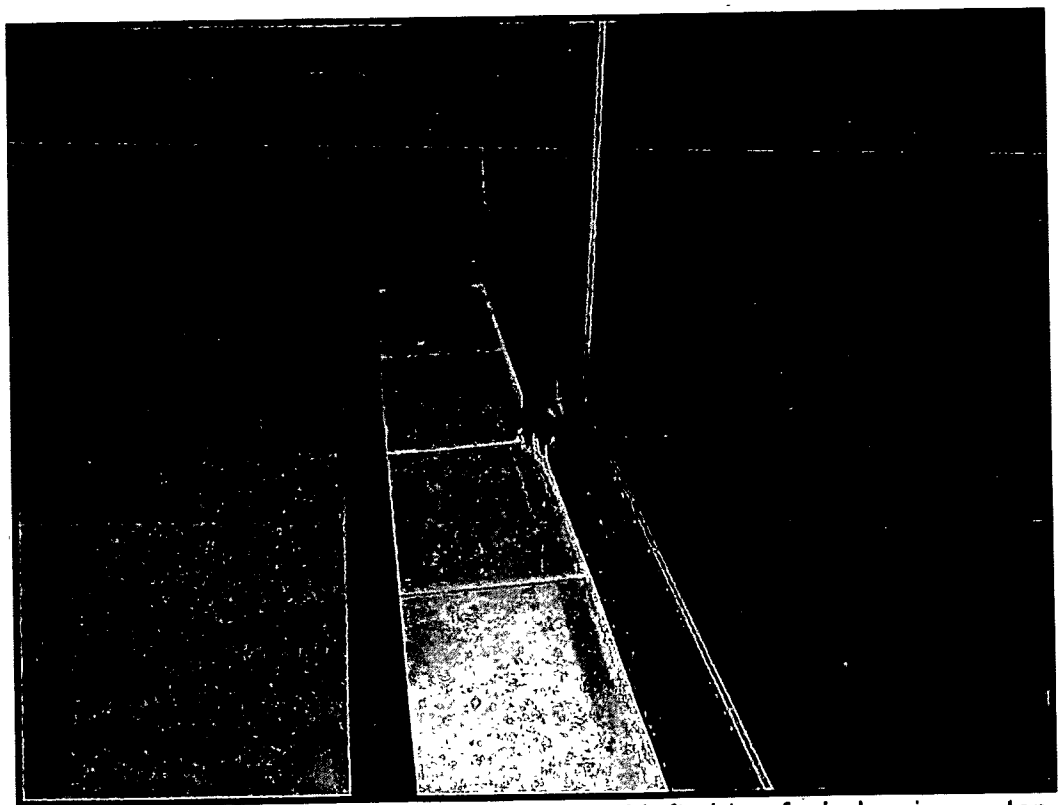
Master bedroom being prepared for demising wall. Note efflorescence on underside of hollow core slabs.



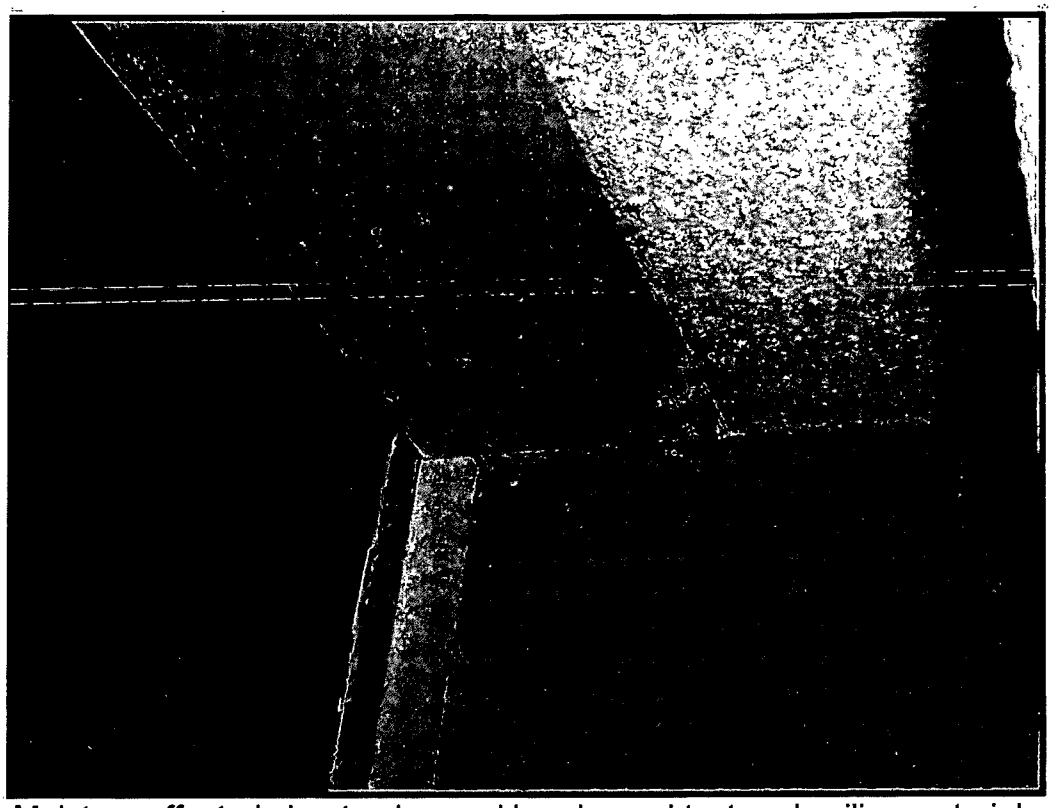
Moisture affected sheetrock on sill below dining area window. Note window does not fully close.



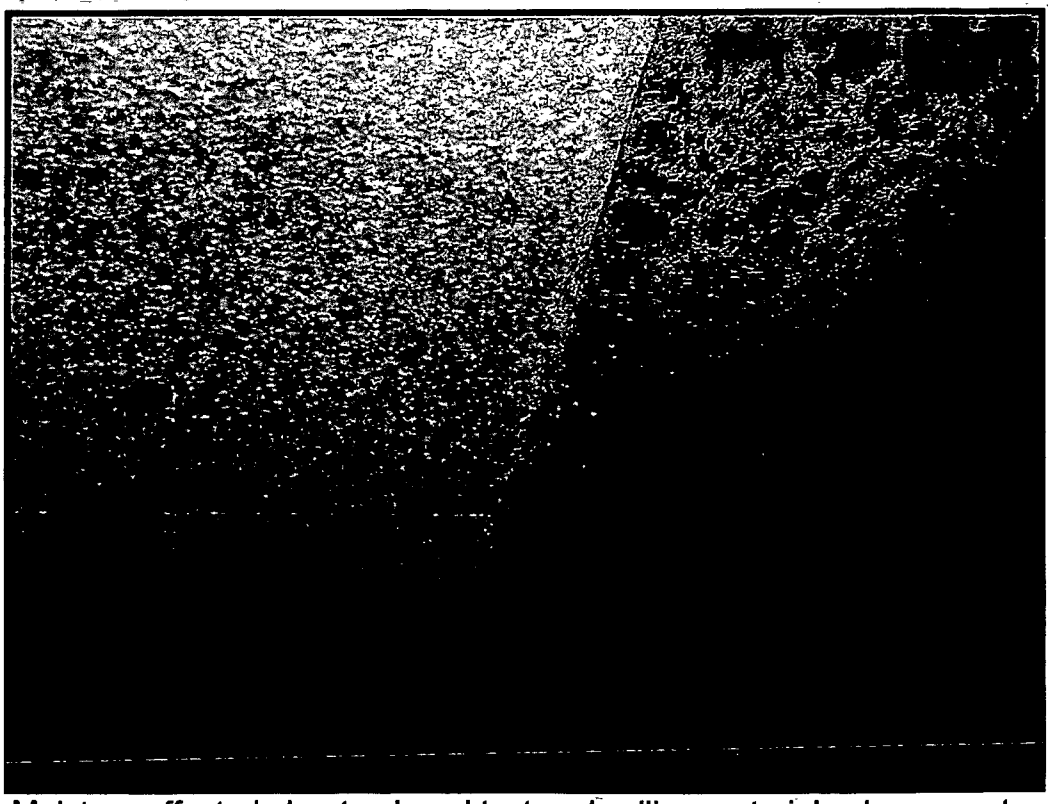
Unit A-51 signage.



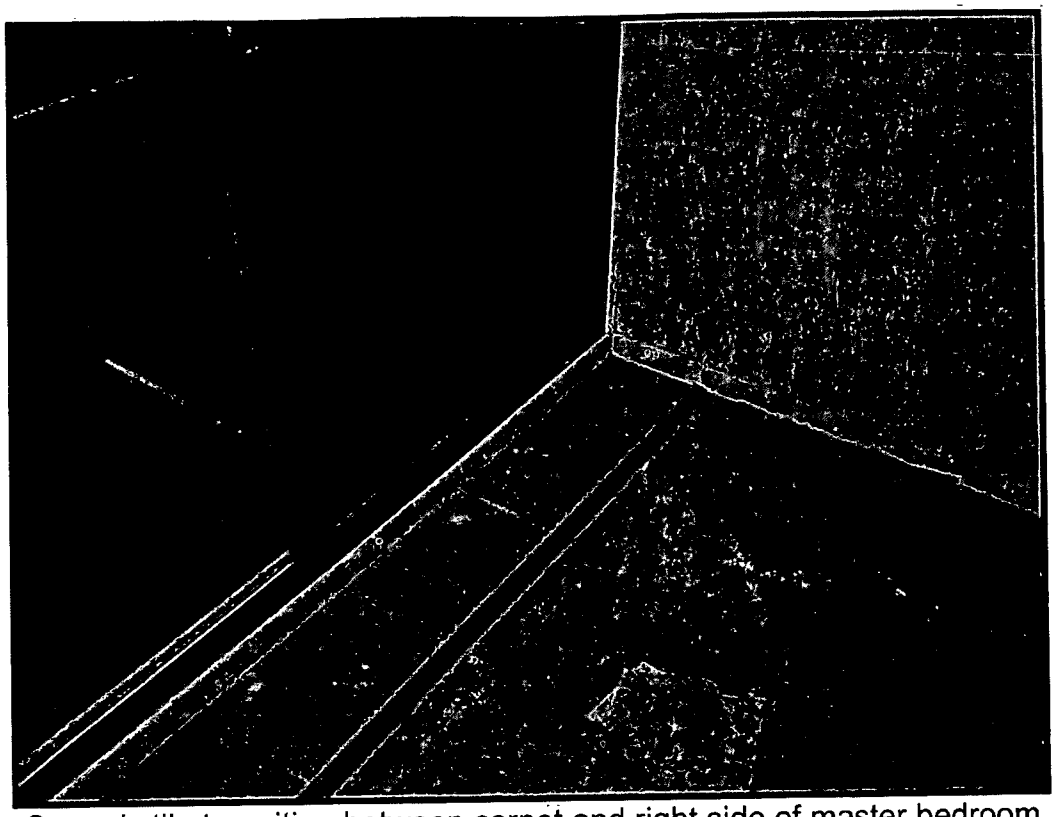
Ceramic tile transition between carpet and left side of window in master bedroom.



Moisture affected sheetrock, wood header and textured ceiling materials above right side of master bedroom window.



Moisture affected sheetrock and textured ceiling materials above master bedroom window.



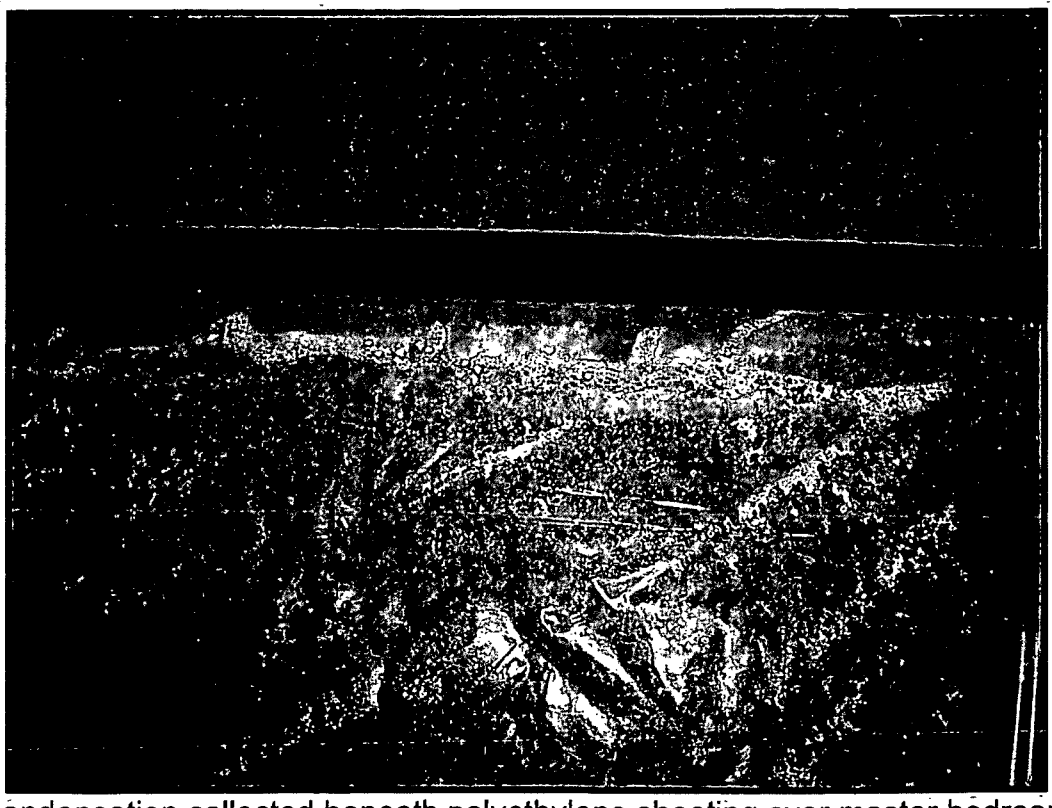
Ceramic tile transition between carpet and right side of master bedroom window.



