THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-001180

RECEIVED
JAN 28 2019
SC Court of Appeals

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, ...Plaintiffs,

v.

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., ...Respondents,

And

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., ...Respondents,

v.

Great American Insurance Company.....Appellant.

RECORD ON APPEAL VOLUME II

Kirby D. Shealy III, Esquire
ADAMS AND REESE LLP
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201
Telephone: (803) 254-4190
kirby.shealy@arlaw.com
Attorneys for Appellant

Bonnie Allen Lynch

Joshua D. Spencer, Esquire
Sarah P. Spruill, Esquire
H. Sam Mabry, Esquire
Haynsworth Sinkler Boyd
P.O. Box 2048
Greenville, SC 29602
Telephone: 864-240-3200
jspencer@hsblawfirm.com
sspruill@hsblawfirm.com
smabry@hsblawfirm.com

AND

Charles B. Jordan, Jr., Esquire
The Pearce Law Group, PC
1314 Professional Drive
Myrtle Beach, SC 29577
Telephone: 843-839-3210
cjordan@pearcelawgroup.com
Attorneys for Respondents

INDEX

Orders

Consent Order for Leave to File Third-Party Complaint filed May 2, 2017 1

Order Granting Third-Party Defendant's Motion in Part filed April 23, 2018 5

Order on Defendants/Third-Party Plaintiffs' Motion for Judgment on the Pleadings filed June 15, 2018 9

Pleadings

Complaint filed July 7, 2016 25

Amended Complaint filed August 24, 2016 295

Second Amended Complaint filed October 28, 2016 543

Third Amended Complaint filed March 8, 2017 796

Defendant Answer to Plaintiff's Third Amended Complaint and Counterclaims filed April 7, 2017 2582

Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed May 2, 2017 2634

Third-Party Defendant's Answer and Counterclaim to Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed July 10, 2017 2849

Third-Party Defendant's Amended Answer and Counterclaim to Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed August 30, 2017 2860

Third-Party Defendants' Second Amended Answer and Counterclaim to Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed April 23, 2018 2930

Transcript of Hearing on March 27, 2018 2999

Stipulation (Exhibit A to Order remanding case filed October 18, 2016) 3047

Consent Motion for Leave to File Third-Party Complaint filed March 28, 2017 3061

Defendants/Third-Party Plaintiffs' Motion for Judgment on the Pleadings as to the First and Fourth Causes of Action in Defendants'/Third-Party Plaintiff's Third-Party Complaint filed January 15, 2018 3279

Memorandum in Support of Defendants'/Third-Party Plaintiffs' Motion for Judgment on the Pleadings as to Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed January 15, 2018 3282

Third-Party Defendant's Memorandum in Opposition to Defendants'/Third-Party Plaintiffs' Motion for Judgment on the Pleadings filed February 14, 2018 3334

Third-Party Defendant's Motion to Amend its Amended Answer and Counterclaim filed on February 23, 2018 3600

Reply Memorandum to Third-Party Defendant's Memorandum in Opposition to Defendants'/Third-Party Plaintiffs' Motion for Judgment on the Pleadings filed on March 21, 2018.....3618

Certificate of Counsel 3663

Walkway Buildings							
[redacted]	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st			3		3	3	
2nd			3		3	3	
3rd	3		3		3		
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3						
2nd	3						
3rd	3						
Description		Comments	Fascia needs to be replaced				
			Some shingles have been replaced but the entire roof need replacing.				
1 - Less Critical							
2 - Consideration							
3 - Monitor							
4 - More Critical							
5 - [redacted]							

2

Walkway Buildings							
[redacted]	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
[redacted]							
Floor Level							
1st	3	[redacted]	3	[redacted]	3	3	
2nd	3		3		3		
3rd		3	3		3	3	
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					3	4	
1st	4						
2nd	4						
3rd	3						

Description		Comments	Fascia is splitting needs replacement
			2nd Fl by stairway has stucco damage
1 -	Less Critical		
2 -	Consideration		
3 -	Monitor		
4 -	More Critical		
5 -	[redacted]		

Walkway Buildings							
[redacted]	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st	[redacted]	[redacted]	3	[redacted]	3	3	[redacted]
2nd	[redacted]	[redacted]	3	[redacted]	3	3	[redacted]
3rd	3	[redacted]	3	[redacted]	3	[redacted]	[redacted]
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2nd	3	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
3rd	3						

Description		Comments	Fascia needs to be replaced
			Some shingles have been replaced but the entire roof need replacing.
1 - Less Critical			
2 - Consideration			
3 - Monitor			
4 - More Critical			
5 - [redacted]			

Walkway Buildings							
Bldg 7	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st			3	3	3	3	
2nd			3	3	3	3	
3rd			3		3		
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3						
2nd	3						
3rd	3						

Description		Comments	These buildings run directly into one another. There is no real walkway area like the other buildings
1 -	Less Critical		
2 -	Consideration		
3 -	Monitor		
4 -	More Critical		
5 -	[illegible]		

Walkway Buildings							
Bldg 7	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st		3	3				
2nd	3		3			3	
3rd			3			3	
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					3	3	
1st	4						
2nd	3						
3rd	4						

Description	Comments
1 - Less Critical	
2 - Consideration	
3 - Monitor	
4 - More Critical	
5 -	

EXHIBIT
"F"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII. IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26-
Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs, v. Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.	**AFFIDAVIT OF JOHN SIMKO, PE, S.I., AND SECB**

HORRY COUNTY
2016 JUL -7 AM 8:24
MELANIE HUGGINS-HARD
CLERK OF COURT

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

1. My name is John Simko. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in

the field of structural engineering. I attended Catholic University of America in Washington DC, from which I received a B.S. Civil Engineering degree in 1961. I received a Masters Degree in Science from East Carolina University in 1991. I am registered in the States of South Carolina, North Carolina, Florida (Licensed as a Special Inspector), New York, Nevada, Louisiana, California, New Jersey, Oregon, Vermont, District of Columbia, Indiana, Ohio and Maryland. A copy of my Curriculum Vitae, marked **Exhibit "A"**, is attached hereto and incorporated by reference as part of this Affidavit.

2. I am not a party to the above entitled action, and I am unrelated to any of the above- captioned members.

3. I am currently the owner of MS Structural Engineers, LLC ("MS Structural Engineers") located in Ormond Beach, Florida, 32176, as a Chief Structural Engineer. I am individually licensed as an Engineer in the State of South Carolina. My experience includes over fifty (50) years of design work, diagnostic evaluations, building repair design, and construction project management. (See **Exhibit A.**)

4. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Complaint.

5. Tilghman Beach and Racquet Club Condominium Regime ("TB&RC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer, Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983 are located in Horry County, South Carolina.

6. The construction of Tilghman Beach & Racquet Club Condominium Regime was completed in accordance with the building code requirements of the 1981 Edition of the Standard Building Code ("SBCCI").

7. The twelve (12) buildings are elevated three (3) story wood framed structures with walkways on one side and balconies on the other. The pre-fabricated structures are located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

8. Article XXI of the Master Deed states that the Association is responsible for the ***maintenance, repair and replacement*** of all of TB&RC's Common Elements. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

9. Article I, Paragraph 11 of the By-Laws addresses the Association's responsibility to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affirmative duties to collect and maintain a reserve fund for the future replacement of structural Common Elements:

(d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project *shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements* as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. *The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements*.

(e) The Board of Directors of the Association, in establishing said annual budget for operation management and maintenance of the Project, *shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress* when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or *for other reason placing financial stress upon the Association*.

10. I conducted a site visit at TB&RC in May, 2015 at the request of certain unit owners. Observations made during the site visit, including review of other engineering reports, indicated the following defective and deficient conditions:

10.1 **Structural Items of Concern**

a. Balcony Railings have corroded at base of supports. Pickets were missing.
b. Balcony decks exhibited sponginess.
c. Connection hardware was corroded and delaminating.
d. Balcony beams are corroded and decayed.
e. Stair areas exhibited corrosion, rot and decay.
f. Split Stringers on stairs.
g. Delaminated and decayed band boards around perimeter of buildings.
h. Post anchorage connections have severe metal loss and are corroded at the balconies and corridors.
i. Post to top rail connections have severe metal loss and are corroded at the balconies and corridors.
j. Wood Post base have decayed and corroded at the balconies and corridors.

k. Connections of cradle beams to wood piling have severe metal loss and are corroded.
l. Connections of diagonal bracing to timber piling have severe metal loss and are corroded.
m. Cantilever cradle beams are decayed and delaminating.
n. Spandrel beams are corroded and decayed at the balcony framing.
o. Floor joists have deteriorated and are deflecting at the balcony framing.
p. Module connections to the cradle beams have metal loss and are corroded.
q. Connectors of the metal connecting plate to the module have corroded.

10.2 **Building Envelope Items of Concern**

a. Moisture penetration behind exterior siding, trim, and flashing.
b. Delaminated exterior siding, trim, and flashing.
c. Delaminating stucco below gable end walls.
d. Cracking in stucco below gable end walls.
e. Moisture penetration/leaking ocean side facing windows.
f. Moisture penetration/leaking ocean side facing sliding glass doors.
g. Moisture penetration/leaking sliding glass doors.
h. Corroded window and sliding glass door casings.
i. Corroded sliding glass door sills.
j. Moisture affected and rotten wood framing around sliding glass doors.
k. Rotting fascia boards.
l. Moisture affected and rotten band boards around perimeter of buildings.

10.3 **Interior Items of Concern**

a. Moisture damaged sheetrock.
b. Moisture damaged interior paint, wall paper and textured ceiling materials.
c. Microbial growth in Unit interiors.
d. Moisture affected floor coverings.
e. Moisture damaged paint, wall paper and textured ceiling materials.
f. Moisture damaged carpet padding and carpet.
g. Moisture damaged and rotting carpet tack strips.
h. Corrosion of tack strip fasteners.

10.4 **Roofing Items of Concern**

a. Missing shingles.
b. Numerous patches.
c. Distressed flashing.
d. Rotting fascia boards.
e. Leaking around skylights.
f. Lack of properly fastened and installed singles.

g. Lack of drip edge at rakes and peaks.
h. Poor attic ventilation.
i. A number of existing hurricane ties are missing, corroded and/or improperly installed.
j. Soft areas and visible deflections in roof deck.
k. Tarps on Roofs.
l. Rotten eaves/soffits.

11. My review of the design and other structural aspects pertaining to the construction of the TB&RC condominium buildings included the following findings[1]:

a. Cantilever cradle beams at the balconies are overstressed by approximately Thirty-Three (33) percent.

b. Balcony joists are overstressed by approximately Eight (8) percent.

c. Cradle beam connections at the piling are stressed to approximately Seventy-Six (76) percent of capacity, and are still delaminating.

d. Module connection to cradle beams plates are stressed to approximately Fifty (50) percent of capacity, but the screws and nails are to be investigated for metal loss and corrosion.

e. Module to module connections are stressed to Fifty (50) percent of capacity, but again the connecting nails and screws are to be investigated.

12. Based upon my understanding of the project, the construction documents and electronic media reviewed, the site conditions observed, and the interpretation of the information presented herein, I offer the following professional opinions, which are based upon a reasonable degree of engineering certainty:

a. All the balcony systems of the project are to be immediately removed and replaced, or totally repaired, except for Building III.

b. All the corridor structural elements (plywood, joists and beams) are to be immediately repaired.

---

[1] A copy of John Simko's calculations for the constructed buildings, marked **Exhibit "B"**, is attached hereto and incorporated by reference as part of this Affidavit.

c. All the corridor railing systems (railings, posts and pickets) are to be immediately replaced.

d. All the connections with the loss of metal in excess of Twenty-Five (25) percent are to be immediately replaced with stainless steel hardware.

e. A systematic and comprehensive plan of replacement for the above items is to be put in place immediately. Each building is to be thoroughly investigated for the deficient items mentioned above and replacement to be implemented without delay in order to avoid a complete failure of the balcony systems.

f. A Three (3) year preventive maintenance program shall be installed which includes inspection of all connections that are visible.

g. The existing balcony areas do not meet the Code and represent a high level of overstress, except for Building III.

h. Mold and rot in the closed in areas are accumulating and could possibly cause health concerns in the future if not repaired.

i. The missing spindles and loose guardrails in all corridors are unsafe and violate Section 23-129.3(6) of the Zoning Code for the City of North Myrtle Beach.

j. The exterior wood siding and trim is decayed and rotten at many locations at all Twelve (12) buildings. This current condition for all buildings violates Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

k. The roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are not properly maintained and further do not provide the buildings with a weather resistant exterior wall envelope. Additionally, tarps on buildings VIII, IX, X, XI, and XII are attached to roofs/skylights. As such, the delaminated roofing and water intrusion problems associated with these defective conditions violate Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

l. Complete replacement of the roofing systems on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII is required. While partial replacement of the roofing components on Buildings I and II is needed.

m. All visible termite damage has not been repaired in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. Further, the Board has failed to

adequately investigate and uncover all hidden termite damage probably existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. See termite damage inspection report including pictures referenced in Paragraph 13(l).

n. Unless a major comprehensive and/or complete repair and reconstruction action is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, the eleven (11) buildings, which have a life expectancy of probably less than four (4) years, will become unrepairable due to the total cost of restoration exceeding the current fair market value of the buildings.

o. The Plaintiffs and other similar situated Co-owners will suffer irreparable injury, harm, and loss due to the diminution in value of their buildings as well as their inability to repair them due to the prohibitory cost of restoration if a comprehensive and/or complete repair and reconstruction plan is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

I reserve the right to amend its above stated opinions as additional information is made available to it.

13. Further, I offer additional opinions concerning the Board's inadequate maintenance, replacement and repair of General Common Elements and Limited Common Elements for Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII which are based upon a reasonable degree of engineering certainty:

a. Deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII have been known by the Board for at least Nineteen (19) years. The Board has long ignored the state of disrepair to these buildings. The Board's failure to properly maintain, repair and replace General Common Elements and Limited Common Elements is a clear breach of its fiduciary duty and duty of reasonable care under the common law.

b. The seriousness of the defects and deficiencies of General Common Elements and Limited Common Elements of the buildings have been historically ignored by the Board.

c. The Board has not acted with due care and in good faith in its affirmative duties, pursuant to the governing documents of the Tilghman Beach & Racquet Club Property Regime, to maintain and repair and thereby prevent progressive damages to the General Common Elements and Limited Common Elements of the buildings.

d. The Board did not engage qualified professionals to assess/evaluate the long known suspected deficient conditions before 2013. The Board's failure to do so permitted the distress to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII to reach a severe and nearly unserviceable condition.

e. The failure of the Board to engage qualified professionals prior to 2013 prohibited the design and implementation of a maintenance and repair program which would have greatly lessened the severity of the distress whereby only typical maintenance, repair and replacements would have been necessary.

f. The consultant's reports clearly identified deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII that are the direct result of the Board not properly maintaining or failing to maintain, repair or replace the Common Elements and Limited Common Elements.

g. The governing documents of the Tilghman Beach & Racquet Club Property Regime impose an affirmative duty on the Board to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII. The Board failed to adequately fund reserves for the maintenance, repair and replacement of General Common Elements and Limited Common Elements, and thereby is responsible for the extraordinarily high cost of the repairs to the buildings, which have and will increase substantially over time.

h. The Board's conduct and also inaction, in failing to discharge its affirmative duties under the governing documents for the reasons described above, are not protected by the business judgment rule.

I reserve the right to amend its above stated opinions as additional information is made available to it.

14. Further, please be advised that my above stated opinions are, also, based upon my

review of the following reports, documentation, and/or information provided to me in this matter, including, but not limited to the following:

(a) Project Plans, drawings, architectural floor plans prepared by Bartholomew Associates Architects and structural plans prepared by Lasater-Hopkins consulting Engineers recorded on February 2, 1982 at the RMC Office of Horry County in Plat Book 1, page 142.

(b) Report of Kyzer Timmerman Structural Engineers, Inc. ("Kyzer Timmerman"), prepared by Ashleigh Weatherly, PE for Tilghman Beach & Racquet Club Association, Inc., dated June 19, 2015.

(c) Report of Criterium-Giles Engineers, Inc. ("Criterium-Giles"), prepared by Christopher A. Flythe, PE for Tilghman Beach & Racquet Club Association, Inc., dated June 19, 2015.

(d) Phase I: Existing Condition Evaluation of Assessment for Tilghman Beach & Racquet Club Ocean Front & Second Row Buildings, submitted by Martinez & Associates Structural Engineers, PA dated June 2015.

(e) Letter to Tilghman Beach & Racquet Club dated February 17, 2016, from Ben Caldwell, AICP, Assistant Zoning Administrator for City of North Myrtle Beach.

(f) Master Deed and By-Laws of Tilghman Beach & Racquet Club Property Regime.

(g) All the building permits, inspection reports, and other repair and reconstruction records for Tilghman Beach & Racquet Club Property Regime on file with the City of North Myrtle Beach.

(h) The minutes and financial records of Tilghman Beach & Racquet Club Homeowners Association, Inc.

(i) December 13, 2006 Reserve Study Report prepared for Tilghman Beach & Racquet Club Homeowners Association, Inc., by Reserve Advisors, Inc.

(j) November 17, 2009 Reserve Study Report prepared for Tilghman Beach & Racquet Club Homeowners Association, Inc. by Reserve Advisors, Inc.

(k) January 14, 2010 Roof System Condition Survey prepared Tilghman Beach & Racquet Club Homeowners Association, Inc. by Sutton-Kennerly & Associates, Inc.

(l) Termite inspection report of Tilghman Beach & Racquet Club Property Regime on June 28, 2014 by Dr. Maxcy P. Nolan, III.

(m) January 26, 2016 Letter from SGA Architecture to the Tilghman Beach & Racquet Club Homeowners Association, Inc., Steve Coggins, AIA.

(n) Cost Summary to Homeowners as prepared by Will Atkinson, Board President in 2015.

I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

FURTHER AFFIANT SAYETH NOT.

John Simko, P.E., S.I., SECB

SWORN to and subscribed before me this
5th day of July, 2016.

Lynn R. Heard
Notary Public for
My Commission Expires: 10-12-21

LYNN R HEARL
NOTARY PUBLIC
MY COMMISSION EXPIRES
OCTOBER 12, 2021
SOUTH CAROLINA

EXHIBIT
"A"

VITAE

For

JOHN SIMKO M.S., P.E., SECB, SI; M.ASCE

Structural Engineer

FL#30122;FLSI#2029; SC #5037

SECB#1586

JOHN SIMKO SECB.,P.E.,S.I.,M.S.
Structural Engineer
MS Structural Engineers
400 South Atlantic Ave. Suite 106
Ormond Beach, FL. 32176
(386) 672-1214

Email: msstructural@cfl.rr.com

PROFESSION:

Professional Engineer (structural) Reg. #6422NC ;#5307 SC
#8977NV
#30122 FL SI# 2029(Threshold Inspector)

Registered Engineer since 1964; Registered Engineer SC since 1974; Firm since 1968

PERSONAL STATEMENT:

I firmly believe that the foundation of rational decisions and intelligent designs is through thorough, detailed and proficient work. Satisfactory engineering services involve not only knowledge and experience, but detailed study, analysis and investigation. If any of the above items are slighted in order to reduce engineering costs, the owner is the losing party. Sound engineering pays for itself many times over, in correct design and reasonable construction costs. We have been in business since 1968 and understand the impact of proper design and construction.

EDUCATION:

Civil Engineering
Catholic University of America, B.C.E.-1961
Washington, DC

Graduate Studies in School of Industrial Technology
East Carolina University, M.S.-1991
Greenville, NC

LECTURES AND COURSES TAUGHT

East Carolina University (1999)
Courses Taught:
Structural Analysis
Foundation Design
Mechanics of Soils

Coastal Carolina College Myrtle Beach, SC
Course Taught:
Law for Engineers
1979 Semester
Coastal Carolina College Jacksonville, NC
Course Taught:
Blueprint Reading
Strength Materials

Pitt Community College Greenville, NC
Course Taught:
Design of wood Structures
Community college of Southern Nevada Las Vegas, NV
Course Taught:
Drafting

PUBLISHED AUTHOR

"Winds of Change" - 1985
"Changes in code Implementation for Residential Structure"-1993

CIVIL LITIGATION:

QUALIFIED AS AN EXPERT:

U.S. District Court, Charleston, SC
Court of Common Pleas 15th Judicial Circuit
Conway and Georgetown, South Carolina

PROFESSIONAL ASSOCIATIONS

American Society of Civil Engineers
American Concrete Institute
American Institute of Steel Construction
Consulting Engineers Society
National Society of Professional Engineers
National Council of Engineering Examiners
Structural Engineering Certification board

PROFESSIONAL REGISTRATIONS

North Carolina, South Carolina, Indiana, Maryland, Ohio, District of Columbia, Florida, New York, California, Vermont, Virginia, Nevada, New Jersey, Oregon, Oklahoma

CAPABILITIES:

Structural Engineering.. Residential Design.. Working Drawings.. Specifications and Construction Inspection.. Expert Witness Testimony.. Computer Applications: AutoCad and Finite Element Analysis

AWARDS AND HONORS

Honor Award for Design by A.I.A. Long Island New York

BRIEF LIST OF STRUCTURAL DESIGN PROJECTS

PROJECT	DESCRIPTION	CLIENT
Guiness Hall . Of Records	2 Story Steel Frame Myrtle Beach, SC	Sand Investments
Sands Condominiums Myrtle Beach, SC	3 Story Condo W/Wood Piling	Sands Investments
Medical Center Brunswick, NC	1 Story Steel Frame	Jefferies & Faris
Heron Cove Condo's Nags Head, NC	4 Story Concrete Frame	Gordon Jones

St. Moritz Condo's	7 Story Concrete Frame	Century 21
Topsail Beach, NC		
Crest Condominiums	4 Story Wood Frame	Duane, Duane & Cahill
Rehoboth Beach, MD	consisted of composite steel and wood frame design	
Parkdale School	2 Story Composite Steel Frame	Kea, Shaw, Grim & Chrichton
St Luke's Church	Wood Frame Bell Tower	J. Rowland Snyder
Washington, D.C.		
Silver Springs Pres. Church	Laminated Wood Arches	Duane, Duane & Cahill
Lydon Hills Schools	1 Story Bearing Wall	Kea,Shaw, Grim & Chrichton
Klingensmith Project	2 Story Office Whse Complex	Duane, Duane & Cahill
St. Regis	7 Story Concrete	United Carolina Bank
Spring Towers	10 Story Concrete	J.O. Baldwin Co.
Wapleton Mansion	9 Story Steel Frame	Bucher-Meyers
St. Moritz	8-Story Concrete Frame	Century 21
The Links	4-8-Story concrete Frames	Rivermar Constr
Laguna Keyes	15-story concrete Frame	Myrtle Beach,SC
Kingston Towers	7-story concrete Frame	Larry Robinson A.I.A.
St. Kitts	7-story concrete Frame	Larry Robinson A.I.A.
St. Maarten	12-story concrete Frame	Larry Robinson A.I.A.
Cipriani	9-story concrete Frame	Larry Robinson A.I.A.
Las Palmas	8-story concrete Frame	Jim Buie A.I.A.
Sanibel	9-story concrete Frame	Larry Robinson A.I.A.
Islemorada	12-story concrete Frame	Larry Robinson A.I.A.
Nikzad Plaza	one story shopping center	Steven Cruz A.I.A.
Cayman Island	15-story concrete Frame	Larry Robinson A.I.A.
Ocean Keyes	13-3 story steel frames	Russ Baltzer A.I.A.
Ace Plaza	0ne story shopping center	Larry Robinson A.I.A.

Ground Mount Solar Panel Project-2295 Old Kings Hwy Port Orange FL
Roof Mount Solar Panel Project-1608 Plantation Drive Ormond Beach FL
Roof Mount Solar Panel Project-4129 Pioneer Way New Smyrna Beach FL
Roof Mount Solar Panel Project-136 Interlake Ave Deland FL
Roof Mount Solar Panel Project-3027 Mac Road St. Augustine FL
Sand Dollar Condo concrete restoration

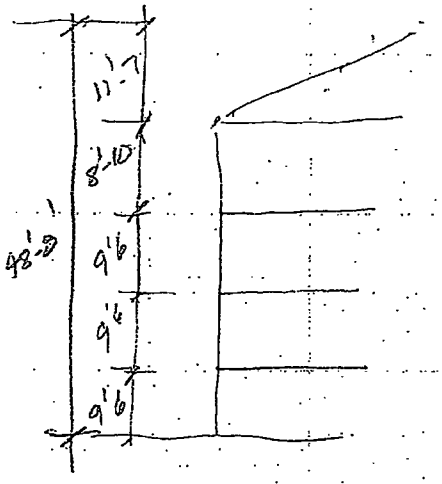
School of Architecture University of Nevada Las Vegas 4 story masonry and steel frame
Fashion Show Mall Las Vegas,NV 1 million s.f. of Mall space design & inspection
Stratosphere Towers Las Vegas,Nv 1200 foot Tower & Casino-Design & inspection

REFERENCES
James Monahan, P.E.
Ormond Beach, FL
Phil Delamare, S.E.
Las Vegas, NV
Wayne Mabry, P.E.
Columbia, SC
Gregg Mendenhall S.E
Las Vegas, NV

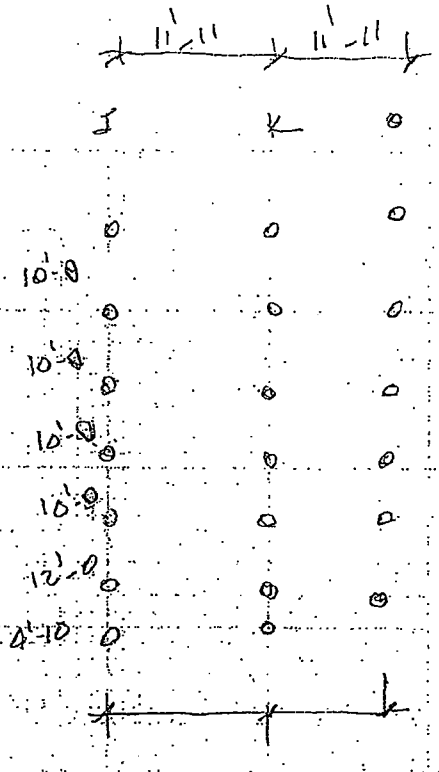
EXHIBIT
"B"

CALCULATIONS

Tildman Estates.



TYP ELEV



TYP PLAN Configuration

Design Loadings:

LIVE LOADS:

Roof = 20 #/□'
Floor = 40 #/□
BALCONY = 40 #/□
Corridor = 100 #/□
STAIRWAY = 100 #/□

DEAD LOADS:

Roof = 10 #/□
Ceiling = 4 #/□
Floor = 6 #/□
EXTERIOR WALLS = 8 #/□
INTERIOR WALLS = 6 #/□

WIND LOAD:

120 MPH

SEISMIC LOAD

Zone 2

STRUCTURAL ENGINEERS

400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tildman Estates
proj no:
date: 5.22.16
by: JS
sheet: S-1

DESIGN WIND LOADS:

120 MPH

Wind - (0'-30') = 29 x 1.1 x 1.15 = 36.7 #/□

(31'-50') = 40 x 1.1 x 1.15 = 50.6 #/□

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

Loads:

WITH 120 MPH WIND, use zero LL on Roof & open walkways. use FULL LL on INTERIOR Floors (for stud design only)

EXTERIOR walls @ 12'-6" ± Module w/ 8' walkway:

TOP FL STUDS:

Roof: 10 #/□ x 12½ = 60 #/'

Wall: 8 #/□ x 8.83 = 71

131 #/'

2nd FL STUDS:

From above:	131
Flr + CL (40+6+4) x 12½ =	300
Walkway: (6 #/□ x 4) =	24
Wall: (8 x 9.5) =	76
	591

591 #/'

1ST FL. STUDS:

From above:	591 #/'
FL + CL	300
Walkway	24
Wall	76
	991

991 #/'

project: Tilghman Estates
proj no
date: 5.26.16
by: BL
sheet: S-2

INTERIOR LOAD BEAR Walls

STRUCTURAL ENGINEERS
400 S. Atlantic Ave. Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

Loads:

TOP FL:

Roof: (20+10) x 12/2 = 180

Wall: (6 x 8.83) = 53

233 #/'

233 #/'

2ND FL:

FROM ABOVE = 233

FL+Clg (40+10) x 12/2 = 300

+ Walls (-)(6 x 9.5) = 157

590 #/'

590 #/'

1ST FL:

FROM ABOVE = 590 #/'

FL+Clg (40+10) x 12/2 = 300

Walls = = 157

947 #/'

947 #/'

Loading to INTERIOR CRADLE

BEAMS = #894 + wt of beams

+ Additional DL from Roof framing trusses

Total wt to cradle beams:

1894 #/'

Roof DL 20 #/'

beams 10 #/'

total 1924 #/'

OR

each side of piling beam to carry 962 #/'

project: Tildenwood Estates

proj no

date: 4.27.16

by: BL

sheet: S-3

Loadings to Pile:

(10.0' x 1.93 K/ft) = 19.3 K to ea. pile.

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

SEISMIC CHECK

$V = Z \cdot K \cdot C \cdot W$

$Z = 0.50$ (zone 3)

$K = 1.33$ (Box system)

$C = \frac{0.05}{\sqrt[3]{T}}$

$T = \frac{0.5\,h_n}{\sqrt{D}}$

W = dead wt. above shear plane

① For Single Stack Configuration

$T = \frac{0.5 \times 28.5}{\sqrt{24}}$ ← h_n to roof portion

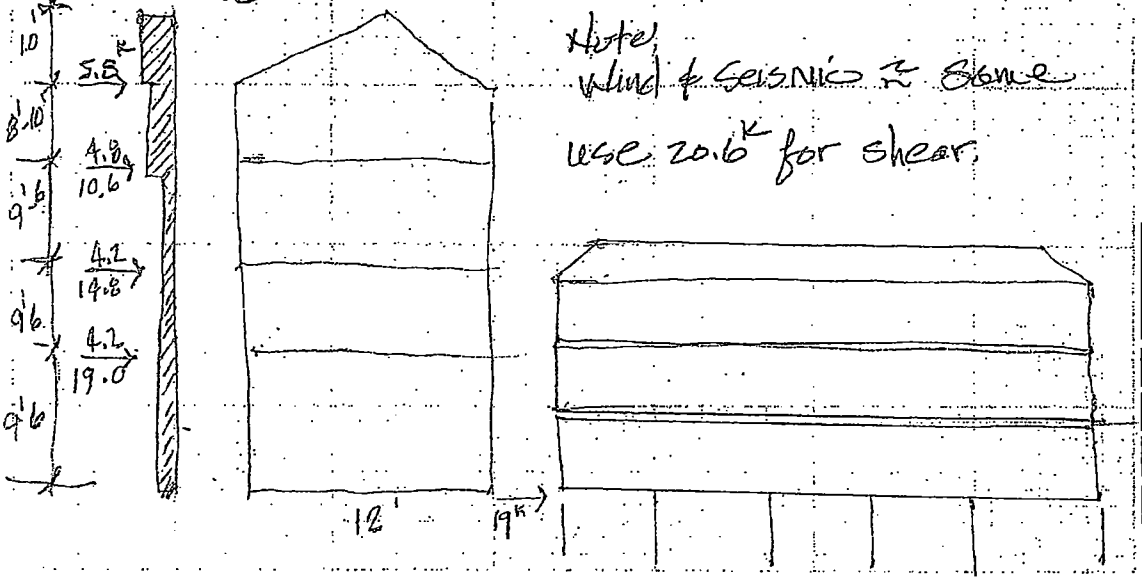
$= 2.91$

$C = \frac{0.5}{\sqrt[3]{2.91}} = 0.35$

W = above = 88.708 #

$V = 0.50 \times 1.33 \times 0.35 \times 88.708\,\# = 20.647\,\#$

Wind V @ base = 19.0 K



Note: Wind & Seismic ≈ Same

use 20.6 K for shear.

project: Tilghman Estates
proj no:
date: 5.27.16
by: JS
sheet: S-4.

Cradle Beams EXISTING

2-2x12 @ side of 12" dia. pile.

S_{xx} of 2x12 = 35.8 in^3

2-2x12 = 71.6 in^3

Using 1/2 side of Modular.

$M = 962 \times 9^2 \div 1/9$

$= 26,532$ #

$V = 1.0 \times 962 = 962$# at connection - See printout @ 8'6" ← use.

$f = M/S = \frac{26,532 \text{ #-in} \times 12 \text{ in/ft}}{71.6 \text{ in}^3}$

$= 1451$ #/in^2 #2 SYP. MAX. — check condition of beam

$\Delta =$

Coil rated @ max. spacing of 8'-0"

ALLOW Loads For Connections

3/4" ⊥ grain: Double SHEAR = 720#
Single = 360#

b/2 = 1 1/2" SYP

3/4" // grain: Double shear = 1892#
Single = 946#

Assume 2-2x12 notched into 12" pile ∴ all Reaction loading taken by shelf of Pile.

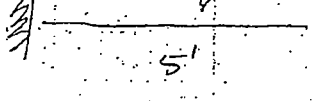
STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tildon estates
proj no:
date: 5.27.14
by: JS
sheet: S-5

Balcony Dreazi

Balcony Cantilever = 5'-0" ±

Loading: 962#/1



$M = 962 \times 5^2/2$
$= 12.01\text{-K}$

$S/R = \frac{12.0 \times 12}{71.6}$
$= 2015 \text{ psi}$

Problem at Cantilever end extending 2-2x12
Cant. Overstress ± 33%

check
2x6 @ 12" o.c.

loading:
LL = 40
DL = 5
TL = 45psf

$N = .045 \times 12^2 \times .125$
$= 0.81\text{K}$

$R = \frac{0.81 \times 1000}{1200}$
$= 0.1 \text{ in}^3$

$S = \frac{1.5 \times 5.5^2}{6} = 7.6 \text{ in}^3$

± 8% overstressed
w/ disintegration a major problem

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tillgham estate
proj no
date: 5.27.16
by: JS
sheet: S-6

Loss of METAL Calculations:

unprotected metal (bolts) have a $\phi.\phi02$

$\phi.002 \times 34 = \phi.068$ in loss or approximately $1/8$"

$2/4" - 1/8" = 5/8"$

∴ Values for 5/8 dia bolts are:

$A_b = .301 in^2$
5/8

$fv = 1.9/.130 = 6.3$ ksi

$F_v = 10$ ksi

$V_b = F_v \times a_b$
$= 10 \times .3 = 3^k$

∴ w/ loss of metal
allow stress on bolt is
at $6.3/10 = 63\%$
Safety allowance of 33% left

If accelerated loss occurs:

$.004 in^2/yr$

$\phi.004 \times 34 = .136$ in loss or approx $-$

$\phi.750 - \phi.136 = \phi.614$

check $9/16"$ dia.

$A_b = \phi.25 in^2$

$fv = 1.9/.125 = 7.6$ ksi $\quad 7.6/10 = 76\%$ ∴ Still ok

$V_b = 10 \times .25 = 2.5^k$
all

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tilghman Estates
proj no:
date: 5.27.16
by: JH
sheet: 5-7

Metal loss of connection plates.

Loga plates – .0625in

12 plates each grid

$A_p = 10 \times .0625 = .625 in^2$

$V_{ea.\ pl.} = \frac{19^k}{12} = 1.58^k$

.0625
.0340
.0285

F_V = 20ksi plates

$f_V = \frac{1.58^k}{.285} = 5.54 ksi$

$A_p = (10 \times .0285) = .285 in^2$

$f_V = \frac{1.58^k}{.625 in^2} = 2.5 ksi < 20 ksi$

Metal loss of .068 at .002in/yr –

With the plates (15yr) = .0625in then the plates and connectors are disintegrated.

Even with only a loss of .001 per year on protected plates that is .001 x 34 = .034 or 1/2 of the original plate.

Connector plates need to be investigated.

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tilghman Estates
proj no:
date: 5.27.16
by: EG
sheet: 3 - 9

3/4" bolts required to carry all lateral loads

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

INTERIOR Lateral Loading at Pile
= 3.8^K

Loading is II grain to double shear

bolts req'd = 3800$^\#$ / 1892$^\#$ = 2 bolts

Area of 3/4" bolt = 0.44 in^2

A307 shear
allow - single = 4.4^K
double = 8.8^K

Fv = 10 ksi

Ab = .44

Tb = 20 ksi

T = tension force or uplift

fb = T/Ab

fv = V/Ab

Fv = 10 ksi

fv = 1.9
.44
= 4.3 ksi

Fv = 10 ksi

Vb = Fv * Ab = 4.4^K

AT Time of installation
fv = 4.3 ksi
w/allow load of 4.4^K
4.4^K > 1.9^K - 43%

project Gilgham estates
proj no
date 5.27.16
by JS
sheet S-9

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\lilgham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11
Licensee : MS STRUCTURAL

Job No. : KW-06006369
Description : CRADLE BEAMS-EACH SIDE OF PILE

CODE REFERENCES

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10
Load Combination Set : ASCE 7-10

Material Properties

Analysis Method : Load Resistance Factor D
Load Combination ASCE 7-10

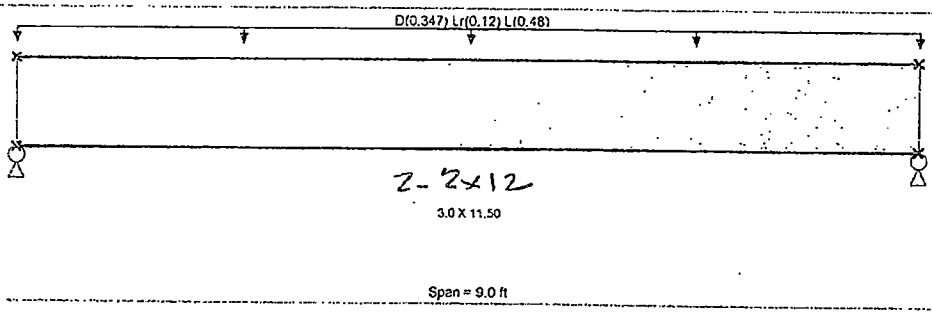
Wood Species : Southern Pine
Wood Grade : No.1: 2" - 4" Thick : 12" Wide

Beam Bracing : Beam is Fully Braced against lateral-torsional buckling

Fb - Tension	1,500.0 psi
Fb - Compr	1,000.0 psi
Fc - Prll	1,400.0 psi
Fc - Perp	565.0 psi
Fv	175.0 psi
Ft	650.0 psi

E : Modulus of Elasticity

Ebend- xx	1,600.0ksi
Eminbend - xx	580.0ksi
Density	34.320pcf



Applied Loads

Service loads entered. Load Factors will be applied for calculations

Beam self weight calculated and added to loads
Uniform Load : D = 0.3470, Lr = 0.120, L = 0.480 , Tributary Width = 1.0 ft, (ROOF-FLOOR)

DESIGN SUMMARY

Design OK

Maximum Bending Stress Ratio	=	0.988 : 1	Maximum Shear Stress Ratio	=	0.640 : 1
Section used for this span		3.0 X 11.50	Section used for this span		3.0 X 11.50
fb : Actual	=	2,304.63psi	fv : Actual	=	193.45 psi
FB : Allowable	=	2,331.72psi	Fv : Allowable	=	302.40 psi
Load Combination		+1.20D+0.50Lr+1.60L+1.60H	Load Combination		+1.20D+0.50Lr+1.60L+1.60H
Location of maximum on span	=	4.500ft	Location of maximum on span	=	8.047 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1

Maximum Deflection

Max Downward Transient Deflection	0.117 in	Ratio =	921 >=360
Max Upward Transient Deflection	0.000 in	Ratio =	0 <360
Max Downward Total Deflection	0.204 in	Ratio =	529 >=240.
Max Upward Total Deflection	0.000 in	Ratio =	0 <240.0

Maximum Forces & Stresses for Load Combinations

Load Combination		Max Stress Ratios									Moment Values			Shear Values		
Segment Length	Span #	M	V	λ	C_{Fv}	C_i	C_r	C_m	C_t	C_L	Mu	fb	Fb	Vu	fv	Fv
+1.40D+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.523	0.338	0.60	1.000	1.00	1.00	0.90	1.00	1.00	5.04	913.77	1748.79	1.76	76.70	226.80
+1.20D+0.50Lr+1.60L+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.988	0.640	0.80	1.000	1.00	1.00	0.90	1.00	1.00	12.70	2,304.63	2331.72	4.45	193.45	302.40
+1.20D+1.60L+0.50S+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.941	0.609	0.80	1.000	1.00	1.00	0.90	1.00	1.00	12.09	2,194.38	2331.72	4.24	184.20	302.40
+1.20D+1.60Lr+0.50L+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.676	0.438	0.80	1.000	1.00	1.00	0.90	1.00	1.00	8.69	1,577.00	2331.72	3.04	132.38	302.40
+1.20D+1.60Lr+0.50W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.487	0.315	0.80	1.000	1.00	1.00	0.90	1.00	1.00	6.26	1,136.02	2331.72	2.19	95.36	302.40
+1.20D+0.50L+1.60S+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\tilgham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11
Lic. #: KW-06006382 Licensee: MS STRUCTURAL

Description : CRADLE BEAMS-EACH SIDE OF PILE

Load Combination / Segment Length	Span #	Max Stress Ratios M	V	λ	$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	Moment Values Mu	fb	Fb	Shear Values Vu	fv	Fv
Length = 9.0 ft	1	0.525	0.340	0.80	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2331.72	2.36	102.76	302.40
+1.20D+1.60S+0.50W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.336	0.217	0.80	1.000	1.00	1.00	0.90	1.00	1.00	4.32	783.24	2331.72	1.51	65.75	302.40
+1.20D+0.50Lr+0.50L+W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.458	0.296	1.00	1.000	1.00	1.00	0.90	1.00	1.00	7.35	1,334.46	2914.65	2.58	112.02	378.00
+1.20D+0.50L+0.50S+W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.420	0.272	1.00	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2914.65	2.36	102.76	378.00
+1.20D+0.50L+0.20S+E+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.420	0.272	1.00	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2914.65	2.36	102.76	378.00
+0.90D+W+0.90H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.202	0.130	1.00	1.000	1.00	1.00	0.90	1.00	1.00	3.24	587.43	2914.65	1.13	49.31	378.00
+0.90D+E+0.90H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.202	0.130	1.00	1.000	1.00	1.00	0.90	1.00	1.00	3.24	587.43	2914.65	1.13	49.31	378.00

Overall Maximum Deflections

Load Combination	Span	Max. "-" Defl	Location in Span	Load Combination	Max. "+" Defl	Location in Span
+D+L+H	1	0.2039	4.533		0.0000	0.000

Vertical Reactions

Support notation : Far left is #1 Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	3.759	3.759
Overall MINimum	0.540	0.540
+D+H	1.599	1.599
+D+L+H	3.759	3.759
+D+Lr+H	2.139	2.139
+D+S+H	1.599	1.599
+D+0.750Lr+0.750L+H	3.624	3.624
+D+0.750L+0.750S+H	3.219	3.219
+D+0.60W+H	1.599	1.599
+D+0.70E+H	1.599	1.599
+D+0.750Lr+0.750L+0.450W+H	3.624	3.624
+D+0.750L+0.750S+0.450W+H	3.219	3.219
+D+0.750L+0.750S+0.5250E+H	3.219	3.219
+0.60D+0.60W+0.60H	0.959	0.959
+0.60D+0.70E+0.60H	0.959	0.959
D Only	1.599	1.599
Lr Only	0.540	0.540
L Only	2.160	2.160
S Only		
W Only		
E Only		
H Only		

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 105
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\bigham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11
Lic. # : KW-06006369 Licensee : MS STRUCTURAL

Description : BALCONY JOISTS

.CODE REFERENCES

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10
Load Combination Set : ASCE 7-10

Material Properties

Analysis Method : Allowable Stress Design
Load Combination ASCE 7-10

Wood Species : Southern Pine
Wood Grade : No.2: 2" - 4" Thick : 5"-6" Wide

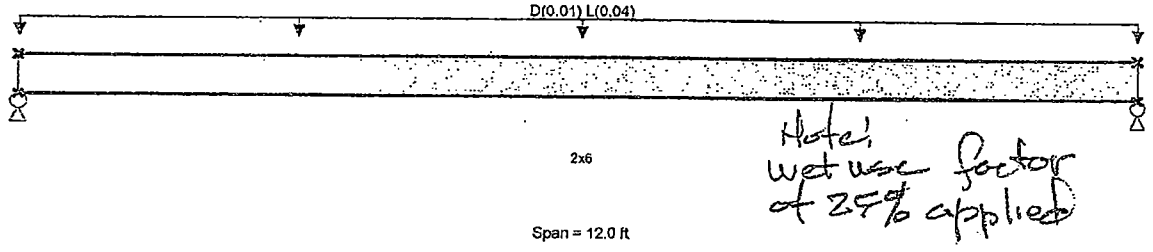
Beam Bracing : Beam is Fully Braced against lateral-torsional buckling

Fb - Tension	1000 psi
Fb - Compr	1000 psi
Fc - Prll	1400 psi
Fc - Perp	565 psi
Fv	175 psi
Ft	600 psi

E : Modulus of Elasticity

Ebend- xx	1400ksi
Eminbend - xx	510ksi
Density	34.32pcf

Repetitive Member Stress Increase



Applied Loads

Service loads entered. Load Factors will be applied for calculations.

Uniform Load : D = 0.010, L = 0.040 , Tributary Width = 1.0 ft, (BALCONY)

DESIGN SUMMARY

Design NG

Maximum Bending Stress Ratio	=	1.656 1	Maximum Shear Stress Ratio	=	0.289 : 1
Section used for this span		2x6	Section used for this span		2x6
fb : Actual	=	1,428.10psi	fv : Actual	=	50.56 psi
FB : Allowable	=	862.50psi	Fv : Allowable	=	175.00 psi
Load Combination		+D+L+H	Load Combination		+D+L+H
Location of maximum on span	=	6.000ft	Location of maximum on span	=	0.000 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1

Maximum Deflection

Max Downward Transient Deflection	0.645 in	Ratio =	223 <360
Max Upward Transient Deflection	0.000 in	Ratio =	0 <360
Max Downward Total Deflection	0.806 in	Ratio =	178 <240.0
Max Upward Total Deflection	0.000 in	Ratio =	0 <240.0

Maximum Forces & Stresses for Load Combinations

Load Combination		Max Stress Ratios									Moment Values			Shear Values		
Segment Length	Span #	M	V	C_d	$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	M	fb	F'b	V	fv	F'v
+D+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.368	0.064	0.90	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	776.25	0.06	10.11	157.50
+D+L+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.656	0.289	1.00	1.000	1.00	1.15	0.75	1.00	1.00	0.90	1,428.10	862.50	0.28	50.56	175.00
+D+Lr+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.265	0.046	1.25	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1078.13	0.06	10.11	218.75
+D+S+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.288	0.050	1.15	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	991.88	0.06	10.11	201.25
+D+0.750Lr+0.750L+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.060	0.185	1.25	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1078.13	0.22	40.45	218.75
+D+0.750L+0.750S+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.152	0.201	1.15	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	991.88	0.22	40.45	201.25

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\tillgham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11
Lic. #: KW-06006369 LICENSEE: MS STRUCTURAL

Description : BALCONY JOISTS

Load Combination / Segment Length	Span #	Max Stress Ratios M	V	C_d	$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	Moment Values M	fb	F'b	Shear Values V	fv	F'v
+D+0.60W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.207	0.036	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1380.00	0.06	10.11	280.00
+D+0.70E+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.207	0.036	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1380.00	0.06	10.11	280.00
+D+0.750Lr+0.750L+0.450W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+D+0.750L+0.750S+0.450W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+D+0.750L+0.750S+0.5250E+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+0.60D+0.60W+0.60H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.124	0.022	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.11	171.37	1380.00	0.03	6.07	280.00
+0.60D+0.70E+0.60H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.124	0.022	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.11	171.37	1380.00	0.03	6.07	280.00

Overall Maximum Deflections

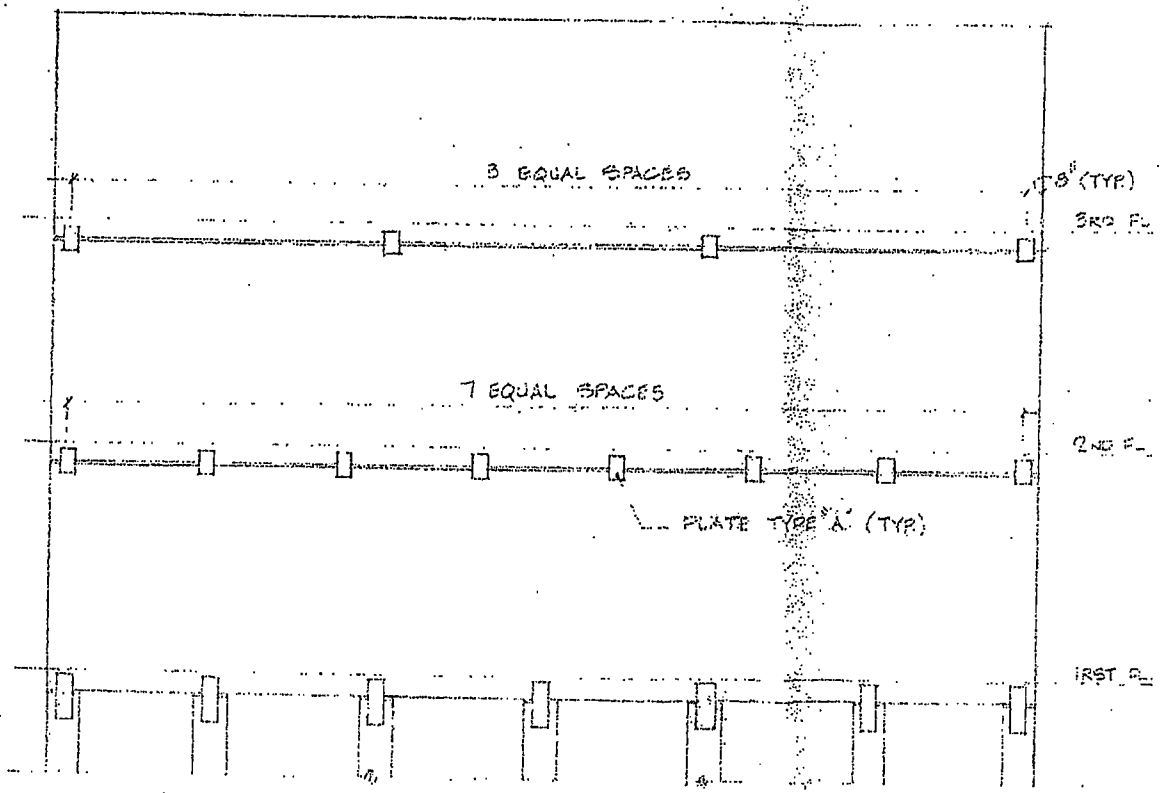
Load Combination	Span	Max. "-" Defl	Location in Span	Load Combination	Max. "+" Defl	Location in Span
+D+L+H	1	0.8059	6.044		0.0000	0.000

Vertical Reactions

Support notation : Far left is #1 Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	0.300	0.300
Overall MINimum	0.036	0.036
+D+H	0.060	0.060
+D+L+H	0.300	0.300
+D+Lr+H	0.060	0.060
+D+S+H	0.060	0.060
+D+0.750Lr+0.750L+H	0.240	0.240
+D+0.750L+0.750S+H	0.240	0.240
+D+0.60W+H	0.060	0.060
+D+0.70E+H	0.060	0.060
+D+0.750Lr+0.750L+0.450W+H	0.240	0.240
+D+0.750L+0.750S+0.450W+H	0.240	0.240
+D+0.750L+0.750S+0.5250E+H	0.240	0.240
+0.60D+0.60W+0.60H	0.036	0.036
+0.60D+0.70E+0.60H	0.036	0.036
D Only	0.060	0.060
Lr Only		
L Only	0.240	0.240
S Only		
W Only		
E Only		
H Only		

2 - S 7 ELEVATION OF LONG WALL CONNECTION PL. LOCATIONS (INTERIOR PARTY WALL) 3/16



3 - S 7 ELEVATION OF LONG WALL CONNECTION PL. LOCATIONS (EXTERIOR WALL) 3/16

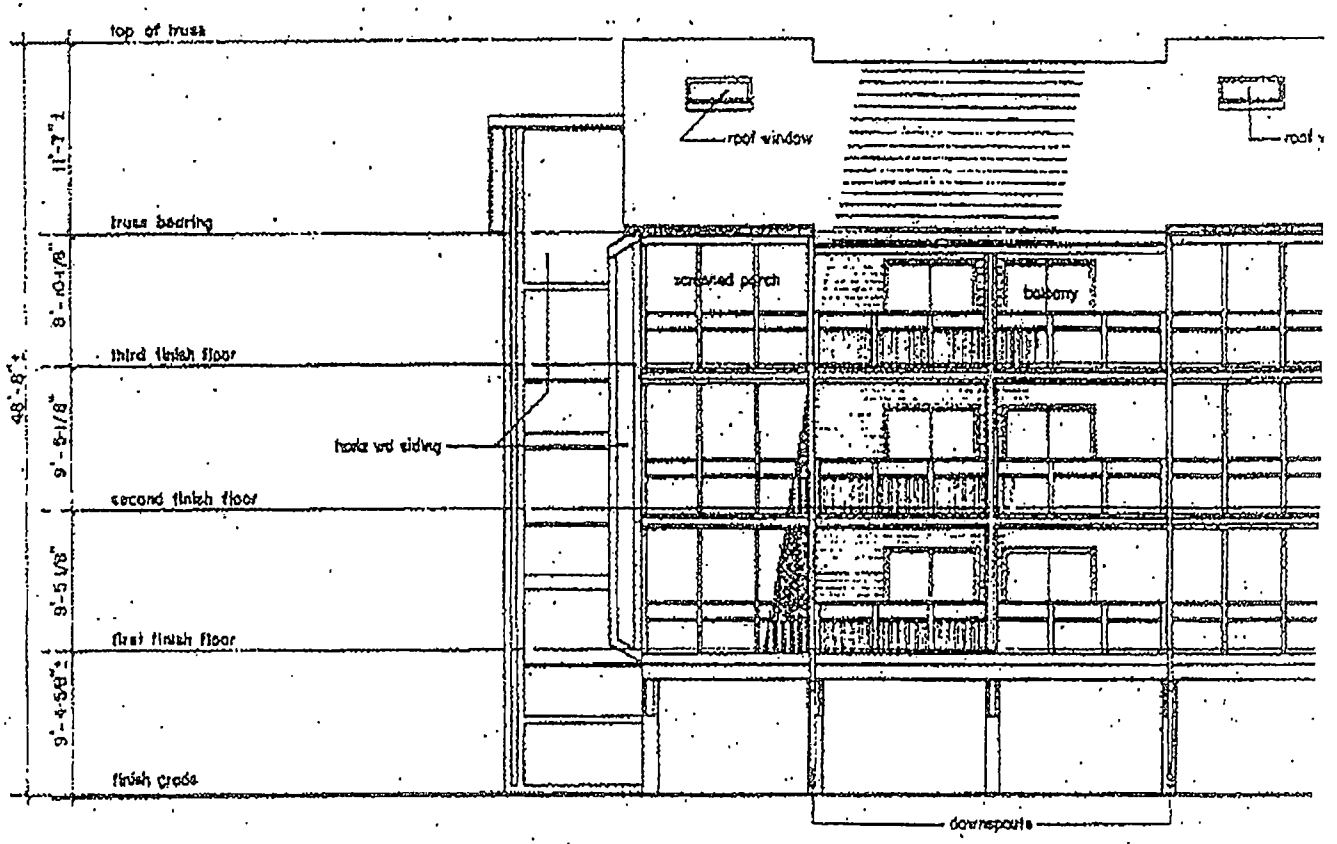
R-532

3/16" = 1'-0" | 5-S7 | ELEVATION OF END WALL - WALKWAY 3/16" = 1'-0

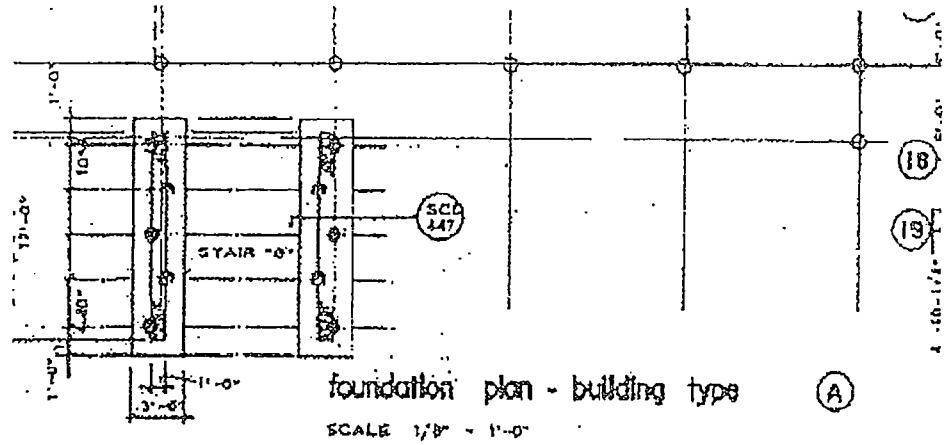
3/16" = 1'-0" | 6-S7 | PLATE TYPE "A" - EXTERIOR & END WALLS 3"=1

3/16" = 1'-0" | 8-S7 | TYP. EXTERIOR UNIT to UNIT CONNECTION

3" = 1'-0" | 9-S7 | PLATE TYPE "B" - INTERIOR WALLS 3" = 1'

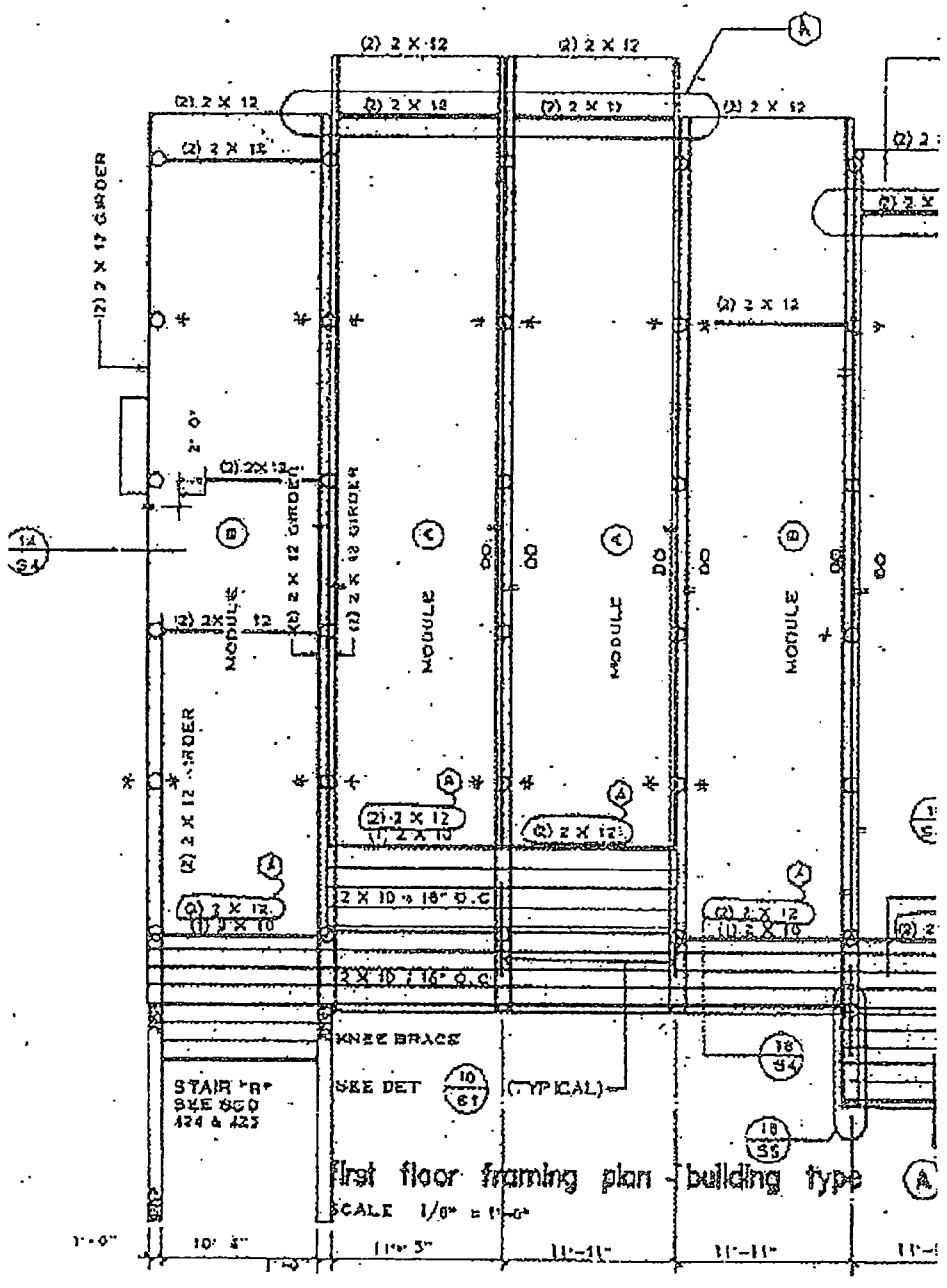

top of truss
roof window
truss bearing
screened porch
balcony
third finish floor
hardi wd siding
second finish floor
first finish floor
finish grade
downspouts
11'-7"±
8'-10 1/8"
9'-5 1/8"
9'-4 5/8"±
38'-8"±

ELEVATIONS



foundation plan - building type (A)

SCALE 1/8" = 1'-0"



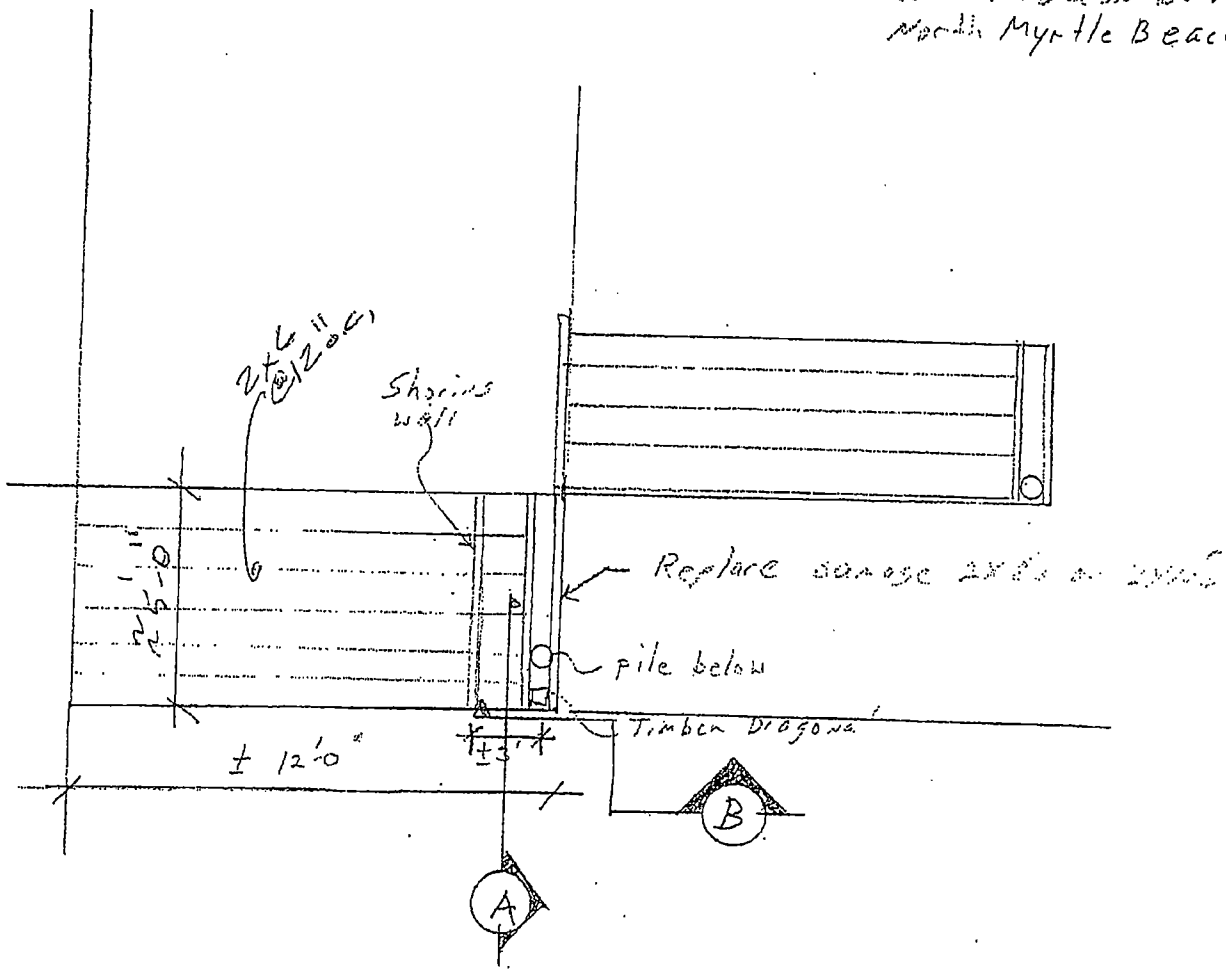
first floor framing plan - building type (A)

SCALE 1/8" = 1'-0"

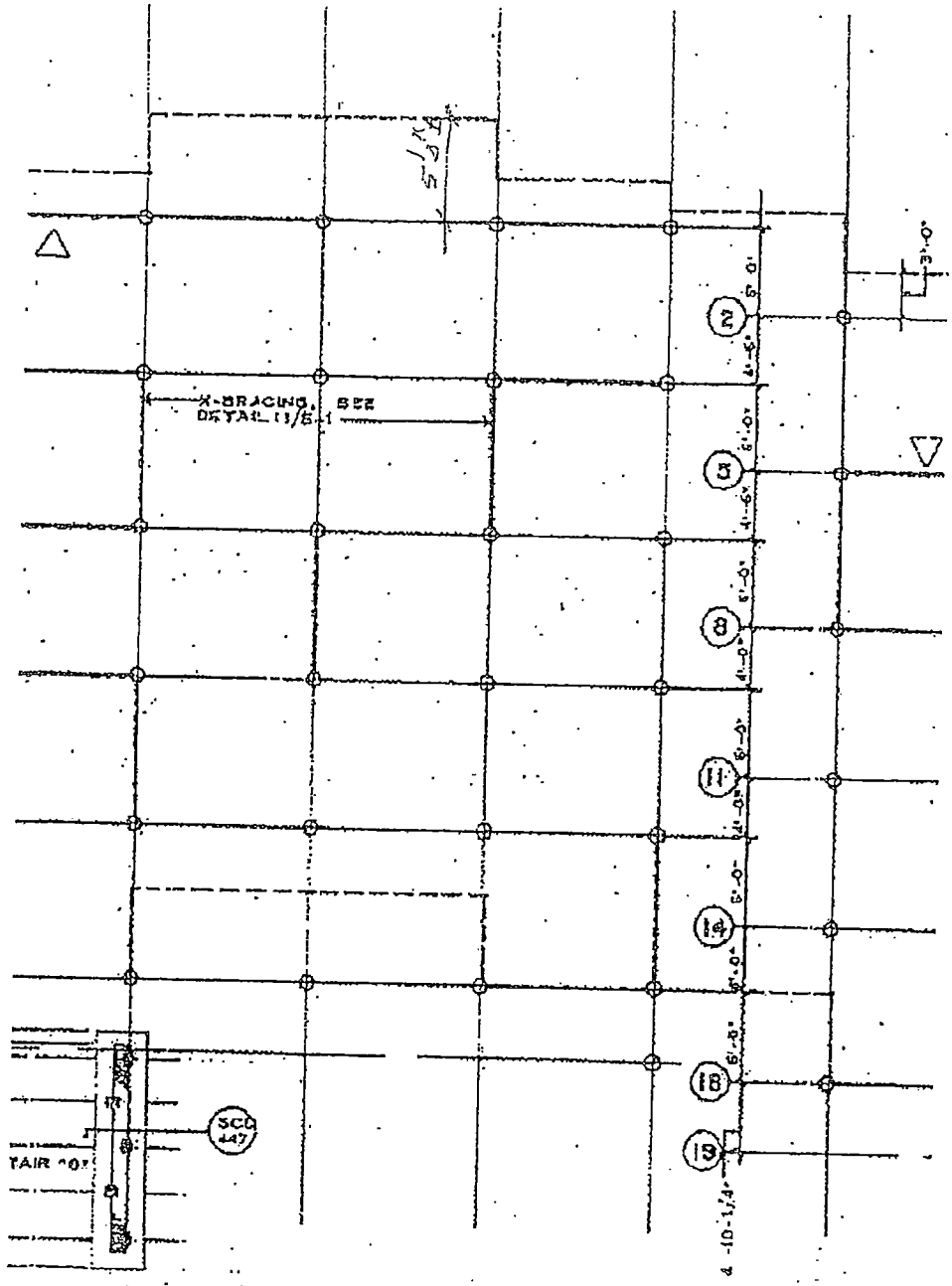
TYP. UNIT Placement

Balcony Framing

Tilghman Beach - Racquet Club
BLDG #3
210 N. Ocean BLVD
North Myrtle Beach, SC

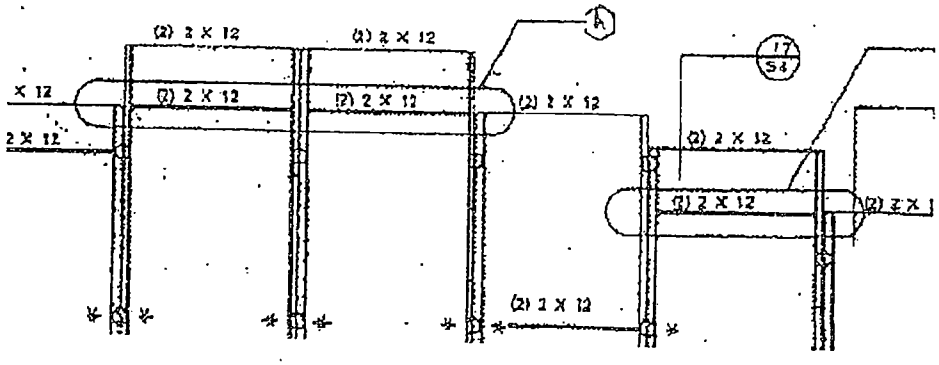


R-537



foundation plan - building type (A)

SCALE 1/8" = 1'-0"



TYP. PILING Placement

EXHIBIT
"G"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc.