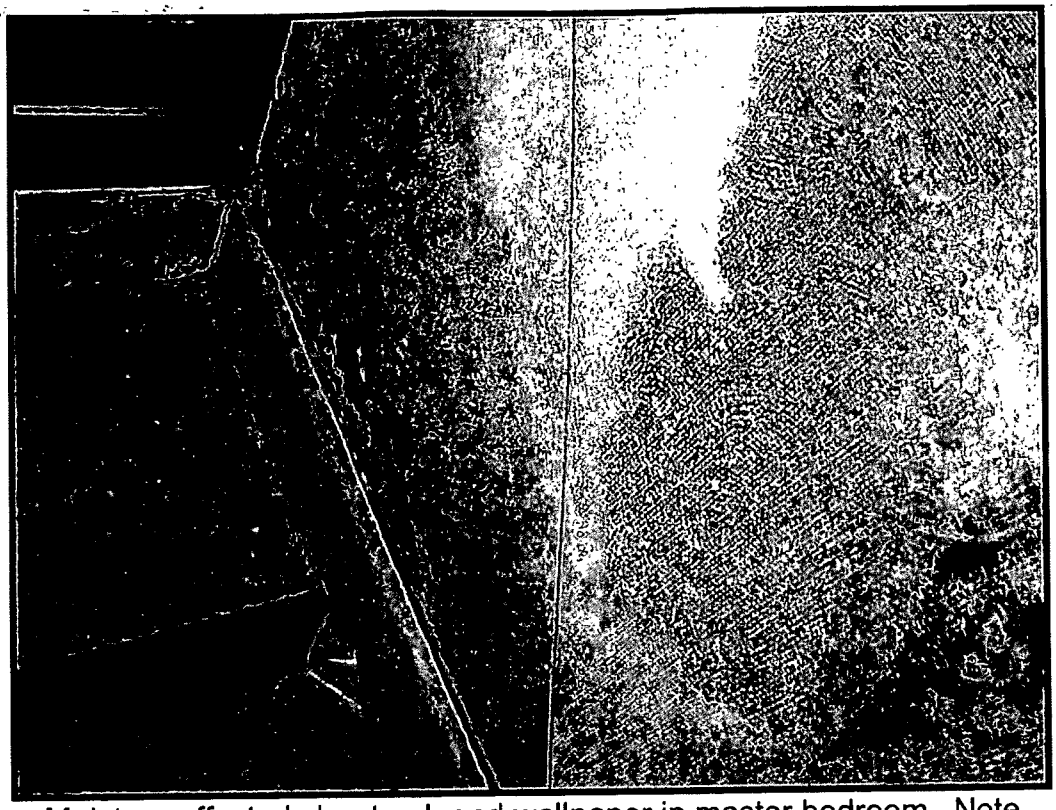
Moisture affected sheetrock and textured ceiling materials above master bedroom window. Note delamination of textured ceiling materials.



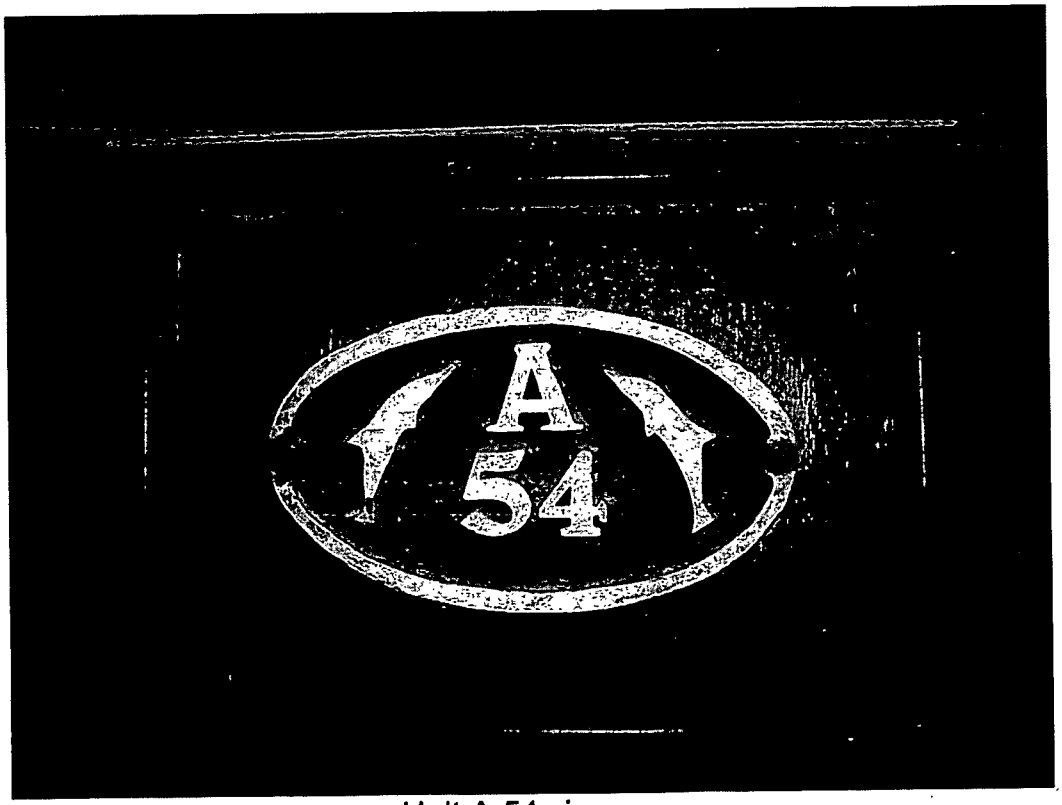
Moisture affected sheetrock, trim and textured ceiling materials above left side of master bedroom window.



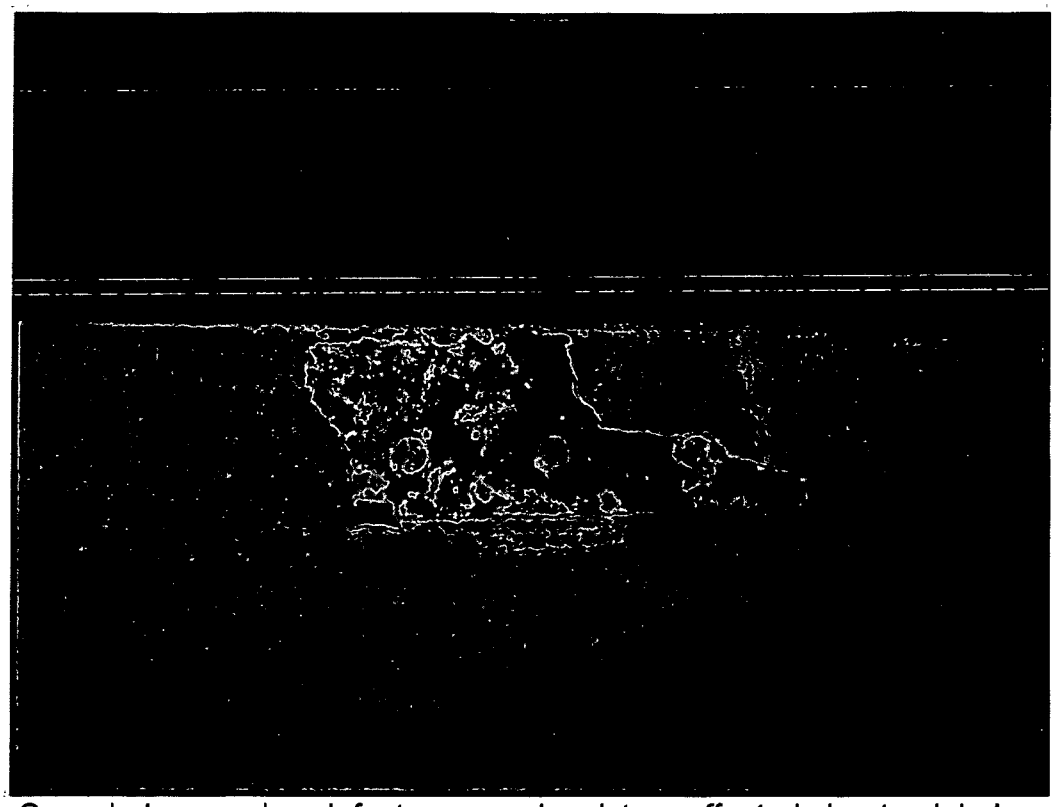
Condensation collected beneath polyethylene sheeting over master bedroom carpet.



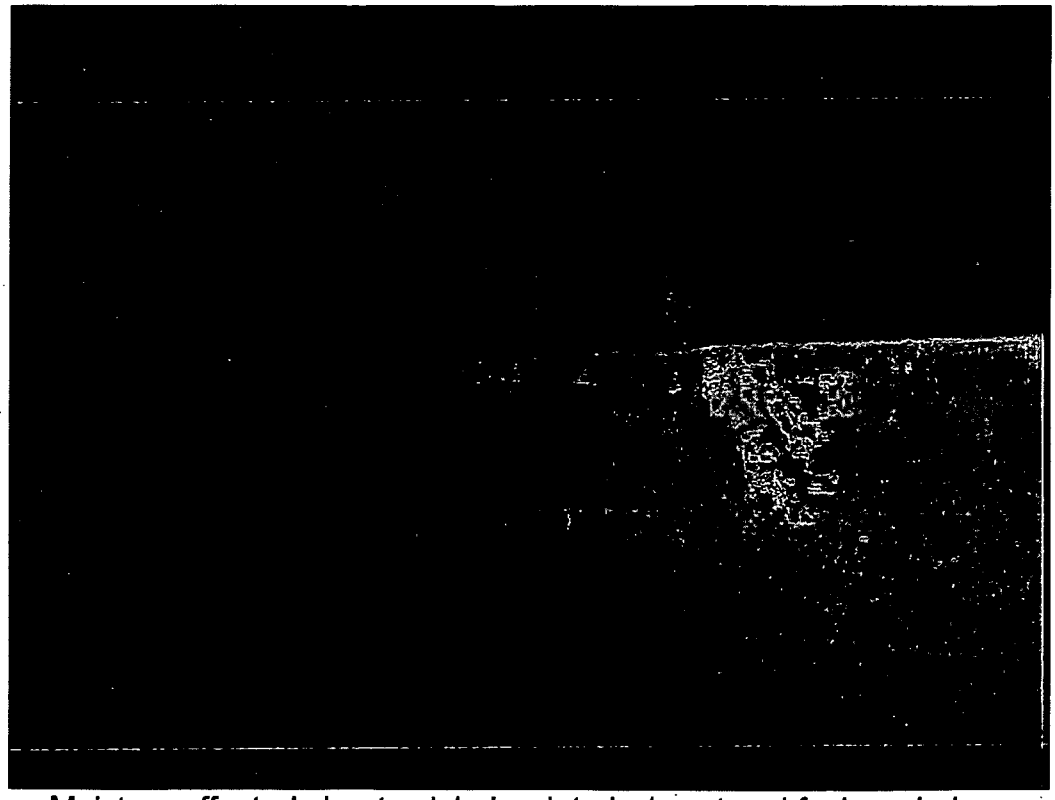
Moisture affected sheetrock and wallpaper in master bedroom. Note mold/mildew staining.



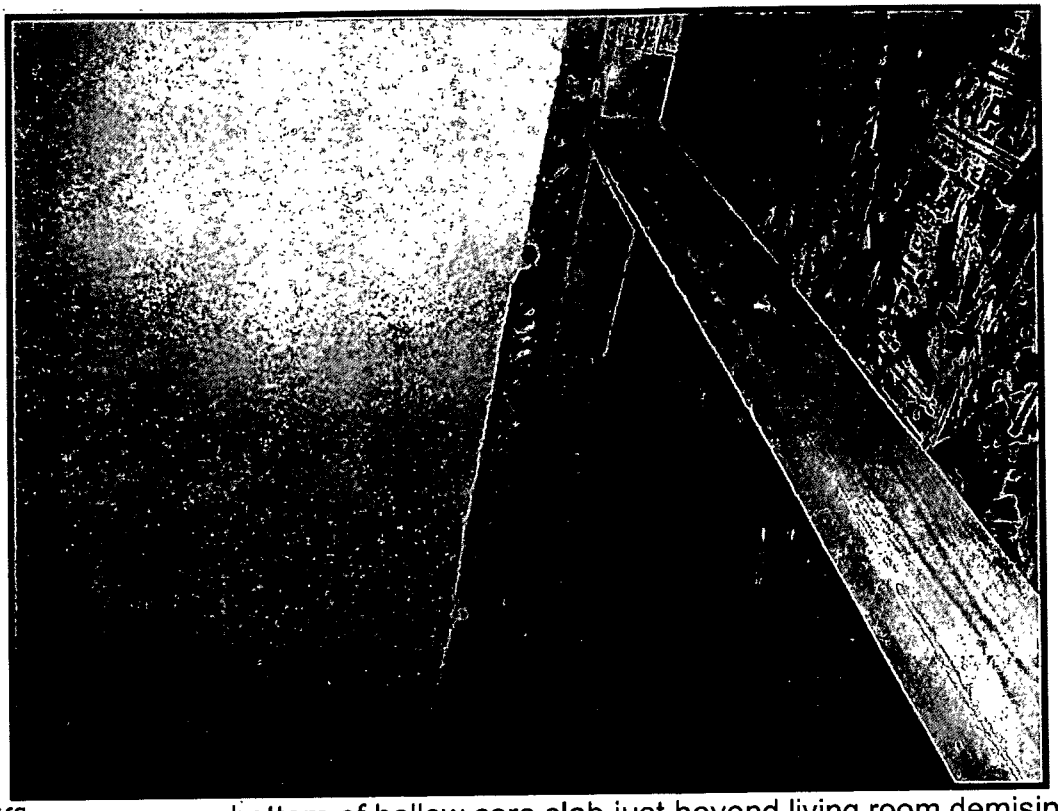
Unit A-54 signage.