Civil Action No. 2016-CP-26-

COPY

STOP WORK ORDER

City of North Myrtle Beach
Office of Planning & Development
1018 2nd Avenue South
North Myrtle Beach, SC 29582
843.280.5560

NO. 2245

THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA

EXHIBIT G

Permit # 16-0153

ADDRESS/LOCATION: 206 2nd Ave N Blk 12

OWNER: Tilghman Beach + Racquet Club

CONTRACTOR: Statesville Restoration

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐

☐ OTHER

VIOLATION: ☐ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: Complete sections of guard rails being removed. If guard rails are removed they must be brought up to 2012 IRC codes. Also many pockets of railings that have been [illegible] spaced correctly.

REMARKS: [illegible]

DATE: 6/17/16

SIGNED: Amy Ball

Please inform Inspections Department as to your Planned re-inspection.

COPY

STOP WORK ORDER

City of North Myrtle Beach
Office of Planning & Development
1018 2nd Avenue South
North Myrtle Beach, SC 29582
843.280.5560

B16-2134

NO. 2091

EXHIBIT
tabbies
6

Ref. Permit Application # 16-02134

ADDRESS/LOCATION: 208 N. Ocean Blvd Bldg 81

OWNER: Tilghman Beach + Racq

CONTRACTOR: Statesville Restoration

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐

☐ OTHER _____

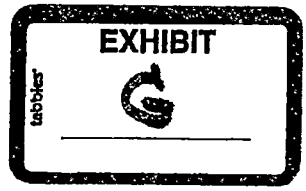
VIOLATION: ☒ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: Exterior Restoration walls and

REMARKS: balconies without required permit. See application on file. Must obtain required permit within 5 business days.

DATE: 6/22/16

SIGNED: [signature]



February 17, 2016

Tilghman Beach and Racquet Club HOA
C/O Earl Collins
KA Diehl & Assoc. Inc.
11822 High. 17 Bypass
Murrells Inlet, SC 29576

Dear Mr. Collins:

The City of North Myrtle Beach has an ordinance pertaining to exterior maintenance of properties. The ordinance requires that all properties maintain a minimum appearance standard as described in the attached text. The ordinance is codified as part of the Zoning Ordinance and thus enforced through the Zoning Office.

There are multiple violations on multiple buildings at the Tilghman Beach and Racquet Club. Specifically the violations are as follows:

- **Siding – exterior coverings shall be properly maintained and provide the building with a weather resistant exterior – wood siding is decayed and/or rotted in some areas – replace all decayed/rotted siding.**
- **Torn screens in windows – screens shall be maintained in good condition - repair, remove or replace all screens that are torn**
- **Decks (stairways) – missing spindles and loose railings – decks (stairways) shall be maintained in a safe condition – replace all missing spindles and replace or reinforce loose railings**
- **Roof – roofing shall be properly maintained and provide the building with a weather resistant exterior – several tarps are attached to roofs/skylights – remove tarps and repair/replace skylights**

Please take note of these items and take corrective measures to comply with the ordinance. The enforcement section of the attached ordinance states that **you shall have repaired the above stated violations within ninety (90) days of receipt of this letter.**

You have the right to file an appeal of this matter with the City of North Myrtle Beach's Board of Zoning Appeals if you believe this letter to be in error.

Contact the Building Inspections department with any question on obtaining the required permits for this work. If you have any questions regarding this matter please call me at (843) 280-5554.

Sincerely,

File Copy

Ben Caldwell, AICP
Assistant Zoning Administrator
City of North Myrtle Beach

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO. 2016-CP-26-4464
)	
Jill Keck Humphries, Dennis L. Johnson,) Jr., Delona Penny Rice, Whitmel L. Brown,) Jr., Gary Steven Robinson, Elizabeth Erin) Humphries, and Nancy H. Johnson,)	
)	
)	
Plaintiffs,)	
)	**AMENDED COMPLAINT OF**
v.)	**THE PLAINTIFFS, JILL KECK HUMPHRIES,**
)	**DENNIS L. JOHNSON, JR., DELONA PENNY**
Tilghman Beach and Racquet Club) Condominium Association, Inc., James H.) Austin, III, Daniel G. Coe, C. Doug) Madison, George P. White and Steele Brice) Windle, III, individually and as Members) of the Board of Directors of the Tilghman) Beach and Racquet Club Condominium) Association, Inc.,)	**RICE, WHITMEL L. BROWN, JR., GARY STEVEN ROBINSON, ELIZABETH ERIN HUMPHRIES, AND NANCY H. JOHNSON**
)	**(JURY TRIAL REQUESTED)**
Defendants.)	
)	

HORRY COUNTY
2016 OCT 28 AM 9:04
CLERK OF COURT

The Plaintiffs, by and through their attorneys, Howell V. Bellamy, III., and Howell V. Bellamy, Jr., of the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, PA., complaining of the Defendants, Tilghman Beach and Racquet Club Condominium Association, Inc. (the "Association"), and James H. Austin, III., Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III., individually and in their capacities as directors of the Council of Co-Owners (collectively, the "Directors") state as follows:

Copy

JURISDICTION AND VENUE

1. At all times relevant the Plaintiff, Jill Keck Humphries ("Humphries"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Humphries is a citizen and resident of Chatham County, North Carolina.

2. At all times relevant the Plaintiff, Dennis L. Johnson, Jr. ("Johnson"), was and is an interest owner of fee simple title to Condominium Unit No. 367 in Building VIII of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Johnson is a citizen and resident of Mecklenburg County, North Carolina.

3. At all times relevant the Plaintiff, Delona P. Rice ("Rice"), was and is an interest owner of fee simple title to Condominium Unit No. 227 in Building I of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Rice is a citizen and resident of Alamance County, North Carolina.

4. At all times relevant the Plaintiff, Whitmel L. Brown, Jr. ("Brown"), was and is an interest owner of fee simple title to Condominium Unit No. 353 in Building XI of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Brown is a citizen and resident of Horry County, South Carolina.

5. At all times relevant the Plaintiff, Gary Steven Robinson ("Robinson"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Plaintiff Robinson is a citizen and resident of Chatham County, North Carolina.

6. At all times relevant the Plaintiff, Elizabeth Erin Humphries ("Elizabeth Humphries"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Upon information and belief, Plaintiff Elizabeth Humphries is a citizen and resident of Chatham County, North Carolina.

7. At all times relevant the Plaintiff, Nancy H. Johnson ("Nancy Johnson") was and is an interest owner of fee simple title to Condominium Unit No. 367 in Building VIII of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Plaintiff Nancy Johnson is a citizen and resident of Mecklenburg County, North Carolina.

8. That Plaintiffs have attempted in good faith to resolve all differences with the Defendants, regarding the particular assertions made in this Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration, maintenance, and repair of the regime property in accordance with governing documents, the Act, and South Carolina law, no resolution could be reached on the allegations raised by Plaintiffs in this Second Amended Complaint.

9. At all relevant times, the Plaintiffs above were and are shareholders and/or members of the Tilghman Beach and Racquet Club Condominium Association, Inc., when the Defendants failed to act, and/or committed their improper, illegal, and unauthorized conduct as set forth below in the subsequent paragraphs.

10. Defendant Association is a nonprofit corporation organized and existing in the State of South Carolina, County of Horry. Defendant Association was and is at all times relevant hereto responsible for the management of the Condominium Project commonly known as the Tilghman Beach and Racquet Club Horizontal Property Regime ("Project") consisting, in part, of twelve (12) residential buildings commonly referred to as Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, and related common facilities, all being more particularly described and delineated by the Master Deed recorded on February 2, 1982, and all amendments thereto (the "Master Deed").

11. Defendant Association acts by and through its Board of Directors ("Board"), the members of which are elected by a majority vote of the co-owners. The Board is charged with the general administration of the Project on behalf of and for the benefit of all co-owners and with due regard for (a) the rights of each co-owner and (b) the terms of the Act, the Master Deed, and By-Laws of the Condominium Project. As part of those duties, the Board is responsible for the selection and supervision of a "Manager of the Regime" as that term is defined in the By-Laws of the Association.

12. Defendant Steele Brice Windle, III ("Windle") is holder of the fee simple title to Condominium Unit No. 127 in Building I of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant

Association. At all times relevant hereto, Defendant Windle acted individually, and as an agent, representative, and member of the Board of Directors of the Defendant Association. Further, the acts of Defendant Windle were "independent acts" as that term is defined under South Carolina law. Upon information and belief, Defendant Windle is a citizen and resident of York County, South Carolina.

13. Defendant Daniel P. Coe ("Coe") is holder of the fee simple title to Condominium Unit No. 361 in Building IX of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. Further, the acts of Defendant Coe were "independent acts" as that term is defined under South Carolina law. Upon information and belief, Defendant Coe is a resident and citizen of Horry County, South Carolina.

14. Defendant C. Doug Madison ("Madison") is holder of the fee simple title to Condominium Unit No. 106 in Building II of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. Further, the acts of Defendant Madison were "independent acts" as that term is defined under South Carolina law. Upon information and belief, Defendant Madison is a citizen and resident of Iredell County, North Carolina.

15. Defendant George P. White ("White") is holder of the fee simple title to Condominium Unit No. 133 in Building III of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant

Association. Further, the acts of Defendant White were "independent acts" as that term is defined under South Carolina law. Upon information and belief, Defendant White is a citizen and resident of Pender County, North Carolina.

16. Defendant, James H. Austin, III ("Austin") is holder of the fee simple title to Condominium Unit No. 357 in Building X of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. Further, the acts of Defendant Austin were "independent acts" as that term is defined under South Carolina law. Upon information and belief, Defendant Austin is a citizen and resident of Moore County, North Carolina.

17. The real property which is the subject of this matter is located in Horry County, South Carolina, and more particularly described as follows:

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase 1, Block 22, and Phase 1, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase 1 of the Tilghman Beach and Racquet Club Condominium Project located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R. L. S., South Carolina No. 2075 and dated January 20, 1982, and filed for record in the office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most current and accurate description of the parcels, and which plat description is reference to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the

Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M. W. Tilghman, Catherine H. Tilghman, and. Mary Elizabeth T. Dent by deed dated September 2, 1982, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

18. Venue is proper in Horry County, South Carolina.

19. This Court has subject matter and personal jurisdiction over the above-named parties hereto.

BACKGROUND FACTS

A. RELEVANT PROVISIONS OF THE MASTER DEED AND BY-LAWS

20. The Tilghman Beach and Racquet Club Horizontal Property Regime ("Regime") was established in 1982 in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §§ 27-31-10 et seq. (2007) ("Act") by the execution and recording of Master Deed in Deed Book 736, at page 360 on February 2, 1982 in the Office of Clerk of Court for Horry County, South Carolina. The Master Deed and By-Laws are the governing documents of the Regime and define various aspects and duties of the Co-owners, Association, and Property Manager regarding the maintenance, replacement, and repair of the Common Elements. A copy of Regime's Master Deed and By-Laws is attached hereto as (**Exhibit "A"**) and incorporated by reference as part of this Complaint.

21. Insofar as is relevant to the assertions in this Second Amended Complaint, Article XXXIV defines certain terms used in this Master Deed and its Exhibits as follows:

> **"Apartment"** means a part of the property intended for any type of independent use (whether it be for residential, recreational, storage, or business) including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building or if not in a building in a separately delineated place whether open or enclosed and whether for the storage of an automobile, moorage of a boat, or other lawful use, and with a direct exit to a public street or highway, or to a common area leading to such street or highway.
>
> **"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.
>
> **"Majority of co-owners"** means fifty-one percent or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of S.C. Code Ann. §27-31-60.
>
> **"Building"** means an existing or proposed structure or structures, containing in the aggregate two or more apartments, comprising a part of the property.

"Property" means and includes (1) the land whether leasehold or in fee simple and whether or not submerged, (2) the building, all improvements, and structures on the land, in existence or to be constructed, and (3) all easements, rights, and appurtenances belonging thereto.

"Master deed" or **"master lease"** means the deed or lease establishing and recording the property of the horizontal property regime.

22. Article V 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 the paragraphs of this Article in pertinent part:

> Each Unit is comprised of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings, and building material enclosed within the following boundaries:
>
> (a) The upper boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the ceiling of the Unit. The lower boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the floor.
>
> (b) The perimetrical boundaries or the Unit shall extend to the unfinished interior surfaces of the perimeter walls of the Unit, excluding loud-bearing structural interior walls or components.
>
> (c) Each Unit shall also encompass and include and each Co-owner shall be responsible for maintenance and repair of 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 window openings of the Unit; (iii) the plumbing, wiring, and mechanical vents which exclusively serve the Unit; (iv) the appliances, air conditioning and heating units, hot water heaters, lavatories, bath tubs, toilets, carpeting, floor covering, trim finished surface of ceilings and walls, insulation, and other fixtures and furnishings which are within or serve the Unit when delivered to the initial Co-owner; (v) all appurtenances which are integral and exclusive to the Unit, including but not limited to lamps attached to the exterior of the Unit, and water and sewer pipes exclusively serving the Unit.

23. Article V of the Master Deed also 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"**[1] of this Master Deed graphically depict the areas encompassing the Common Elements in Phase I.

a) **General Common Elements** means and includes:

(1) The Real Property (excluding the Limited Common Elements and the Apartments), including but not limited to the land on which the buildings containing the Apartments are constructed;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;

(3) The basements, flat roofs, yards and gardens, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, 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;

(6) Any elevators, garbage incinerators and, in general, all devices und installations existing for common use;

(7) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety, including but not necessarily limited to the following:

(a) The additional improvements designated as General Common Elements on **Exhibit "B"** attached hereto;

(b) All swimming pools, tennis courts and related and supporting facilities, all parking areas, roads, walkways, paths, trees, shrubs, yards, gardens, bodies of water, bridges, gazebos, and Regime entrance signs and lighting on the Real Property (outside of the Apartments); and

(c) A non-exclusive easement and right-of-way for access, egress and ingress to and from the Regime and each Apartment and Improvements contained therein across the

[1] **Exhibits A and B** of the Master Deed are referred to throughout the Master Deed. **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.

public roads and streets of Ocean Drive Section, North Myrtle Beach, to and from U.S. Highway 17, and any other public streets or highways adjoining or abutting such private roads and streets of Ocean Drive Section of North Myrtle Beach;

b) **Limited Common Elements** means and includes:

(1) Those Common Elements which are agreed upon by all the Apartment 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, balconies, sanitary services common to the Apartments of a particular floor, and the like; and

(2) The additional improvements designated as Limited Common Elements on **Exhibit "B"** attached hereto. Maintenance and repair of Limited Common Elements rest with the owner(s) of the Apartment to which they abut, adjoin, or service.

24. Article XX of the Master Deed states specific requirements regarding the maintenance and repair of each Apartment by the owner. This Article provides in pertinent part:

> Every Co-owner **must perform promptly all maintenance and repair work within his Apartment**, . . . if omitted, could adversely affect the Regime in its entirety or in a part belonging to other Co-owners, being expressly responsible for the damages and liability which, his failure to do so may engender. . . . **Such Co-owner shall . . . be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces . . ..** ***The floor and interior walls and windows or screens of any balcony or deck attached to his Apartment shall be maintained by the Co-owner at his expense.***

25. Article XXI of the Master Deed states specific requirements regarding the maintenance and repair of the Common Elements by the Association. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance,

repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

26. Article XXVII of the Master Deed provides remedies for described defaults committed by the Co-owner or Co-owners of any Apartments, or the Association due to their failure to discharge their duties under the governing documents. The following described defaults in Paragraphs A and B of this Article entitles an ***aggrieved Co-owner or Co-owners of other Apartments*** to the following legal[2] and/or equitable relief:

A. Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, or its rules and regulations, ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages, injunctive relief,*** foreclosure of lien ***or any combination thereof and which relief may be sought by Association, or, if appropriate, by an aggrieved Co-owner of an Apartment, or both.***

B. The Co-owner or Co-owners of each Apartment ***shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness,*** or by that of any member of his family, or his or their guests, employed, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association.

27. The By-laws of the Regime further define the specific duties and responsibilities of the Association's Board of Directors ("Board") regarding the operation, funding, maintenance, repair, and replacement of the Common Elements. Specifically, Article I, Paragraph 4(j) (ii) of the By-Laws addresses the Board's affirmative duties regarding its ***"maintenance, repair, and replacement . . . of the general and limited elements"***:

> The Board of Directors shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws . . The Board of Directors ***shall*** exercise such duties and responsibilities as ***shall*** be encumbent upon it by law, the Master Deed, these By-Laws, or as it ***may deem***

[2] Murphy v. Yacht Cove Homeowners Ass'n., 289 S.C.367, 345 S.E.2d 709 (1986)(The South Carolina Court found **"that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association"** for failure to discharge its duties related to maintenance and repair of the common elements under the Master Deed and Bylaws. Id. at 369, 345 S.E.2d at 710).

necessary or appropriate in the exercise of its powers and ***shall*** include, without limited the generality of the foregoing, the following:

. . .

(ii) To ***carry out the maintenance, care, upkeep, repair, replacement, operation, . . and the management of the general and limited elements***, services and facilities or the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members.

28. Article I, Paragraph 7 of the By-Laws defines the Board's affirmative duties and responsibilities for the "fiscal management" of the Association. Specifically, the Board's budgetary funding responsibilities ***necessary for maintenance and operation of Common Elements*** are addressed in subparagraph 7(b) in pertinent part:

> The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:
>
> (i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts ***necessary for maintenance and operation of Common Elements***, landscaping, street and walkways, office expense, swimming pool, utility services, casualty insurance, liability insurance, ***administration and reserves (operating and replacement)***; and

29. Lastly, Article I, Paragraph 11 of the By-Laws addresses the Association's authority to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affirmative duties to establish an annual operating budget for the maintenance and repair of the Regime's Common Elements, and to collect and maintain a reserve fund for the future replacement of structural common elements:

> (d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project ***shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements*** as

well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. ***The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements.***

(e) The Board of Directors of the Association, in establishing said annual budget for operation management and maintenance of the Project, ***shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress*** when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or ***for other reason placing financial stress upon the Association.***

B. THE GENERAL PLAN OF DEVELOPMENT OF THE PROJECT

30. Tilghman Beach and Racquet Club Condominium Regime ("TB&RC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983.

31. There are six (6) building design types which consist of two (2) stairwells, common area corridors, and two (2) balconies per Apartment, as graphically depicted in the certified architect's plans ("Plans"), recorded in the Horry County Register of Deeds in Plat Book 1, Page 42. Specifically, the twelve (12) buildings are pre-fabricated structures located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

C. EVALUATIONS OF BUILDINGS PRIOR TO 2010

32. Since completion of the Condominium Project, the Board has failed to implement or to require the Manager of the Regime to implement a program for the inspection, maintenance and repair of the Project's Common Elements that would have timely identified and thereby minimized the cost of remediating the current damage to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, all in breach of the Board's obligations to the Co-owners under the Master Deed and By-Laws. Further, this factual proposition is supported by the building, inspection, and zoning records of the City of North Myrtle Beach.

33. The Board, from its inception, also consistently failed to establish a reasonable reserve for the payment of future Common Expenses costs arising out of damage to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII as a consequence of the effects of the ocean environment of which they were or should have been aware.

D. EVALUATIONS OF BUILDINGS SINCE 2010

34. Extensive evaluations of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII have been made since 2010 as the result of historic and persistent concerns raised by various Co-owners, past board members, managers, and consultants. Specifically, the following consultants were engaged for the purpose of evaluating and/or developing various repair and reconstruction plans for the deficient and defective condition in the buildings since 2010:

a. Kyzer & Timmerman Engineers, Inc;
b. Criterium-Giles Engineers, Inc;
c. Martinez & Associates Structural Engineers, PA;
d. SGA Architecture, LLC;
e. Procon & Associates, Inc;
f. Spann Roofing & Sheet Metal, Inc;
g. ABS, Inc;
h. Keystone R&C, Inc;
i. Sutton-Kennerly and Associates, Inc;
j. Maxey P. Nolan III, PhD., Entomologist;

k. A & I Construction;
l. Shoreline/Stewart Construction; and
m. Reserve Advisors, Inc.

35. The above listed consultants identified numerous defective and deficient conditions resulting in building distress in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, which can be separated into structural, building envelope, interior, and roofing conditions. A general summary of the deficient conditions, by category, found by them includes:

Structural Items of Concern

a. Balcony Railings have corroded at base of supports. Pickets were missing;
b. Balcony decks exhibited sponginess;
c. Connection hardware was corroded and delaminating;
d. Balcony beams are corroded and decayed;
e. Stair areas exhibited corrosion, rot and decay;
f. Split Stringers on stairs.
g. Delaminated and decayed band boards around perimeter of buildings;
h. Post anchorage connections have severe metal loss and are corroded at the balconies and corridors;
i. Post to top rail connections have severe metal loss and are corroded at the balconies and corridors;
j. Wood Post base have decayed and corroded at the balconies and corridors;
k. Connections of cradle beams to wood piling have severe metal loss and are corroded;
l. Connections of diagonal bracing to timber piling have severe metal loss and are corroded
m. Cantilever cradle beams are decayed and delaminating;
n. Spandrel beams are corroded and decayed at the balcony framing;
o. Floor joists have deteriorated and are deflecting at the balcony framing;
p. Module connections to the cradle beams have metal loss and are corroded;
q. Connectors of the metal connecting plate to the module have corroded; and
r. Soffits are corroded and decayed.

Building Envelope Items of Concern

a. Moisture penetration behind exterior siding, trim, and flashing;
b. Delaminated exterior siding, trim, and flashing;
c. Delaminating stucco below gable end walls;
d. Cracking in stucco below gable end walls;
e. Moisture penetration/leaking ocean side facing windows;
f. Moisture penetration/leaking ocean side facing sliding glass doors;

g. Moisture penetration/leaking sliding glass doors;
h. Corroded window and sliding glass door casings;
i. Corroded sliding glass door sills;
j Moisture affected and rotten wood framing around sliding glass doors;
k. Rotting fascia boards; and
l. Moisture affected and rotten band boards around perimeter of buildings.

Interior Items of Concern

a. Moisture damaged sheetrock;
b. Moisture damaged interior paint, wall paper and textured ceiling materials;
c. Microbial growth in Unit interiors;
d. Moisture affected floor coverings;
e. Moisture damaged paint, wall paper and textured ceiling materials;
f. Moisture damaged carpet padding and carpet;
g. Moisture damaged and rotting carpet tack strips; and
h. Corrosion of tack strip fasteners.

Roofing Items of Concern

a. Missing shingles;
b. Numerous patches;
c. Distressed flashing;
d. Rotting fascia boards;
e. Leaking around skylights;
f. Lack of properly fastened and installed singles;
g. Lack of drip edge at rakes and peaks;
h. Poor attic ventilation;
i. A number of existing hurricane ties are missing, corroded and/or improperly installed;
j. Soft areas and visible deflections in roof deck;
k. Tarps on Roofs; and
l. Rotten eaves/soffits.

36. Based upon the severe level of distress in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, the consultants agreed that these defective conditions did not just develop within the past few years. The consultants' repair and replacement recommendations and approaches for executing the repairs and replacements varied, but typically included:

a. Replacement of the floor sheathing and flashing, and installation of waterproofing on all balconies and corridors;

b. Replacement of the remaining stucco on the gable ends with fiber cement siding to prevent future water intrusion and reduce maintenance;

c. Remove and replace deteriorated cedar siding, trim, and flashing on all balconies and corridors;

d. Remove and replace deteriorated and damaged guardrails on all balconies and corridors;

e. Replacement of the deteriorated post connections on all balconies and corridors;

f. Replacement of the delaminated cradle framing on all balconies and corridors;

g. Replacement of all balcony sliding glass doors that have exceeded their typical life expectancy (greater than 20 years since installed);

h. Replacement of all corroded bolts, nuts, and washers with stainless steel;

i. Remove and replace windows and sliding glass doors and contiguous damaged framing;

j. Repair or replace distressed exterior trim, siding, and flashing;

k. Replacement of the roofing systems and/or defective roofing components on all buildings;

l. Replacement of visible and/or hidden termite damage in all buildings;

m. Repair and replacement of all leaks currently occurring in all building envelopes; and

n. Replacement of all existing defective building components in violation of Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

E. THE BOARD'S SUBSEQUENT ACTIONS IN 2016

37. In June of 2015, the Board hired Saul Martinez, P.E. ("Martinez") of Martinez & Associates Structural Engineers, PA ("Martinez & Associates"), and requested that it assess the current condition of the structural systems and the exterior envelope of the Project's twelve (12) buildings.

38. Martinez & Associates' field observations of the maintenance and repair condition of the various building components was itemized in a "Building Summary and Field Itemization Table" for each building included in its investigative report entitled Phase I: Existing Condition Evaluation of Assessment for Tilghman Beach & Racquet Club Ocean Front & Second Row Buildings, submitted by Martinez & Associates Structural Engineers, PA dated June 2015 ("Investigative Report of Martinez & Associates").

39. In January of 2016, the Board hired Steve Goggans, AIA of SGA Architecture, LLC, ("SGA") to prepare a comprehensive capital improvement plan to complete all the necessary repair and restoration work on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. This restoration plan for the remaining eleven (11) building was based upon the reports prepared by professional engineers focusing on the structural systems and exterior envelope systems of the buildings in the Regime as well as the combined experience and knowledge gained from making and completing all necessary repairs to Building III. Specifically, SGA agreed to provide professional management services to assemble the contract documents, put the project out to competitive bid, and provide construction administration through the duration of the construction. A copy of their AIA Document B101-2007 Standard Form Agreement is attached hereto as (**Exhibit "B"**) and incorporated by reference as part of this Second Amended Complaint.

40. In January of 2016, Goggans issued a Letter from SGA Architecture to the Tilghman Beach & Racquet Club Homeowners Association, Inc.,("Association") which provides in pertinent part:

> 3. Given the damage to Building 6, which is similar to Building 2, ***my concern at this point is that the structural problems are systemic throughout the whole property. The damage to Building 6 is severe. Further delay in curing these problems will lead to further damage,***

increasingly costly repairs, and ultimately, structural failure. Therefore, I respectfully recommend that the Board convene a meeting to discuss a more comprehensive and expeditious approach to affecting a long term repair and stabilization solution for the entire property. I will make myself as available as possible for such a meeting. Given the issues and damage observed thus far, this matter should be treated with urgency. A copy of the January 2016 Letter from SGA to the Association, Inc., is attached hereto as (**Exhibit "C"**) and incorporated by reference as part of this Complaint.

41. At the February 6, 2016 special meeting, in response to questions from Co-owners, the Board's consultants, Martinez and Goggans, concurred in advising the Board and the Co-owners regarding the urgency of making necessary repairs to the Project's defective and deficient buildings. A summary of their opinions and recommendations, recorded by former Board President Carl W. Atkinson, Jr., is as follows:

a. That TB&RC has major structural and water intrusion damage issues;

b. The problems with water intrusion in the eleven (11) buildings are at a point where the damage is increasing at an even greater acceleration rate;

c. The handrail systems in the eleven (11) buildings are dangerous and unsafe;

d. Unless major corrective action is taken immediately the buildings are likely to have a life expectancy of not more than four (4) years after which they will be unrepairable due to the prohibitory cost of repair;

e. That the best repair approach would be a systematic, comprehensive approach to repairs for each building. Stated differently, repair all defects and/or problems with each building in its entirety as you proceed;

f. That a systemic comprehensive repair approach is needed to accomplish the repairs for the defective buildings rather than a piecemeal, patch and repair approach; and

g. That a systemic comprehensive repair approach would also be the most economical and cost effective restoration plan for the defective buildings in the long run.

42. Further, current board members Madison, Coe and Windle, in February 2016

recommended a construction process[3] for the Board to follow for identifying and implementing all necessary repair work in the future at TB&RC. Specifically, the construction process proposed for future repair (outlined by Madison, Coe and Windle) included following particulars in pertinent part:

a. The Board shall have a detailed forensic analysis performed on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII by an architectural/engineering firm (not just a structural engineer) to determine all necessary repairs for the Project's General Common Elements and Limited Common Elements;

b. The Board shall have an architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs for the Project's General Common Elements and Limited Common Elements; and

c. The Board shall submit design drawings and specifications for the repairs to at least three (3) commercial contractors to obtain proposals from the contractor for the performance of the required repairs.

43. Notwithstanding the opinions and/or recommendations from Martinez and Goggans, the current Board has failed or otherwise refuses to undertake these necessary repairs to eliminate the major structural and water intrusion damage, the leaks, and to protect the General Common Elements and Limited Common Elements from future damage, or even to assess the Co-owners for the necessary repair cost thereof, all as required under the Master Deed and By-Laws.

44. Furthermore, the existing water intrusion problems and defective building conditions at the Project are the result of the Defendants' failure to follow their own recommended construction procedure and/or process for determining and completing all necessary repairs to defective and deficient General Common Elements and Limited Common

[3] A copy of the construction process for future repairs to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, prepared and recommended by current board members Madison, Coe and Windle, is attached hereto as (**Exhibit "D"**) and incorporated by reference as part of this Complaint.

Elements as well as their failure to comply with their affirmative duties under the governing documents and State law.

45. The defects in the maintenance, replacement, and repair of the General Common Elements and Limited Common Elements complained of include, but are not limited to, the following:

a. Failure and/or lack of a waterproofing system has caused severe damage to the structural components of the buildings by allowing water to infiltrate the buildings;

b. Waterproofing was not installed at some areas requiring waterproofing;

c. Lack of proper door/window flashing has caused water to infiltrate buildings;

d. Mold has contaminated portions of the buildings due to water intrusion;

e. Termite damage has occurred in portions of the buildings due to water intrusion;

f. Improper maintenance and/or repair of roofs and roofing materials;

g. Improper maintenance and/or repair of cedar siding, trim, and flashing;

h. Improper maintenance and/or repair of the pier system's bracing connections;

i. Improperly maintained and/or inadequately repaired guardrails throughout the Project including corridors and balconies;

j. Improperly maintained and/or inadequately repaired guardrail posts and post connectors throughout the Project including corridors and balconies;

k. Improperly maintained and/or inadequately repaired floor framing throughout the Project including corridors and balconies;

l. Improperly maintained and/or inadequately repaired cradle beam/girder systems at the first level only of the building corridors and balconies;

m. Improperly maintained and/or inadequately repaired ceiling soffits throughout the Project including corridors and stairwells;

n. Improperly maintained and/or repaired exterior decks and balconies which are suffering deterioration and damage to the structural components;

o. Improperly maintained and/or repaired gable end walls and stair tower walls which are suffering deterioration and damage throughout the Project;

p. Failure to maintain and/or repair the buildings in accordance with the applicable building codes and/or in conformance with the product manufacturer's installation instructions; and

q. Failure to maintain detailed records of repair projects to the common elements to include dates of repair, material brand/type, color, material warranty information, and name and contact information of contractor and contractor warranty information.

46. Actual property damage to the Project has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, and intersections, resulting from the negligent and grossly negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements performed by the Defendants. Consequently, continuous, and repeated water intrusion has resulted in physical property damage, including severe damage, rot and deterioration of the buildings and their structural components. Due to the lack of proper maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements in violation of its governing documents, continuous and repeated exposure to harmful conditions, including water intrusion, has occurred, resulting in physical and consequential damages, including but not limited to the following:

a. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly maintained, replaced, and repaired common elements, including doors and windows; and

b. physical injury to tangible property, premature deterioration of building components and/or damage and deterioration to the work of others caused by the

continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around negligently maintained, replaced, and repaired exterior cladding, sealants, joints, caulk, and waterproofing systems.

47. The negligent and grossly negligent acts of omission and commission by the Defendants and damage that resulted therefrom were foreseeable.

48. Upon information and belief, the defective maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements by the Defendants was inspected by its insurance agents, none of whom detected the inadequate maintenance nor comprehended the resulting damage therefrom. Further, upon information and belief, the damage which exists at the Project were unintended from the stand point of these Defendants.

49. As a direct and proximate result and consequence of the safety defects and structural problems at the Project, the Project has been severely damaged as a result of moisture intrusion and Plaintiffs have spent, and will continue to spend, substantial sums of money for the extraordinary repairs and reconstruction of major portions of the common elements at the Project. The buildings at the Project have suffered actual damage caused by exposure to water seeping into the walls that resulted from the negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

50. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

51. Defendants, as the underlying agents and representatives of the Co-owners, owed a duty to the Plaintiffs to exercise reasonable care in maintenance, repair, and replacement of the Project's General Common Elements and Limited Common Elements, and, to adequately fund

the reserves to rectify any defects and deficiencies in the Common Elements, and to prevent similar defects and deficiencies in the future.

52. Defendants, as the underlying agents and representatives of the Co-owners, breached their affirmative duties set forth above, and were negligent, grossly negligent, reckless, willful and wanton in the following particulars, to wit:

a. In failing to plan for the necessary maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements since its inception;

b. In failing to have a detailed forensic analysis performed on Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII by an architectural/engineering firm to determine all necessary repairs for the Project's General Common Elements and Limited Common Elements;

c. In failing to have an architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs for the Project's General Common Elements and Limited Common Elements;

d. In failing to submit any design drawings and specifications for known defective conditions in the Project's General Common Elements and Limited Common Elements to at least three (3) commercial contractors to obtain proposals from them for the performance of the required repairs;

e. In failing to completely repair and replace all defective and deficient conditions in the Project's General Common Elements and Limited Common Elements in timely and code compliant manner as recommended by their consultants and legal advisors;

f. In failing to assess the Co-owners for the necessary repairs needed to fix the Project's defective and deficient General Common Elements and Limited Common Elements as recommended by their consultants and legal advisors;

g. In failing to adequately fund the reserves for the necessary maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements since its completion and certification of occupancy;

h. In failing to employ experienced contractors, architects, and engineers to inspect, maintain, and completely repair the Project's defective and

deficient General Common Elements and Limited Common Elements prior to 2013;

i. In failing to pursue a recovery and institute litigation against all responsible parties for the original construction defects and deficiencies associated with the design and construction of the buildings;

j. In failing to conduct a timely reserve study to plan and prepare for the future maintenance, replacement, and repair cost associated with the Project's General Common Elements and Limited Common Elements;

k. In failing to assess the co-owners or otherwise adequately fund the reserves so that necessary funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned defects and deficiencies in the Project's General Common Elements and Limited Common Elements due to inadequate maintenance and repairs;

l. In failing to maintain, repair, and replace all defective building components in accordance with the applicable building codes and zoning ordinance for the city of North Myrtle Beach, and/or in conformance with the product manufacturer's installation instructions;

m. In failing to perform timely and necessary repair work to the Project's General Common Elements and Limited Common Elements which has caused substantial and ongoing damages to these buildings stemming from water infiltration;

n. In failing to levy any assessment or even adequate assessment against all the co-owners needed to fix the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII since the reserve fund is currently inadequate to finance the costs for fixing these buildings. This unreasonable delay in facilitating repairs to the regime property has caused substantial and ongoing damages to these buildings' Common Elements stemming from water infiltration;

o. In failing to fully investigate and obtain reports concerning the structural integrity of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as well as a complete forensic analysis and scope of repair addressing all of their water infiltration problems;

p. In failing to obtain competitive bids from qualified and experienced contractors for the extensive and necessary repair and reconstruction work being performed on the defective and deficient General Common

Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII. This *ultra vires* action violates State law;

q. In failing to ensure that current repair and reconstruction work being performed on the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII complies with the applicable building codes, regulations, product specifications, and guidelines in the design and reconstruction of these buildings;

r. In failing to previously identify, reserve for, and implement a more rational and economically palatable program to systematically maintain the buildings' exterior building envelope over time, through normal annual assessment fee collections from the co-owners. This inaction and violation of the governing documents resulted from the mismanagement of the Association;

s. In acting unreasonably in other such ways as may be revealed during the discovery and as shown at the trial of this action.

53. As a direct and proximate result and consequence of the negligence and/or gross negligence of the Defendants, Plaintiffs have suffered injuries and damages in a pro-rata share of the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, or, in the alternative, the loss of use and depreciation in fair market value of their individual units, and such punitive damages as may be appropriate. Furthermore, the Plaintiffs will be subject to economic loss damages due to the budget deficits, inadequate reserves (resulting from failure to plan for future maintenance and repair of building components), and special repair and reconstruction assessment directly resulting from Defendants' negligent and reckless conduct. These monetary damages are a direct and proximate result of the Defendants' errors, omissions, and breaches of duty directly related to its management of the regime property as described above. Accordingly, the Plaintiffs are entitled to recover actual damages from the Defendants in an amount to be proved at trial, and such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Breach of the Master Deed's Covenants and Restrictions)

54. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

55. The condominium recorded documents, such as declarations or By-Laws, constitute a contract between the Regime on the one side and the Co-owners on the other side. The failure of the Association's Board to comply with the provisions of the restrictions and/or the governing documents gives rise to an action for breach of contract by an aggrieved Co-owner.[4] Specifically, Article XXVII of the Master Deed provides in pertinent part:

> Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, . . . ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages . . .*** ***by an aggrieved Co-owner of an Apartment***. . .

56. Article VIII of the Master Deed makes "[e]ach every apartment and the Common Elements . . . subject to the restrictions, easements, conditions and covenants prescribed and established herein, . . . set[s] forth the obligations and responsibilities incident to ownership of each Apartment. . . ."

57. Defendants, as the underlying agents, servants, and representatives of the Co-owners, have violated and continue to violate §§§ 4(j)(ii) and (vii), 7(b)(I), and 11(a)(b) and (e) of the By-Laws and Articles XX, XXI, and XXVII of the Master Deed by failing to discharge their affirmative duties through inadequate maintenance, repair, and replacement of the Project's General Common Elements and Limited Common Elements, and also failing to adequately fund

---

[4] See Murphy v. Yacht Cove Homeowners Ass'n., 289 S.C. 367, 345 S.E.2d 709 (1986), where the South Carolina Supreme Court held "***that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association***" for failure to discharge its duties under the Bylaws related to the maintenance and repair of the common elements. 289 S.C. at 369, 345 S.E.2d at 710.

the reserves to rectify all known defects and deficiencies in the Common Elements, and to prevent similar defects and deficiencies in the future.

58. As a direct and proximate result and consequence of the Defendants' failure to discharge their above referenced affirmative duties in good faith, Plaintiffs have suffered injuries and damages in a pro-rata share of the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, or, in the alternative, the loss of use and depreciation in fair market value of their individual units; therefore, they are entitled to recover from Defendants all their direct, consequential, and actual damages in amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

59. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

60. This is an action for declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 et seq., of the South Carolina Code of Laws, 1976, as amended, to determine the rights, status or other legal relations of the parties regarding the current and future maintenance, repair, and replacement of the Project's defective and deficient General Common Elements and Limited Common Elements.

61. Specifically, § 15-53-30 provides:

> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

62. A justiciable controversy exists between the parties regarding their rights, status, and legal relations with respect to Project's Master Deed and By-Laws, the Act, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach for the reasons described in Paragraphs 31 through 47 of the Second Amended Complaint.

63. Plaintiffs may not have an adequate remedy at law.

64. Plaintiffs desire a judicial determination for one or more of the following declarations as relief:

a. For a declaration that the TB&RC's governing documents impose an affirmative duty on the Defendants to timely repair and replace all defective and deficient General Common Elements and Limited Common Elements identified and currently existing in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII. To find and declare the Defendants have failed to timely maintain, repair and replace the defective and deficient General Common Elements and Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, and thereby are responsible for the extraordinarily high cost of the repairs or restoration of these deficient buildings, which have and will increase substantially over the structures' remaining useful life.

b. For a declaration that the TB&RC's governing documents, as well as State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require the Defendants to take immediate action to effectuate the complete removal and replacement of all distressed building components, including, but not limited to:

(1) All the defective balcony systems in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(2) All the defective corridor structural elements (plywood, joists and beams) in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(3) All the defective corridor railing systems (railings, posts and pickets) in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(4) All the defective connectors with the loss of metal in excess of

Twenty-Five (25) percent in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(5) The defective roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(6) All the decayed and rotten exterior wood siding/trim and flashing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert; and

(7) All the defective sliding glass doors in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert.

c. For a declaration that the TB&RC's governing documents, together with State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require the Board to develop a systematic and comprehensive plan for the timely and economically feasible removal and replacement of all defective building components located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII instead of piecemeal approach that is currently being utilized by the Defendants which is not cost effective reconstruction.

d. For a declaration that the TB&RC's governing documents, together with the State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require the Defendants to thoroughly investigate all known and/or reasonably suspected defective and deficient conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII without delay in order to avoid a complete failure of the building systems rendering them unsafe as well as economically unfeasible to reconstruct.

e. For a declaration that the TB&RC's governing documents impose an affirmative duty on the Defendants to adequately fund reserves for the necessary maintenance, repair and replacement of the General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

f. For a declaration that the Defendants failed to adequately fund reserves for the necessary maintenance, repair and replacement of the General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. To find and declare that the Defendants have failed to adequately fund reserves for the necessary

maintenance, repair and replacement of the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, and thereby are responsible for the extraordinarily high cost of the repairs or restoration of these deficient buildings, which have and will increase substantially over the structures' remaining useful life.

g. For a Declaration that the TB&RC's governing documents, together with the State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively provide the Plaintiffs with the right to consider and decide whether Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are repairable from a practical standpoint, as well as whether it is economically feasible to reconstruct these deficient and defective buildings under the current building code.

h. For a declaration that the Board's bad faith conduct, *ultra vires* acts, and failure to discharge its affirmative duties, regarding the maintenance, repair, and replacement of the regime's General Common Elements and Limited Common Elements, are not protected by the business judgment rule.

i. For a declaration that the TB&RC's governing documents as well as State law impose an affirmative duty on the Defendants to levy an assessment against all co-owners for establishing the necessary repair funds to fix the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII stemming from past and ongoing water infiltration.

j. Any and all other relief that deemed to be necessary and proper by the Court.

FOR A FOURTH CAUSE OF ACTION
(Injunctive Relief)

65. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

66. Plaintiffs have suffered injuries, harm, and damages in an amount equal to their pro-rata share of the extraordinary repair, maintenance and reconstruction cost required to fix their structures, including depreciation in value of their units as a result of the Defendants' continual failure to discharge their affirmative duties related to the inadequate maintenance,

repair, and replacement of the Project's defective, deficient, and unsafe General Common Elements and Limited Common Elements. These allegations are supported by the factual findings set forth in the Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) and incorporated by reference as part of this Second Amended Complaint.

67. Injunctive relief is necessary to remedy the past violations of the Defendants' conduct and to prevent future injury, harm, and depreciation in value to the Plaintiffs' property interest including their individual units and the Regime's Common Elements.

68. Both S.C. Code Ann. § 27-31-170 (2007) and Article XXVII of Master Deed authorize the Plaintiffs as "aggrieved Co-owners" with the contractual right to bring an action for injunctive relief to compel the Board to comply with its affirmative duties under the By-Laws to repair and replace the Project's defective and deficient General Common Elements and Limited Common Elements. Specifically, Article XXVII of the Master Deed provides in pertinent part:

> Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, . . . ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages, injunctive relief, . . . which relief may be sought, . . . by an aggrieved Co-owner of an Apartment*** . . . .

69. Plaintiffs have no adequate remedy at law for the above-described acts of omission and commission of the Defendants, and Plaintiffs will suffer irreparable harm as evidenced by the findings set forth in the Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as **(Exhibits "E" and "F")** unless they obtain injunctive relief for the reasons described below.

70. Plaintiffs seek injunctive relief from the Court in one or more of the

following particulars:

a. To issue a mandatory injunction requiring the Defendants to immediately comply with their affirmative duties, under the TB&RC's governing documents, State law, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, to completely replace and totally repair all distressed building conditions in the Project's General Common Elements and Limited Common Elements previously identified by the Defendant's consultants and the Plaintiffs' expert, including, but not limited to:

(1) All the defective balcony systems located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(2) All the defective corridor structural elements (plywood, joists and beams) located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(3) All the defective corridor railing systems (railings, posts and pickets) located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(4) All the defective bolts, and/or connectors with the loss of metal in excess of Twenty-Five (25) percent located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(5) The defective roofing systems installed on Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII;

(6) All the decayed and rotten exterior wood siding/trim and flashing located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII; and

(7) All the defective sliding glass door systems located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII.

b. To issue a mandatory injunction requiring the Defendants to immediately comply with their affirmative duty, under the TB&RC's governing documents, State law, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, to completely investigate all known and/or reasonable suspected defective conditions currently existing in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII in order to determine the proper scope of repair as well as the actual replacement cost needed for all of the damaged buildings components;

c. To issue a mandatory injunction requiring the Defendants to obtain reports concerning the structural integrity of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, the current state of the subflooring, balcony systems, and other structural elements. To also obtain reports regarding the performance standards of the windows and sliding glass door systems, the mold content of each building, and then fund the remediation of any problems noted through the use of reserves and a subsequent assessment applicable to all co-owners;

d. To issue a mandatory injunction requiring the Defendants to levy an assessment against all the co-owners for the necessary repairs to fix the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII due to the fact that the reserve fund is currently inadequate to finance the costs for fixing these defective and deficient buildings ; and

e. For such other and further injunctive relief as this Court may deem just and proper.

FOR A FIFTH CAUSE OF ACTION
(Specific Performance)

71. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

72. Defendants, through their failure to repair damage to the General Common Elements and Limited Common Elements, have breached affirmative duties and obligations owed to the Plaintiffs, as prescribed by the Project's Master Deed and By-Laws.

73. Defendants have further breached their affirmative duties and obligations owed to Plaintiffs by failing to effect the repairs to the damaged General Common Elements and Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as evidenced by the factual findings set forth in the Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as **(Exhibits "E" and "F")** and incorporated by reference as part of this Second Amended Complaint.

74. Plaintiffs request an Order of the Court entering a judgment on their behalf requiring the Defendants to specifically perform their affirmative duties and obligations under the Master Deed and By-Laws by repairing and replacing all the defective and deficient General Common Elements and Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII.

WHEREFORE, having fully set forth their Second Amended Complaint, the Plaintiffs pray for the following relief:

a. For an Order of the Court finding the Defendants, by and through their agents, servants, and representatives, breached and violated, including, but not limited to, Sections 4(j)(ii) and (vii), 7(b)(i), and 11(a)(b)and (e) of the By-Laws, and Articles XX, XXI, and XXVII of the Master Deed of Tilghman Beach and Racquet Club Property Regime;

b. As to the First Cause of Action, the Plaintiffs are entitled to an award of actual damages in an amount to be proven at trial; and, also, to an award of punitive damages based upon the Defendants' willful violations of the provisions of the TB&RC's Master Deed and By-Laws and State law;

c. As to the Second Cause of Action, Plaintiffs are entitled to an award of actual damages in an amount to be proven at trial;

d. As to the Third Cause of Action, Plaintiffs are entitled to declaratory relief as demanded in one or more of the following particulars requested under subparagraphs (a),(b),(c),(d),(e),(f),(g),(h),(i), and (j) of Paragraph 64 of the Second Amended Complaint.

e. As to the Fourth Cause of Action, Plaintiffs are entitled to a mandatory injunction compelling one or more of the following particulars requested under subparagraphs (a), (b),(c),(d), and (e) of Paragraph 70 of the Second Amended Complaint.

f. As to the Fifth Cause of Action, the Plaintiffs request an Order of the Court requiring the Defendants to immediately comply with their affirmative duties and responsibilities under the Master Deed and By-Laws by levying an assessment against all co-owners to repair and replacement of all defective and deficient conditions of the General Common Elements and the Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as recommended by the Defendants' prior consultants, legal advisers; and, further supported by the findings set forth in the Affidavits of Saul J. Martinez, P.E. of

Martinez & Associates Structural Engineers, PA and John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) and incorporated by reference as part of this Second Amended Complaint.

g. For attorneys fees, costs and expenses incurred in bringing this action;

h. For a trial by Jury; and

i. For such other and further relief as the Court may deem proper.

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.

Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #68543)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

October 27, 2016

EXHIBITS

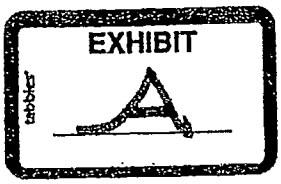
"A"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. And Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-



Deed Bk 736 Pg 360
2-2-83

MASTER DEED

OF

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

Developer:

SUMMEY BUILDING SYSTEMS, INC.
Post Office Box 497
Dallas, North Carolina 28034

Prepared by:

Law Offices of
Richard M. Lovelace, Jr., P.A.
Post Office Box 1706
Conway, South Carolina 29526

BOOK 736 PAGE 360

INDEX

TO

MASTER DEED

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

ARTICLE	TITLE	PAGE
I	Horizontal Property Regime Created	4
II	General Description of Plan of Development	4
III	Legal Description	5
IV	Survey and Description of Improvements	5
V	Apartments, General Common Elements and Limited Common Elements	5
VI	Ownership of Apartments and Appurtenant Interest in Common Elements	6
VII	Restriction against Further Subdividing of Apartments and Separate Conveyance of Appurtenant Common Elements, Etc.	7
VIII	Regime Subject to Restrictions	8
IX	Perpetual Non-Exclusive Easement in Common Elements	8
X	Easement for Unintentional and Non-Negligent Encroachments	8
XI	Restraint upon Separation and Partition of Common Elements	8
XII	Percentage of Undivided Interest in Common Elements Appurtenant to Each Apartment	9
XIII	Residential Use Restriction Applicable to Apartments; Prohibition Against "Time-Sharing"	9
XIV	Use of Common Elements Subject to Rules of Association; Restrictions on Use of Lagoons	9
XV	Regime to be used for Lawful Purposes, Restriction against Nuisances, Etc.	10
XVI	Right to Entry into Apartments in Emergencies	10
XVII	Right of Entry for Maintenance of Common Elements	10
XVIII	Limitation upon Right of Co-Owners to Alter and Modify Apartments	10
XIX	Right of Association to Alter and Improve Common Elements and Assessment Therefor	11
XX	Maintenance and Repair by Co-Owners of Apartments	11
XXI	Maintenance and Repair of Common Elements by the Association	11
XXII	Personal Liability and Risk of Loss of Co-Owner of Apartment and Separate Insurance Coverage	12

ARTICLE	TITLE	PAGE
XXIII	Eminent Domain	12
XXIV	Insurance	13
XXV	Apportionment of Tax or Special Assessment if Levied and Assessed against the Regime as a Whole	13
XXVI	Amendment to Master Deed	14
XXVII	Remedies in Event of Default	14
XXVIII	Use or Acquisition of Interest in the Regime to Render User or Acquirer Subject to Provisions of Master Deed, Rules and Regulations	15
XXIX	Right of Developer to Representation on Board of Directors of Association	15
XXX	Annual Reports to be Provided to Lender	16
XXXI	Severability	16
XXXII	Master Deed Binding Upon Developer, Its Successors and Assigns, and Subsequent Co-Owners	16
XXXIII	Developer's Easements and Reservations	17
XXXIV	Definitions	17
XXXV	Miscellaneous	17
	EXHIBIT "A" -- Description of Real Property	19
	EXHIBIT "B" -- Apartment Description & Numbers	20
	EXHIBIT "C" -- Schedule of Percentage Interests	21
	EXHIBIT "D" -- Architect's Certificate	23
APPENDIX "A"	By-Laws of Tilghman Beach and Racquet Club Condominium Association, Inc.	24
APPENDIX "B"	Certificate of Incorporation of Tilghman Beach and Racquet Club Condominium Association, Inc.	40

726 362

MASTER DEED

for

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

****

I.

HORIZONTAL PROPERTY REGIME CREATED

SUMMEY BUILDING SYSTEMS, INC., a South Carolina corporation ("the Developer"), having its principal office at Myrtle Beach, Horry County, South Carolina, as the sole owner in fee simple of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands and buildings hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime to be known as Tilghman Beach and Racquet Club Horizontal Property Regime ("the Regime"), in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §27-31-10 et seq. (1976) ("the Act"). By the execution and recording of this Master Deed, the Developer further states that:

(1) The Developer proposes to create and does hereby create, with respect to the property described above, the Regime containing not less than one (1) phase nor more than two (2) phases to be governed by and to be subject to the provisions of this Master Deed and of the Act;

(2) The Regime, and all property and/or interest in property contained therein, shall be owned, occupied, used, conveyed, encumbered, leased, improved in phases, maintained and governed in accordance with the provisions of the Act and in accordance with the covenants, restrictions, encumbrances, and obligations set forth or incorporated by reference in this Master Deed, all of which shall be deemed to be covenants, restrictions, encumbrances and obligations running with the land.

In conformity with §27-31-30 and §27-31-100 of the Act, the Developer sets forth the following particulars with respect to the Regime:

II.

GENERAL DESCRIPTION OF PLAN OF DEVELOPMENT

The Developer intends to develop the property hereinafter described as a phased horizontal property regime containing not less than one (1) phase nor more than two (2) phases. The maximum number of Apartments in each phase shall be one hundred eight (108). The Developer hereby submits Phase I to the Regime. The Developer shall elect on or before December 31, 1982, whether to submit Phase II to the Regime. A chart showing the percentage interest in the common elements of each Apartment owner at each stage of development (if the Developer elects to proceed with Phase II) is attached hereto as Exhibit "C" and made a part hereof by reference.

BK 736 PG 353

36

III.

LEGAL DESCRIPTION

The land ("the Real Property") which is hereby submitted to the Regime is described as Phase I on Exhibit "A" attached hereto and made a part hereof by reference. The land comprising Phase II, which may be submitted to the Regime, is also described in said Exhibit "A" and shall be a part of the Real Property when submitted to the Regime. The Real Property as so described has an area set forth on said Exhibit "A".

IV.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Attached hereto at the time this Master Deed is filed for record and incorporated herein by reference as if set forth in full herein are one or more boundary surveys, an as-built survey (Phase I submitted and Phase II to be submitted) and site plan showing the location of all buildings and other improvements, a set of floor plans of the buildings which show graphically the dimensions, area and location of each Apartment therein and the dimensions, area, and location of the General Common Elements and Limited Common Elements affording access to each Apartment. Each Apartment is identified thereon by specific number and no Apartment bears the same designation as any other Apartment. Said surveys, site plan and set of floor plans (hereinafter collectively called "the Regime Plans") are recorded as a separate Horizontal Property Regime plat in the office of the Clerk of Court for Horry County in Plat Book I at Page 142. The buildings containing the Apartments have the areas set forth on Exhibit "B" attached hereto.

V.

APARTMENTS, GENERAL COMMON ELEMENTS

AND LIMITED COMMON ELEMENTS

The Regime consists of Apartments, General Common Elements and Limited Common Elements, as said terms are hereinafter defined.

Apartments, as the term is used herein, shall mean and comprise the separate and numbered Apartments which are designated in Exhibit "B" to this Master Deed. Each Unit is composed of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings, and building material enclosed within the following boundaries:

(a) The upper boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the ceiling of the Unit. 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 and each Co-owner shall be responsible for maintenance and repair of the following: (i) the doors (including screen doors) which lead into the Unit and which may be exclusively reserved to the use of a Unit, including the locks, knobs, handles, and other fixtures which are part of the doors; (ii) the windows, glasses, screens, frames, and ceilings which are part of the perimeter walls of the Unit; (iii) the plumbing, wiring, and electrical units which exclusively serve the Unit; (iv) the appliances, air conditioning and heating units, hot water heaters, lavatories, bath tubs, toilets, carpeting, floor coverings, the finished surfaces of ceilings and walls, insulation, and other improvements and furnishings which are within or serve the Unit when designated to the individual Co-owner; (v) all appurtenances which are integral and exclusive to the Unit, including but not limited to lamps attached to the exterior of the Unit, and water and sewer pipes exclusively serving the Unit.

Bk: 75 Pg: 264

General Common Elements means and includes:

(1) The Real Property (excluding the Limited Common Elements and the Apartments), including but not limited to the land on which the buildings containing the Apartments are constructed;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;

(3) The basements, flat roofs, yards and gardens, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, 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;

(6) Any elevators, garbage incinerators and, in general, all devices and installations existing for common use;

(7) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety, including but not necessarily limited to the following:

(a) The additional improvements designated as General Common Elements on Exhibit "B" attached hereto;

(b) All swimming pools, tennis courts and related and supporting facilities, all parking areas, roads, walkways, paths, trees, shrubs, yards, gardens, bodies of water, bridges, gazebos, and Regime entrance signs and lighting on the Real Property (outside of the Apartments);

(c) A non-exclusive easement and right-of-way for access, egress and ingress to and from the Regime and each Apartment and improvements contained therein across the public roads and streets of Ocean Drive Section, North Myrtle Beach, to and from U.S. Highway 17, and any other public streets or highways adjoining or abutting such private roads and streets of Ocean Drive Section of North Myrtle Beach;

Limited Common Elements means and includes:

(1) Those common elements which are agreed upon by all the Apartment 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, balconies, sanitary services common to the Apartments of a particular floor, and the like;

(2) The additional improvements designated as Limited Common Elements on Exhibit "B" attached hereto. All [illegible] and repair of Limited Common Elements rest with the owner(s) of the Apartment to which they abut, adjoin, or service.

The General Common Elements and the Limited Common Elements are hereinafter occasionally collectively referred to as "the Common Elements".

VI.

OWNERSHIP OF APARTMENTS AND APPURTENANT

INTEREST IN COMMON ELEMENTS

Once the Real Property and Common Elements are submitted to the Regime, an Apartment in the Regime may be individually conveyed and

7:6 365

encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other Apartments in the Regime of which it forms a part, and the corresponding individual titles and interests shall be recordable.

Any Apartment may be held and owned by more than one person as tenants in common or in any other recognized form of real property ownership, subject to the provisions of Article XIII hereof.

An Apartment owner shall have the exclusive ownership of his Apartment and shall have a common right to a share, with the other co-owners, in the Common Elements of the Regime, equivalent to the percentage representing the value of the individual Apartment, with relation to the value of the whole Regime. All unit voting rights, percentage of assessments, monthly or special and every other Apartment right or liability are based on this percentage. This percentage is set forth on Exhibit "C" attached hereto and made a part hereof by reference, shall have a permanent character, shall not be altered without the acquiescence of the co-owners representing all the Apartments of the Regime (subject, however, to the provisions of Article XI hereof), but will change (decrease) as additional phases may be submitted to the Regime as shown on Exhibit "C".

The basic value, (identified as the "Value for Statutory Purposes" on said Exhibit "C") which shall be fixed for the sole purpose of this Master Deed and irrespective of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

VII.

RESTRICTION AGAINST FURTHER SUBDIVIDING OF APARTMENTS AND SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS, ETC.

No Apartment may be divided or subdivided into a smaller Apartment or smaller Apartments than as described in Exhibit "B" attached hereto, nor shall any Apartment, or portion thereof, be added to or incorporated into any other Apartment. The undivided interest in the Common Elements declared to be an appurtenance to each Apartment shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Apartment, and the undivided interest in the Common Elements appurtenant to each Apartment shall be deemed conveyed, devised, encumbered, or otherwise included with the Apartment even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Apartment. Any conveyance, mortgage, or other instrument which purports to effect the conveyance, devise or encumbrance, or which purports to grant any right, interest or lien in, to, or upon, an Apartment, shall be null, void and of no effect insofar as the same purports to affect any interest in an Apartment and its appurtenant undivided interest in the Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Apartment. Any instrument conveying, devising, encumbering or otherwise dealing with any Apartment which describes said Apartment by the Apartment Number assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Apartment and its appurtenant undivided interest in the Common Elements. Nothing contained in this paragraph shall be construed as limiting or preventing ownership of any Apartment and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or any other recognized form of real property ownership.

BOOK 736 PAGE 386

VIII.

REGIME SUBJECT TO RESTRICTIONS

Each and every Apartment and the Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein, governing the use of said Apartment and the Common Elements, and setting forth the obligations and responsibilities incident to ownership of each Apartment and its appurtenant undivided interest in the Common Elements and said Apartments and the Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the Real Property and/or the improvements thereon.

IX.

PERPETUAL NON-EXCLUSIVE EASEMENT

IN COMMON ELEMENTS

The General Common Elements shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the co-owners of Apartments in the Regime for their use and the use of their immediate families, tenants, lessees, licensees, guests, and invitees, for all proper and normal purposes, for the furnishing of services and facilities for which the same are reasonably intended, and for the enjoyment of said co-owners of Apartments. Notwithstanding anything above provided in this article, Tilghman Beach and Racquet Club Condominium Association, Inc. (a South Carolina eleemosynary corporation, hereinafter called "the Association"), shall have the right to establish the rules and regulations pursuant to which the co-owner or co-owners of any Apartment may be entitled to the exclusive use of any parking space or spaces as well as any other Common Elements (whether General or Limited).

X.

EASEMENT FOR UNINTENTIONAL AND

NON-NEGLIGENT ENCROACHMENTS

In the event that any portion of the Common Elements now or hereafter encroaches upon any Apartment, or vice versa, or in the event that any portion of one Apartment now or hereafter encroaches upon another Apartment, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, does and shall exist.

XI.

RESTRAINT UPON SEPARATION AND PARTITION

OF COMMON ELEMENTS

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.

All the co-owners or the sole owner of the Regime may waive the Regime and regroup or merge the records of the individual Apartments with the Real Property, provided that the individual Apartments are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Subject to the other provisions of this Article XI, unless all of the first mortgagees (based upon one vote for each first mortgage owned), and

BOOK 736 PAGE 367

R-588

owners (other than the Developer) of the Apartments have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Regime;

(b) change the pro rata interest or obligations of any Apartment for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Apartment in the Common Elements;

(c) partition or subdivide any Apartment;

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Regime shall not be deemed a transfer within the meaning of this subparagraph (d).

XII.

PERCENTAGE OF UNDIVIDED INTEREST IN

COMMON ELEMENTS APPURTENANT TO EACH APARTMENT

The undivided interest in the Common Elements appurtenant to each Apartment is that percentage of undivided interest which is set forth and assigned to each Apartment in Exhibit "C" attached hereto and made a part hereof by reference.

XIII.

RESIDENTIAL USE RESTRICTION APPLICABLE TO APARTMENTS;

PROHIBITION AGAINST "TIME-SHARING"

Each Apartment is hereby restricted to residential use by the co-owner or co-owners thereof, their immediate families, guests, tenants, lessees, licensees and invitees; provided, however, the developer may retain title to and use of Apartment No. 160, to be utilized by the Developer, its successors or assigns, for a sales office, model, rental office, management office, or any and all related activities related to sale, resale, rental, and management of this designated unit. All draperies or other window coverings on a window facing the exterior of any Apartment and visible from any Common Element or public or private street or area shall be lined with a white lining with the white lining exposed to the exterior of the Apartment. No "For Sale" signs or the like shall be permitted on any Common Element or in any Apartment so as to be visible from any Common Element or public or private street or area. No Apartment shall be "time-shared", nor shall any Apartment be owned, used or operated under the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. §27-32-10 et seq. (1980 Supp.), as the same may be amended from time to time, nor shall any Apartment be owned, used or operated so as to constitute such Apartment as a "time-sharing unit" within the meaning of such statutory provisions.

XIV.

USE OF COMMON ELEMENTS SUBJECT

TO RULES OF ASSOCIATION; RESTRICTIONS ON USE OF LAGOONS

The use of the Common Elements by the co-owner or co-owners of the Apartments, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Directors of the Association.

Bk 736 Pg 389

365

XV.

REGIME TO BE USED FOR LAWFUL PURPOSES.

RESTRICTION AGAINST NUISANCES, ETC.

No immoral, improper, offensive or unlawful use shall be made of any Apartment or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Regime shall be observed. No co-owner of any Apartment shall permit or suffer any thing to be done or kept in his Apartment, or on the Common Elements, which will increase the rate of insurance on the Regime, or which will obstruct or interfere with the rights of other occupants of the building or annoy them by unreasonable noises, nor shall any such co-owner undertake any use or practice which shall create and constitute a nuisance to any other co-owner of an Apartment, or which interferes with the peaceful possession and proper use of any other Apartment or the Common Elements.

XVI.

RIGHT OF ENTRY INTO APARTMENTS IN EMERGENCIES

In case of any emergency originating in or threatening any Apartment, regardless of whether the co-owner is present at the time of such emergency, the Board of Directors of the Association or any other person or firm authorized by it, or the building superintendent or managing agent, shall have the right to enter such Apartment for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the co-owner of each Apartment if required by the Association, shall deposit under the control of the Association a key to such Apartment.

XVII.

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS

Whenever it is necessary to enter any Apartment for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements, the co-owner of each Apartment shall permit other co-owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Apartment, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVIII.

LIMITATION UPON RIGHT OF CO-OWNERS

TO ALTER AND MODIFY APARTMENTS

Any co-owner of an Apartment may make any modifications or alterations within his/her/their's Apartment without first obtaining the written consent of the majority of Apartment owners; however if the modification or alteration desired by the co-owner of any Apartment involves the removal of any permanent interior partition, the Association shall have the right to permit such removal so long as the portion sought to be removed is not a load-bearing partition, and so long as the removal of would in no manner affect or interfere with the providing of utility constituting Common Elements located therein. No co-owner shall enclose any balcony or deck abutting his Apartment to be used, or erect any improvements or changes to be made on the exterior of the building, including painting or other decoration, or the installation of electrical wiring, television antennae, machines or air conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of any portion of the building not within the walls of such Apartment, nor shall storm panels or awnings be affixed, without the written consent of the Association being first obtained.

7.3[illegible] .59

XIX.

RIGHT OF ASSOCIATION TO ALTER AND IMPROVE

COMMON ELEMENTS AND ASSESSMENT THEREFOR

The Association shall have the right to make or cause to be made such alterations, modifications and improvements to the Common Elements, provided such alterations, modifications or improvements are first approved in writing by the Board of Directors of the Association; provided further, that such alterations, modifications or improvements do not adversely affect the value of the Common Elements or Apartments in the Regime; and the cost of such alterations, modifications or improvements shall be assessed as common expenses and collected from the co-owners of all Apartments according to their percentage of ownership of the Common Elements; provided, however, that the cost of any improvement contemplated under this section may not exceed an amount equal to ten (10%) percent of the Association's budget for the prior year, without approval of fifty-one (51%) percent of the Association ownership.

XX.

MAINTENANCE AND REPAIR BY CO-OWNERS OF APARTMENTS

Every co-owner must perform promptly all maintenance and repair work within his Apartment, to include any plumbing or electrical connections providing service to such Apartment, which, if omitted, could adversely affect the Regime in its entirety or in a part belonging to other co-owners, being expressly responsible for the damages and liability which his failure to do so may engender. The co-owner of each Apartment shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Apartment and which may now or hereafter be situated in his Apartment. Such co-owner shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces, painting, decorating and furnishings, and all other accessories which such co-owner may desire to place or maintain in his Apartment. Whenever the maintenance, repair and replacement of any items for which the co-owner of an Apartment is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by Association, the proceeds of the insurance received by Association, or the insurance trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of any insurance maintained by the co-owner of such Apartment, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement received by such co-owner on account of any insurance maintained by the co-owner of such Apartment. The floor and interior walls and windows or screens of any balcony or deck attached to his Apartment shall be maintained by the co-owner at his expense. Reference is made to S.C. Code Ann. §27-31-250 (1976), which code section is controlling of insurance proceeds when said code section is applicable by its terms.