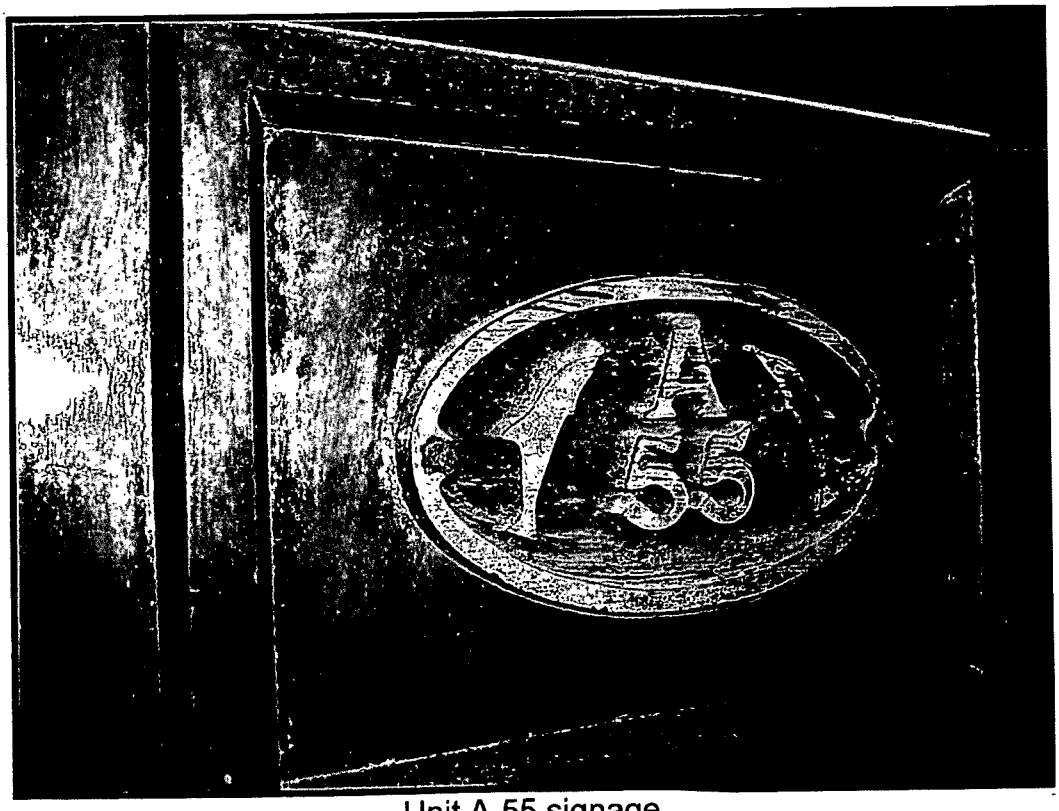
Corroded corner bead, fasteners and moisture affected sheetrock below interior/courtyard facing bedroom window.



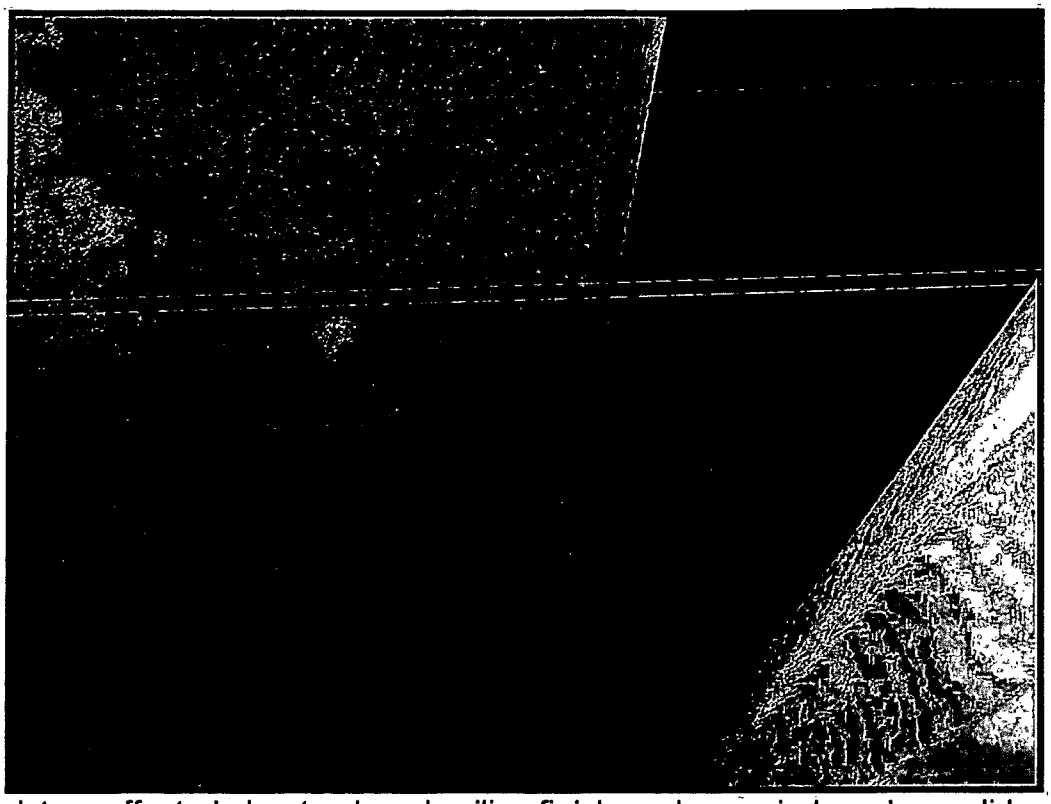
Moisture affected sheetrock below interior/courtyard facing window.



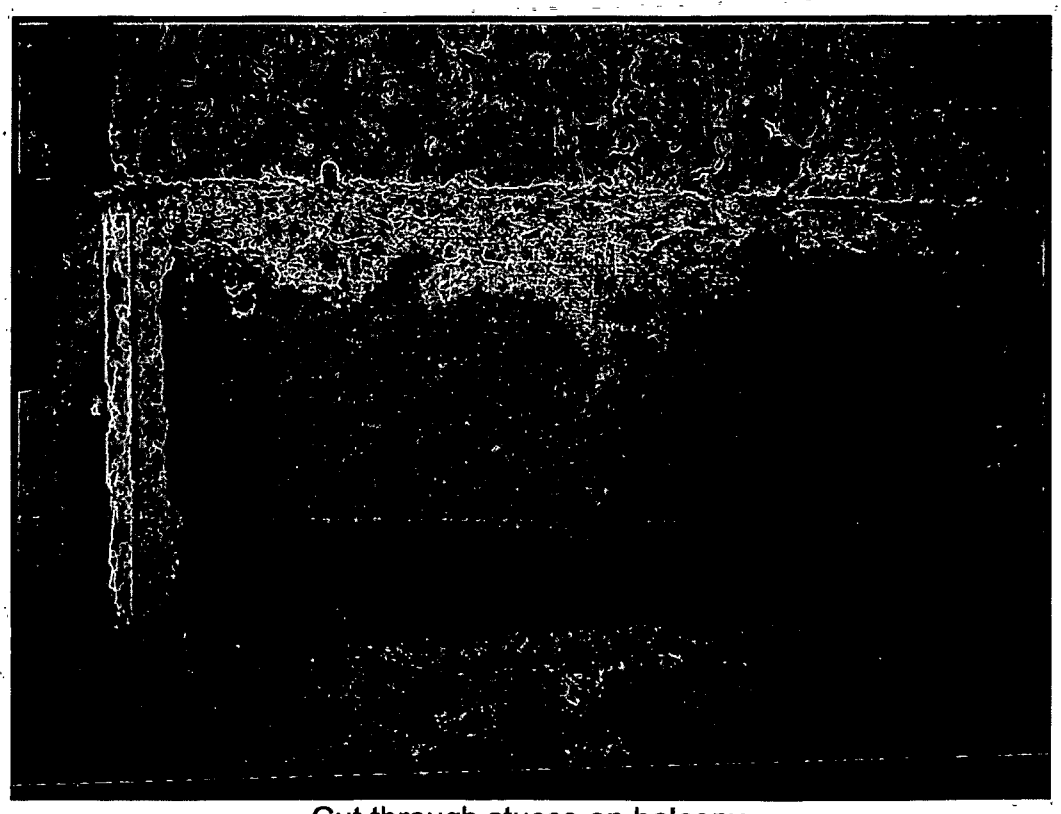
Efflorescence on bottom of hollow core slab just beyond living room demising wall.



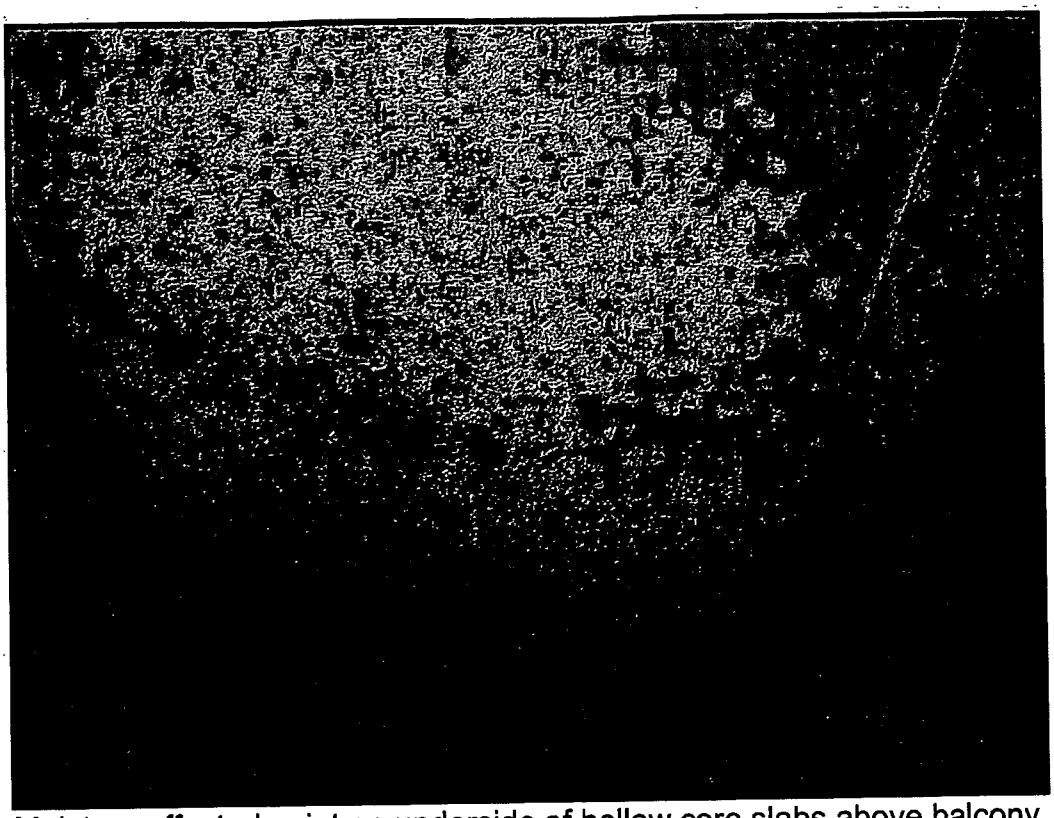
Unit A-55 signage.



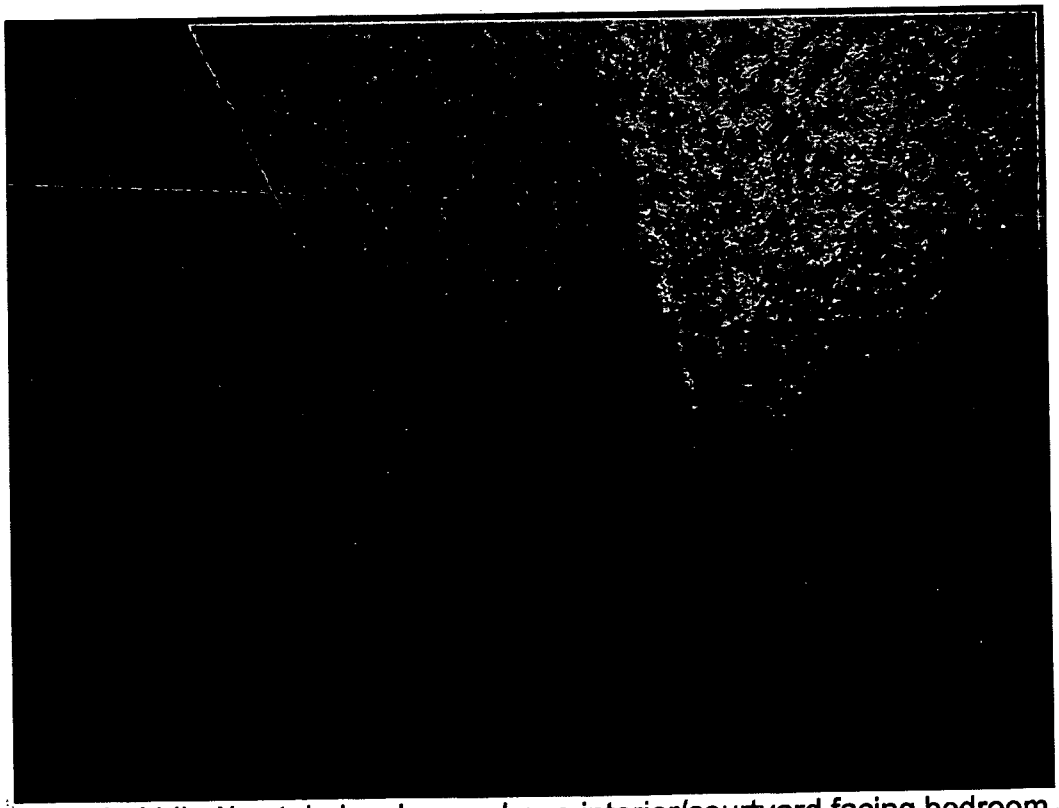
Moisture affected sheetrock and ceiling finishes above window above slider in living area.



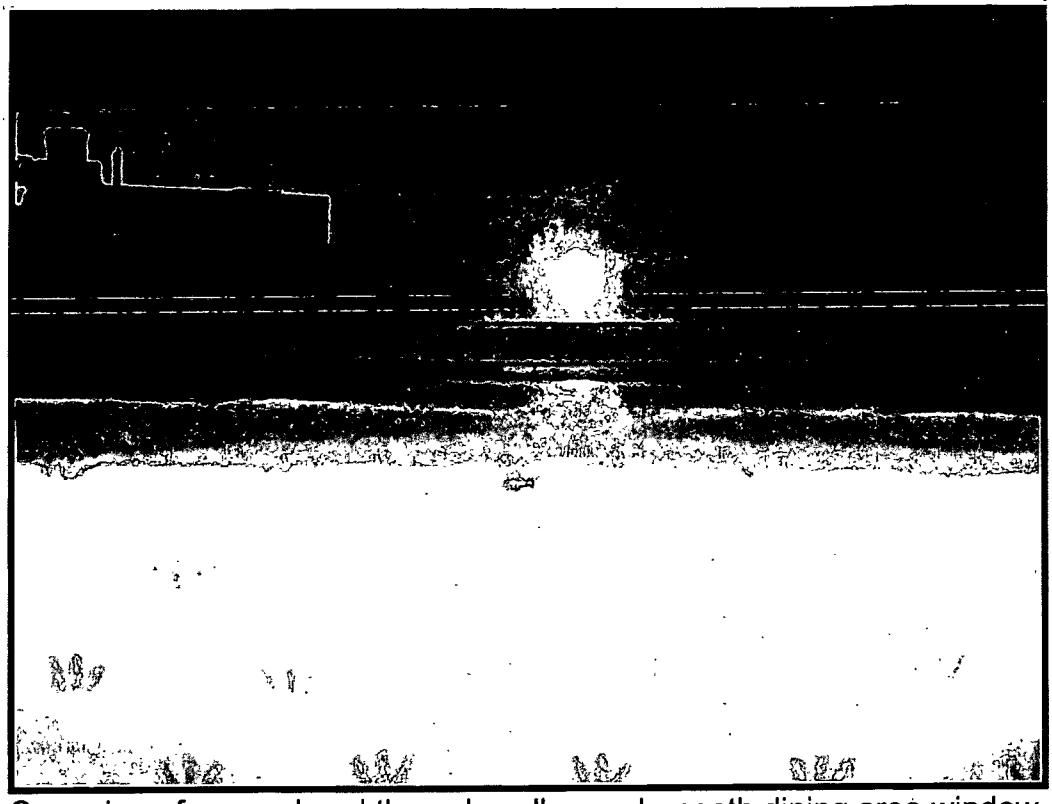
Cut through stucco on balcony.