XXI.

MAINTENANCE AND REPAIR OF

COMMON ELEMENTS BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility services to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common

Elements, the Association shall, at its expense, repair such incidental damage.

XXII.

PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER OF APARTMENT AND SEPARATE INSURANCE COVERAGE

The co-owner of each Apartment may, at such co-owner's own expense, obtain insurance coverage for loss of or damage to any furniture, appliances, plumbing, fixtures, furnishings, carpet, floor, and ceiling, and wall coverings, personal effects and other personal property belonging to such co-owner and may, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while within such co-owner's Apartment or upon the Common Elements. All such insurance obtained by the co-owner of each Apartment shall, where available, provide that the insurer waives its right of subrogation as to any claims against other co-owners of Apartments, the Association, and the respective servants, agents and guests of said other co-owners and Association. Risk of loss of or damage to any furniture, appliances, furnishings, personal effects and other personal property (other than such furniture, appliances, furnishings and personal property constituting a portion of the Common Elements) belonging to or carried on the person of the co-owner located in or upon the Common Elements shall be borne by the co-owner of each such Apartment. All furniture, appliances, furnishings, carpet, floor, ceiling, and wall coverings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all co-owners of all Apartments shall be covered by such insurance as shall be maintained in force and effect by Association as hereinafter provided. The co-owner of an Apartment shall have no personal liability for any damages caused by the Association or in connection with the use of the Common Elements. The co-owner of an Apartment shall be liable for injuries or damage resulting from an accident in his own Apartment, to the same extent and degree that the co-owner of a house would be liable for an accident occurring within the house.

XXIII.

EMINENT DOMAIN

(1) Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the Common Elements or one or more Apartments or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board of Directors of the Association and each Apartment owner shall be entitled to notice thereof and the Board of Directors shall, and the Apartment owners at their respective expense may, participate in the proceedings incident thereto.

(2) With respect to Common Elements, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Apartment owner's interest therein. After such determination, each Apartment owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest in the Common Elements and facilities. This provision does not prohibit a majority of Apartment owners from authorizing the Board of Directors to use such damages or awards for replacing or restoring the Common Elements so taken on the remaining land, or on other acquired land, provided that this Master Deed and Regime Plans are duly amended.

(3) With respect to one or more Apartments or portions thereof, the damages or awards for such taking shall be determined in proceedings from insurance on account of damage or destruction and pursuant to the By-Laws of the Association, and shall be deposited with the Insurance Trustee as defined therein. Even though the damages or awards may be payable to one or more Apartment owners, the Apartment owners shall deposit the damages or awards with the Insurance Trustee, and in the event of failure to do so, at the option of the Board of Directors, either a special assessment shall be

BK 736 PG 371

made against a defaulting Apartment owner on his unit at the request of the award or the amount of such award shall be set off against the sums hereafter made payable to such Apartment owner. The proceeds of the damages or awards shall be distributed or used in the manner provided for in the By-Laws of the Association and the owners of affected Apartments shall have the rights provided in the By-Laws of the Association for insurance proceeds provided the damaged Apartments or parts thereof are restored from the Regime and from the provisions of the Act as may be allowed by applicable law. If the property is not removed from the Regime and from the provisions of the Act, and one or more Apartments are taken, in whole or in part, the taking shall have the following effects:

(a) If the taking reduces the size of an Apartment and the remaining portion of the unit may be made tenantable, the Apartment shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the Apartment. In the event of any surplus in the award the balance shall be distributed to the mortgagee (if any) of the Apartment to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Apartment owner. If there is a balance of the award distributed to the Apartment owner or a mortgagee, the Apartment owner's percentage of undivided interest in the Common Elements and facilities shall be equitably reduced to the extent allowed by law. This reduction shall be done by reducing such interest in the proportion by which the floor area of the Apartment is reduced by the taking, and then recomputing the percentages of undivided interest of all Apartment owners in the Common Elements.

(b) If the taking destroys or so reduces the size of an Apartment that it cannot be made tenantable, the award shall be paid to the mortgagee (if any) of the Apartment to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Apartment owner, and the remainder of the Apartment shall become a part of the Common Elements and shall be placed in condition for use by all Apartment owners in the manner approved by the Board of Directors. The percentages of undivided interests in the Common Elements appurtenant to the Apartment that continue as part of the property shall, to the extent allowed by law, be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Apartment owners.

(c) Changes in Apartments, in the Common Elements, and in the ownership of the Common Elements that are affected by the taking referred to in this Article XXIII shall be evidenced by an appropriate amendment to this Master Deed and Regime Plans, which must be approved by a majority of the owners of the Apartments, together with the unit mortgages if any.

XXIV.

INSURANCE

The Association shall insure the Regime against risks, as is set forth in the By-Laws of the Association attached hereto (as the same may be amended from time to time), without prejudice to the right of each co-owner to insure his Apartment on his own account or for his own benefit.

XXV.

APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED AND ASSESSED AGAINST THE REGIME AS A WHOLE

In the event that any taxing authority having jurisdiction over the Regime shall levy or assess any tax or special assessment against the Regime as a whole, as opposed to levying and assessing such tax or special assessment against each Apartment and its appurtenant undivided interest in the Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a common expense by the Association, and any taxes or special assessments which are to be levied shall be included, wherever possible, in the estimated annual budget of the

M: 735 · 372

Association, or shall be separately levied and collected as an assessment by the Association, against all of the co-owners of Apartments and said Apartments if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by Association in the event that such tax or special assessment is levied against the Regime, as a whole, instead of against each separate Apartment and its appurtenant undivided interest in the Common Elements shall be apportioned among the co-owners of all Apartments so that the amount of such tax or special assessment so paid or to be paid by Association and attributable to and to be paid by the co-owner or co-owners of each Apartment shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in the Common Elements appurtenant to each Apartment bears to the total undivided interest in the Common Elements appurtenant to all Apartments. In the event that any tax or special assessment shall be levied against the Regime in its entirety, without apportionment by the taxing authority to the Apartments and appurtenant undivided interests in the Common Elements, then the assessment by Association, which shall include the proportionate share of such tax or special assessment attributable to each Apartment and its appurtenant undivided interest in the Common Elements, shall separately specify and identify the amount of such assessment attributable to such tax or special assessments, and the amount of such tax or special assessment so designated shall be and constitute a lien prior to every other claim, save lien claims for taxes, state or federal, and claims of prior mortgage holders, upon any Apartment and its appurtenant undivided interest in the Common Elements to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Apartment and its appurtenant undivided interest in the Common Elements.

XXVI.

AMENDMENT OF MASTER DEED

Subject to the provisions of Article XI of this Master Deed and subject to any applicable laws requiring a greater majority, neither this Master Deed nor any of its provisions shall be revoked or amended without the approval of the co-owners owning at least sixty-six per cent (66%) of the Apartments and at least sixty-six per cent (66%) of the total interest in the Common Elements and the record holders of first mortgages affecting at least sixty-six per cent (66%) of the Apartments and at least sixty-six per cent (66%) of the total interest in the Common Elements, except that the system of administration as set forth in the Charter and By-Laws of the Association may be amended and modified from time to time in accordance with the provisions of the Act and other applicable law, the Charter, and By-Laws of the Association. Any such amendment or revocation shall be executed and subscribed with the same formalities required in South Carolina for the making of deeds, and recorded in the public records of Horry County. Scrivener's errors, upon affidavit of counsel preparing this Master Deed, may be corrected by filing of such affidavit, attached to any such amendment.

XXVII.

REMEDIES IN EVENT OF DEFAULT

The co-owner or co-owners of each Apartment shall be governed by and shall comply with the provisions of this Master Deed, and the Charter and/or the By-Laws of the Association and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. The following described defaults by the co-owner or co-owners of any Apartment shall entitle the Association or the co-owner or co-owners of other Apartment or Apartments to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, or its rules and regulations, shall be grounds for relief which may include, but not be limited to, an action to recover sums due for damages, injuctive relief, foreclosure of lien or any combination thereof and

which relief may be sought by Association, or, if appropriate, by an aggrieved co-owner of an Apartment, or both.

B. The co-owner or co-owners of each Apartment shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of any such alleged default by the co-owner of any Apartment, the Association, if successful, shall be entitled to recover against the Apartment and have a lien for the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the co-owner of any Apartment be entitled to such attorney's fees.

D. The failure of the Association or of the co-owner of an Apartment to enforce any right, provision, covenant, or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of the Association or of the co-owner of an Apartment to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to Association or the co-owner or co-owners of an Apartment pursuant to any terms, provisions, covenants, or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies, or privileges as may be available to such party at law or in equity.

F. The failure of the Developer or of any mortgagee to enforce any right, privilege, covenant or condition which may be granted to them, or either of them, by this Master Deed or other above mentioned document shall not constitute waiver of the right of either of said parties to thereafter enforce such right, provision, covenant or condition in the future.

XXVIII.

USE OR ACQUISITION OF INTEREST IN THE REGIME TO RENDER USER OR ACQUIRER SUBJECT TO PROVISIONS OF MASTER DEED, RULES AND REGULATIONS

All present or future co-owners, tenants, or any other person who might use the facilities of the Regime in any manner, are subject to the provisions of this Master Deed and all documents appurtenant hereto and incorporated herewith, and the mere acquisition or rental of any Apartment, or the mere act of occupancy of any Apartment, shall signify: (1) that the provisions of this Master Deed are accepted and ratified in all respects; and (2) that the owner(s) of such Apartment acquiesces in the decreasing percentage set forth in Article VI and Exhibit "C" of this Master Deed.

XXIX.

RIGHT OF DEVELOPER TO REPRESENTATION ON BOARD OF DIRECTORS OF ASSOCIATION

So long as the Developer is the co-owner of Five (5) or more Apartments in the Regime, the said Developer shall have the right to designate and select all of the persons who shall serve as members of each Board of Directors of the Association; and so long as the Developer is the

7.56 · · 37-1

3,44

co-owner of at least One (1) but not more than Four (4) Apartments, the Developer shall have the right to designate and select a majority of the persons who shall serve as a member of each Board of Directors of the Association. Whenever the Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association the manner in which such person or persons shall be designated shall be as provided in the Charter, and/or By-Laws of the Association, and the Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by the Developer need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Developer to designate directors shall terminate on December 31, 1984.

Any representative of the Developer serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote upon any management contract or other matter between Developer and Association where the Developer may have a pecuniary or other interest. Similarly, Developer as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between the Developer and the Association where the Developer may have a pecuniary or other interest.

XXX.

ANNUAL REPORTS TO BE PROVIDED TO LENDER

So long as any lender is the co-owner or holder of mortgages encumbering five (5) or more Apartments in the Regime, the Association shall furnish said lender with at least one copy of the annual financial statement and report of the Association audited satisfactorily to such lender and setting forth such details as the said lender may reasonably require, including a detailed statement of annual carrying charges or income collected, and operating expenses, such financial statement and report to be furnished upon written request of such lender(s) within ninety (90) days following the end of each fiscal year.

Such statement shall be prepared in accordance with generally accepted accounting principles and shall contain the certificate of a Certified Public Accountant to that effect. Further, the accountant or accounting firm shall include as a special item(s) any information to which a reasonable man would attach importance in the management of his own financial affairs, should said information not appear readily from the face of the statement.

XXXI.

SEVERABILITY

In the event that any of the terms, provisions or covenants of this Master Deed are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

XXXII.

MASTER DEED BINDING UPON DEVELOPER, ITS SUCCESSORS

AND ASSIGNS, AND SUBSEQUENT CO-OWNERS

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Apartment and its appurtenant undivided interest in the Common Elements and this Master Deed shall be binding upon the Developer, its successors and assigns, and upon all

parties who may subsequently become co-owners of Apartments in the Regime, and their respective heirs, legal representatives, successors and assigns.

XXXIII.

DEVELOPER'S EASEMENTS AND RESERVATIONS

Developer, its successors and assigns, shall have the right of ingress and egress over, upon, and across the Common Elements, and/or any phases which may now or hereafter be submitted to the Regime in accordance with the provisions of this Master Deed, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to construction, development and sales of the Apartments and operation of the Apartments and Common Elements, the Regime and the overall development of the Property of which the Regime is a part. Developer, its successors and assigns, shall retain the right to use the sales office and any model Apartments and the Common Elements in connection therewith during the period of development and sale of the Regime, including additional phases of development.

Developer also reserves unto itself, its successors and assigns, the right to submit additional phases to the Regime in accordance with this Master Deed and applicable law.

Developer also reserves unto itself, its successors and assigns, a perpetual, non-exclusive easement across Phase I of the Regime for access, egress, ingress, utilities, drainage and all other purposes reasonably necessary and/or appropriate (in the Developer's sole discretion) for the development of and construction of improvements upon the land described as Phase II on Exhibit "A" of the Master Deed, whether or not the Developer elects to submit said Phase II to the Regime.

At the time of submission of Phase II to the Regime, the Developer shall be deemed to have reserved to itself and its successors and assigns an identical easement across the phase so submitted for the benefit of the remaining phase or parcel, whether or not so stated in the instrument of submittal.

XXXIV.

DEFINITIONS

Unless the context requires otherwise, the terms used in this Master Deed and the Exhibits attached hereto shall have the meanings contained in S.C. Code Ann. §27-31-20 (1976) and in the remainder of the Act.

XXXV.

MISCELLANEOUS

Attached hereto as Exhibit "D" and made a part hereof by reference is the Architect's Certificate required by S.C. Code Ann. § 27-31-110 (1976).

Attached hereto as an Appendix and made a part hereof by reference is a copy of the By-Laws of the Association, as required by S.C. Code Ann. §27-31-150 (1976).

IN WITNESS WHEREOF, the Developer has executed this Master Deed this 29th day of January, 1992.

Signed, sealed and delivered
in the presence of:

Lynette Rogers

Sharon Smiley

SUMMEY BUILDING SYSTEMS, INC.
(SEAL)

By: _____
David W. Hoyle, President

17

BOOK 726 PAGE 316

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

Personally appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw Sunney Building Systems, Inc. by David W. Hoyle, its President, sign, seal and deliver the within Master Deed and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Lynett Rogers

SWORN to and subscribed before me this 28th day of January, 1982.

Notary Public for South Carolina (L.S.)

My Commission expires: 7-14-82

BOOK 736 PAGE 377

311

EXHIBIT "A"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

DESCRIPTION OF REAL PROPERTY

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which Is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summay Building Systems, Inc. by deed of Charles T. Tilghman, M. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1982, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

BOOK 726 PAGE 378

3,18

EXHIBIT "B"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Apartment Description and Numbers

Exhibit "B" incorporates into the Master Deed a boundary survey, an as-built survey and site plan, showing the location of the buildings and other improvements, and a set of floor plans of the buildings which show graphically the dimensions, area, and location of the Common Elements appurtenant to and affording access to each Apartment.

The aforementioned survey and plans (hereinafter collectively called "the Regime Plans") were prepared by Bartholomew Associates, Architects, and are recorded in the Office of the Clerk of Court for Horry County in Condominium Plat Book 1 at Page 142, and are hereby incorporated herein and made a part hereof by reference.

The Regime Plans and the as-built survey show that the 108 Apartments in Phase I of the Regime are contained in 5 buildings. The Regime Plans, filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 1 at Page 142 show, in detail, the individual units, together with their specifications and dimensions, and also show the location of the swimming pool and related facilities.

All kitchen and other electrical appliances, air-conditioning, wherever installed, and heating units and hot water heaters located within each Apartment are neither General Common Elements nor Limited Common Elements, but are the personal property of the Apartment owners.

Included in the General Common Elements are asphalt parking areas, concrete and wood walks, a pool, wood and concrete sundeck (if any) around the pool, and landscaping. Specific designations of General Common Elements contained herein are for clarification only and are to be read in conjunction with the definitions of such elements contained elsewhere in the Master Deed and also in conjunction with the Regime Plans.

Included in the Limited Common Elements are decks, exclusive of individual unit decks and porches, exterior stairways, exterior fences, and entry courts, exterior storage areas, and permanent exterior trash collection areas. Skylights, where applicable, are Limited Common Elements, but responsibility for maintenance and repair of skylights is upon unit owners who/which have skylights.

Bk 7.16 Pg 329

3'17

EXHIBIT "C"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Schedule of Percentage of Undivided Interest in the Common Elements Appurtenant to Apartments in Tilghman Beach and Racquet Club Horizontal Property Regime (Phase I), pursuant to S.C. Code Ann. §27-31-60 (1976):

Apartment Number	Value for Stautory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Subdadion to the Regime Phase I	Phase II
Building 1			
121	$90,000.00	0.9259	0.4695
221	90,000.00	0.9259	0.4695
321	90,000.00	0.9259	0.4695
122	90,000.00	0.9259	0.4695
222	90,000.00	0.9259	0.4695
322	90,000.00	0.9259	0.4695
123	90,000.00	0.9259	0.4695
223	90,000.00	0.9259	0.4695
323	90,000.00	0.9259	0.4695
124	90,000.00	0.9259	0.4695
224	90,000.00	0.9259	0.4695
324	90,000.00	0.9259	0.4695
125	90,000.00	0.9259	0.4695
225	90,000.00	0.9259	0.4695
325	90,000.00	0.9259	0.4695
126	90,000.00	0.9259	0.4695
226	90,000.00	0.9259	0.4695
326	90,000.00	0.9259	0.4695
127	90,000.00	0.9259	0.4695
227	90,000.00	0.9259	0.4695
327	90,000.00	0.9259	0.4695
128	90,000.00	0.9259	0.4695
228	90,000.00	0.9259	0.4695
328	90,000.00	0.9259	0.4695
Building 2			
129	90,000.00	0.9259	0.4695
229	90,000.00	0.9259	0.4695
329	90,000.00	0.9259	0.4695
130	90,000.00	0.9259	0.4695
230	90,000.00	0.9259	0.4695
330	90,000.00	0.9259	0.4695
131	90,000.00	0.9259	0.4695
231	90,000.00	0.9259	0.4695
331	90,000.00	0.9259	0.4695
132	90,000.00	0.9259	0.4695
232	90,000.00	0.9259	0.4695
332	90,000.00	0.9259	0.4695
133	90,000.00	0.9259	0.4695
233	90,000.00	0.9259	0.4695
333	90,000.00	0.9259	0.4695
134	90,000.00	0.9259	0.4695
234	90,000.00	0.9259	0.4695
334	90,000.00	0.9259	0.4695
Building 4			
115	90,000.00	0.9259	0.4695
215	90,000.00	0.9259	0.4695
315	90,000.00	0.9259	0.4695
116	90,000.00	0.9259	0.4695
216	90,000.00	0.9259	0.4695
316	90,000.00	0.9259	0.4695
117	90,000.00	0.9259	0.4695

736 — 380

Apartment Number	Value for Statutory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Subdivision to the Regime	
		Phase I	Phase II
Building 4 (cont'd)			
217	$90,000.00	0.9259	0.4695
317	90,000.00	0.9259	0.4695
118	90,000.00	0.9259	0.4695
218	90,000.00	0.9259	0.4695
318	90,000.00	0.9259	0.4695
119	90,000.00	0.9259	0.4695
219	90,000.00	0.9259	0.4695
319	90,000.00	0.9259	0.4695
120	90,000.00	0.9259	0.4695
220	90,000.00	0.9259	0.4695
320	90,000.00	0.9259	0.4695
Building 10			
155	90,000.00	0.9259	0.4695
255	90,000.00	0.9259	0.4695
355	90,000.00	0.9259	0.4695
156	90,000.00	0.9259	0.4695
256	90,000.00	0.9259	0.4695
356	90,000.00	0.9259	0.4695
157	90,000.00	0.9259	0.4695
257	90,000.00	0.9259	0.4695
357	90,000.00	0.9259	0.4695
158	90,000.00	0.9259	0.4695
258	90,000.00	0.9259	0.4695
358	90,000.00	0.9259	0.4695
159	90,000.00	0.9259	0.4695
259	90,000.00	0.9259	0.4695
359	90,000.00	0.9259	0.4695
160	90,000.00	0.9259	0.4695
260	90,000.00	0.9259	0.4695
360	90,000.00	0.9259	0.4695
Building 11			
145	90,000.00	0.9259	0.4695
245	90,000.00	0.9259	0.4695
345	90,000.00	0.9259	0.4695
146	90,000.00	0.9259	0.4695
246	90,000.00	0.9259	0.4695
346	90,000.00	0.9259	0.4695
147	90,000.00	0.9259	0.4695
247	90,000.00	0.9259	0.4695
347	90,000.00	0.9259	0.4695
148	90,000.00	0.9259	0.4695
248	$90,000.00	0.9259	0.4695
348	90,000.00	0.9259	0.4695
149	90,000.00	0.9259	0.4695
249	90,000.00	0.9259	0.4695
349	90,000.00	0.9259	0.4695
150	90,000.00	0.9259	0.4695
250	90,000.00	0.9259	0.4695
350	90,000.00	0.9259	0.4695
151	90,000.00	0.9259	0.4695
251	90,000.00	0.9259	0.4695
351	90,000.00	0.9259	0.4695
152	90,000.00	0.9259	0.4695
252	90,000.00	0.9259	0.4695
352	90,000.00	0.9259	0.4695
153	90,000.00	0.9259	0.4695
253	90,000.00	0.9259	0.4695
353	90,000.00	0.9259	0.4695
154	90,000.00	0.9259	0.4695
254	90,000.00	0.9259	0.4695
354	90,000.00	0.9259	0.4695

DEC 7.6 ... 781

EXHIBIT "D"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Architect's Certificate

Pursuant to S.C. Code Ann. §27-31-110 (1976), I certify that the Regime Plans described in the attached Exhibit "B" of Tilghman Beach and Racquet Club Horizontal Property Regime (situate upon real estate described in the attached Exhibit "A"), fully depict (within reasonable construction tolerances) the layout, location, number identification, and dimensions of the buildings and improvements contained in Phase I of the Regime, said plans being dated April 24, 1981.

Norman E. Bartholomew, A.I.A.
Bartholomew Associates, Architects
S. C. License No. 2274

Myrtle Beach, South Carolina

January 29, 1982.

STATE OF SOUTH CAROLINA
NORMAN E. BARTHOLOMEW
RALEIGH, N.C.
2274
REGISTERED ARCHITECT

BOOK 736 PAGE 382

APPENDIX "A"

BY-LAWS

OF

TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

1. INTRODUCTION

These are the By-Laws of Tilghman Beach and Racquet Club Condominium Association, Inc., an eleemosynary corporation organized and existing under the laws of the State of South Carolina (hereinafter called "the Association"), which has been organized for the purpose of administering Tilghman Beach and Racquet Club Horizontal Property Regime, a horizontal property regime established pursuant to S.C. Code Ann. §§27-31-10 et seq. (1976) (hereinafter called "the Regime"). The Regime is identified by the name Tilghman Beach and Racquet Club and is located upon the real property in Horry County, South Carolina, described on Exhibit "A" attached hereto and made a part hereof by reference.

(a) The provisions of these By-Laws are applicable to the Regime, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Charter of the Association and in the Master Deed of the Regime (hereinafter "the Master Deed") which has been recorded herewith in the public records of Horry County, South Carolina, at the time portions of said property and the improvements now or hereafter situate thereon were submitted to the plan of condominium ownership. The terms and provisions of said Charter and Master Deed shall be controlling wherever the same may be in conflict with these By-Laws.

(b) All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the Regime or any of the facilities thereof in any manner, are subject to the regulations set forth in these By-Laws and in said Charter and Master Deed (and any amendments thereto).

(c) The office of the Association shall be 210 North Ocean Boulevard, North Myrtle Beach, South Carolina, or such other place as the Board of Directors of the Association may designate from time to time.

(d) The fiscal year of the Association shall be the calendar year.

(e) The seal of the Association shall bear the name of the Association and the word "South Carolina".

(f) There shall be no dividends or profits paid to any member nor shall any part of the income of the Association be distributed to the Board of Directors or officers. In the event there are any [illegible] disbursements [illegible] applied against [illegible] in a reasonable amount [illegible] rendered, any excess [illegible] purpose and may be paid [illegible] agreed upon [illegible] performance of duties and [illegible] dissolution of said Association, the Association may [illegible] members as in proportion [illegible] such payment, benefit or distribution shall be deemed to be [illegible] distribution of income.

This Association shall issue no shares of stock of any kind or nature whatsoever. Membership in the Association and the number of votes as well as the number of members shall be based upon such factors as are provided in the Master Deed of the Regime and the By-Laws of the Association and the voting rights of the owners of interests in said [illegible]

BOOK 726 PAGE 383

shall be as set forth in the Master Deed of the Regime and/or the By-Laws of the Association.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

(a) All persons who are owners of Apartments in the Regime shall be members of this Association. Such membership shall automatically terminate when such person is no longer the owner of such Apartment and membership shall be limited to such owners.

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

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

(d) Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of the meeting for which their use is sought.

(e) Approval or disapproval of an Apartment co-owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such co-owner if in an Association meeting.

(f) Except where otherwise required under the provisions of the Charter of the Association, these By-Laws, the Master Deed, or where the same may otherwise be required by law, the affirmative vote of the co-owners of fifty-one (51%) per cent of the Apartments represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(a) The annual members' meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, at a time to be designated on the first Saturday in March of each year for the purpose of electing directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Saturday. The first organizational meeting shall be held in 1982.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from the members of the Association representing a majority of Apartment ownership.

(c) Notice of all members' meetings, regular or special, shall be given by the President, Vice President or Secretary of the Association, or other officers of the Association in the absence of said persons, to each member, unless waived in writing, as hereinafter provided, which notice shall state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than ten (10) nor more than sixty (60) days prior to the date set for the meeting, and notice shall be mailed or presented personally to each member within such time period. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed properly given when deposited in the United States mails addressed to the member at his post office address as it appears on the records of the Association, the postage thereon prepaid. Proof of

7.08 384

such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, whenever the latter percentage of attendance may be required as set forth in the Charter, these By-Laws or the Master Deed, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.

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

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

i) Calling of the roll and certifying proxies
ii) Proof of notice of meeting or waiver of notice
iii) Reading of minutes
iv) Reports of officers
v) Reports of committees
vi) Appointment by chairman of inspectors of election
vii) Election of directors
viii) Unfinished business
ix) New business
x) Adjournment

4. BOARD OF DIRECTORS

(a) The first Board of Directors of the Association and succeeding Boards of Directors, shall consist of seven (7) persons, four (4) serving for two (2) years, and three (3) serving for one (1) year. At least a majority of the Board of Directors shall be members of the Association, or shall be authorized representatives, officers, or employees of a corporate member of the Association. The first Board of Directors of the Association shall be comprised of the four (4) persons designated to act and serve by the Association President, which President is named in the Charter, which said persons shall serve until their successors are elected at the first meeting of the members of the Association called after Phase I of the property identified herein have been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Horry County, South Carolina. Should any member of said first Board of Directors be unable to serve for any reason, a majority of the remaining members of the Board of Directors shall have the right to select and designate a party to act and serve as a director for the unexpired term of said director who is unable to serve. So long as Sunrise Building Systems, Inc., hereinafter referred to as the "Developer", is the owner of five (5) or more Apartments in the Regime, the Developer shall have the right to designate and select all of the persons who shall serve as members of each Board of Directors of the Association; and so long as the Developer is the owner of at least two, but not more than four (4) Apartments, the Developer shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association. At the power of the Developer to designate directors as above referred to shall terminate on December 31, 1982. The Developer has heretofore (in the Charter of the Association) designated the initial Board of Directors and Officers of the Association. Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina corporations for profit.

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

1) The Developer, as Sponsor of the Regime, shall at the beginning of the election of the Board of Directors, designate and select that number of the members of the Board of Directors which it should be entitled to designate and select in accordance with the provisions of these By-Laws,

R-606

and upon such designation and selection by the Developer by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by the Developer shall be deemed and considered for all purposes directors of the Association, and shall thereforth perform the offices and duties of such directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws.

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

iii) Vacancies in the Board of Directors shall be filled for the balance of the unexpired term of the Director(s) replaced by the remaining directors, except that should any vacancy in the Board of Directors be created in any directorship previously filled by any person designated and selected by the Developer, such vacancy shall be filled by the Developer designating and selecting, by written instrument delivered to any officer of the Association, the successor director to fill the vacated directorship for the unexpired term thereof.

iv) At the first annual meeting of the members held after Phase I of the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Horry County, South Carolina, the term of office of the four (4) directors receiving the highest plurality of votes shall be established at two (2) years, and the term of office of the other three (3) directors shall be established at one year. Thereafter, as many directors of the Association shall be elected at the annual meeting as there are regular terms of office of directors expiring at such time, and the term of the directors so elected at the annual meeting of the members each year shall be for two (2) years expiring at the second annual meeting following their election, and thereafter until their successors are duly elected and qualified or until removed in the manner elsewhere provided or as may be provided by law for the removal of directors of South Carolina corporations for profit. If at the time of the first annual meeting, the Developer is the co-owner of at least one (1), but not more than four (4) Apartments, then the Developer shall have the right to designate and select two (2) directors whose term of office shall be established at two (2) years, and one director whose term of office shall be established at one (1) year.

v) In the election of directors, there shall be appurtenant to each Apartment as many votes for directors as there are directors to be elected (regardless of the percentage interest in common elements appurtenant to such Apartment); provided, however, that no member or co-owner of any Apartment may cast more than one vote for any person nominated as director, it being the intent hereof that voting for directors shall be non-cumulative.

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

(c) The organizational meeting of the newly elected Board of Directors shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which it

BOOK 736 PAGE 088

was elected, and no further notice of the organization meeting shall be necessary provided a quorum shall be present.

(d) Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegram, at least three (3) days prior to the day named for such meeting, unless notice is waived.

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

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

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

(h) The presiding officer of directors' meetings shall be the President of the Association. In the absence of the President, the directors present shall designate one of their number to preside.

(i) Directors will serve without compensation, save reimbursement for out-of-pocket expenses incurred in the ordinary conduct of Association affairs.

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

(i) To prepare a budget, make, levy and collect assessments against members and members' Apartments to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

(ii) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the general and limited elements, services and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members;

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

(iv) To make and amend regulations governing the use of the property, real and personal, in the Regime so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Master Deed;

(v) To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Apartments in the Regime, as may be necessary or convenient in the operation and management of the Regime, and in accomplishing the purposes set forth in the Master Deed; provided, however, that any agreement for professional management of the Regime, or any other contract providing for services of the Developer, may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice;

(vi) Subject to the provisions of subparagraph (v) above, to contract for the management of the common areas and facilities in the Regime and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Master Deed to have approval of the Board of Directors or membership of the Association;

(vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the Master Deed and the regulations hereinafter promulgated governing use of the property in the Regime;

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

(ix) To carry insurance for the protection of the Regime, the members of the Association, and the Association against casualty, liability and other risks;

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

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

5. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS

(a) Notwithstanding anything contained in these By-Laws to the contrary any meeting of members or directors may be held at any place within or without the State of South Carolina.

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

6. OFFICERS

(a) The executive officers of the Association shall be the President and Secretary, who shall also be directors; a Treasurer; and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. No person may hold two (2) or more offices. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

BOOK 736 PAGE 388

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

(c) Any Vice President, unless the majority may select a presiding officer, shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

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

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

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

7. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Master Deed shall be supplemented by the following provisions:

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

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

(i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of Common Elements, landscaping, street and walkways, office expense, swimming pool, utility services, casualty insurance, liability insurance, administration and reserves (operating and replacement); and

(ii) Proposed assessments against each member. Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 1st of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each member concerned. Delivery of a copy of any budget or amended budget or assessment to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to at any time in its sole discretion levy an

Book 7.96 Page 389

additional assessments in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

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

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

(e) An audit of the accounts of the Association shall be made annually by a certified public accountant and a copy of the report shall be furnished to each member not later than April 1st of the year following the year for which the report is made.

(f) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

8. PARLIAMENTARY RULES

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

9. AMENDMENTS TO BY-LAWS

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

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

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

(c) In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than fifty-one per cent (51%) of the voting interests in the Regime (subject to any applicable long term lease provisions). Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of Berkeley County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members.

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the

BK 736 PG 390

Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

(n) Notwithstanding the foregoing provisions of this Article 9, no amendment to these By-Laws which shall abridge, amend or alter the right of the Developer to designate and select members of each Board of Directors of the Association, as provided in Article 4 hereof, may be adopted or become effective without the prior written consent of the Developer. Neither will any right of any Apartment mortgagee be affected with the express written consent of said mortgagee(s).

10. INSURANCE

Section 1. Insurance Required. The Board of Directors shall obtain and maintain, to the extent available, at least the following insurance:

A. Hazard Insurance. The Association shall insure all Apartments and all Common Elements against floods and against all hazards and risks normally covered by a standard hazard policy, including fire and lighting, the hazards and risks covered by "extended coverage", and vandalism and malicious mischief. All Apartments and all Common Elements shall be insured for the full replacement cost thereof (without deduction or allowance for depreciation), and the policy of insurance shall have a full replacement cost rider. Such insurance shall cover only the Apartments and the Common Elements. The hazard insurance obtained by the Association may provide that an amount not to exceed one thousand dollars ($1,000.00) shall be deductible from any indemnity payable on account of a single loss, but any such deductible portion shall be borne by the Association as a common expense, regardless of the number of co-owners or Apartments directly affected by the loss. The hazard insurance obtained by the Association shall provide coverage for common expenses with respect to the Apartments and Common Elements during any period of repair or reconstruction.

B. Liability Insurance. The Association shall also obtain premises liability insurance on all Apartments and Common Elements and the Association providing for a single-limit indemnity of not less than one million dollars ($1,000,000.00) and covering bodily and personal injury and property damage. Such liability insurance shall cover claims of one or more Co-Owners against one or more other Co-Owners as well as claims of third parties against one or more Co-Owners or the Association. The Association shall not be required, however, to obtain public liability insurance covering accidents occurring within the limits of an Apartment or off the Regime Property. If available at a reasonable cost, the Association shall cause to be included within the policy of liability insurance premises medical payment coverage. The policy shall not be cancelled or reduced as to coverage limits without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto.

C. The Association shall also obtain and maintain workmen's compensation insurance to the extent necessary to comply with any applicable law.

D. The Association shall also obtain and maintain such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this article 7 shall be subject to the following provisions:

A. Common Policy Provisions. All [illegible] and General [illegible] of the Association as Insured [illegible] shall be a Common Expense. All such insurance shall be company or companies rated "A" or better and [illegible] most recent issue of Best's Insurance Reports. The policy [illegible] permitted to expire except upon resolution of a majority of [illegible]

that effect. Certificates of all policies of hazard insurance obtained on the Regime by the Board of Directors, together with proof of payment of the premiums thereon, shall be delivered upon request to any Co-Owner or any entity holding a lien upon or security interest in any Apartment.