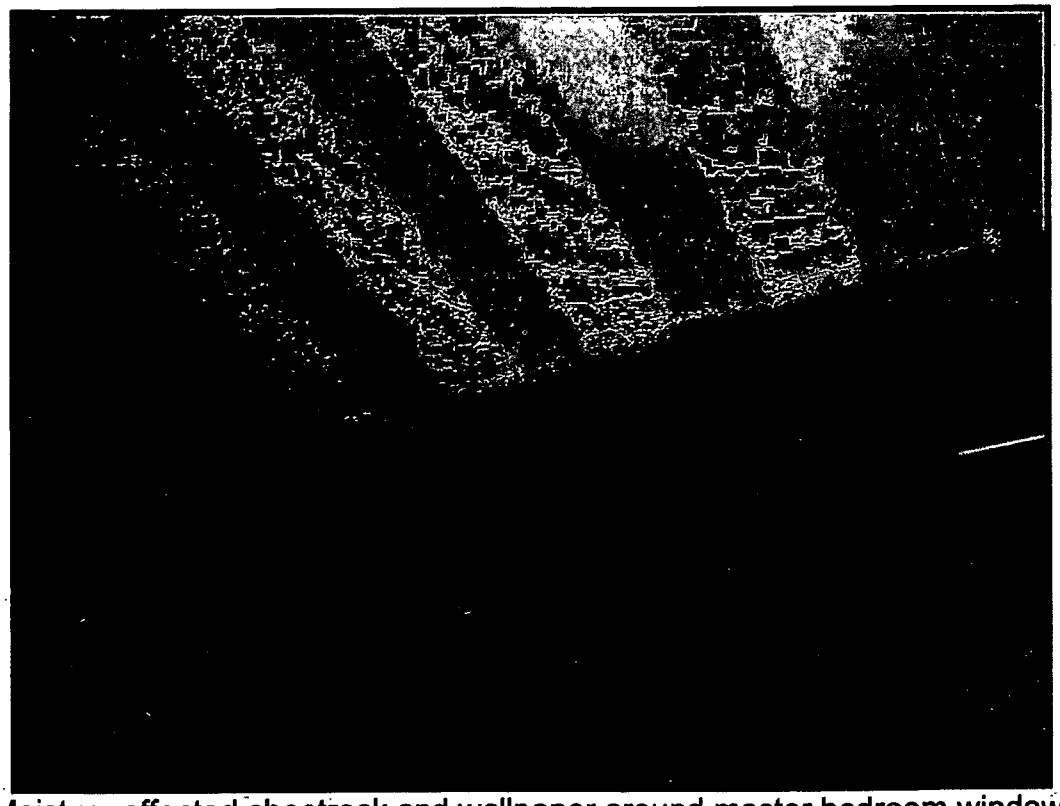
Moisture affected paint on underside of hollow core slabs above balcony.



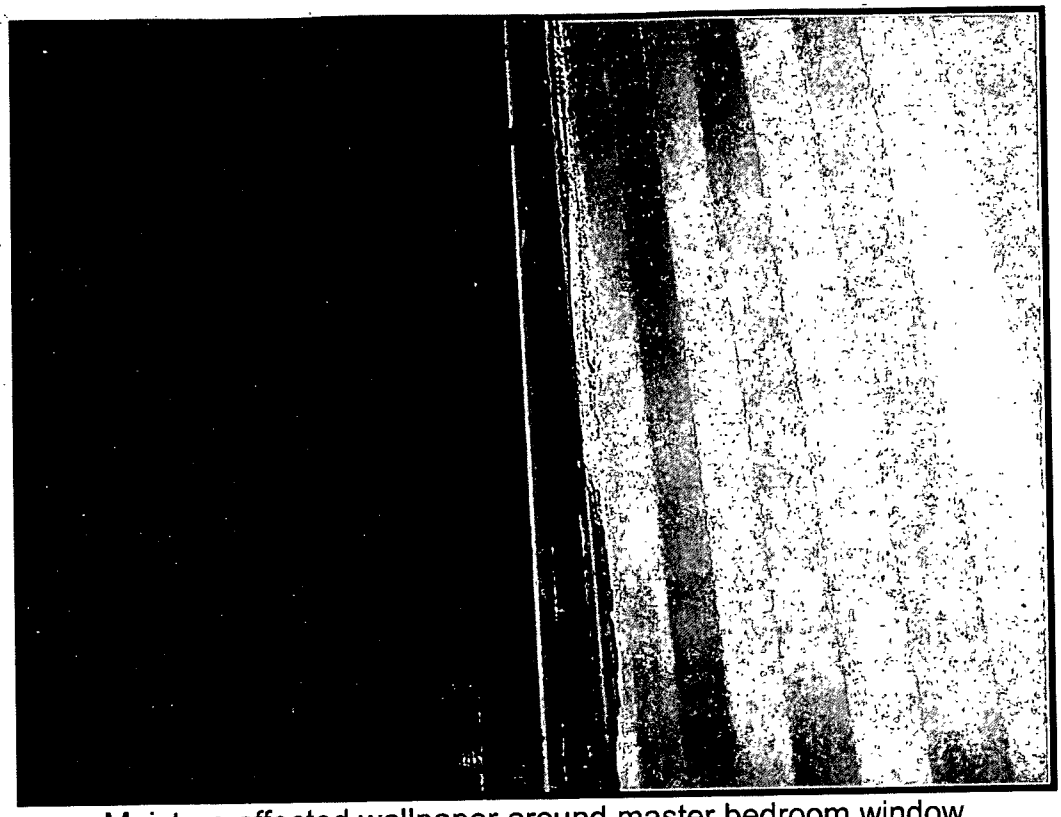
Corroded blind/curtain hardware above interior/courtyard facing bedroom.



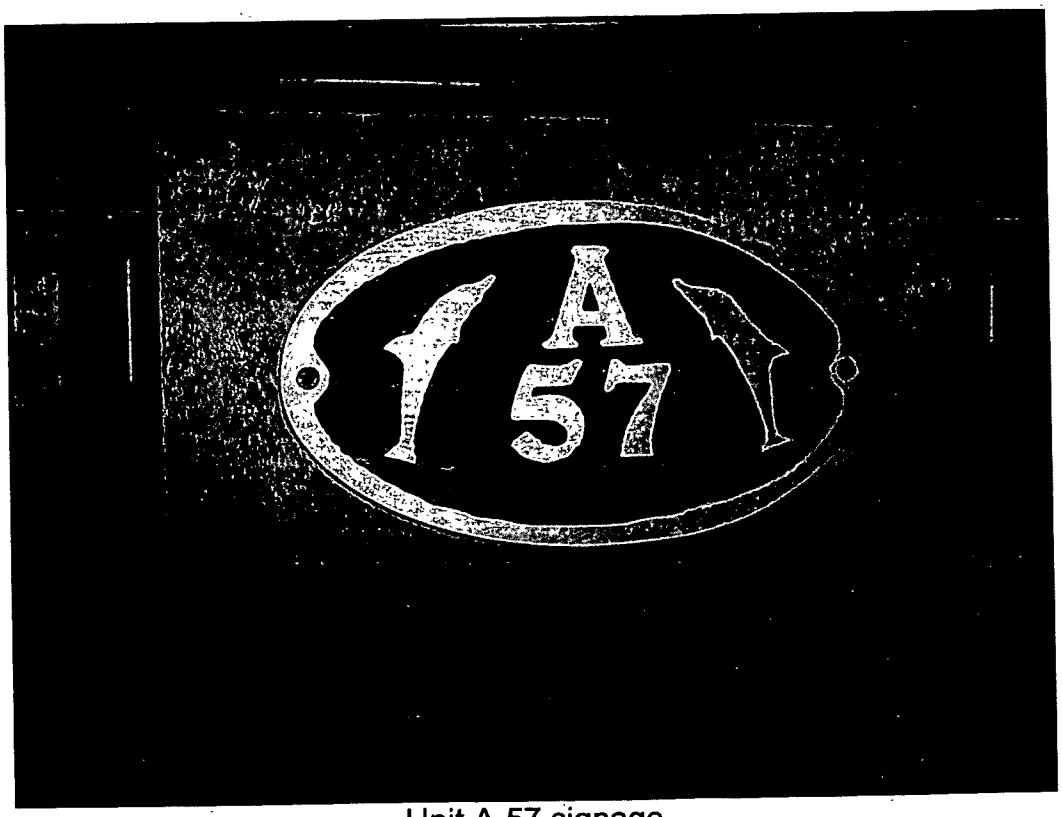
Corrosion of corner bead through wallpaper beneath dining area window.



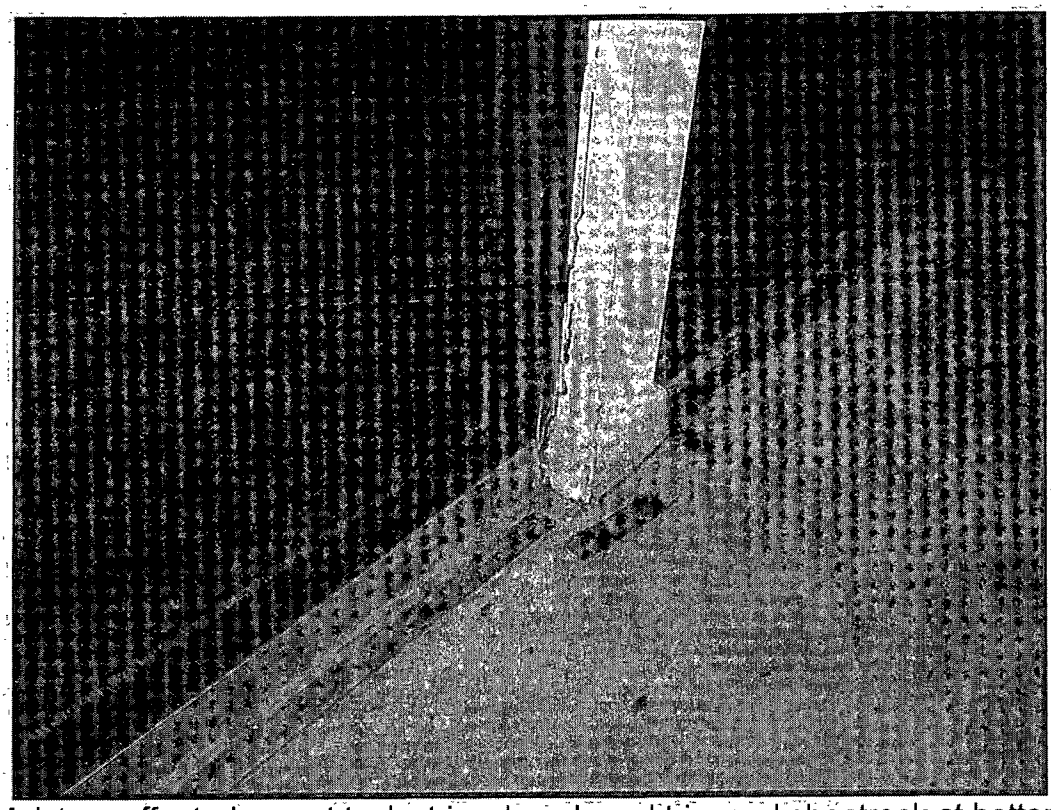
Moisture affected sheetrock and wallpaper around master bedroom window.



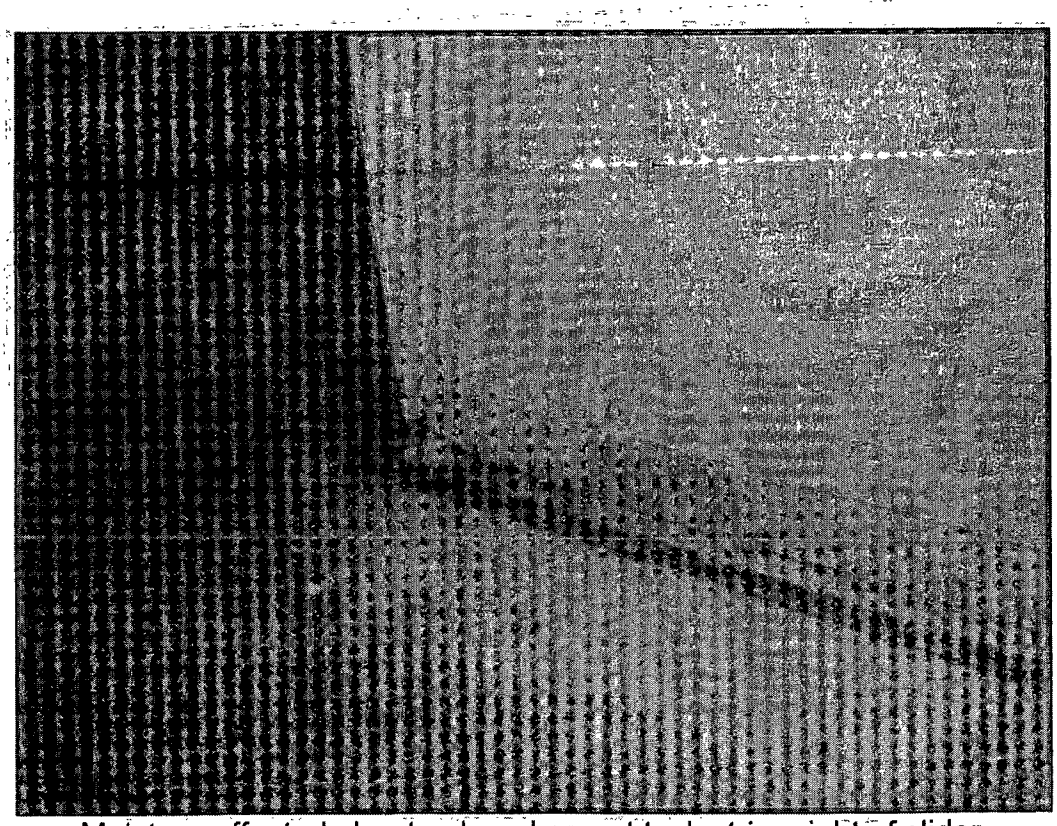
Moisture affected wallpaper around master bedroom window.



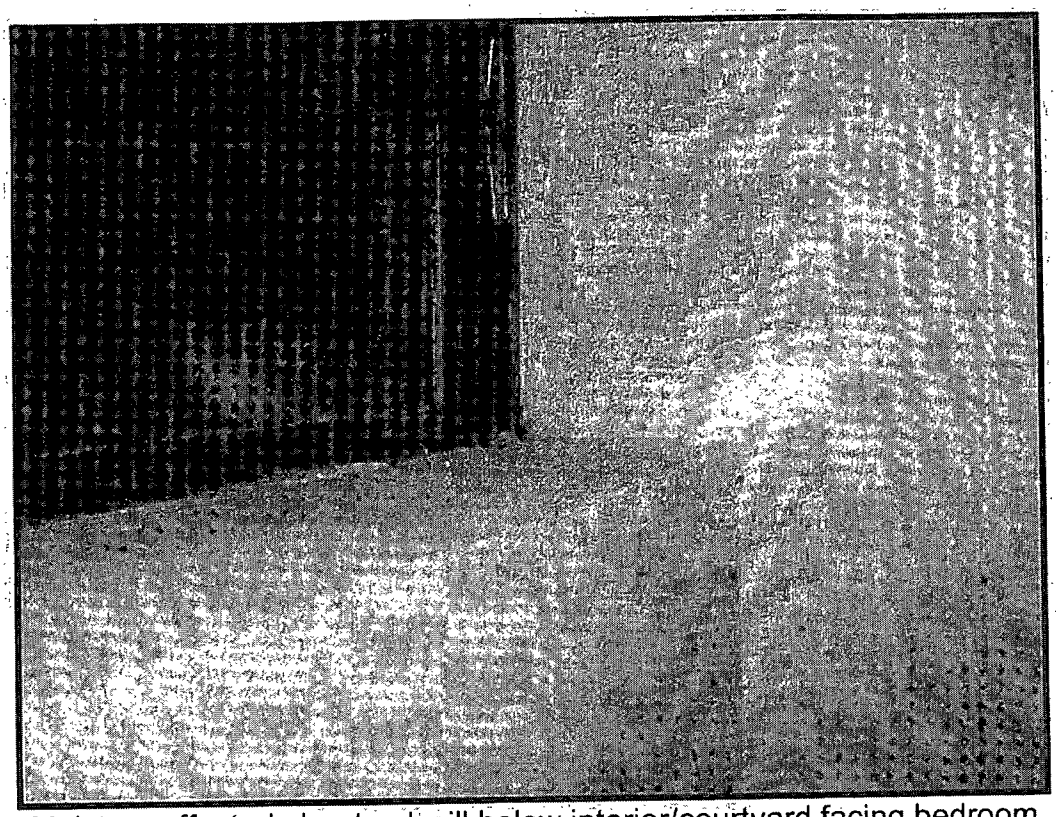
Unit A-57 signage.



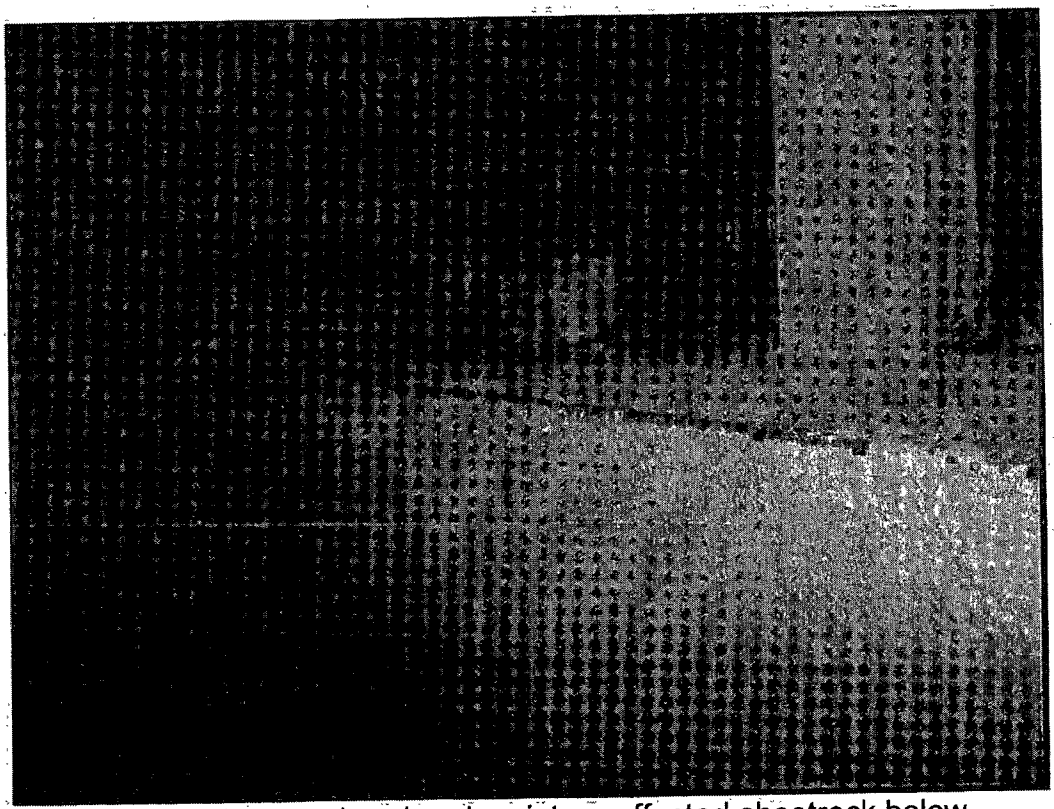
Moisture affected carpet tack strips, baseboard trim and sheetrock at bottom of slider.



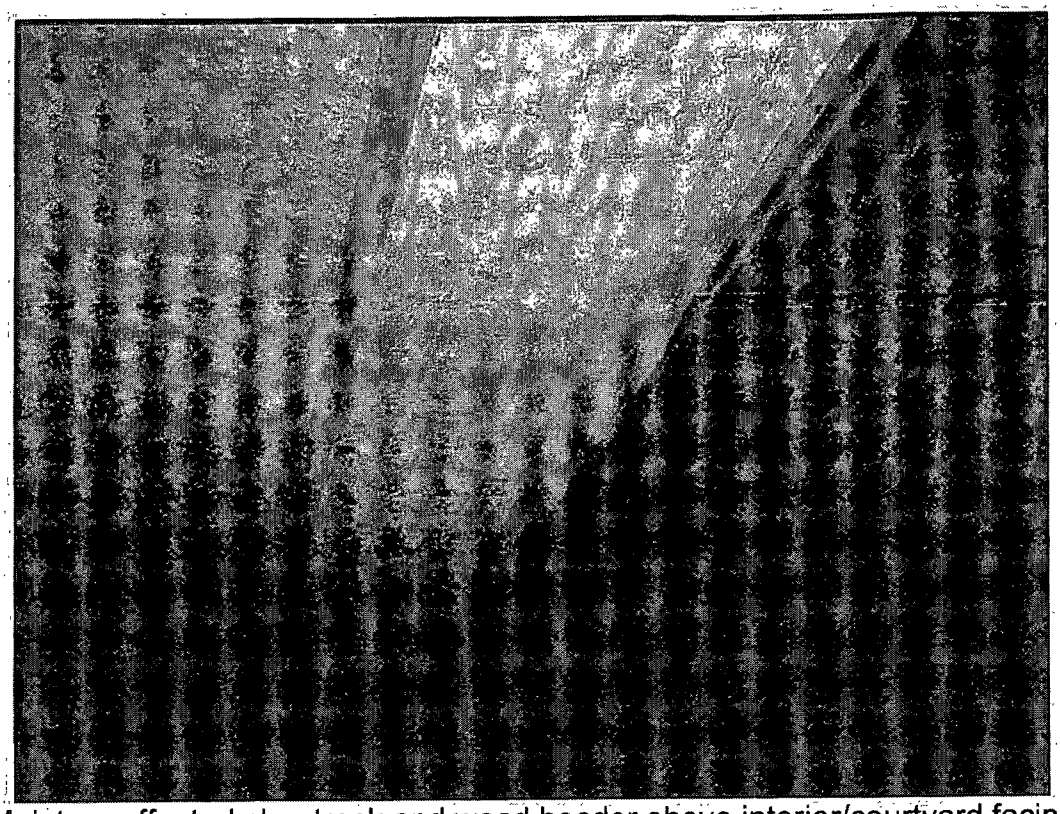
Moisture affected sheetrock and carpet tack strips right of slider.



Moisture affected sheetrock sill below interior/courtyard facing bedroom window.

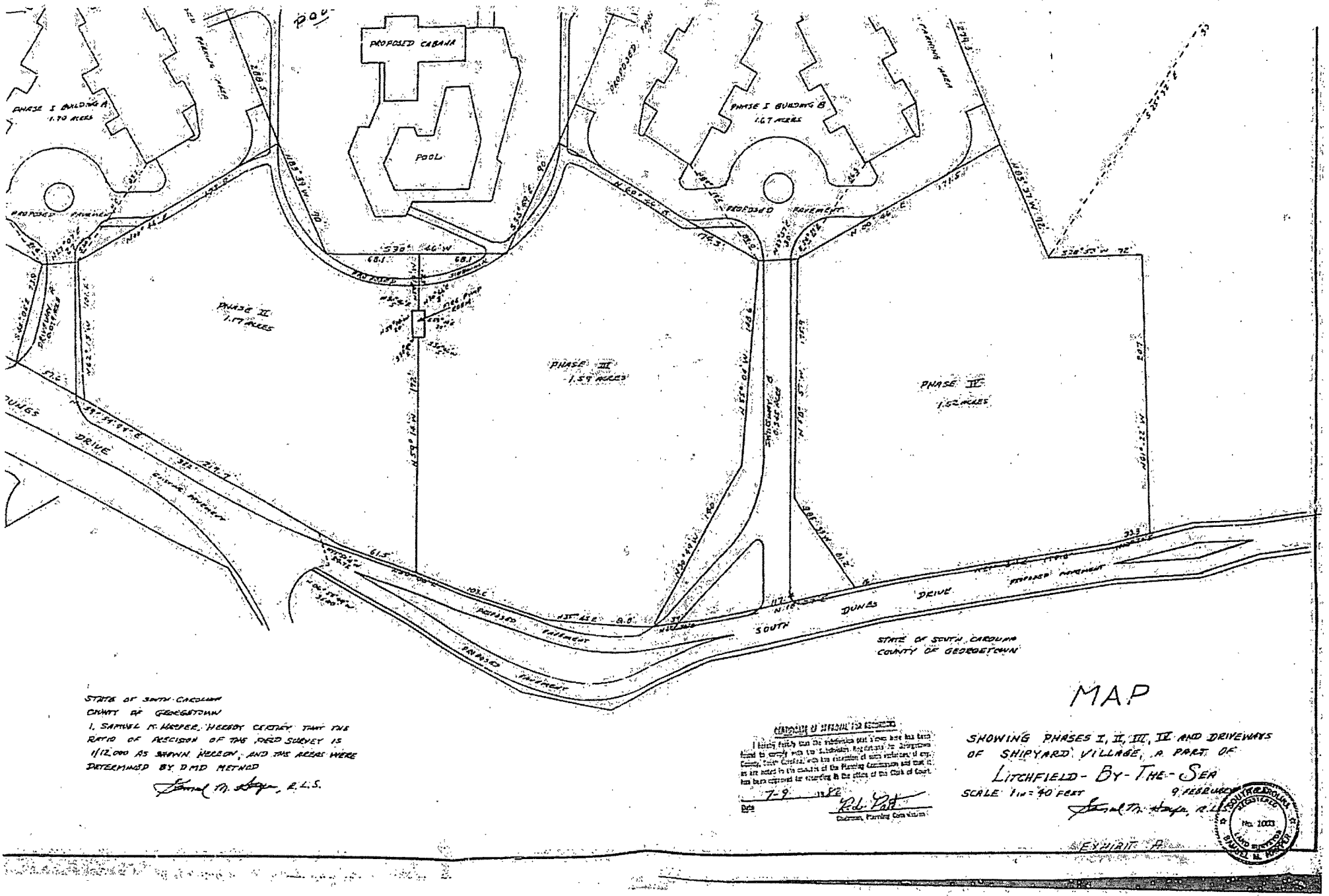


Corroded corner bead and moisture affected sheetrock below interior/courtyard facing bedroom window.



Moisture affected sheetrock and wood header above interior/courtyard facing bedroom window.

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



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
I, SAMUEL M. HARPER, HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE FIELD SURVEY IS 1/12,000 AS SHOWN HEREON, AND THIS AREAS WERE DETERMINED BY DMD METHOD

Samuel M. Harper, R.L.S.

CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the subdivision plat shown here has been found to comply with the Subdivision Regulations for Georgetown County, South Carolina, with the exception of such variances, if any, as are noted in the minutes of the Planning Commission and that it has been approved for recording in the office of the Clerk of Court.

7-9-82

R.L. Pate
Chairman, Planning Commission

MAP

SHOWING PHASES I, II, III, IV AND DRIVEWAYS OF SHIPYARD VILLAGE, A PART OF LITCHFIELD-BY-THE-SEA

SCALE 1 in = 40 FEET

9 FEBRUARY 1982

Samuel M. Harper, R.L.S.