B. Hazard and Flood Policy Provisions. All policies of hazard and flood insurance on the Apartments and the Common Elements obtained by the Board of Directors shall provide as follows:

1. The indemnity payable on account of any damage to or destruction of the Apartments or the Common Elements shall be payable to any mortgagees holding mortgages on any damaged Apartments as their interests may appear;

2. The policy shall not be cancelled or reduced as to coverage limits without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-Owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-Owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors.

5. If the Board of Directors determines that it is possible to obtain such a provision, no right of subrogation shall exist against any Owner or members of his household or his social guests;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Owners determine in the manner provided in the Master Deed or by applicable law not to repair or restore the damaged property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a majority, of the Co-Owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions (except provisions 1 and 2 above) may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days' notice to every Co-Owner or by resolution of a majority of the Co-Owners.

C. Claims. The Board of Directors of the Association shall have exclusive authority to prosecute and settle on behalf of the Owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors. In the event of damage to or destruction of any portion of the Apartments or the Common Elements, the Board of Directors shall promptly file claims for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any security interests in any Apartment which may be entitled to participate in such claim of the filing of the same.

D. Insurance Proceeds. The net proceeds received by or due to the Board of Directors [illegible] indemnity paid under a policy of hazard insurance obtained [illegible] by the Board of Directors [illegible] by paid by the Board of Directors [illegible] Trustee as [illegible] Insurance Trustee shall be [illegible] the Board of Directors and [illegible] five million dollars ($5,000,000) per [illegible] hold the insurance proceeds in trust and [illegible] deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-Owners by a vote of eighty (80%) percent of the voting rights or by applicable law decide not to reconstruct the damaged property, the Insurance Trustee shall distribute the insurance proceeds

among all the Owners and/or mortgagees with liens upon the Apartment, as their respective interest may appear, in proportions to their respective undivided interests in the portion or portions of the property damaged or destroyed.

1. If the Board of Directors is required to provide for the reconstruction of the damaged property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the Co-Owners and their respective mortgagees in proportion to their interests in the portion or portions of the Property repaired or restored. In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

E. Insurance by Owners. Each Co-Owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;

2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and

3. Liability insurance covering accidents occurring within the boundaries of his Apartment.

Any Owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate of the policy of insurance, if requested.

F. Where the insurance proceeds are insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the co-owners directly affected by the damage, in proportion to the value of their respective Apartments; and if any one or more of those Co-Owners owning a minority of Apartments in the Regime directly affected by the damage shall refuse to make such payments, the majority of such Co-Owners directly affected by such damage may proceed with the reconstruction at the expense of all the co-owners benefitted thereby, upon proper resolution setting forth the circumstances of the case and the cost of the works, with the intervention of the Association.

II. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Regime, it being recognized that the delegation of such duties to one entity is in the best interests of the co-owners of all Apartments. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the co-owners of Apartments, costs and expenses which will be continuing or non-recurring costs, as the case may be, which costs and expenses are sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation and management, the said Association has heretofore been granted the right to make, levy and collect assessments against the co-owners of all Apartments and said Apartments. In furtherance of said grant of authority to Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Regime, the following provisions shall be operative and binding upon the co-owners of all Apartments, to wit:

R-614

(a) All assessments levied against the co-owners of Apartments shall unless otherwise provided for in these By-Laws, be in the same proportion to the total assessment made against all co-owners of Apartments and their Apartments as the undivided interest in the Common Elements appurtenant to each Apartment bears to the total undivided interest in the Regime. Should the Association be the co-owner of any Apartment or Apartments, the assessment which would otherwise be payable to Association by the co-owner of such Apartment or Apartments, reduced by the Apartment or Apartments by the Association, shall be apportioned and assessment therefor levied ratably among the co-owners of all Apartments which are not owned by the Association, based upon their proportionate interests in the Common Elements exclusive of interests therein appurtenant to any Apartment or Apartments owned by Association.

(b) The assessment levied against the co-owner of each Apartment and his Apartment shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year which shall correspond to the calendar year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Regime, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amount required to be collected as an assessment each year. Upon adoption of such annual budget by the Board of Directors of Association, copies of said budget shall be delivered to each co-owner of an Apartment and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each co-owner shall not affect the liability of any co-owner for such assessment. Should the Board of Directors at any time determine, in the sole discretion of said Board of Directors, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Regime, or in the event of emergencies, said Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

(d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to create and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by Association, although nothing herein contained shall limit Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the project in the event of emergencies, or in the event the sums collected from the co-owners of Apartments are insufficient to meet the then fiscal requirements of Association, but it shall not be a requirement that these monies be used for such latter purposes, as a monthly assessment may be levied therefor if deemed to be preferable by the Board of Directors of the Association in the sole discretion of said Board of Directors.

(e) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project, shall include therein a sum to be collected and maintained as a reserve fund operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by co-owners of Apartments, as a result of emergencies or for other reason placing financial stress upon the Association.

(f) Except as to special assessments, all monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of the operating and managing the Regime, or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws and the Master Deed and as the monies for any assessment are paid unto the Association by any co-owner of an Apartment the same may be commingled with the monies paid to the Association by the other co-owners of Apartments. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, who shall own any common surplus in the proportions of their percentage of undivided interest in the Regime, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer this membership interest therein, except as an appurtenance to his Apartment.

(g) The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto Association, on or before the due dates for such payment. When in default, the Board of Directors may accelerate the remaining installments of any annual assessment upon notice thereof to the Apartment co-owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice, which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within thirty (30) days after their due date, the Association, through its Board of Directors, may proceed to enforce and collect the said assessments against the Apartment co-owner owing the same in any manner provided for by the Act, including the right of foreclosures and sale. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear a monthly penalty of Twenty-Five and 00/100 ($25.00) Dollars per month until such delinquent assessment or installment thereof, and all interest due thereon, has been paid to Association.

(h) The co-owner or co-owners of each Apartment shall be personally liable to Association for the payment of all assessments, regular or special, which may be levied by Association while such party or parties are co-owner or co-owners of an Apartment in the Regime. In the event that any co-owner or co-owners are in default in payment of any assessment or installment thereof owed to the Association, such co-owner or co-owners of any Apartment shall be personally liable for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

(i) No co-owner or an Apartment may exempt himself from liability for any assessment levied against such co-owner and his Apartment by waiver of the use or enjoyment of any of the General Common Elements, or by abandonment of the Apartment, or in any other manner.

(j) Recognizing that the necessity for providing proper operation and management of the project entails the continuing payment of costs and expenses therefor, which results in benefit to all of the co-owners of Apartments, and that the payment of such common expense represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of the co-owner of each Apartment, Association is hereby granted a lien upon each Apartment and its appurtenant undivided interest in the Common Elements, which lien shall secure the monies due for all assessments now or hereafter levied against the co-owner of each Apartment, which lien shall also secure all interest which may be due on the amount of any delinquent assessments owed to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Apartment and its appurtenant undivided interest in the the Common Elements. The lien granted to Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to rental from the co-owner of any Apartment

from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Apartment. The rental required to be paid shall be equal to the rental charged on comparable type of Apartments in North Myrtle Beach, South Carolina. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of eight percent (8%) per annum on any such advances made for such purpose.

(k) The lien herein granted unto Association shall be effective from and after the time of recording in the public records of Horry County, South Carolina, a claim of lien stating the description of the Apartment encumbered thereby, the name of the record co-owner, the amount due and the date when due, and the lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed, and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The claim of lien filed by the Association shall be subordinate to the lien of any mortgage encumbering the Apartment.

In the event that any person, firm or corporation shall acquire title to any Apartment and its appurtenant undivided interest in the Common Elements by virtue of any foreclosure, judicial sale or deed in lieu of foreclosure, such person, firm or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Apartment and its appurtenant undivided interest in the Common Elements subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title subject to the lien of any assessment by Association representing an apportionment of taxes or special assessment levied by taxing authorities against the Regime in its entirety. In the event of the acquisition of title to an Apartment by foreclosure, judicial sale or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all co-owners of all Apartments as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or as preventing the enforcement of collection of such payment by means other than foreclosure.

(l) Whenever any Apartment may be sold by the co-owner thereof, which sale shall be concluded only upon compliance with other provisions of these By-Laws, the Association upon written request of the co-owner of such Apartment shall furnish to the proposed purchaser a statement verifying the status of payment of any assessment which shall be due and payable to Association by the co-owner of such Apartment. Such statement shall be executed by an officer of the Association and any purchaser may rely upon such statement in concluding the proposed purchase transaction, and Association shall be bound by such statement. Any holder of any mortgage on any Apartment shall have the right at all reasonable times and frequency to inquire as to the past due status of any assessment payments, and the Association shall, upon request, promptly notify any such mortgagee when any assessment payment becomes more than sixty (60) days past due, or when any default in the performance of any obligation required by the Master Deed or these By-Laws as to such Apartment is not cured within sixty (60) days.

In the event that an Apartment is to be sold at the time when payment of any assessment against the co-owner of said Apartment and such Apartment due to Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase shall, after payment of those sums given priority by S.C. Code Ann. §27-31-200 (1976) be applied by the purchaser first to payment of any then delinquent assessment or installment thereof due to Association before the payment of any proceeds of purchase to the co-owner of any Apartment who is responsible for payment of such delinquent assessment.

BOOK 756 PAGE 386

In any voluntary conveyance of an Apartment (other than a deed in lieu of foreclosure as set forth above), the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

Notwithstanding anything in these By-Laws to the contrary, it is declared that until December 31, 1985, each Apartment shall be exempt from the assessment created herein until such time as the Apartment is conveyed by the Developer to a Grantee owner. Except as expressly provided herein, no Apartment and its appurtenant percentage interest shall be exempt from said assessment. Moreover, until such time as an Apartment is conveyed by the Developer to a Grantee, the Developer shall be assessed and pay to the Association in lieu of an assessment thereof a sum equal to the actual amount of actual operating expenditures assessed by the Association against co-owners of Apartments other than those owned by the Developer. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 1986, the Developer shall be subject to assessments as provided for in these By-Laws so that it will pay assessments on the same basis provided for under these By-Laws as the same are paid by Apartment co-owners.

12. DEFINITIONS

All terms defined in the Master Deed shall have the same meaning in these By-Laws as in the Master Deed.

13. CONFLICTS

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

L 736 P 597

EXHIBIT "A"

TO BY-LAWS OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

DESCRIPTION OF REAL PROPERTY

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 3075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which Is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 3075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Dunmay Building Systems, Inc. by deed of Charles T. Tilghman, W. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

APPENDIX "B"

The State of South Carolina

EXECUTIVE DEPARTMENT

CERTIFICATE OF INCORPORATION
BY THE SECRETARY OF STATE

WHEREAS, Lynette Rogers, 211 Laurel St., Conway, SC
Richard M. Lovelace, Jr., 211 Laurel St., Conway, SC

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

TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

which has been duly and regularly organized, did on the 7th day of January, A. D. 19 82, file with Secretary of State a written declaration setting forth:

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

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

And Whereas, *Said Declarants and Petitioners* further declared and affirmed:

FIRST: Their names and residences are as above given.

SECOND: The name of the proposed Corporation is TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

S.C. 736 .. 359

THIRD: The place at which it proposes to have its headquarters or be located is 210 North Ocean Blvd. North Myrtle Beach, SC

FOURTH: The purpose of the said proposed Corporation is to operate and manage the Tilghman Beach and Racquet Club Condominium Association and all duties and responsibilities incident thereto.

R-620

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

Lynette Rogers	P. O. Box 1704, Conway, SC	President
Richard M. Lovelace, Jr.	P. O. Box 1704, Conway, SC	Vice President/Secretary

SIXTH: That they desire to be incorporated: in perpetuity.

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

GIVEN under my hand and the seal of the State, at Columbia, this 7th day of January in the year of our Lord one thousand nine hundred and 82 and in the two hundred and sixth year of the Independence of the United States of America.

JOHN T. CAMPBELL,
Secretary of State.

BOOK 736 PAGE 400

400

R-621

SUPPLEMENT

TO

MASTER DEED

OF

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

Developer:

SUMMEY BUILDING SYSTEMS, INC.
Post Office Box 497
Dallas, North Carolina 28034

Prepared by:

Law Offices of
Richard M. Lovelace, Jr., P.A.
Post Office Box 1704
Conway, South Carolina 29526

5-11-82 P
11.27 AM

SUPPLEMENT

MASTER DEED

for

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

****

I.

HORIZONTAL PROPERTY REGIME CREATED

SUMMEY BUILDING SYSTEMS, INC., a South Carolina corporation ("the Developer") having its principal office at Myrtle Beach, Horry County, South Carolina, as the sole owner in fee simple of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands and buildings hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime to be known as Tilghman Beach and Racquet Club Horizontal Property Regime ("the Regime"), in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §27-31-10 et seq. (1976) ("the Act"), which Regime is set forth in Master Deed of Tilghman Beach and Racquet Club Horizontal Property Regime executed by Summey Building Systems, Inc., dated January 29, 1982, recorded in the Office of the Clerk of Court for Horry County on February 2, 1982, in Deed Book 736 at Page 360.

The real property and improvements thereon hereby submitted to the Regime is more fully described as follows:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M.

BOOK 746 PAGE 314

314

W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

Attached hereto as Exhibit "A" and made a part hereof by reference is the Architect's Certificate required by S.C. Code Ann. §27-31-110 (1976). Exhibit "B" Attached hereto sets forth and designates the Phase II units.

IN WITNESS WHEREOF, the Developer has executed this Supplement to Master Deed this 6th day of May, 1982.

Signed, Sealed, and Delivered in the Presence of:

SUMMEY BUILDING SYSTEMS, INC.

By: _____ (L.S.)
David W. Hoyle, President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, deposes and says that (s)he saw Summey Building Systems, Inc., by David W. Hoyle, its President, sign, seal, and as its act and deed, deliver the within Supplement to Master Deed; and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____

SWORN to before me this
6th day of May, 1982.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-14-82

BOOK 746 PAGE 315

315

EXHIBIT "A"

TO SUPPLEMENT TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Architect's Certificate

Pursuant to S.C. Code Ann. §27-31-110 (1976), I certify that the Regime Plans described in the Exhibit "B" attached to the Master Deed of Tilghman Beach and Racquet Club Horizontal Property Regime (situate upon real estate described in the attached Supplement), fully depict (within reasonable construction tolerances) the layout, location, number identification, and dimensions of the buildings and improvements contained in Phase II of the Regime, said plans being dated April 24, 1981

Norman E. Bartholomew, A.I.A.
Bartholomew Associates, Architects
S. C. License No. 2274

Myrtle Beach, South Carolina

May 6, 1982.

*(For original Architect's Certificate as to Phase I, see title page of Regime Plans and Exhibit "D" to Master Deed)

EXHIBIT "B"

TO SUPPLEMENT TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Schedule of Percentage of Undivided Interest in the Common Elements Appurtenant to Apartments in Tilghman Beach and Racquet Club Horizontal Property Regime (Phase I), pursuant to S.C. Code Ann. §27-31-60 (1976):

Apartment Number	Value for Stautory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Subdivision to the Regime	
		Phase I	Phase II
Building 2			
101	$90,000.00	0.9259	0.4695
201	90,000.00	0.9259	0.4695
301	90,000.00	0.9259	0.4695
102	90,000.00	0.9259	0.4695
202	90,000.00	0.9259	0.4695
302	90,000.00	0.9259	0.4695
103	90,000.00	0.9259	0.4695
203	90,000.00	0.9259	0.4695
303	90,000.00	0.9259	0.4695
104	90,000.00	0.9259	0.4695
204	90,000.00	0.9259	0.4695
304	90,000.00	0.9259	0.4695
105	90,000.00	0.9259	0.4695
205	90,000.00	0.9259	0.4695
305	90,000.00	0.9259	0.4695
106	90,000.00	0.9259	0.4695
206	90,000.00	0.9259	0.4695
306	90,000.00	0.9259	0.4695
107	90,000.00	0.9259	0.4695
207	90,000.00	0.9259	0.4695
307	90,000.00	0.9259	0.4695
108	90,000.00	0.9259	0.4695
208	90,000.00	0.9259	0.4695
308	90,000.00	0.9259	0.4695
Building 3			
109	90,000.00	0.9259	0.4695
209	90,000.00	0.9259	0.4695
309	90,000.00	0.9259	0.4695
110	90,000.00	0.9259	0.4695
210	90,000.00	0.9259	0.4695
310	90,000.00	0.9259	0.4695
111	90,000.00	0.9259	0.4695
211	90,000.00	0.9259	0.4695
311	90,000.00	0.9259	0.4695
112	90,000.00	0.9259	0.4695
212	90,000.00	0.9259	0.4695
312	90,000.00	0.9259	0.4695
113	90,000.00	0.9259	0.4695
213	90,000.00	0.9259	0.4695
313	90,000.00	0.9259	0.4695
114	90,000.00	0.9259	0.4695
214	90,000.00	0.9259	0.4695
314	90,000.00	0.9259	0.4695
Building 6			
139	90,000.00	0.9259	0.4695
239	90,000.00	0.9259	0.4695
339	90,000.00	0.9259	0.4695
140	90,000.00	0.9259	0.4695
240	90,000.00	0.9259	0.4695
340	90,000.00	0.9259	0.4695
141	90,000.00	0.9259	0.4695

BK 746 PG 317

317

Apartment Number	Value for Statutory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Submission to the Regime	
		Phase I	Phase II
Building 6 (cont'd)			
241	$90,000.00	0.9259	0.4695
341	90,000.00	0.9259	0.4695
142	90,000.00	0.9259	0.4695
242	90,000.00	0.9259	0.4695
342	90,000.00	0.9259	0.4695
143	90,000.00	0.9259	0.4695
243	90,000.00	0.9259	0.4695
343	90,000.00	0.9259	0.4695
144	90,000.00	0.9259	0.4695
244	90,000.00	0.9259	0.4695
344	90,000.00	0.9259	0.4695
Building 7			
135	90,000.00	0.9259	0.4695
235	90,000.00	0.9259	0.4695
335	90,000.00	0.9259	0.4695
136	90,000.00	0.9259	0.4695
236	90,000.00	0.9259	0.4695
336	90,000.00	0.9259	0.4695
137	90,000.00	0.9259	0.4695
237	90,000.00	0.9259	0.4695
337	90,000.00	0.9259	0.4695
138	90,000.00	0.9259	0.4695
238	90,000.00	0.9259	0.4695
338	90,000.00	0.9259	0.4695
Building 8			
166	90,000.00	0.9259	0.4695
266	90,000.00	0.9259	0.4695
366	90,000.00	0.9259	0.4695
167	90,000.00	0.9259	0.4695
267	90,000.00	0.9259	0.4695
367	90,000.00	0.9259	0.4695
168	90,000.00	0.9259	0.4695
268	90,000.00	0.9259	0.4695
368	90,000.00	0.9259	0.4695
169	90,000.00	0.9259	0.4695
269	90,000.00	0.9259	0.4695
369	90,000.00	0.9259	0.4695
170	90,000.00	0.9259	0.4695
270	90,000.00	0.9259	0.4695
370	90,000.00	0.9259	0.4695
171	90,000.00	0.9259	0.4695
271	90,000.00	0.9259	0.4695
371	90,000.00	0.9259	0.4695
Building 9			
161	90,000.00	0.9259	0.4695
261	90,000.00	0.9259	0.4695
361	90,000.00	0.9259	0.4695
162	90,000.00	0.9259	0.4695
262	90,000.00	0.9259	0.4695
362	90,000.00	0.9259	0.4695
163	90,000.00	0.9259	0.4695
263	90,000.00	0.9259	0.4695
363	90,000.00	0.9259	0.4695
164	90,000.00	0.9259	0.4695
264	90,000.00	0.9259	0.4695
364	90,000.00	0.9259	0.4695
165	90,000.00	0.9259	0.4695
265	90,000.00	0.9259	0.4695
365	90,000.00	0.9259	0.4695

BOOK 745 PAGE 318

318

STATE OF SOUTH CAROLINA)
) DECLARATION OF RESTRICTIONS
COUNTY OF HORRY)

WHEREAS, Pilgrim Estates, Inc., a Delaware corporation, hereinafter sometimes referred to as the developer, or the grantor, doing business in South Carolina, has undertaken the development of PILGRIM ESTATES or PILGRIM BEACH, a subdivision near the Atlantic Ocean in Horry County, South Carolina, and has caused maps thereof to be made, all as referred to below, making sales of certain lots based on said maps by deeds containing certain restrictions, restrictions, covenants and limitations; and

WHEREAS, the Board of Directors of said corporation has adopted a resolution providing as follows:

BE IT RESOLVED: that, for the better protection of the corporation and of purchasers from it, the officers of said corporation are authorized, directed and empowered to execute an instrument or instruments in such form as they may be advised adopting restrictive or protective reservations, covenants, conditions or limitations covering sections One (1), Two (2), Three (3), and Four (4) of Pilgrim Estates in substantially the form considered at this meeting; and that said officers be further authorized to impose or adopt such other restrictions as may from time to time appear advisable in connection with the sale of property in the aforesaid sections, or any other section which may be opened;

And the restrictive or protective covenants set forth below were those approved by the Directors; Now, therefore,

KNOW ALL MEN BY THESE PRESENTS that Pilgrim Estates, Inc., pursuant to the above resolution, and for the protection and benefit of purchasers from said corporation does hereby impose the following reservations, covenants, conditions, restrictions and limitations on the following property, to wit:

Sections One (1) and Two (2) of Pilgrim Estates as shown on map by T. M. Jordan Consulting Engineer, dated July, 1949, recorded in Plat Book 19, at page 50, Clerk's Office, Horry County.

Section Three (3) of Pilgrim Estates as shown on map by T. M. Jordan, Consulting Engineer, dated August 25, 1949, and recorded in Plat Book 19 at page 66.

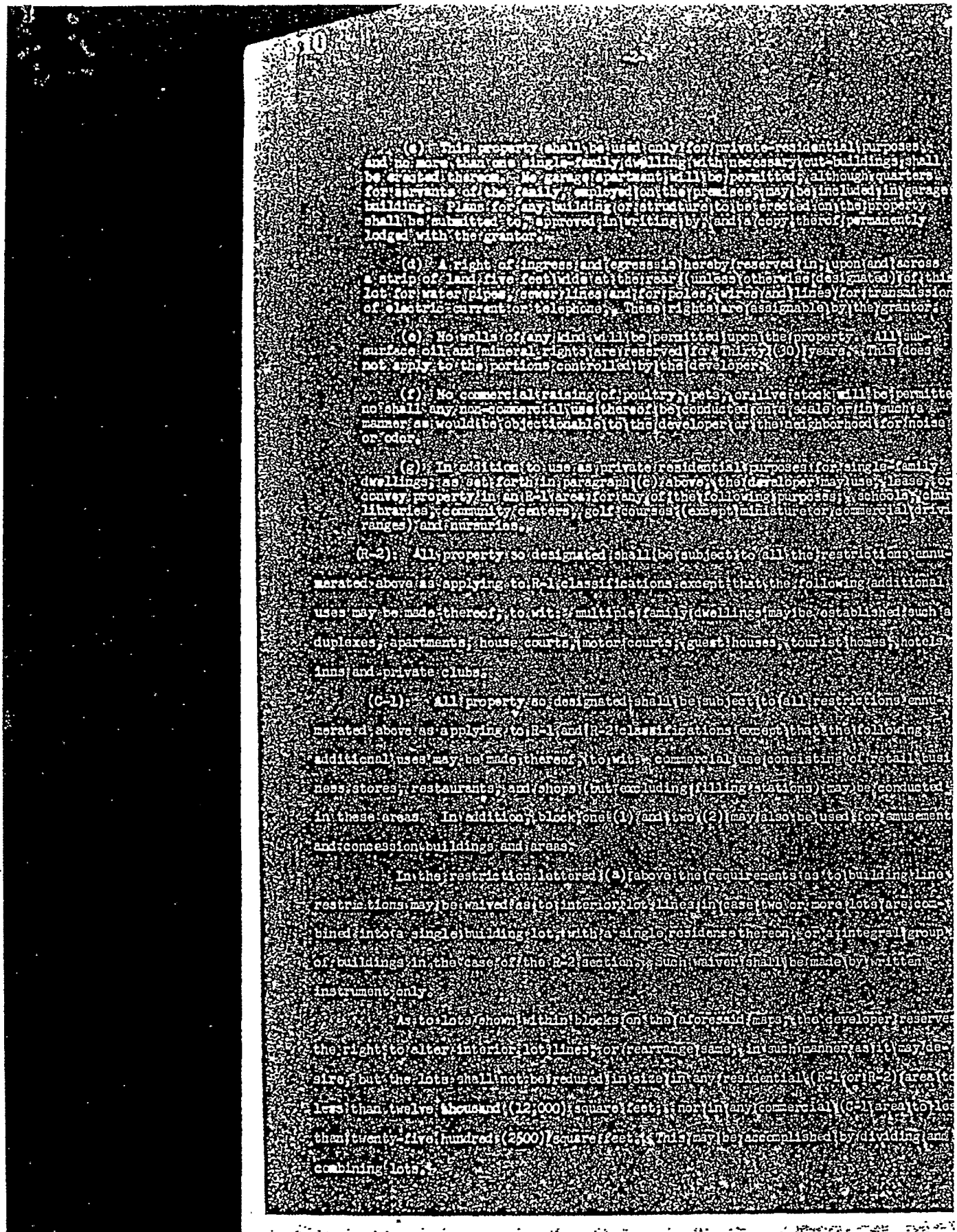
Section Four (4) of Pilgrim Estates by T. M. Jordan, Consulting Engineer, not dated, but filed September 28, 1949 in Plat Book 19 at page 67, Clerk's Office, Horry County.

The maps referred to above consist of a number of blocks and those blocks shall be classified as to use in accordance with the terms of this instrument.

(R-1): All lots in the blocks designated below shall be subject to the following use and area requirements, which shall be deemed covenants running with the land, binding on all purchasers thereof:

(a) No lot shall be subdivided and no residence or building, including porches and projections of any kind, shall be erected so as to extend beyond over or across any of the building lines relating to said lots. The building lines are shown on the recorded maps. As to unsold lots the developer reserves the right to alter or rearrange lines as hereinafter provided.

(b) No surface toilet shall be permitted on this property but the purchaser shall install at his own expense a septic tank or other sanitary appliance of a type and character approved by the State Board of Health. In the event that a public sewer system should later be installed, the lot owner will join thereto.



(1) ... property shall be used only for private residential purposes ... and no more than one single family dwelling, with necessary out-buildings, shall be erected thereon. No garage apartment will be permitted, although quarters for servants of the family employed on the premises may be included in garage building. Plans for any building or structure to be erected on the property shall be submitted to, approved in writing by, and a copy thereof permanently lodged with the grantor.

(d) A right of ingress and egress is hereby reserved in, upon and across a strip of land five feet wide at the rear (unless otherwise designated) of each lot for water pipes, sewer lines and for poles, wires and lines for transmission of electric current or telephone. These rights are assignable by the grantor.

(e) No walls of any kind will be permitted upon the property. All sub-surface oil and mineral rights are reserved for Thirty (30) years. This does not apply to the portions controlled by the developer.

(f) No commercial raising of poultry, pets, or live stock will be permitted nor shall any non-commercial use thereof be conducted in a manner such as would be objectionable to the developer or the neighborhood for noise or odor.

(g) In addition to use as private residential purposes for single-family dwellings, as set forth in paragraph (c) above, the developer may use, lease, or convey property in an R-1 area for any of the following purposes: schools, churches, libraries, community centers, golf courses (except miniature or commercial driving ranges) and cemeteries.

(R-2) All property so designated shall be subject to all the restrictions enumerated above as applying to R-1 classifications except that the following additional uses may be made thereof, to wit: multiple family dwellings may be established such as duplexes, apartments, house courts, motor courts, guest houses, tourist homes, hotels, inns and private clubs.

(C-1) All property so designated shall be subject to all restrictions enumerated above as applying to R-1 and R-2 classifications except that the following additional uses may be made thereof, to wit: commercial use consisting of retail business, stores, restaurants, and shops (but excluding filling stations) may be conducted in these areas. In addition, block one (1) and two (2) may also be used for amusement and concession buildings and areas.

In the restriction lettered (a) above the requirements as to building lines, restrictions may be waived as to interior lot lines in case two or more lots are combined into a single building lot with a single residence thereon, or a integral group of buildings in the case of the R-2 sections, such waiver shall be made by written instrument only.

As to lots shown within blocks on the aforesaid maps, the developer reserves the right to alter interior lot lines, or rearrange same, in such manner as it may desire, but the lots shall not be reduced in size in any residential (R-1 or R-2) area to less than twelve thousand (12,000) square feet, nor in any commercial (C-1) area to less than twenty-five hundred (2500) square feet. This may be accomplished by dividing and combining lots.

[illegible] Ten (10), Eleven (11) [illegible] Seven (7), in Block [illegible]

[illegible] Block [illegible] Eleven (11), Twelve (12), [illegible] Thirteen (13), in Block [illegible]

which are marked "reserved" on said map [illegible] for the purpose of [illegible]

beach club, resort hotel, [illegible] or purposes incident thereto, as

may be determined by the Developer.

Nothing contained in this [illegible] shall be construed to modify, waive

or in any way alter any restrictions, covenants, reservations, conditions, or limi-

tations which may have been imposed in deeds of conveyances already made by the

developer or included in any other instrument executed by it affecting said area.

The developer reserves the right to impose additional or further use and/or

area requirements in any conveyances of individual lots, or groups of lots, here-

after made by it.

OCEAN FRONT LOTS: As to any lots, except in Blocks One (1) and Two (2),

shown on the above plat as abutting the strand area, marked on said map as

"reserved for play ground and park", the following additional covenant shall apply:

That no front row lot, and no buildings or structures of any kind (except a continuous

boardwalk, or other similar way) will be erected between the front line of said lot

and the mean high water mark of the Atlantic Ocean.

LAKES: None of the lakes which may be located on the area covered

by the maps above referred to (or any subsequent maps of additional areas) shall

be considered as dedicated to the public use, but the ownership and control of said

lakes is reserved for the developer, which, without limiting the generality, specifically includes the following:

(a) That the use of said lakes shall be subject to rules and regulations which may from time to time be promulgated by the developer, and which may provide for closed seasons, bag and size limits, or other regulation of fishing or hunting, and which may restrict or prohibit the use of certain kinds of boats or motors and other craft thereon. These rules or regulations may be promulgated by posting same or keeping them on file at the principal office of the developer at or near Ocean Drive Beach, South Carolina.

(b) Nothing herein contained shall impose on the developer any liability for the maintenance or safe condition of said lakes, either to the purchaser or any person whomsoever, nor shall the limits of lot lines be extended by reason hereof, nor shall anything herein contained prevent the developer from permitting the use of said lakes by other persons,

The lots or blocks shown on the aforesaid maps which are restricted in accordance with the foregoing provisions are the following:

Residential (R-1): Sections one (1), Three (3), and Four (4), Blocks: Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-Seven (27), Twenty-eight (28), Twenty-nine (29), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-Seven (37), Forty-Seven (47), Forty-eight (48), Eighty (80), and Eighty-two (82);

Residential (R-2): Section Two (2), Blocks: Three (3), Four (4), Twenty-three (23), and Twenty-four (24).

SPECIAL PROVISION: All restrictions above shall be applicable to blocks Ten (10), Eleven (11), Thirty (30) and Thirty-One (31), in Section Three (3), including, in addition thereto, any R-2 uses;

Commercial (C-1): Section Two (2), Blocks One (1) and Two (2), lots One (1) to Eight (8) inclusive, of Block Twenty-One (21), lots One (1) to Thirteen (13) inclusive, of Block Twenty-Two (22). The undivided portions of said blocks twenty-one (21) and Twenty-two (22) may later be restricted by the developers as to Commercial proper.

The restrictions, covenants or limitations herein imposed, except those rights reserved to the developer, may be enforced by any lotowner in the same block, or in any block immediately adjacent thereto, in which another lotowner may sue to enforce or prevent any breach of the said restrictions, covenants or limitations.

Invalidation of any one of these reservations, restrictions, covenants, or limitations by judgment or court order shall not affect any of the other provisions which shall remain in full force. Any of the rights reserved to or retained by the developers herein may be assigned, transferred or conveyed.

In witness whereof the said Tilghman Estates, Inc. has caused this instrument to be executed this twenty-fifth day of March, 1950.

TILGHMAN ESTATES, INC. (SEAL)

By _____
As President

By _____
As Secretary

Signed, Sealed and Delivered in the Presence of:

_____

_____

13908

Deed 741 pg 385

HORRY COUNTY
'02 MAR 25 PM 2:50
BILLIE G. RICHARDSON
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) AMENDMENT TO MASTER DEED
COUNTY OF HORRY)

WHEREAS, Summey Building Systems, Inc. is the developer of a condominium project located in the City of North Myrtle Beach, Horry County, South Carolina, popularly known as Tilghman Beach and Racquet Club; and

WHEREAS, by Master Deed filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Deed Book 736 at Page 360, the property subject to said Master Deed was encumbered and controlled pursuant to the terms and conditions of said Master deed; and

WHEREAS, Paragraph XXVI of said Master Deed set out the provisions for the amendment of said Master Deed; and

WHEREAS, Summey Building Systems, Inc. is the owner and holder of more than the requisite number of units to amend the Master Deed;

NOW, THEREFORE, the Master Deed, as previously filed, as reflected in the recitations above, is hereby amended as follows:

1. Page 22 should reflect that the following units are in Building 11:

151
251
351
152
252
352
153
253
353
154
254
354

Page 22 should reflect that the following units are in Building 12:

145
245
345
146
246
346
147
247
347

BK 741 PG 385

385

148
248
348
149
249
349
150
250
350

2. Page 29, Paragraph 6, OFFICERS, Subparagraph (a), should read as follows:

> (a) The executive officers of the Association shall be the President and Secretary, who shall also be Directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. No person may hold two (2) or more offices. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

3. The following provision is added to the Master Deed as Article XXXIV:

THE PIER AND PROVISOS THEREOF

> Anything in this Master Deed to the contrary notwithstanding, Tilghman Beach and Racquet Club Condominium Association, Inc. shall have the power to establish, and enforce at law or equity, rules and regulations as to access, use, control and maintenance of the Pier abutting the property and to the easements and improvements which are a part of same. Said Pier is not a Common Element as same are established and defined in this Master Deed, but has been or shall be conveyed to the Association by the Grantor for the use and benefit of the Association and its members. It is hereby declared and agreed upon by the Grantor, for itself and for each dwelling hereinabove established or to be established pursuant to the provisions of this Master Deed, that the costs and expenses of maintaining, owning, and enjoying said Pier and its appurtenances are proper expenses to be shared by the Co-owners of the Dwellings and such expenses are hereby agreed to be and are declared to be valid and proper Common Expenses to be included in the budget of the Association and collectible in the same manner as, and together with the assessments pursuant to the provisions of Article XIX of this Master Deed. Nothing in the Master Deed shall be construed as prohibiting the Association from charging fees for use of said Pier and the improvements thereon nor from admitting members of the general public thereto, provided any such activity is for the benefit of the Association and its members.

4. Article XXXIV of said Master Deed is hereby changed to Article XXXV.

5. Article XXXV of said Master Deed is hereby changed to Article XXXVI.

Witness the due execution hereof this 19th day of March, 1982.

Signed, Sealed, and Delivered
in the Presence of:

Lydia C. Holloway

Lynette Rayford

SUMMEY BUILDING SYSTEMS, INC.

By: _____ (L.S.)
David W. Hoyle, President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Summey Building Systems, Inc., by David W. Hoyle, its President, sign, seal, and as the corporate act and deed, deliver the within Amendment to Master Deed; and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

Lydia C. Holloway

SWORN to before me this
19th day of March, 1982.

Lynette Rayford (L.S.)
Notary Public for South Carolina

My Commission Expires: 1-2-86

BOOK 741 PAGE 387

3

387

FILED
6-18-84
84 JUN 18 P2:45
BILLIE C. BEAM
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) MASTER DECLARATION OF INTENT AND SUPPLEMENT TO TITLE TO REAL ESTATE
COUNTY OF HORRY)

WHEREAS SUMMEY BUILDING SYSTEMS, INC. was the owner and developer of the condominium project known as Tilghman Beach and Racquet Club, a two-phased condominium development erected on Block 2 and Block 22, Tilghman Estates, Ocean Drive Section, North Myrtle Beach, Horry County, South Carolina; and

WHEREAS some question has arisen as to the nature and quality of title passed by various individual unit deeds; and

WHEREAS it was and is the intention of the Grantor to convey title to each unit in fee simple absolute, together with a covenant of general warranty;

NOW, THEREFORE, in order to set to rest any questions as to the nature and quality of title which passed from SUMMEY BUILDING SYSTEMS, INC. to any individual unit (as purchaser(s)) his/her/their heirs, successors, or assigns, to whom/which a deed from the Grantor has been heretofore delivered and recorded, for and in consideration of the sum of Five and 00/100 ($5.00) Dollars and the recitation set forth above, the undersigned, as Grantor, has granted, bargained, sold and released; and by these presents, does grant, bargain, sell and release unto the said Purchaser(s) of record from Summey Building Systems, Inc., his/her/their/its Heirs and Assigns forever, in and to any unit erected on the premises described below:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete,

BOOK 877 PAGE 616

and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, R. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said title holders of record, his/her/their/its Heirs and Assigns forever.

AND Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said title holders of record, his/her/their/its Heirs and Assigns, against it and its Successors and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by grantor this 18th day of JUNE, in the year of our Lord one thousand nine hundred and four and in the two hundred eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered in the Presence of:

Harriett H. Coles

Witness

SUMMEY BUILDING SYSTEMS, INC.

By: David W. Hoyle, President

877 · 598

BOOK 877 PAGE 017

-2-

17

STATE OF ~~NORTH~~ CAROLINA)
)
COUNTY OF Horry)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Summey Building Systems, Inc., by David W. Hoyle, its President sign, seal, and as its act and deed, deliver the within Title to Real Estate; and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

Harriett H. Coles

SWORN to before me this
18th day of June, 1984.

Notary Public for North Carolina (L.S.)
My Commission Expires: 8-4-92

BOOK 877 PAGE 018

BOOK 870 PAGE 599

18

Schedule B

No. L 81370

Part I

This policy does not insure against loss or damage by reason of the following:

1. 1982 City and County Property taxes, liens not yet due and payable, and all subsequent years.

2. Declaration of Restrictions dated March 25, 1950, and recorded in Deed Book 78, at Page 309, records of Horry County.

3. A right of ingress and egress reserved in, upon and across a strip of land five (5') feet wide at the rear of the lot for utility purposes as set forth in the above set out restrictions.

4. Covenants, Conditions, Restrictions, Reservations, Easements, Liens for Assessments, Options, Powers of Attorney and Limitations on title created by the South Carolina Horizontal Property Act and as set forth in the Master Deed dated January 29, 1982, and recorded February 2, 1982, in Deed Book 736, at Page 360, and thereafter amended by an Amendment dated March 19, 1982, and recorded March 25, 1982, in Deed Book 741, at Page 385, and thereafter supplemented by a Supplement to Master Deed dated May 6, 1982, and recorded May 11, 1982, in Deed Book 746, at Page 313, records of Horry County.

5. Such matters of survey occuring subsequent to January 20, 1982, being the date of survey by C. B. Berry, R.L.S.

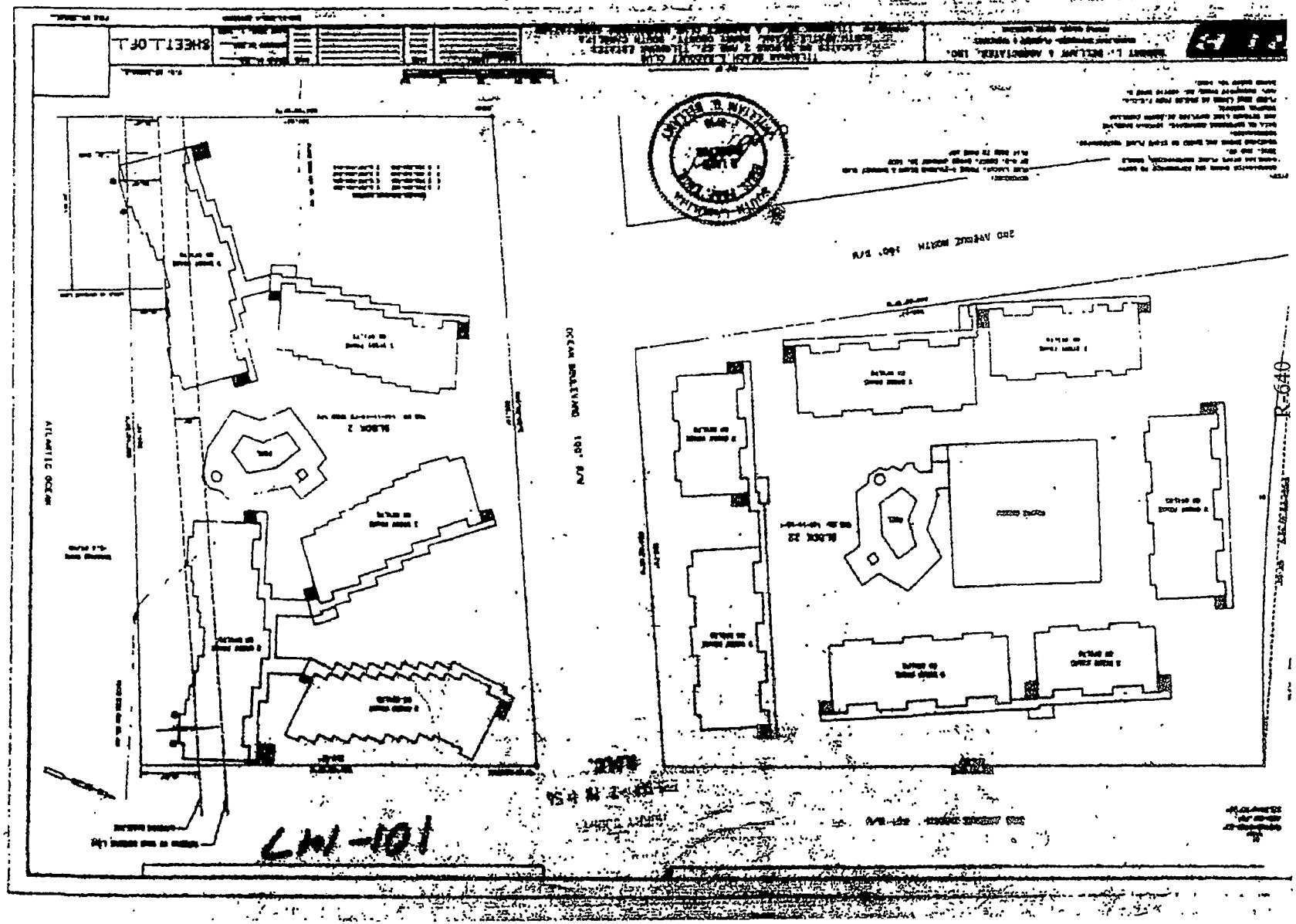
Part II

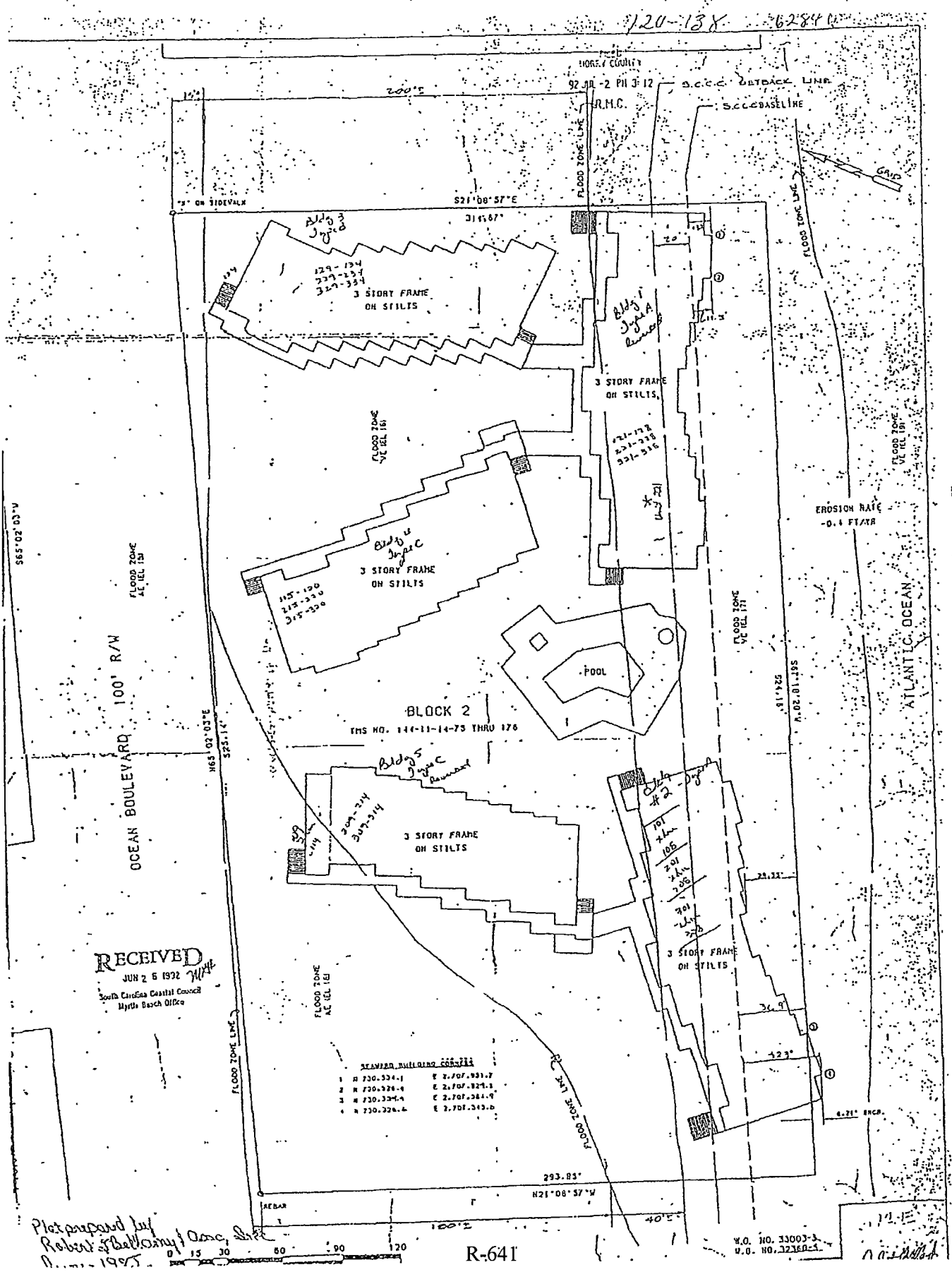
In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest.

DWELLING NO. 111 (Phase II) of Tilghman Beach and Racquet Club, a Horizontal Property Regime established by the Grantor pursuant to the South Carolina Horizontal Prperty Act, Sections 27-31-10, et seq., South Carolina Code of Laws, as amended and submitted by Master Deed dated January 29, 1982, and recorded February 2, 1982, in the Office of the Clerk of Court for Horry County, South Carolina, in Deed Book 736, at Page 360, and as amended by Supplement to Master Deed recorded May 11, 1982, in Deed Book 746, at Page 313, as shown upon plans by Bartholomew Associates, Architects, which such plans are recorded in the Office of the Clerk of Court for Horry County, in Condominium Plat Book 1, at Page 142.

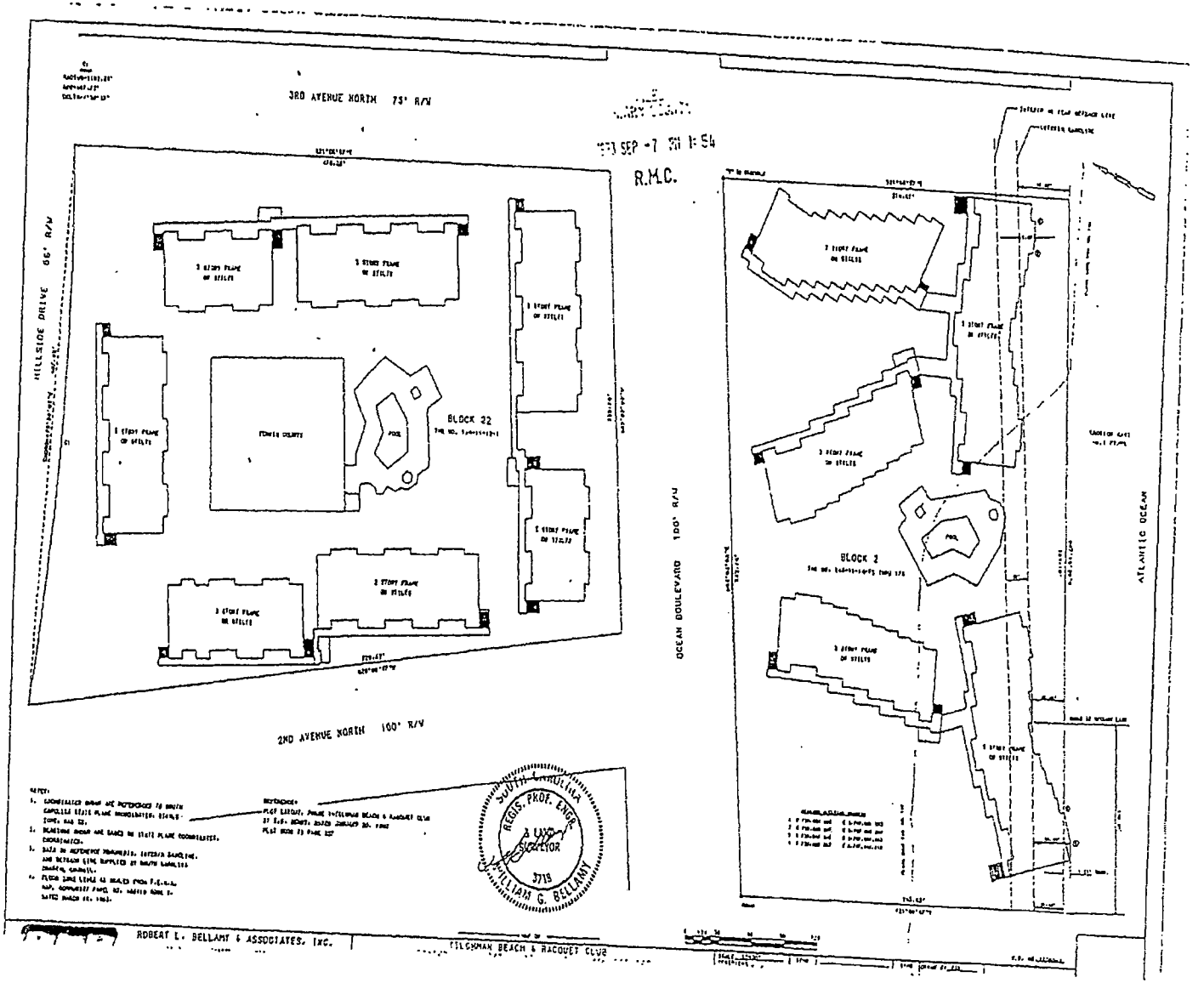
The real estate upon which the said Dwelling is situate is described as ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in real estate Plat Book 72, at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

SUBJECT to all of the provisions of the aforesaid Master Deed.


LM-101
R-640

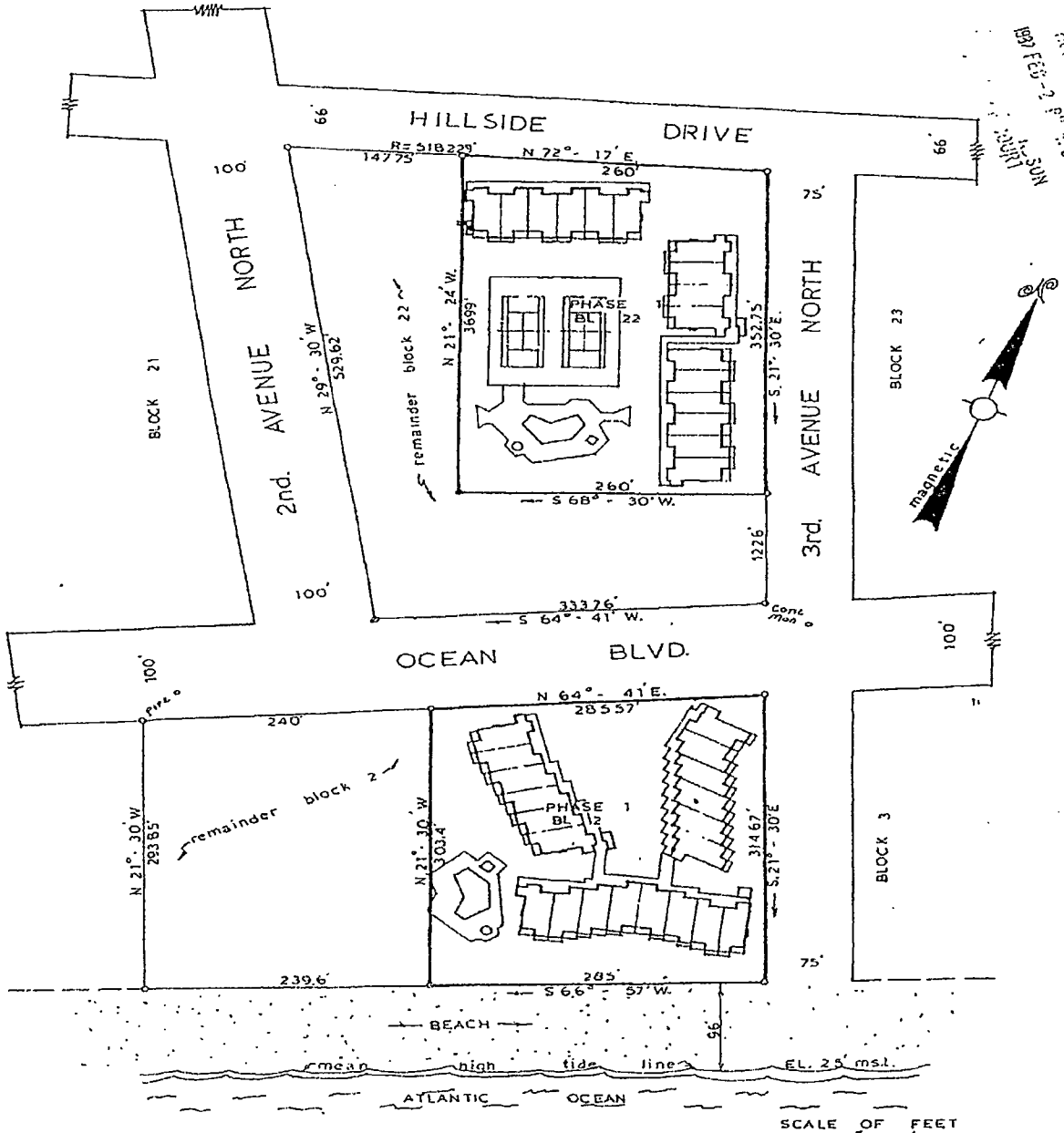


Plat prepared for
Robert J Bellamy & Assoc. Inc.
Dated - 1992


3RD AVENUE NORTH 75' R/W
HILLSIDE DRIVE 66' R/W
BLOCK 32
OCEAN BOULEVARD 100' R/W
BLOCK 2
ATLANTIC OCEAN
2ND AVENUE NORTH 100' R/W
R.M.C.
SOUTH CAROLINA
REGIS. PROF. ENGR.
&
LAND
SURVEYOR
3719
WILLIAM G. BELLAMY
ROBERT L. BELLAMY & ASSOCIATES, INC.
FISHERMAN BEACH & RACQUET CLUB

R-642

Plat Book 72 Page 2



PLOT LAYOUT
PHASE 1 - TILGHMAN BEACH & RACQUET CLUB
LOCATED ON BLOCKS 2 AND 22, TILGHMAN ESTATES
NORTH MYRTLE BEACH
LITTLE RIVER TOWNSHIP - HORRY COUNTY, S. C.
OWNED BY
TILGHMAN BEACH & RACQUET CLUB

I Hereby Certify that the Measurements as shown Are Correct and there are No Encroachments or Projections other than shown.

C. B. BERRY, R.L.S. - S. C. NO. 2075
NORTH MYRTLE BEACH, S. C. 29582
JANUARY 20, 1982
SURVEYED BY TERRY MCLAMB

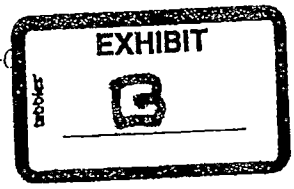
EXHIBIT
"B"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII. IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-



AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifth day of January in the year Two Thousand Sixteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Tilghman Beach & Racquet Club Condominium Association, Inc. ,
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576

and the Architect:
(Name, legal status, address and other information)

SGA Architecture, LLC
245 Business Center Lane, Ste. 4B
P.O. Box 1859
Pawleys Island, SC 29585

for the following Project:
(Name, location and detailed description)

Tilghman Beach & Racquet Club Homeowners Association Property Regime
Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791657119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003644459)

TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

See "Exhibit A", Initial Information, which is attached hereto and incorporated herein by reference.
Tilghman Beach and Racquet Club, "TBRC", is a horizontal property regime maniged by the Owner, by and through its Board of Directors, pursuant to a Master Deed and By-Laws, as amended, hereinafter referred to as the "Governing Documents"; recorded in the Horry County Register of Deeds, Deed Book 739, Page 360. TBRC is an apartment style development containing 213 units in 12 three-story buildings located in the City of North Myrtle Beach. Of the 12 Buildings, Buildings 1 through 5 are located east of Ocean Boulevard and Buildings 6 through 12 are located west of Ocean Boulevard. There are six building design types based on the original construction plans, herein after referred to as the "Plans", recorded in the Horry County Register of Deeds, Plat Book 1, Page 142. The Owner recently completed structural repairs to Building 3. The scope of work of the repairs and project administration was completed by Martinez & Associates, Saul Martinez, P.E. The general contractor was A & I Fire and Water Restoration. The Owner is currently contracted for engineering services and project administration with Martinez & Associates for Building 1 and portions of Building 2. In addition the Owner is currently contracted with Shoreline Remodel, LLC for portions of Building 2 and 6.

The Owner completed a Reserve Study in 2006 and forensic reports by Criterium-Giles Engineers, report dated June 19, 2015, and Martinez & Associates, report dated July 1, 2015. Based upon the Governing Documents, the Plans, the 2006 Reserve Study, experience with Building 3, and the forensic reports, the Owner desires to retain an Architect for a maintenance and repair program for the Project to be determined after consultation with Engineer, Architect, and

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:04:30 on 01/14/2016 under Order No.8791687110_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2008644458)

other consultations approved by Owner pursuant to the proposal attached as "Exhibit C", as modified herein, and "Exhibit D". In the event of any conflict between the Exhibits A-D and the terms of this Agreement, the terms of this Agreement shall control.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

TBD

.2 Substantial Completion date:

TBD

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5

The Architect shall maintain all forms of insurance required by law in the state in which the Project is located and the state in which the Architect's primary office is located. In addition to professional liability insurance, the Architect shall also maintain insurance coverage for comprehensive general liability, automobile liability, and workers' compensation by a carrier satisfactory to the Owner, which carrier shall be licensed to provide such coverage in the above-noted states, in forms and amounts satisfactory to the Owner. The Architect shall ensure that any and all Consultants engaged or employed by the Architect carry and maintain similar insurance covering their respective portions of the Services. The Architect and its Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice to the Owner, at the anniversary date(s) of the submittal, and at any time when a material change in coverage, carriers, or underwriters occurs. The Owner may require that the proof of coverage be in the form of a true and accurate copy of the policies of insurance, themselves. The maintenance of such coverage shall be a condition precedent to the Owner's obligation to pay under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty days prior to any cancellation, nonrenewal, or material modification of a policy.

Init. AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003644A50)

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

$1,000,000 per occurrence; $3,000,000 per aggregate

.2 Automobile Liability

$1,000,000; $500,000 coverage with $500,000 per occurrence

.3 Workers' Compensation

As required by the State of South Carolina

.4 Professional Liability

In addition to other insurance required by statute or under provisions of this Agreement, the Architect shall, at no additional cost to the Owner, provide professional liability insurance, issued by an insurance carrier approved in advance by the Owner and licensed to provide such coverage in the State of South Carolina to compensate the Owner for all negligent acts, errors, and omissions by the Architect, its agents, its employees, and its Consultants arising out of this Agreement. The Owner shall be a named additional insured on this insurance policy, which shall provide a coverage amount not less than $1,000,000 per occurrence, with a deductible not exceeding $20,000 per occurrence. Upon execution of this Agreement, and at every date for renewal of that policy, the Architect shall cause a Certificate of Insurance to be issued to the Owner by an insurance agent licensed in the above-noted state. Provision to the Owner of a valid Certificate of Insurance and (upon request by the Owner) a true and correct copy of the policy with coverage that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to the Architect by the Owner. This policy shall remain in effect for the benefit of the Owner at least through any warranty period covering the Project but in no case for less than thirty-six (36) months after the Date of Substantial Completion of the Project or thirty-six (36) months after the date of Termination of this Agreement, whichever period ends later

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1

The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8701687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall indicate in detail the materials, systems, and other requirements for construction of the Work.

§ 3.4.2 The Architect shall prepare Construction Documents that conform with the laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
.3 organizing and conducting a pre-bid conference for prospective bidders;
.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

Init. / AIA Document B101™ – 2007 (Formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0791887118_1 which expires on 01/28/2016, and is not for resale.
User Notes: (2003644459)

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors; and

.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming Work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents; and, if the Contractor's efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating: (a) the problem; (b) the reasons for the actions taken by the Architect; (c) what, if any, response has been forthcoming from the Contractor; and (d) what actions by the Owner and/or Contractor are needed or expected. The Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.5791697119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

(2003844459)

§ 3.6.2.3 The Architect shall interpret and advise the Owner of that interpretation matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement, nor in A201-2007 (as amended), shall make a decision of the Architect binding upon the Owner in the absence of the Owner's express written approval thereof in writing.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the requirements indicated in or reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Where approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

Init.
/
AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.5791637119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(3003644459)

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain a complete set of change orders and documents incorporated in them.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Owner may request other Additional Services of the Architect. Additional Services will be requested by the Owner, and confirmed in writing. Should the Owner request services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested.
(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under this law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

(2033644453)

Additional Services		Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1	Programming (B202™–2009)		
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™–2007)		
§ 4.1.6	Building Information Modeling (E202™–2008)		
§ 4.1.7	Civil engineering		
§ 4.1.8	Landscape design		
§ 4.1.9	Architectural Interior Design (B252™–2007)		
§ 4.1.10	Value Analysis (B204™–2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site Project Representation (B207™–2008)		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As-Designed Record drawings		
§ 4.1.15	As-Constructed Record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™–2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™–2007)		
§ 4.1.22	Commissioning (B211™–2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™–2012)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™–2007)		
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Additional services and exclusions are listed in Exhibit C

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.5701687119_1 which expires on 04/29/2016, and is not for resale.
User Notes:

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of bidders or persons providing proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker;

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor

(Paragraph deleted)

.3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

(2003844459)

Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the Contract for Construction and the General Conditions of the Contract for Construction (as amended). The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs,

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003644459)

overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect as part of the Basic Services, represent the Architect's judgment as a design professional familiar with the construction industry.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0781987119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003844459)

Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 The Architect shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the OwnerARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, either upon the date of Substantial Completion (for acts or failures to act occurring before Substantial Completion of which the Owner was aware) or upon the Owner's discovery of the acts, omissions, events, or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; but in no case shall an action be brought more than twelve years after the Date of Substantial Completion.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

(Paragraph deleted)

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:00 on 01/14/2016 under Order No.8791667118_1 which expires on 04/26/2016, and is not for resale.
User Notes:

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 The method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 8.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 The Architect waives all objections to joinder of the Architect as a party to any Project-related mediation, arbitration, or litigation in which the Owner is joined or is otherwise positioned as a party or in which the Architect's conduct or its performance of professional services is in any way relevant to the subject of a dispute. The Architect also agrees to prepare or modify all documents used or prepared by the Architect, including, but not limited to, agreements between the Architect and its Consultants, agreements between the Owner and other parties (including, without limitation, the Contract for Construction), and any General and Supplemental Conditions for Construction for this Project, to reflect this waiver.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement within thirty days of the date due hereunder, the Architect shall be entitled give the Owner twenty-one (21) days' written notice of the Architect's intention to terminate or suspend provision of Services. This notice shall detail the Architect's specific reason(s) for its intended termination or suspension and shall state with specificity the means by which the Owner may cure the alleged reason and the reasons why the Owner is not justified in withholding payment to the Architect. Thereafter, if the Owner fails either to pay or justify its lack of payment in accordance with the terms of this Agreement, Architect may give notice of its intention to suspend the Services five days thereafter. Services shall otherwise be performed continually and expeditiously during the pendency of disputes.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8781687119_1 which expires on 04/23/2016, and is not for resale.
User Notes:
(2003814459)

(Paragraph deleted)

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 This Agreement may be terminated by the Owner, with or without cause, for the Owner's convenience upon not less than seven (7) days' written notice to the Architect. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraph deleted)

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect may not assign its interests or obligations under this Agreement without the written consent of the Owner, which consent may be withheld by the Owner for any reason. The Owner reserves the right, upon notice to the Architect, to assign this Agreement to an institutional lender providing financing for the Project or to other persons or other entities who are ready and capable of performing the Owner's obligations under the Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.5.1 The Owner shall enjoy the same benefits and rights as to the Architect's Consultants as the Architect enjoys with respect to its Consultants. The Architect shall enter written contracts with its Consultants that impose upon its Consultants the same duties and obligations to the Owner as the Consultant has to the Architect. Should the Owner terminate this Agreement with the Architect, the Owner shall, upon Owner's request, obtain assignment of the Consultant's agreement(s) with the Architect. That assignment does not change the fact that the Owner has no obligation to pay Consultants my amounts whatsoever on this Project, except prospective fees expressly agreed to by the Owner after Owner's acceptance of assignment of the Consultant's agreement(s). As a condition precedent to the Owner's payment of Architect's invoices, the Architect shall supply the Owner with copies of the Architect's agreements with its Consultants.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 16:04:30 on 01/14/2016 under Order No.8791607119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit C, as modified to provide that Construction Administration fees shall be 2.6% of the cost of construction not to exceed $185,000.00, not including reimbursable expenses. In addition, the parties agree that Owner's payment of Invoice Dated 11/23/15 in the amount of $13,109.07 shall be credited against Architect's fees under this Contract.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit B, upon approval by Owner

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit B, upon approval by Owner

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty-five percent (25.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	N/A	percent (	N/A	%)
Design Development Phase	N/A	percent (	N/A	%)
Construction Documents Phase	N/A	percent (	N/A	%)
Bidding or Negotiation Phase	N/A	percent (	N/A	%)
Construction Phase	N/A	percent (	N/A	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003844459)

performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Exhibit B

Employee or Category	Rate
N/A	

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses; and
.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus See Exhibit B percent (See Exhibit B %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

A fixed fee of $5,000.00 and provided the Architect is indemnified and held harmless from all claims relating from the use of the Architects instruments of service.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Five Thousand Dollars and Zero Cents ($ 5,000.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

8.00 % per annum

Init.
/

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791587118_1 which expires on 04/28/2016, and is not for resale.
User Notes:

(2003644458)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.3.1 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the negligence, errors, omissions, or failure to perform by the Architect, its employees, its agents, or its Consultants.

§ 12.3.2 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the breach of this Agreement or any implied covenants deemed to be applied thereto, intentional acts, omissions, or other failures to perform by the Architect, its employees, its agents, or its Consultants.

§ 12.3.3 The indemnity provisions of the previous sections in this Article 12 shall not be construed so that one provision cancels, limits, or abrogates the indemnities and protections afforded the Owner in the others; and duties of the Architect to indemnify, defend, and hold the Owner harmless in each of those sections shall be construed cumulatively.

§ 12.3.4 A maximum number of visits to the site by the architect over the duration of the project during construction shall be as follows:

.1	Phase 2 Roofing	-	11 Visits
.2	Phase 3 Building	-	14 Visits
.3	Phase 4 Building	-	14 Visits
.4	Phase 5 Building	-	12 Visits

Phase are proposed in Exhibit D

§ 12.3.5 A maximum of 4 bid packages and 4 competitive bidding processes shall be prepared and conducted by the Architect with packages and bidding to be in accord with Exhibit D.