SOUTH CAROLINA REGISTERED LAND SURVEYOR No. 1003 SAMUEL M. HARPER

EXHIBIT "A"

LEGEND

1. PERIMETER BOUNDARY OF STRUCTURE
2. UNITED SECTION ELEMENT
3. INTERIOR LOAD BEARING PARTITION
4. BOUNDARY OF UNIT

NOTES

1. THE PLANS SHOWN ON THIS DRAWING CONSIST OF THREE BEDROOM FLAT TYPE UNITS
2. EACH UNIT CONSISTS OF THE SPACE BOUNDED BY THE UNDECORATED AND/OR UNFINISHED SURFACES OF THE CEILINGS AND PERIMETER OR LOAD BEARING WALLS
3. UNLESS MARKED, INTERIOR AND EXTERIOR ANGLES ARE RIGHT DEGREES.
4. MASONRY WALL AND DINING ROOM WINDOW HEADS IN UNITS DIF B5, B24, B58, B85, AND B46 ONLY

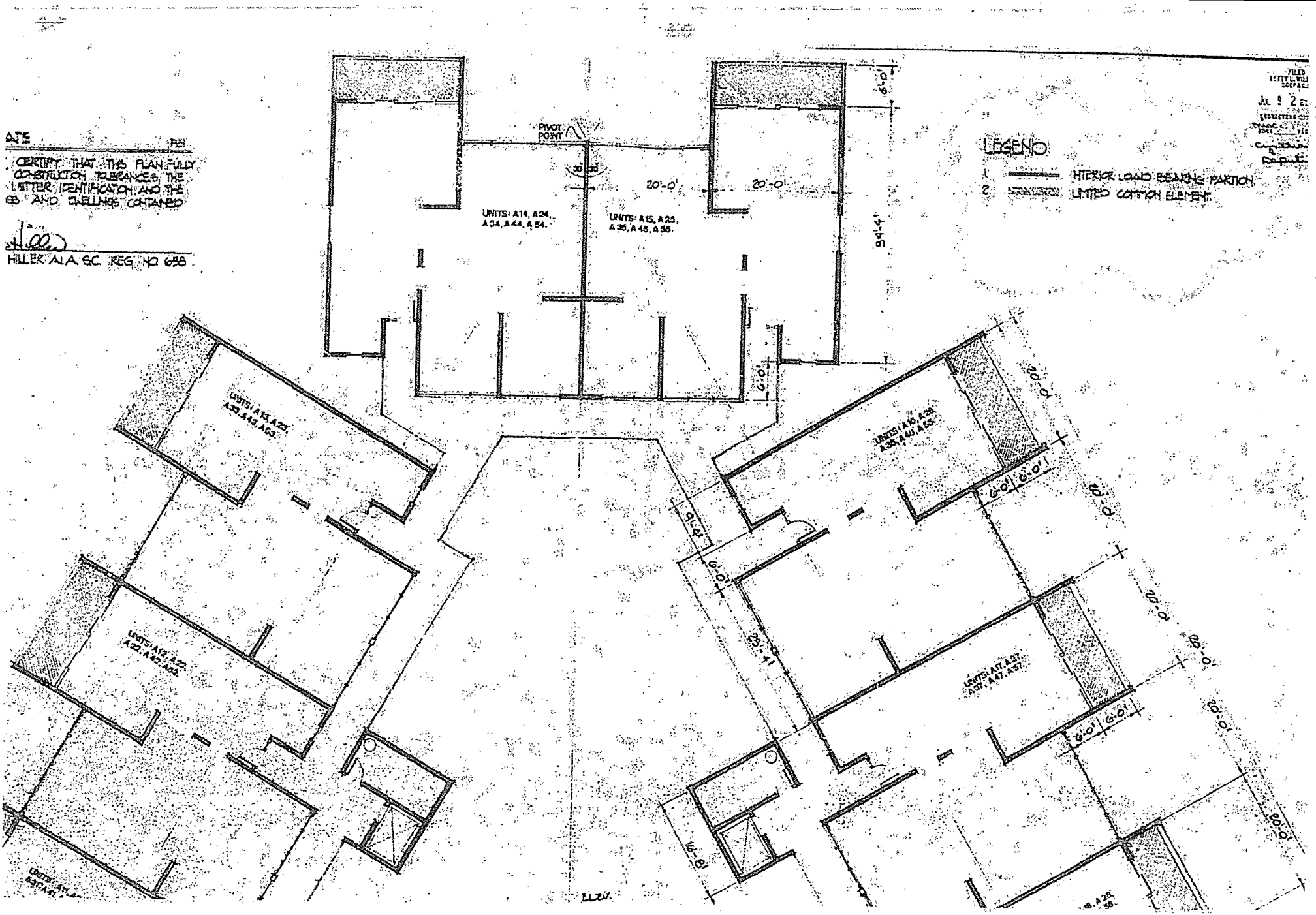
ARCHITECT'S CERTIFICATE

I, JOE M. MILLER, PE HEREBY CERTIFY THAT THIS PLAN FULLY DEPICTS WITH REASONABLE CONSTRUCTION TOLERANCES, THE LAYOUT, LOCATION, NUMBER, LETTER IDENTIFICATION, AND THE DIMENSIONS

DRAWN BY: LLK
DATE:
REVISED:

BOX 5898-B
GREENVILLE, S.C.

SHIPYARD VILLAGE


DATE
CERTIFY THAT THIS PLAN FULLY CONSTRUCTION TOLERANCES, THE LETTER IDENTIFICATION AND THE AND DWELLINGS CONTAINED
HILLER A.I.A. SC. REG. NO 6558
PIVOT POINT
20'-0"
20'-0"
UNITS: A14, A24, A34, A44, A54.
UNITS: A15, A25, A35, A45, A55.
UNITS: A13, A23, A33, A43, A53.
UNITS: A12, A22, A32, A42, A52.
UNITS: A16, A26, A36, A46, A56.
UNITS: A17, A27, A37, A47, A57.
LEGEND
INTERIOR LOAD BEARING PARTITION
LIMITED COMMON ELEMENT
FILED
Jul 9 2

Reserves Funding Summary

RESERVES FUNDING SUMMARY
SHIPYARD VILLAGE
PAWLEY'S ISLAND, SOUTH CAROLINA

Year	Capital Improvements	Painting Waterproofing	Total Allocation	End of Year Balance
1983	$9,367	$10,786	$20,153	N/A
1984	$9,367	$10,786	$20,153	N/A
1985	$9,367	$10,786	$20,153	N/A
1986	$10,042	$12,086	$22,128	N/A
1987	$10,947	$12,700	$23,647	N/A
1988	$18,356	$12,650	$31,006	N/A
1989	$18,381	$13,662	$32,043	N/A
1990	$20,141	$14,755	$34,896	N/A
1991	$21,795	$22,519	$44,314	N/A
1992	$28,597	$23,870	$52,467	$70,703
1993	$28,597	$23,870	$52,467	$81,470
1994	$34,565	$25,064	$59,629	N/A
1995	$34,565	$25,064	$59,629	$153,005
1996	$39,983	$21,000	$60,983	$53,754
1997	$39,983	$21,000	$60,983	$90,557
1998	$43,587	$21,000	$64,587	$46,458
1999	$63,696	$43,727	$107,423	$168,648
2000	$61,593	$45,306	$106,899	$83,320
2001	$63,134	$46,433	$109,567	$255,172
2002	N/A	N/A	N/A	N/A
2003			$132,265	$381,246
2004			$120,614	$268,251
2005			$250,000	$334,349
2006			$283,395	$1,801,991
2007			$274,087	$1,708,355
2008			$274,087	$1,756,691
2009			$274,087	$1,727,528
2010			$277,470	N/A

No distinct capital improvement, painting, waterproofing allocations

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

C

SHIPYARD VILLAGE

Council of Co-Owners, Inc.

April 24, 2008 2006 ?

Dear Shipyard Village Owners:

Enclosed please find the minutes from the 2006 Shipyard Village Annual Meeting. These minutes will be approved at the 2007 Annual Meeting. If you did not attend the meeting, the 2005 audit is also enclosed for your review. And, there is a new board member contact sheet for your file.

Please note that the amendment to the master deed **did not pass.** There were 63.59% in favor of the amendment and 8.35% opposed. Unfortunately, 28-29% (approximately 38-39 units) did not vote on this matter which affects every owner. The Shipyard Village Master Deed cannot be amended unless 66.66% vote in favor of the amendment. You will note in the minutes of the meeting that a motion was made towards the end of the meeting to leave the vote on the amendment open for 30 days, in order to allow those owners who did not vote, to vote. In subsequent discussions with the attorney for Shipyard Village, the Board was advised that it is questionable whether the vote on the amendment can be "left open."

While the Board is confident that the majority of the owners are in favor of the amendment, the Board has decided not to follow any "questionable" procedures regarding this. Thus, the Board has decided to start the amendment process over. The Board believes this amendment is in the best interest of the owners and the community as a whole, and obviously, based on the first vote, so do a majority of the owners.

Enclosed please find a NEW PROXY CARD for the amendment vote. Please take a minute NOW to fill this out and drop it in the mail or fax it to the Management Office at 843-357-9890. The deadline for returning the proxy is May 26, 2006.

We will inform the owners of the results shortly after date. **Again, we need 66.66% of the owners to approve this amendment for it to pass.** Enclosed again is the information on the proposed amendment. Please promptly return your completed Proxy Card by mail or by faxing to our office at 843-357-9890.

Some additional points from the annual meeting to be aware of:

- Pool bracelets will be used again this year. The bracelets will be strictly enforced and those without bracelets will be asked to leave the pool area. If you do not have your bracelet from last year, you may see Richard Bennett, Maintenance Supervisor, on site, (843-385-1643) or contact the management office. Replacement bracelets are $1.00 each.

POST OFFICE BOX 2537 • MURRELLS INLET, SOUTH CAROLINA 29576
(843) 357-9888 • FAX: (843) 357-9890

- Again for this season, beach tents will not be permitted in front of Shipyard from sundown to sun up.
- A handicap ramp for access to the pool area will be built on the B building side of the pool. This should be completed by Memorial Day.

We thank those who attended the meeting and those who participated by proxy. Please don't hesitate to contact the management office if you have any questions.

Enjoy the summer season!

Sincerely,

FOR THE BOARD OF DIRECTORS

Kellie A Diehl

Kellie A. Diehl, PCAM
Managing Agent

SHIPYARD VILLAGE COUNCIL OF CO-OWNERS, INC.

TWENTY FOURTH ANNUAL MEMBERS' MEETING

APRIL 15, 2006

MINUTES

The Twenty Fourth Annual Members' Meeting of the Shipyard Village Council of Co-Owners, Inc., was called to order at 9:00 A.M., Saturday, April 15, 2006 at the Litchfield by the Sea Beach House, Pawleys Island, South Carolina.

I. **Opening Comments and Introductions:**
Dr. C. Leon Jennings, President of the Shipyard Village Board of Directors, opened the meeting by welcoming those in attendance. He then introduced the Board members in attendance: G. Henry Jobe, Paul Wiley, Brian Nisbet, Bob Shaffner and Marie Aker. Dr. Jennings introduced the K. A. Diehl & Associates, Inc. management representatives: Kellie Diehl, Kelly Lawson, Tara Woodson and Richard Bennett, on-site maintenance supervisor.

II. **Formal Opening of the Meeting:**
Dr. Jennings formally called the meeting to order and stated that in accordance with Article I, Section 6, of the Association Bylaws, as amended, that the Annual Members' Meeting shall be held on the third Saturday of April of each year or at such other time as may be determined by the Board of Directors. Dr. Jennings stated that he would serve as Chairman of the meeting and that Ms. Aker, Secretary/Treasurer will serve as Secretary of the meeting.

Chairman Jennings stated that Kelly Lawson has been appointed Agent and Proxy for those members of the Association not present at the meeting for the purpose of voting. Ms. Lawson will also serve as Clerk of the meeting.

III. **Roll Call/Quorum Certification:**
The Chairman requested Ms. Lawson to report on the roll call check in process and certification of the quorum. Ms. Lawson announced that 44.22% of the membership was represented by proxy and 28.44% was represented in person, for a total representation of 72.66%. She then noted that the quorum requirements had been met to successfully conduct the meeting in accordance with the By-Laws of the Association.

IV. **Examination of Proof of Mailing :**
The Chairman examined the Proof of Mailing of the Notice of the Twenty Fourth Annual Members' Meeting and noted that the Proof of Mailing along with a sample of the notice would be filed with the official records of this meeting.

V. **Approval of Minutes:**
The Chairman requested that the Secretary read the minutes of the Twenty Third Annual Members' Meeting, unless there was a motion and a second to waive the reading of the minutes and approve them

as written. **Upon a motion by Mr. Cassidy (A55), seconded by Mr. Fuller (C41) and duly carried by voice vote, the reading of the minutes was waived; and further, the minutes were approved as written.**

VI. **Annual Reports:**
The Chairman noted the formal order of business of the Annual Meeting allows for certain reports to be made.

A. **Board of Directors Report:**
Chairman Jennings reported on the following Association issues/activities:

1. Richard Bennett: Dr. Jennings stated that Richard Bennett has been the on-site supervisor for Shipyard Village for just about a year. The Board has been very pleased with Richard's performance. He has safety as a priority for his staff and the owners. He also is focused on saving the Association money by implementing more effective procedures and researching to find the best price available for whatever the issue. Two examples cited by Dr. Jennings were 1)more than $14,000 savings in water expenses realized by repair of a major spa leak not reported by previous maintenance personnel and 2) $4,500 saved by changing contractors to perform the fire system certification.
2. Projects completed:

- A new roof, with a 2 year warranty, was installed on the A building. The Board has also signed a contract to have Spann Roofing check all roofs on an annual basis and make any necessary repairs to extend the life of the roofs.
- New corridor carpet was installed in the A and B buildings.
- The corridor railings in the A and B buildings were painted.
- The carpets in C and D building were cleaned (job was awarded prior to the Board's knowledge of the repair work schedule). The carpets will be cleaned again at the end of the repair work.
- Sidewalks were power-washed.
- Emergency lights in the A and B building were brought up to code.
- Pull covers were installed on the fire alarms to reduce the number of false alarms – the fire company will charge after 3 false alarms.
- Vents were installed in the storage room doors of the A and B buildings. – This year when FEMA did its annual inspection, it was noted for the first time that the storage closets needed to be vented to comply with FEMA codes. Our flood insurance premium was increased due to the lack of ventilation. Once the staff completed the vents, FEMA did a follow-up inspection and Shipyard received a $4673 per building refund on the flood premium.
- Several long standing drainage problems in the A and B parking lots were corrected.
- The pool cabana and pump house roofs were replaced.
- The pool cabana was repaired, painted, new lighting installed and bathrooms updated.
- The C & D building fire suppression system was inspected in 20% of the units. There was no evidence found of a systemic problem; however, the Board still reserved the right to file an action at a later date if this surfaces.
- A thermal camera investigation and subsequent report was performed on the building exteriors to determine water penetration points.
- Window standards were developed for A and B window replacement.

3. Projects Planned:

- New signs for under building unit parking identification.
- Handicap ramp on the B building side of the pool will be installed shortly.
- New fountain heads will be purchased to provide a better water spray for the fountains at the C and D buildings.
- Additional stucco evaluations will be done on the A and B building.
- Additional window evaluations will be done on the A and B building.

4. Lawsuit settled:

- Chairman Jennings reported that the lawsuit was settled for $3,019,300 gross. After attorneys' fees, court expenses and $100,000 payout of the class action suit, the Association netted slightly more than $2,200,000.
- Chairman Jennings pointed out that the lawsuit was based more on *anticipated* damages than actual damages. There was not a lot of damage behind the Dryvit; thus making the case more difficult to settle. The original estimate by the forensic engineer and the attorneys for the lawsuit certainly had some "fluff" in it.

5. Current Projects:

- Dr. Jennings reviewed the selection of Pro-Tec for repairs to the C & D buildings. The Board investigated possible solutions for repair of the C and D buildings which included hard coat stucco, a cement based panel system and an elastomeric coating produced by Dow Corning. The coating with Dow Corning called Dow AllGuard provided a 10 year warranty against water penetration and was the most cost effective solution for the repair of our buildings.

  Cost of the project:
  $680,610 – ceilings, elastomeric coating, engineer's fee
  $ 67,500 – estimated window repairs
  $ 28,698 – painting of steps leading to first floor units and storage lockers in garages.
  TOTAL: $776,808

  The Board has committed to putting aside $600,000 in the reserve account to fund maintenance of the C & D buildings and re-coating in 10 years. The balance of the settlement funds (approx. $912,000) has been placed in general reserves. The Board will have a professional reserve study of the remaining life and replacement costs for all of the common elements.

6. General Information

- Chairman Jennings asked that owners make appointments with Richard Bennett. He has many issues to deal with each day and will be more efficient if owners would schedule a time to see him instead of just popping in the office. As an example, Richard got a blackberry recently which allows him to email and track his phone calls. He has received 1800 phone calls in the last two months.
- Chairman Jennings reminded owners that no structural alteration of units can be

done without Board approval. Putting up crown molding or changing a counter top is fine – changing a wall or a door opening is a structural change and would need approval.

- Pool ID bracelets will be used again this year. If you have misplaced your bracelets and need new ones, they can be obtained for $1.00 each at the site office.
- The beach tent rule will be enforced again this year also – no tents on the beach from sundown to sun up.
- Only owners are allowed to have pets. Owners must clean up after their pets as dog deposits not only ruin the grass but also create a health hazard – many children play in the grass, etc.
- If it becomes necessary to remove furniture from balconies in a hurricane warning, your maintenance contractor or rental agent should do this for you; however, the Shipyard site staff will help in this effort if necessary. If you do not want your furniture put directly on the carpet, it is your responsibility to provide a tarp or cover for the carpet.
- Please note that only household trash can be placed in the dumpsters. Old bicycles, microwaves, etc. cannot be placed in the dumpsters. There are two recycling centers for this type of trash – one just north of Brookgreen Gardens and one in Pawleys Island.
- Finally, Chairman Jennings reported that the Shipyard Board has drafted a letter to the Litchfield by the Sea Board concerning the appearance of Heron Marsh. The landscaping is not up to LTBS standards and looks very shabby. Henry Jobe commented that he is on the LTBS Board and this issue was raised at a general meeting last fall yet no action has been taken. Mr. Jobe encouraged owners to look at Heron Marsh and write individual letters to the LTBS Board.

B. **Financial Report:**

- Ms. Diehl reported that the 2005 Audit was completed by C. Nicholas Diez, CPA. She then noted that the report was distributed to the membership at this meeting. The owners not in attendance will also receive a copy of the report when the minutes of the meeting are mailed. Ms. Diehl then briefly reviewed the report for the benefit of the membership, stating that the Association had ended 2005 with an approximate $21,767 surplus. This surplus was transferred to the reserve account to avoid paying a high tax rate. Ms. Diehl stated that thus far for 2006 the Association is operating under budget. Ms. Diehl commended the Board for their prudent financial management.
- Ms. Diehl also reported that the Board has commissioned an insurance replacement cost appraisal – to make sure there is enough coverage to re-build the buildings if destroyed by a storm, fire, etc. The last appraisal was done in December 2002 – it is recommended to get an appraisal every 3-5 years. Construction costs have increased and availability of construction materials has decreased which may cause the appraisal to value the buildings at a higher amount. The master insurance policy renews in June. Increasing the amount of property coverage would increase the premium. Also, due to the severe hurricane season last year, the number of insurance carriers willing to provide insurance to coastal properties has decreased. The Board and management will do everything possible to find the best coverage at the best price; however, owners should be prepared for a substantial increase in the insurance assessment, which comes out mid-May.

VII. **Election of Directors, Tax Resolution and Master Deed Amendment:**

Chairman Jennings announced that the primary purpose of the meeting is to elect Directors. There are four seats open on the Board.

Chairman Jennings asked Ms. Aker to give the report from the nominating committee. She then stated that the Nominating Committee's slate is:

Jack C. Eblin (D32)
C. Leon Jennings, Jr. (B54)
G. Henry Jobe (A15)
Jim Poag (A58/B51)

Write in nominations have been received for:

W. Clinton Carter (D51)
Katie Morrow (B28)

The Chairman opened the floor to additional nominations. With no further nominations, Mr. Shearer (B16) moved that the nominations be closed, seconded by Mr. Kelly (D15).

A motion was made by Ms. Morrow (B28), seconded by Mr. Eblin (D32), that any excess Association income over Association expenses as defined in IRS Reg. I-277-I for the year ending December 31, 2006 shall be applied against the subsequent tax year member assessments as provided by IRS Revenue Ruling 70-604.

Chairman Jennings reviewed the proposed amendment to the Master Deed. The proposal was made by the Board after hearing of problems that many owners in the A and B building were experiencing trying to replace windows individually. Plus, window contractors cannot necessarily take care of exterior stucco repairs around the windows. If the window is not installed properly and stucco repaired properly, water can penetrate to the unit below. The amendment would make all windows and sliding doors the responsibility of the Association. The window and door screens would remain the responsibility of the owner. The Board would then have an engineer/architect assist with determining which stack of windows is in the worst shape to be replaced first. A schedule would be developed to do x number of stacks each year. Chairman Jennings stated that the Board was not going to use funds from the settlement to replace all windows in the A and B buildings. Questions were posed and answered and several owners from the A and B building shared problems and experiences related to trying to replace a window or two in their unit.

At this point, ballots were handed out to those owners who had not sent in a proxy card.

VIII. **Unfinished Business:**

There was no old business to be discussed.

IX. **New Business and Member Comment:**

Some of the items discussed were:

1. If the amendment passes, payment options for window repairs or replacement could include funds from reserves, assessments or loans.
2. If the amendment passes, the Association would be responsible for replacing faulty windows due to normal wear and tear.
3. Homeowners were reminded not to set off firecrackers from their balconies.
4. Permission to tile balconies is not required, but it is recommended that Richard Bennett be consulted for specifications as to installation.

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

EXHIBIT "2"

SHIPYARD VILLAGE

July 8, 2009

Dear Shipyard Village Homeowners,

As you are aware, Buildings A and B are in need of extensive repairs. As reported to the membership, the major issues with the buildings are the deterioration of the balconies and walkways as a result of severe corrosion of the cantilever beams and various floor panels. As a result of the continued corrosion, the Association's engineering firm, Sutton-Kennerly & Associates (SKA), recommended that several balconies and walkways be shored as a precautionary measure to ensure structural stability of the walkway and balcony components at both buildings.

This determination came as a result of the following summarized observations by SKA: 1) A number of structural pre-stressed concrete hollow slab components and reinforced concrete beam elements both at walkways and balconies are exhibiting significant deterioration from corrosion of embedded steel. This has manifested as cracking and spalling parallel to slab reinforcing steel and apparent reduction in a cross-sectional area of portions of the embedded steel resulting in a reduction in structural capacity. 2) Delaminated and displaced stucco and concrete from corrosion of the reinforcing steel presents a safety hazard due to the potential for falling objects. Various pre-stressed hollow core slabs, reinforced concrete beams, and other components have impending spalls. "Impending spall" is a term used to describe cracked or delaminated concrete or stucco that could potentially separate and fall in the near future and injure an occupant below. In addition to the safety concerns, impending spalls can increase the rate of deterioration due to exposure to water.

In addition, the windows and sliding glass doors will be replaced. The envelopes around the windows/sliding glass doors are experiencing water penetration and therefore the windows and sliders will be replaced with windows that meet current code. It is imperative that these components be replaced so that the contractors can ensure the window and door assemblies are watertight.

The railings will be removed during the demolition of the balconies and walkways. Railings will be installed that meet current building codes.

The repair project will commence on September 14, 2009 at Building B. The units can be occupied through September 13, 2009. Within the next two (2) weeks, the owners of Building B will receive a detailed checklist on what they will need to do prior to September 14, 2009 to prepare the unit for the repair project. The repair work for Building B is planned to be completed on May 28, 2010. The work is planned to start at Building A on September 13, 2010 and completed May 27, 2011.

The most efficient way to finance the necessary repairs is through a Special Assessment. The more cumbersome alternative called for in the Bylaws would make it necessary for the cost of the repairs to be added to the 2010 and 2011 Operating fund and bill all homeowners monthly just like other homeowners expenses. The Board would prefer to utilize a Special Assessment and to that end, the Board is calling a Special Members' Meeting scheduled for Saturday, August 1, 2009 at 9:00 am in the Tara Room at the Litchfield By The Sea Convention Center, for the sole purpose of voting on a special assessment. Enclosed, please find the official notice of the meeting, along with pertinent information relative to the special assessment.

Should you have any questions, please feel free to contact me at (843) 652-2162.

FOR THE BOARD OF DIRECTORS

Sincerely,

Vicki Gallagher, CMCA, AMS
K. A. Diehl & Associates, Inc.
Managing Agent for Shipyard Village
Email: vicki.gallagher@kadiehl.com

Enclosures

SHIPYARD VILLAGE

NOTICE

July 8, 2009

Dear Shipyard Village Homeowner,

In accordance with the Bylaws of Shipyard Village Council of Co-Owners, Inc., notice is hereby given of a Special Members' Meeting on **Saturday, August 1, 2009**. The meeting will commence at 9:00 am and will be held in the Tara Room at the Litchfield By The Sea Convention Center, Pawleys Island, South Carolina. *Registration will begin at 8:30 am* – avoid the last minute rush at the door at 9:00 am!

The purpose of this meeting will be to vote on the proposed special assessment that will allow the Association to fund the necessary repairs to Buildings A & B.

Sutton-Kennerly & Associates (SKA) is currently in Phase II of the bid process. Bid specifications have been issued to eight (8) qualified contractors. The pre-bid meeting was held on June 30, 2009, with the receipt of the proposal deadline being July 28, 2009. Following the receipt of the proposals, SKA will review the proposals and provide a comparison report to the Board of Directors with their comments and recommendations. Unfortunately, we don't believe that this information will be received by the Board by August 1, 2009.

However, due to the repair project commencing on September 14, 2009 it is imperative that the membership vote on the special assessment in the near future, so when a contract is awarded, the materials can be ordered without a delay. It is the Board's objective that there will be no delays so that the work can be completed prior to Memorial Weekend in 2010, and further costs associated with additional shoring will be avoided.

The special assessment is based on SKA's construction budget with a 15% contingency. The proposed special assessment is $11,000,000, see attached breakdown as provided by SKA.

The Association's By-Laws, Article V, Section 5.5, defines a special assessment as follows: "The funds required from time to time to pay any Common Expenses which are not covered by the Budget but which are approved by a majority of the Co-owners." Therefore, in order for the Special Assessment to pass, over 50% of the membership must vote in the affirmative.

If the Special assessment does not pass, the cost of the repairs will be added to the 2010 and 2011 Operating fund.

The special assessment per unit is based on the percentage of interest assigned to the unit, as dictated in the Association's governing documents.

Special Assessment Unit Assessment Calculation with 80 units sharing the windows/doors expense (Building A & B owners only)

A & B Units	$88,398
C & D – 3 Bdr.	$64,868
C & D – 4 Bdr.	$68,471

The payment amount of the special assessment will be dependent on the outcome of the lawsuit filed against the Association with respect to the windows and sliding glass doors' 2006 amendment. The calculations above assume that the expense of the windows and sliding glass doors will be borne by the homeowners in building A&B. Currently the Association has moved forward with a Summary Judgment as a means for resolving the civil action filed by C & D owners. Consequently, the results of the judgment may have an impact on the windows/doors cost allocation to A, B, C and D owners. If the ruling comes back that all unit owners are responsible for the expense for the windows/doors, the assessments will be adjusted accordingly.

The assessment will be paid over a two (2) year period (during the duration of the repair work). The Association is offering three (3) payment plans.

First Option Payment – Payment in Full due on September 1, 2009:

A & B Unit Types	$88,398
C & D – 3 Bdr.	$64,868
C & D – 4 Bdr.	$68,471

Second Option – Two (2) Equal Payments – First payment due on September 1, 2009; and second payment due on July 1, 2009:

A & B Unit Types	$44,199 each payment
C & D – 3 Bdr.	$32,434 each payment
C & D – 4 Bdr.	$34,236 each payment

Third Option –Equal Monthly Payments over a 24 month period, first payment will be due on September 1, 2009:

A & B Unit Types	$3,683/month plus interest
C & D – 3 Bdr.	$2,703/month plus interest
C & D – 4 Bdr.	$2,853/month plus interest

The coupons for September through December 2009 will be mailed under separate cover. When the lawsuit is resolved and if the assessments need to be adjusted, new coupons will be issued. The balance of the coupons will accompany the 2010 monthly assessment coupons for 2010 year. Each homeowner will receive monthly coupons until such time the Association is notified on which payment plan is chosen.

After soliciting proposals from 3 financial institutions, the Board is seeking a line of credit up to $11,000,000 with the CA Banc, which is a large financial institution that specializes in providing loans to associations. Since $11,000,000 is a significant amount of money to borrow, the line of credit has not been secured at this time. The bank needs to be assured that the Association can pay back the line of credit; therefore, the special assessment must first be approved and the bank needs assurance that not be more than 7% of the membership will default on their payment. Once this is determined, CA Banc has indicated it will provide the line of credit to the Association. If a line of credit is secured, the Association will incur interest expense and fees, which will be added to the assessment amounts for those homeowners who choose to pay the assessments monthly. If a homeowner decides to make payment in full or in the two (2) equal payments as noted above, no interest expense will be incurred.

It is very important that you attend this meeting either in person or by proxy as the Special Meeting can only be conducted after the establishment of a quorum of fifty-one percent (51%) of the Shipyard Village members. Please return the enclosed proxy to the management office ***no later than Thursday, July 30, 2009 in the provided self-addressed postage-paid envelope.***

Should you have any questions, please feel free to contact me,

FOR THE BOARD OF DIRECTORS

Sincerely,

Vicki Gallagher, CMCA, AMS
K. A. Diehl & Associates, Inc.
Managing Agent
email: vicki.gallagher@kadiehl.com

Enclosures: as noted

Structural and Facade Repairs for
Shipyard Village

SKA Project No. 080489.2
Opinion of Project Cost

Phase 1 (Building "B"): Sept. 2009 to May 2010
Phase 2 (Building "A"): Sept. 2010 to May 2011

Slab and Beam Repairs	$1,865,520
New Windows and Doors	$2,459,000
Wall Systems	$150,000
Stucco and Flashings	$100,000
Waterproofing and Coatings	$497,000
New Handrails	$362,500
Other Concrete Repairs	$379,000
Interior Finishes and Temporary Walls	$326,000
Misc. Repairs	$82,500
General Conditions	$1,365,500
Overhead and Profit (~10%)	$768,302
Total:	$8,341,322
Engineering Design Fees	$131,600
Engineering Contract Admin. Estimate	$415,000
Subtotal:	$8,887,822
Contingency (15%)	$1,251,198
Reimbursement to Reserves for Repair Investigation Expenses	$628,726
Shoring Expense	$146,722
Project Management by KAD	$30,000
Total:	$10,944,468

SHIPYARD VILLAGE COUNCIL OF CO-OWNERS, INC.

SPECIAL MEMBERS' MEETING
AUGUST 1, 2009

PROXY

The undersigned member of the Shipyard Village Council of Co-Owners, Inc. (hereinafter, "Association") hereby appoints the following to act as his, her or its proxy, with full power of substitution to act and vote at the Special Members' Meeting to be held August 1, 2009, and any adjournments thereof, on all matters properly coming before the meeting:

( )Clinton Carter and Robert Postiglione, or either of them

or

( )_____**(Print Name)**

(Please check desired proxy)

and directs said proxy to vote as indicated below with regard to the Special Assessment as described in the Notice in the Special Meeting:

Special Assessment: (Vote / **FOR** or **AGAINST** the special assessment)

☐ For Special Assessment ☐ Against Special Assessment

I direct my designated proxy to vote as indicated regarding the Special Assessment, and if no directions or incomplete directions are given, the above designated proxy will have the right to act and vote as he or she deems fit on such matter.

I may withdraw this proxy at any time, in person or in writing, prior to the commencement of the meeting.

Date_____, 2009

(Owner Signature)_____ Unit No. _____

Printed name: _____

_____ **I/we plan on attending the meeting. There will be _____ members attending.**

IMPORTANT
Return your proxy by mail or fax to:
Shipyard Village Council of Co-Owners
c/o KA Diehl & Associates, Inc.
11740 Highway 17 Bypass South
Murrells Inlet, SC 29576
FAX NUMBER: (843) 652-2192

Assessment Allocation Summary

ASSESSMENT ALLOCATION SUMMARY
SHIPYARD VILLAGE
PAWLEYS ISLAND, SOUTH CAROLINA

Activity	SKA Cost	% of SKA Total*	Window and Door Re-Allocations Building Unit Designation A	B	CD3	CD4	Category Subtotal	57% Common/ Limited Common	Windows & Doors	Common/Limited Common Deduct @ 57% Building Unit Designation A	B	CD3	CD4	Category Subtotal
Slab and Beam Repairs (All Common)	$1,865,520	22.3648%	$503,765	$503,765	$708,422	$149,555	$1,865,507	$1,063,346		$287,146	$287,146	$403,800	$85,246	$1,063,339
Windows and Doors	$2,459,000	29.4797%	$1,229,500	$1,229,500	$0	$0	$2,459,000	$0	$2,459,000					
Wall Systems (29.4797% of $156,000 = $45,988 to A & B)	$156,000	1.8702%	$52,702	$52,702	$41,777	$8,819	$156,000	$62,707	$45,988	$16,933	$16,933	$23,813	$5,027	$62,706
Succo and Finishes (29.4797% of $100,000 = $29,480 to A & B)	$100,000	1.1989%	$33,783	$33,783	$26,780	$5,653	$99,999	$40,197	$29,480	$10,855	$10,855	$15,264	$3,222	$40,196
Waterproofing and Coatings (29.4797% of $497,000 = $146,514 to A & B)	$497,000	5.9583%	$167,902	$167,902	$133,095	$28,098	$496,998	$199,777	$146,514	$53,948	$53,948	$75,864	$16,016	$199,775
New Handrails (Common)	$352,500	4.2259%	95,189	95,189	133,860	28,259	$352,498	$200,925		$54,258	$54,258	$76,300	$16,108	$200,924
Other Concrete Repairs (Slab Edges Value To Date = $227,130, all Common))	$379,000	4.5436%	$154,576	$154,576	$57,672	$12,175	$378,999	$216,030		$58,337	$58,337	$82,036	$17,319	$216,028
Interior Finishes and Temporary Walls (Demising Wall Value = $156,652)	$326,000	3.9083%	$126,976	$126,976	$59,488	$12,558	$325,999	$0		$0	$0	$0	$0	$0
Misc. Repairs (29.4794% of $82,500 = $24,320 to A & B)	$82,500	0.9891%	$27,871	$27,871	$22,094	$4,664	$82,500	$33,162	$24,321	$8,955	$8,955	$12,593	$2,659	$33,162
General Conditions (29.4797% of $1,365,500 = $402,546 to A & B)	$1,365,500	16.3703%	$461,309	$461,309	$365,677	$77,198	$1,365,493	$548,884	$402,546	$148,221	$148,221	$208,436	$44,003	$548,880
OH and Profit (29.4797% of $758,302 = $223,545 to A & B)	$758,302	9.0909%	$256,179	$256,179	$203,071	$42,870	$758,299	$304,811	$223,545	$82,311	$82,311	$115,751	$24,436	$304,809
Total*	**$8,341,322**	**100.0000%**	**$3,109,753**	**$3,109,753**	**$1,751,935**	**$369,851**	**$8,341,291**	**$2,669,839**		Common/limited common deduct for activities				**$2,669,820**
Engineering Design Fees (All Common)	$131,500	1.5765%	$35,510	$35,510	$49,936	$10,542	$131,499	$74,955		$20,241	$20,241	$28,464	$6,009	$74,954
Engineering Contract Administration (29.4797% of $415,000 = $122,340 to A & B)	$415,000	4.9752%	$140,200	$140,200	$111,136	$23,462	$414,999	$166,816	$122,341	$45,047	$45,047	$63,347	$13,373	$166,815
Subtotal**	**$8,887,822**		**$3,285,463**	**$3,285,463**	**$1,913,008**	**$403,855**	**$8,887,789**	**$241,771**		Common/limited common deduct design/investigation				**$241,769**
Contingency 15% (29.4797% of $1,251,198 = $368,849 to A & B)	$1,251,198	15.0000%	$422,694	$422,694	$335,068	$70,736	$1,251,193	$882,348	$368,850	$238,269	$238,269	$335,067	$70,736	$882,342
Reimbursement to Reserves for Repair Investigation (Schneider/Frisch Expenses = $216,662)	$628,726		$219,605	$219,605	$156,479	$33,034	$628,723	$358,374		$96,775	$96,775	$136,091	$28,730	$358,371
Shoring (All Common)	$146,722		$39,620.81	$39,620.81	$55,717	$11,762	$146,721	$83,632		$22,584	$22,584	$31,759	$6,705	$83,631
Project Management by KAD (All Common)	$30,000		$8,101.20	$8,101.20	$11,392	$2,405	$30,000	$17,100		$4,618	$4,618	$6,494	$1,371	$17,100
Grand Total***	**$10,944,468**											**$1,615,079**	**$340,960**	

Total deduct per Unit Owner above

Unit totals w/ window and door costs exclusively to Building A and B Unit Owners (1)	**$2,471,664**	**$521,793**
Unit deductions w/ 57% of common and limited common cost per Unit Owner (2)	**$1,615,079**	**$340,960**
Fair/Reasonable Assessment cost per Unit Owner Type (3) = (1) - (2)	**$856,584**	**$180,834**

Fair/Reasonable Assessment Based Upon Window/Door Related Items to A & B Only and BOD Failure to Maintain/Repair Common and Limited Common Elements From 1994 through 2010	**$17,132**	**$18,083**

Note: Windows and Doors Represent 29.4797% of activity value of $8,341,322

January 4, 2012

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

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

Dear Howell:

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

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

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

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

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

Community Associations and Governance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA HORIZONTAL PROPERTY ACT (The Act):

Section 27-31-20. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal and, where proper, the compensation thereof;

(b) Method of calling or summoning the co-owners to assemble; that a majority of at least fifty-one percent is required to adopt decisions; who is to preside over the meeting and who will keep the minutes book wherein the resolutions shall be recorded;

(c) Care, upkeep and surveillance of the property and its general or limited common elements and services;

(d) Manner of collecting from the co-owners for payment of the common expenses;

(e) Designation and dismissal of the personnel necessary for the works and the general or limited common services of the property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Master Deed of Shipyard Village HPR:

Section 5.6 Operation and Maintenance

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

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

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

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

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

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

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

7. Admit that Sections 3.6, 4.3, 5.5, 5.6, 7.1, 7.4, 9.4, 9.6, 9.9, 12.1, 16.1, 16.2, and 16.4 of the Master Deed, as amended, impose affirmative duties on the Defendant and the individual A, B, C And D Unit Co-owners regarding the maintenance, replacement, and repair of their individual units and the regime's common elements. A copy of the Master Deed and By-Laws of the Shipyard Village HPR, including their amendments, are attached hereto, and marked as **Exhibit Nos. 1-4.** (The Master Deed of Shipyard Village Horizontal Property Regime dated July 7, 1984, and recorded on **July 9, 1984**, in **Deed Book 201 at page 880**, in the Office of the Register of Deeds for Georgetown County, South Carolina; **First Amendment** to Master Deed of Shipyard Village Horizontal Property Regime (1st Amendment) recorded **August 5, 1998, in Deed Book 891 at Page 001**, in the Office of the Register of Deeds for Georgetown County, South Carolina; Second Amendment to Master Deed of Shipyard Village Horizontal Property Regime (2nd Amendment) recorded **January 19, 1999**, in **Deed Book 910 at Page 25**, in the Office of the Register of Deeds for Georgetown County, South Carolina (said Second Amendment was recorded in **Deed Book 942 at Page 46**); and the **Bylaws of Shipyard Village Horizontal Property Regime** attached to the Master Deed dated July 7, 1982, recorded in Deed Book 201, at Page 929, on July 9, 2002, in the Register of Deeds Office in Georgetown County ("ROD"), South Carolina (20 pages)); and

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

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

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

Section 7.2 **Voting**

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

Section 7.4 **Bylaws and Regulations**

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

Section 14.1 **Amendments**

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

Section 16.2 **Compliance**

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

By-laws of Shipyard Village HPR:

Section 1.4 **Voting**

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

Section 1.5 **Consents**

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

Section 2.1 **Form of Administration**

"The Council ***SHALL*** act by and through its Board of Directors."

Section 2.2 **Authorities and Duties**

"In its discretion and as required by the Act, the Master Deed, and these Bylaws, the Board of Directors ***SHALL*** provide for the following:

(1) The contracting with a managing agent to provide for the surveillance and security of the Regime Property, the maintenance, repair and replacement of the Common Elements, and the designation and dismissal of the personnel necessary to accomplish the same:

(4) The enactment of reasonable regulations governing the operation and use of Common Elements:

(6) The enforcement of the terms of the Master Deed, these Bylaws, and any regulations promulgated pursuant to the Bylaws;

(7) The general administration of the Council and the Regime on behalf of and for the benefit of all Co-owners "

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Record

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

Parades Preliminary Report
January 4, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF HISTORIC MAINTENANCE RESERVE FUNDING & EXPENDITURES

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

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

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

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

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

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

Other Expert Opinions

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

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

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

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

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

My Professional Opinions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Each member and the BOD as a whole has an absolute duty to act in good faith, with the care an ordinary and prudent person in a like position would exercise and in a manner the director/BOD reasonably believes to be in the best interests of the corporation and its members. The record clearly shows this standard was NOI met.

SUMMARY

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

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

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

CLOSING

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

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

Yours truly,



Michael R. Parades, PCAM

Attachments

EXHIBIT 1

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

EXPERIENCE

7/09-Present Realtor-Dunes Properties

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

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

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

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

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

MICHAEL R. PARADES, PCAM

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

EDUCATION

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

PROFESSIONAL DESIGNATIONS

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

MEMBERSHIPS

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

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

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

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

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

Lawsuits Involved as Expert Witness

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

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

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

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

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

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

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

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

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

This lawsuit has been dismissed.

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

Distant Island Community Association vs Mark Christmus

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

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

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

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

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

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

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MRP Addendum-Lawsuits

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

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

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

Lawsuit relates to personal injury due to negligence of defendants.

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

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

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

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

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

Lawsuit is a breach of contract lawsuit.

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

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

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

MRP Addendum-Lawsuits

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

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

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

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

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

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

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

IN RE: South Capital Group Inc., Debtor

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

EXHIBIT 2

FIDUCIARY OBLIGATIONS

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

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

- The Duty of Care and
- The Duty of Loyalty

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

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

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

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

DUTY OF CARE

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

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

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

Fiduciary Obligations

Elements of The Duty of Care:

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

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

DUTY OF LOYALTY

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

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

Thus the duty of loyalty relates to:

- Conflicts of Interest
- Corporate Opportunity
- Confidentiality

Conflicts of Interest

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

Corporate Opportunity

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

Confidentiality

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

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

EXHIBIT 3

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

April 25, 2011

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

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

Gentlemen:

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

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

Respectfully submitted,
ECS CAROLINAS, LLP represented by;

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

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

TABLE OF CONTENTS

ECS CAROLINAS LLP AND STEPHEN J GEIGER BACKGROUND

PROJECT DESCRIPTION

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

SUMMARY OF MASTER DEED AND AMENDMENTS

SUMMARY OF HISTORIC RESERVES FUNDING

SUMMARY OF HISTORIC RESERVES ACCOUNT EXPENDITURES

REVIEW OF CORRESPONDENCE

EVALUATIONS OF BUILDINGS A AND B PRIOR TO 2006

EVALUATIONS OF BUILDINGS A AND B SINCE 2006

SUMMARY OF CONSULTANTS FINDINGS

SUMMARY OF ECS OBSERVATIONS

REPAIR ALTERNATIVES AND COSTS

PROPOSED ASSESSMENT OF CONSTRUCTION AND DESIGN FEES

PROFESSIONAL OPINIONS

RE-ALLOCATION OF ASSESSMENTS

CLOSING

ATTACHMENTS

ECS CAROLINAS LLP AND STEPHEN J. GEIGER BACKGROUND

ECS Firm Overview

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

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

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

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

Stephen J. Geiger, P.E. Experience Overview

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

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

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

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

PROJECT DESCRIPTION

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

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

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

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

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

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

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

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

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

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

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

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

Board of Directors

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

Managing Agents

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

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

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