§ 12.3.6 Special meetings with the POA/HOA/Board/Committees/ or Association representatives affiliated with the above shall be additional services.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

"Exhibit A", Initial Information

Init. AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:20 on 01/14/2016 under Order No.8791607118_1 which expires on 04/28/2016, and is not for resale.
User Notes: (2003544452)

"Exhibit B", SGA Architecture Standard Hourly Rate Sheet
"Exhibit C", Architecture Proposal dated July 15, 2015, as modified herein.
"Exhibit D" TBRC Envelope Repairs and Building Project

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

Carl W. Atkinson Jr President of BP 0.00

(Printed name and title)

ARCHITECT

(Signature)

Susan N. Evans Architect.

(Printed name and title)

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.

User Notes:

(2003844459)

EXHIBIT D

Tilghman Beach and Raquet Club Potential Building Project

Phase 1 Historical Data		Est Cost	Act Cost	Est Duration	Act Duration	Est A/E Fees	Prelim Schedule
Building Three	Whole Building		$ 567,245	17 weeks	15 weeks		*Complete*
Building One	Roofs						*Complete*
Building Two	Roofs						*Complete*
	Critical Repairs	$ 15,140		3 weeks			*Pending*
Project Initiation						$ 6,400	*Complete*
Phase 2 Roofing							
Buildings 4-12	Bid Docs Prep			2 weeks		$ 6,400	*Nov. 2015*
	Bid Period			2 weeks		$ 1,800	*Dec. 2015*
	Construction	$ 817,190		18 weeks		$ 18,000	*Jan. - June 2016*
Phase 3 Bldgs							
Buildings 1,2,&5	Bid Docs Prep			6 weeks		$ 12,500	*July - Aug. 2016*
	Bid Period			3 weeks		$ 2,400	*Sep. 2016*
	Construction	$ 1,705,000		28 weeks		$ 42,000	*Oct. - May 2017*
Phase 4 Bldgs							
Buildings 6,8,10,&12	Bid Docs Prep			6 weeks		$ 11,600	*July - Aug. 2017*
	Bid Period			3 weeks		$ 2,400	*Sep. 2017*
	Construction	$ 1,944,000		28 weeks		$ 38,000	*Oct. - June 2018*
Phase 5 Bldgs							
Buildings 4,7,9,&11	Bid Docs Prep			6 weeks		$ 11,600	*July - Aug. 2018*
	Bid Period			3 weeks		$ 2,400	*Sep. 2018*
	Construction	$ 1,596,000		24 weeks		$ 34,000	*Oct. - April 2019*
Totals		$ 6,077,330	$ 567,245			$ 189,500	

Tilghman Beach and Raquet Club Potential Building Project

Item				Estimate or Cost
Building Three	Base Contract	$ 525,000	Base Bid	$ 567,245
	Change Order 1	$ 28,345	Replace gutter system, Bolts at front walkways, (4) back porch flashing details, Unforeseen conditions (rotted corner rim)	
	Change Order 2	$ 13,900	Corridor Drains, Unforeseen conditions (rotted trim, siding, and joists), add post base trim, parking ceiling repairs	
Building Two	Critical Repairs	$ 15,140	South end cradle beam and porch repairs	$ 15,140
Roofs 4-12	Roofing & Skylights	$ 485,000	Spann Roofing Estimate	$ 817,190
	Carpentry	$ 106,000	Fascias, Cheekwalls, Gable End Walls, Demo and Siding - Based on Reserve Study numbers (4,500LF + 12,000SF)	
	Paint	$ 15,000	All woodwork above eave lines and fascias (15,000SF)	
	Gutters	$ 40,000	$5,000/building	
	Contingency	$ 64,600	10% - Includes Unforeseen	
	GC & OH&P	$ 106,590	15%	
Bldgs 1,2,&5		$ 1,705,000	$26,000/unit times 66 units	$ 1,705,000
Bldgs 6,8,10,&12		$ 1,944,000	$27,000/unit times 72 units - 3.5% annual inflation	$ 1,944,000
Bldgs 4,7,9,&11		$ 1,596,000	$28,000/unit times 57 units - 3.5% annual inflation	$ 1,596,000
				$ 6,644,575

EXHIBIT C

SGA ARCHITECTURE

ARCHITECTURE | LAND PLANNING | LANDSCAPE ARCHITECTURE

Myrtle Beach · Charleston · Pawleys Island

PROPOSAL
for
Professional Project Management Services

Tilghman Beach and Raquet Club Building Project

2nd Ave North
North Myrtle Beach, SC 29582
July 15, 2015

1.0 PROJECT DESCRIPTION

SGA has been asked to provide a proposal for Professional Project Management Services to the Tilghman Beach and Racquet Club Horizontal Property Regime for the completion of their Building project. The property consists of 12 three-story above timber piling pre-fabricated wood structures. Five of the buildings are located on the east side of Ocean Boulevard and seven are located on the west side of Ocean Boulevard.

The buildings were originally constructed in 1980 and are in need of substantial exterior repair. Over the last year, professional engineers have been through the property and have prepared reports focusing on the structural systems and exterior envelope concerns of the buildings. Additionally, a general contractor has completed a complete repair of building #3 on the Ocean side of Ocean Boulevard.

The Owners wish to take the information from the prepared reports combined with the experience of building #3 and prepare a comprehensive capital improvement plan to complete the other 11 buildings. SGA will provide professional Project Management services to assemble the contract documents, put the project out to competitive bid, and provide construction administration services through the duration of the construction.

It is anticipated that the construction will be spread out over several years. The bulk of the construction will take place between the off season months of September and March. Several buildings will be completed per year. SGA will be the professional "Point of Contact" for the Owners and the Property Manager for items related to the project for the entire duration of the Work.

245 Business Center Lane Pawleys Island, SC 29585
PHONE (843) 979-5450 | FAX (843) 979-5451 | www.SGAarchitecture.com

2.0 SCOPE OF WORK

A. Construction Documents

1. SGA Architecture will gather all pertinent site data and prepare base drawings for project use. It is anticipated that the drawings will be of a "typical" nature with detailed schedules for each of the buildings.
2. SGA will carefully evaluate the 3 previously prepared engineer reports and provide additional professional Architectural guidance as required to provide a complete scope of work.
3. SGA will prepare complete project specifications suitable for competitive bidding in 8-1/2 x 11 format.
4. SGA will meet with City of North Myrtle Beach building official and review Regulatory requirements.
5. It is anticipated that the Construction Documents will include the following typical drawings:
    a. Project Site Key Plan
    b. Lower Level Key Plan
    c. First, Second, and Third Floor Unit Key Plans
    d. Roof Key Plan
    e. Exterior Elevations
6. It is anticipated that the Project Specifications will include the following products:
    a. Roofing, Skylights, Gutters and Downspouts, Siding and Trim (cement board type), Flashings, Painting, Membrane Waterproofing, Carpeting and Flooring, Railings and Guardrails, others as needed.
7. It is anticipated that the project manual will include the following sections:
    a. Division 0 – Front End – Introductory Information, Procurement Requirements, and Contracting Requirements
    b. Division 1 – General Requirements – Administrative Requirements through Closeout Submittals
    c. Divisions 02-14 – Product Specifications

B. Bid/Negotiation

1. SGA will assist the Owner by researching and recommending suitable bidders to invite to bid the project.
2. SGA will put the project out for competitive bids, respond to bidders questions during the bid process, receive bids on behalf of the Owner, and prepare a bid tabulation sheet of all bids.
3. SGA will assist the Owner in evaluating the bids received, make a recommendation to award, and prepare a Notice of Award.
4. SGA will prepare the Owner/Contractor Agreement, including all attachments and exhibits, subject to Owner review, modification and approval.

C. Construction Administration

1. SGA will review a Project construction schedule, including phasing of construction, times for commencement and completion required of each separate Contractor, ordering and delivery of materials requiring long-lead times, and the occupancy requirements of the Owner.
2. SGA will provide administrative, management and related services to endeavor to coordinate the activities of the Contractor and subcontractors with each other, and with those of the Owner and SGA to complete the Project in accordance with the latest approved estimate of Construction Cost, the Project construction schedule, and the Construction Documents.
3. SGA will schedule and conduct pre-construction, construction, and progress meetings with the Contractors to discuss such matters as procedures, progress and scheduling. SGA will prepare and distribute minutes to the Owner and Contractor.
4. The General Contractor will provide a construction schedule and a schedule of values prior to the start of work. SGA will coordinate the schedule so that it includes the Owners occupancy requirements showing portions of the Project having occupancy priority. SGA will have the schedule updated by the Contractor and reissued as required to show current conditions. If an update indicates the previously approved Project construction schedule may not be met, SGA will recommend corrective action to the Owner.
5. SGA will monitor the approved estimate of Construction Cost. SGA will show actual costs for activities complete or in progress and estimates for uncompleted tasks.
6. SGA will review reports and forecasts for the Project and advise the Owner as to variance between actual and budgeted or estimated costs.
7. SGA will review cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.
8. SGA will record the progress of the Project, on a weekly basis, with written progress reports to the Owner including information on the Contractor's Work as well as the entire Project, showing percentages of completion. SGA will maintain a report documenting the weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.
9. SGA will maintain, on a current basis: one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; other related documents and revisions that arise out of the Contracts or Work.
10. In regards to unforeseen conditions which may be encountered, SGA will review newly proposed design recommendations by the Contractor related to water,

mold or termite abatement procedures, and will offer professional opinions of the same and recommendations to the Owner, when appropriate.

11. SGA will facilitate the Project closeout process, including review and assisting in preparing of punch lists, equipment commissioning, collection of as built information, warranty, operation and maintenance manuals, and final job costs accounting.

3.0 FEES

Construction Documents	$16,800 – fixed fee
Bid / Negotiation	Included in below
Construction Administration	2.6 % of the Cost of Construction
Reimbursable Expenses	$5,400 – estimated
Attendance at Special Meetings and preparation of Special project related Presentations	Hourly – per attached rates

4.0 EXCLUSIONS FROM THE SCOPE OF WORK

Miscellaneous services that may be required in this project, but are not included in Basic Services, are the following:

- Property surveys, easement surveys, detailed descriptions of site
- Additional Utility/drainage/roadway/parking engineering
- Meetings with regulatory agencies other than those specified above.
- Hazardous waste determinations, environmental analysis, or impact statements
- Financial feasibility or other special financial studies
- Interaction with or management of consultants other than those identified above.
- Plans, review fees, and any other review fees required for project review
- Forensic studies or testing.

5.0 ADDITIONAL SERVICES

In the event services beyond the scope of this contract are required, SGA Architecture shall submit a proposal to the client for approval before proceeding.

6.0 TERMS AND CONDITIONS

Projects will be billed monthly with payment due thirty (30) days from the date of the invoice. Payment will be considered overdue after thirty (30) days from the date of the invoice, with

interest charged at a monthly rate of 1.5% (18% annual rate). Work will automatically cease until payment is made on projects with invoices forty-five (45) days old.

245 Business Center Lane Pawleys Island, SC 29585
PHONE (843) 979-5450 | FAX (843) 979-5451 | www.SGAarchitecture.com

AIA® Document B101™ – 2007 Exhibit A

Initial Information

for the following PROJECT:
(Name and location or address)

Tilghman Beach & Racquet Club Homeowners Association Property Regime
Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

THE OWNER:
(Name, legal status and address)

Tilghman Beach & Racquet Club Condominium Association, Inc.
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576

THE ARCHITECT:
(Name, legal status and address)

Steve Goggans
SGA Architecture
PO Box 1859
Pawleys Island, SC 29585

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This Agreement is based on the following information.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

ARTICLE A.1 PROJECT INFORMATION

§ A.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

Construction Program for Tilghman Beach & Racquet Club, See Section 1.1

§ A.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions; or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total, and if known, a line item break down.)

AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:15:49 on 01/14/2016 under Order No.8791687118_1 which expires on 04/28/2016, and is not for resale.
User Notes: (1196968261)

Init.

1

| TBD

§ A.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

| TBD

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract, or construction management.)

| Negotiated Lump Sum or Cost Plus Contracts following receipt of competitive bids

§ A.1.6 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

| TBD

ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address and other information.)

| President of Board of Directors/Tilghman Beach & Racquet Club
| Currently Will Atkinson
| c/o K.A. Diehl & Assoc., Inc., Registered Agent
| 11822 Highway 17 Bypass South
| Murrells Inlet, SC 29576
| Attn: Vickie Gallagher
| Vickie.gallagher@kadiehl.com
| 843.357.9888 x162

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

| Tilghman Beach & Racquet Club Board of Directors
| c/o K.A. Diehl & Assoc., Inc., Registered Agent
| 11822 Highway 17 Bypass South
| Murrells Inlet, SC 29576
| Attn.: Vickie Gallagher
| Vickie.gallagher@kadiehl.com
| 843 357 9888 x 162

§ A.2.3 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

| TBD

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

| Steve Goggans
| SGA Architecture
| P.O. Box 1859
| Pawleys Island, SC 29585

Init.
/
AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:15:49 on 01/14/2016 under Order No.8701687119_1 which expires on 04/20/2016, and is not for resale.
User Notes:
(1105558261)

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

TBD, if needed

.2 Mechanical Engineer

TBD, if needed

.3 Electrical Engineer

TBD, if needed

§ A.2.5.2 Consultants retained under Additional Services:.

§ A.2.6 Other Initial Information on which the Agreement is based:
(Provide other Initial Information.)

TBD

AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:15:49 on 01/14/2016 under Order No.0791007119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(1166908261)

EXHIBIT B

SGA ARCHITECTURE
PROFESSIONAL SERVICES ON A TIME & EXPENSE BASIS
STANDARD HOURLY RATE SHEET
EFFECTIVE
03/01/2015

SGA Architecture provides service on a time and expense basis as follows:

1. This basis includes allowance for direct and non-salary expenses. It also provides for services we may subcontract to others.

2. Direct salary expenses are based upon our payroll costs. The payroll costs include the costs of insurance and medical benefits.

The current charge-out rates for each skill and position are as follows:

POSITION	MAXIMUM HOURLY CHARGE OUT RATE
SENIOR PRINCIPAL	$200.00
MANAGING PRINCIPAL	$180.00
DESIGN PRINCIPAL	$175.00
ASSOCIATE PRINCIPAL/STUDIO MANAGER	$160.00
ASSOCIATE PROJECT MANAGER / PLANNER LA	$150.00
LANDSCAPE ARCHITECT / PLANNER III	$130.00
LANDSCAPE ARCHITECT / PLANNER II	$120.00
LANDSCAPE ARCHITECT / PLANNER I	$110.00
INTERN LANDSCAPE ARCHITECT III	$105.00
INTERN LANDSCAPE ARCHITECT II	$ 95.00
INTERN LANDSCAPE ARCHITECT I	$ 85.00
ASSOCIATE/PROJECT MANAGER/ARCHITECT	$150.00
PROJECT ARCHITECT III	$130.00
PROJECT ARCHITECT II	$120.00
ARCHITECT I	$110.00
INTERN ARCHITECT III	$105.00
INTERN ARCHITECT II	$ 95.00
INTERN ARCHITECT I	$ 80.00
ASSOCIATE/PROJECT MANAGER / INTERIOR DESIGNER	$150.00
INTERIOR DESIGNER III	$130.00
INTERIOR DESIGNER II	$120.00
INTERIOR DESIGNER I	$110.00
INTERN INTERIOR DESIGNER	$ 95.00
ADMINISTRATIVE/CLERICAL	$ 80.00

REIMBURSABLES

1. All project related reimbursable expenses (e.g. reproduction, postage, delivery, telephone, renderings, accommodations, travel, etc.) in connection with this project will be billed to the client at 1.25 times their cost. Auto mileage will be billed at the current IRS rate. Travel time will be billed at individual's charge out rate.
2. Upon execution of this agreement Client shall identify persons who are responsible for approval and processing of SGA's invoices and identify timing of such approvals and processing.
3. Invoices are due upon receipt. Payment shall be considered overdue after thirty (30) days from date of invoice and 8.00% per annum is automatically added to the principal balance then remaining.
4. If client for any reason fails to pay invoices within 30 days of date of invoice, SGA has the right to cease work on the project and Client shall waive any claim against SGA for cessation of services.
5. Additional consultant costs including but not limited to Architectural, Structural, Civil, Mechanical and Electrical Engineering, Survey, Soils and Environmental Services will be billed at a rate of 1.25 times the amount billed to SGA.
6. Work products (such as sketches, plans, diagrams, documents, reports, etc.) produced under this agreement are instruments of service and shall remain the property of SGA. Nothing may be copied nor reproduced in any manner without written permission from SGA.

EXHIBIT
"C"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII. IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-

SGA ARCHITECTURE

ARCHITECTURE | LAND PLANNING
LANDSCAPE ARCHITECTURE

EXHIBIT
C

January 22, 2016

Tilghman Beach and Racquet Club Condominium Association, Inc.
c/o Ms. Vickie Gallagher, Executive VP, K.A. Diehl & Associates
2nd Avenue North & N Ocean Blvd
North Myrtle Beach, SC 29582

Dear Ladies and Gentlemen,

As most of you are aware, repairs were initiated this week by Shoreline Remodel (Shoreline) on Building 6. Unfortunately, while re-cladding the end wall of the Building 6, the Contractor ran into unexpected and serious structural damage resulting from moisture intrusion and termites. The termite colony was no longer active, but had done significant damage to the unit.

On January 20, the next day, I visited the site to survey the damage. Unfortunately, a cantilevered, girder and numerous studs will require replacement. Additionally, two windows will require replacement. This work will be invasive, and will affect the interior finishes of this unit. The following day, January 21st, Saul Martinez, the Structural Consultant visited the site and determined that the damage was similar to that discovered in an earlier repair made on Building 2. Saul stated that he can develop the documents for the structural repair for $1,800.00 and SGA will develop documents and specifications for the window replacement and flashings. SGA's fee will be approximately $500.00 for the same, not including bid and negotiations or construction administration. This additional engineering and architectural design work is urgent and unavoidable.

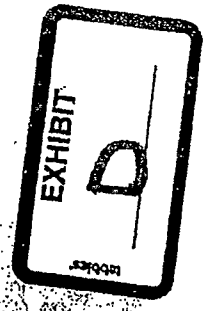
The above also presents a number of issues for our contractor, Shoreline. As Shoreline is only a cladding and trim company, they don't feel qualified to make the structural repairs. Consequently, two companies were contacted, ProCon and Donnie Stewart, to survey the work and offer pricing for the same. Both of these companies are qualified and ProCon performed the prior work on Building 2. These companies won't be able to offer final prices until Design Documents for the repair are provided. This, of course means that siding replacement can't be continued, and Shoreline has to stop its work.

Shoreline is concerned about its liability relating to keeping the building open for several days or weeks, during the period the design professionals finish their documents and Procon or Stewart mobilize. It should be noted that replacement windows often require several weeks to obtain. I don't know the cost implications for demobilizing Shoreline and their remobilization costs at this point. In consideration of the above, I offer the following recommendations:

1. Shoreline has been asked to supply a hold harmless letter to protect it during the time the Building 6 is open. They will be required to temporarily cover and protect the damaged area of the building during the period work is stopped. The Architect will inspect the temporary covering, but can in no way warrant or guarantee the viability of the temporary protection.
2. The Board needs to immediately authorize SGA and Martinez to complete documents relating to the repair. We will proceed on a good faith basis while we are awaiting this approval.
3. Given the damage to building 6, which is similar to Building 2, my concern at this point is that the structural problems are systemic throughout the whole property. The damage observed in Building 6 is severe. Further delay in curing these problems will lead to further damage, increasingly costly repairs, and ultimately, structural failure. Therefore, I respectfully recommend that the Board convene a meeting to discuss a more comprehensive and expeditious approach to affecting a long term repair and stabilization solution for the entire property. I will make myself as available as possible for such a meeting. Given the issues and damage observed thus far, this matter should be treated with urgency.

Respectfully submitted,

Steve Goggans, AIA



PROPOSAL FOR TBRC FUTURE

FROM DOUG MADISON & DANNY COE

A. All Repairs In All Buildings Should Have Been Completed Before Undertaking Any "Renovation" or "Freshening Up" of Building 3

It is unfair to all homeowners in all buildings throughout TBRC, the Board should have (1) identified all required repairs in all 12 buildings at TBRC, and (2) completed all required repairs in all 12 buildings before undertaking any desired "renovation" or "freshening up" in Building 3.

It is simply unfair to the homeowners at TBRC to deplete our financial resources "renovating" or "freshening up" any single building before all required repairs were completed in all buildings.

B. What Needs to be Done

1. Step One:

In regard to Step One, we the homeowners at TBRC need to demand that all "renovation" or "freshening up" at TBRC stop until ALL required repairs in all buildings are identified, the costs of all required repairs calculated and a plan prepared for performing all required repairs.

2. Step Two:

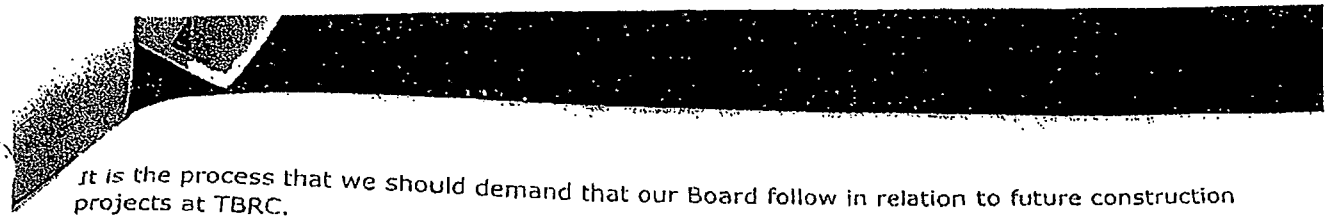
Step two involves specifying what "renovation" or "freshening up" the homeowners would like to see done at TBRC. That work should be specifically identified as well as the cost of that work.

3. Step Three:

Then the homeowners should vote on what "renovation/freshening up" work they actually want performed at TBRC and approve the amount they are willing to pay for renovation/freshen up work. Only then any "renovation/freshening up" work proceed according to the vote of at least 51% of the homeowners at TBRC. If this happens, we as homeowners cannot complain even if we don't like what we may want. Finally, it is what we all agreed to abide by pursuant to the Master Deed when we purchased our property at TBRC.

A Proposed Process for the Board to Follow

Set forth below is a proposed process for identifying and implementing all repair/renovation/freshening up work at TBRC. It is a process commonly utilized in the construction industry with a high degree of success.



It is the process that we should demand that our Board follow in relation to future construction projects at TBRC.

1. The Board will have a detailed forensic analysis performed on Buildings 1, 2, 4-12 by an architectural/engineering firm (not just a structural engineer) to determine all necessary repairs;

2. The Board will have the architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs;

3. The Board will submit the design drawings and specifications for the repairs to at least three commercial general contractors (**not an emergency restoration contractor**) and obtain proposals from the contractors for performance of the required repairs;

4. The Board will also have the architectural/engineering firm prepare design drawings and specifications for any desired "renovation" work;

5. The Board will submit the design drawings and specifications for the "renovation" work to **at least 3 commercial contracting firms and obtain proposals for the desired renovation work;**

6. The Board will then prepare alternative proposals for payment of the cost of the repairs and renovation work;

7. The Board will have a color rendering prepared showing what the TBRC buildings will look like upon completion of different options for (1) no renovations; (2) some renovations; and (3) all desired renovations to show all homeowners at a Special Meeting;

8. The Board will then conduct a Special Meeting to display the renderings and explain/discuss/talk about all the above with all homeowners;

9. **The Board will conduct a vote of all homeowners at the Special Meeting to determine which proposal the majority of the TBRC homeowner's support; (1) only repairs, or (2) repairs and some renovation work;**

10. The Board will then, with the assistance of a construction lawyer, enter into good contracts with (1) the architectural/engineering firm, (2) the general contractor and (3) a Project Manager to act on behalf of TBRC, **in relation to whatever proposal is approved by a majority of the homeowners at TBRC. (This is lacking in the current board majority's existing plan or action.)**

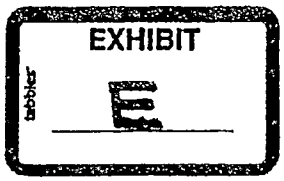
EXHIBIT
"E"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII. IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-



STATE OF SOUTH CAROLINA COUNTY OF HORRY Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs, v. Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26- AFFIDAVIT OF SAUL JOSEPH MARTINEZ

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

1. My name is Saul Joseph Martinez. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and

expertise in the field of structural engineering. I attended The Citadel in Charleston, SC, from which I received a B.S. Civil Engineering degree in 1993. I am registered in the States of South Carolina, North Carolina, Florida, New York, Virginia, Louisiana, Tennessee and Georgia. A copy of my Curriculum Vitae, marked **Exhibit "A"**, is attached hereto and incorporated by reference as part of this Affidavit.

2. I am not a party to the above entitled action, and I am unrelated to any of the above- captioned members.

3. I am currently the owner of Martinez & Associates Structural Engineers, PA located in Myrtle Beach, SC as a Principal Structural Engineer. My experience includes approximately twenty-three (23) years of design work, diagnostic evaluations, building repair design, and construction project management. (See **Exhibit A.**)

4. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Complaint.

5. Tilghman Beach and Racquet Club Condominium Regime ("TBRC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer, Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983 are located in Horry County, South Carolina.

6. The construction of Tilghman Beach & Racquet Club Condominum Regime was completed in accordance with the building code requirements of the 1981 Edition of the Standard Building Code ("SBCCI").

7. The twelve (12) buildings are elevated three (3) story wood framed structures with corridor walkways on one side and cantilevered balconies on the other. The pre-fabricated structures are located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

8. Article XXI of the Master Deed states that the Association is responsible for the ***maintenance, repair and replacement*** of all of TB&RC's Common Elements. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

9. Article I, Paragraph 11 of the By-Laws addresses the Association's responsibility to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affinnative duties to collect and maintain a reserve fund for the future replacement of structural Common Elements:

> (d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project ***shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and***

mechanical equipment constituting a part of the Common Elements as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. ***The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors*** ***so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements***.

(e) The Board of Directors of the Association, in establishing said annual budget for operation management and maintenance of the Project, ***shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress*** when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or ***for other reason placing financial stress upon the Association***.

10. In December of 2014, I was charged with developing structural remediation documents guidelining the methods of repair of the structural frame and water-protective building envelope for Buildings #1 and #3 at TB&RC. Because work on Building #3 has been halted by the Board of Directors being performed by a previously hired General Contractor, the BOD instructed this engineer to prioritize the remediation of Building #3. Deficient items of primary concern during the design phase were:

10.1 **Structural Remediation Items**

a. Balcony Railings that were unstable with missing pickets and deficient connections.
b. Balcony subflooring exhibiting loss of strength and deflecting floor joists.
c. Ground level and upper level connection hardware that was corroded and delaminating.
d. Balcony beams that were deflected as much as 2 inches and showed water damage.
e. Stair areas with damaged wood studs at base of walls.
f. Corridor subflooring exhibiting loss of strength and deflecting floor joists.
g. Corridor areas retaining excessive amount of water after storm events.
h Ground level and upper level connection hardware that was corroded and

delaminating.

i. Rusted connections at balcony and corridor post connections.

10.2 Building Envelope Remediation Items

a. Corridor areas retaining excessive amount of water after storm events.
b. Ground level and upper level connection hardware that was corroded and delaminating.
c. Water penetration at roof including skylights, wall to roof interfaces, ridges and gable vents.
d. Water penetration at building corner units.
e. Water penetration at sliding glass doors due to corroded door pans and deficient hardware.
f. Lack of membrane protection at balcony and corridor perimeters.
g. Lack of flashing protection at post to floor interface.
h. Lack of flashing or membrane protection at deck to wall interface.
i Rusted connections at balcony and corridor post connections.
j Deficient corridor guard railing for horizontal thrust.
k. Absence of drip edge flashing at corridors and balconies.
l. Absence of trip edge flashing at roof perimeter.

11. My review of the remaining nine (9) buildings as requested by the TB&RC Board of Directors in the spring of 2015 is depicted in detail on the Martinez & Associates Structural Engineers, PA report dated June 26, 2015 and marked as **Exhibit B**.

12. Based upon my knowledge of the studied buildings, Martinez & Associates Structural Engineers, PA offers the following professional opinions, which are based upon a reasonable degree of engineering certainty:

a. All balconies at Buildings I and II should be completely demolished and replaced with new inclusive of supporting cradle beam components.

b. All the balconies of the project are to be immediately removed and replaced, or totally repaired, with the exception of Building III.

c. All sliding glass doors or non-code compliant sliding glass doors should be removed, reflashed, new door pans installed and replaced with impact resistant code compliant units. Execution of this plan will significantly improve water infiltration within bedroom units.

d. All corridor structural elements (plywood, joists and beams) are to be immediately repaired or replaced.

e. All the corridor guard railing systems (railings, posts and pickets) are to be immediately replaced, with the exception of Building III.

f. All the connections with the loss of metal in excess of twenty-five (25) percent are to be immediately replaced with stainless steel hardware as was recommended but not executed at Building III.

g. A three (3) year preventive maintenance program shall be implemented which includes inspection and treatment of all exposed connections, replacement of damaged siding components, and replacement of all defective windows.

h. The existing balcony support components do not meet the Code and represent a high level of overstress, except for Building III.

i. Missing spindles, damaged wood and deficient connections at corridor guardrails are unsafe and violate Section 23-129.3(6) of the Zoning Code for the City of North Myrtle Beach.

j. The exterior wood siding and trim is decayed and rotten at many locations at all twelve (12) buildings. This current condition for all buildings violates Section 23–129.3(1) of the Zoning Code for the City of North Myrtle Beach.

k. The roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are not properly maintained and do not provide the buildings with a weather resistant exterior wall envelope. Additionally, several tarps are attached to roofs/skylights. As such, the delaminated roofing and water intrusion problems associated this defective condition violate Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

l. The complete replacement of the roofing systems on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII. Partial replacement of the roofing components on Buildings I and II.

m. All visible termite damage has not been repaired in the buildings. Further, the Board has failed to adequately investigate and uncover all potential termite damage within Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

n. Significant remediation construction is immediately needed on Buildings I and II due to my opinion that the two (2) buildings have less than a three (3) year life expectancy and will become unrepairable past October of 2018.

o. Significant remediation construction is immediately needed on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII due to my opinion that the nine (9) buildings have less than a four (4) year life expectancy and will become unrepairable past October of 2019.

p. Significant remediation construction is still required at Building III at the ground level and specifically at the driven piling system where recommended work as a part of the engineering documents permitted was not executed by the Board of Directors for TB&RC.

Martinez & Associates Structural Engineers, PA reserves the right to amend its above stated opinions as additional information is made available to it.

13. Further, Martinez & Associates Structural Engineers, PA offers additional opinions concerning the Boards' lack of proper maintenance, replacement and repair of General Common Elements and Limited Common Elements for Buildings I, II, III (ongoing), IV, V, VI, VII, VIII, IX, X, XI and XII which are based upon a reasonable degree of engineering certainty:

a. Deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII have been known by the Board for at least nineteen (19) years. The Board has long ignored the state of disrepair to these buildings. The Board's failure to properly maintain, repair and replace General Common Elements and Limited Common Elements is a clear breach of its fiduciary duty and duty of reasonable care under the common law.

b. The seriousness of the defects and deficiencies of General Common Elements and Limited Common Elements of the buildings have been historically ignored by Board.

c. The Board has not acted with due care and in good faith in its affirmative duties, pursuant to the governing documents of the Tilghman Beach & Racquet Club Property Regime, to maintain and repair and thereby prevent progressive damages to the General Common Elements and Limited Common Elements of the buildings.

d. The Board did not engage qualified professionals to assess/evaluate the long known suspected deficient conditions before 2013. The Board's failure to do so permitted the distress to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII to reach a severe and nearly unserviceable condition.

e. The failure of the Board to engage qualified professionals prior to 2013 prohibited the design and implementation of a maintenance and repair program which would have greatly lessened the severity of the distress whereby only typical maintenance, repair and replacements would have been necessary.

f. Our report clearly identified deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII that are the direct result of the Board not properly maintaining or failing to maintain, repair or replace the Common Elements and Limited Common Elements.

g. The governing documents of the Tilghman Beach & Racquet Club Property Regime impose an affirmative duty on the Board to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. The Board failed to adequately fund reserves for the maintenance, repair and replacement of General Common Elements and Limited Common Elements, and thereby is responsible for the extraordinarily high cost of the repairs to the buildings, which have and will increase substantially over time.

h. The Board's conduct and also inaction, in failing to discharge its affirmative duties under the governing documents for the reasons described above, are not protected by the business judgment rule.

I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

[SIGNATURE PAGE TO FOLLOW]

FURTHER AFFIANT SAYETH NOT.

Saul Joseph Martinez, PE

SWORN to and subscribed before me this
5th day of July, 2016.

Lynn R. Heard
Notary Public for
My Commission Expires: 10-12-21

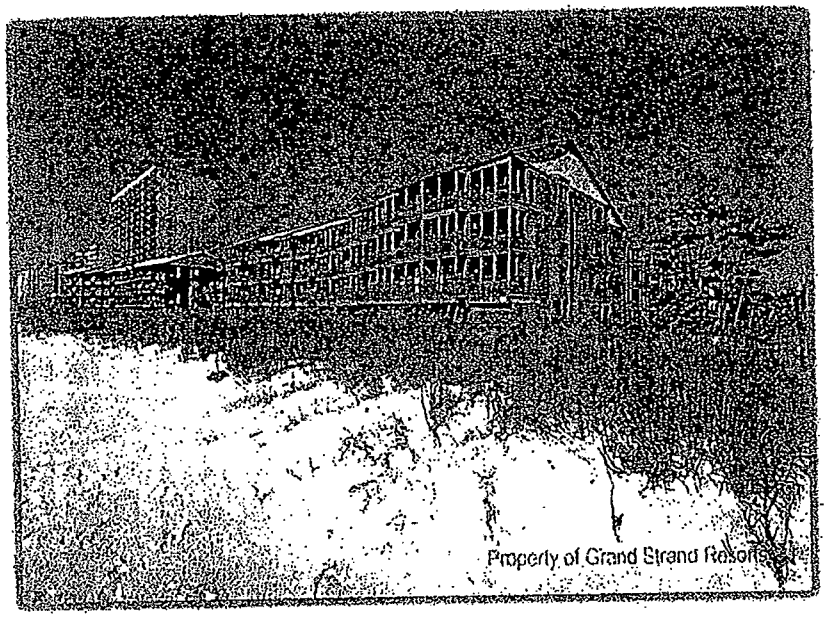
LYNN R HEARL
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES
OCTOBER 12, 2021

EXHIBIT
"A"

Phase I Assessment for

For

Tilghman Beach & Racquet Club
Ocean Front & Second Row Buildings
North Myrtle Beach, South Carolina



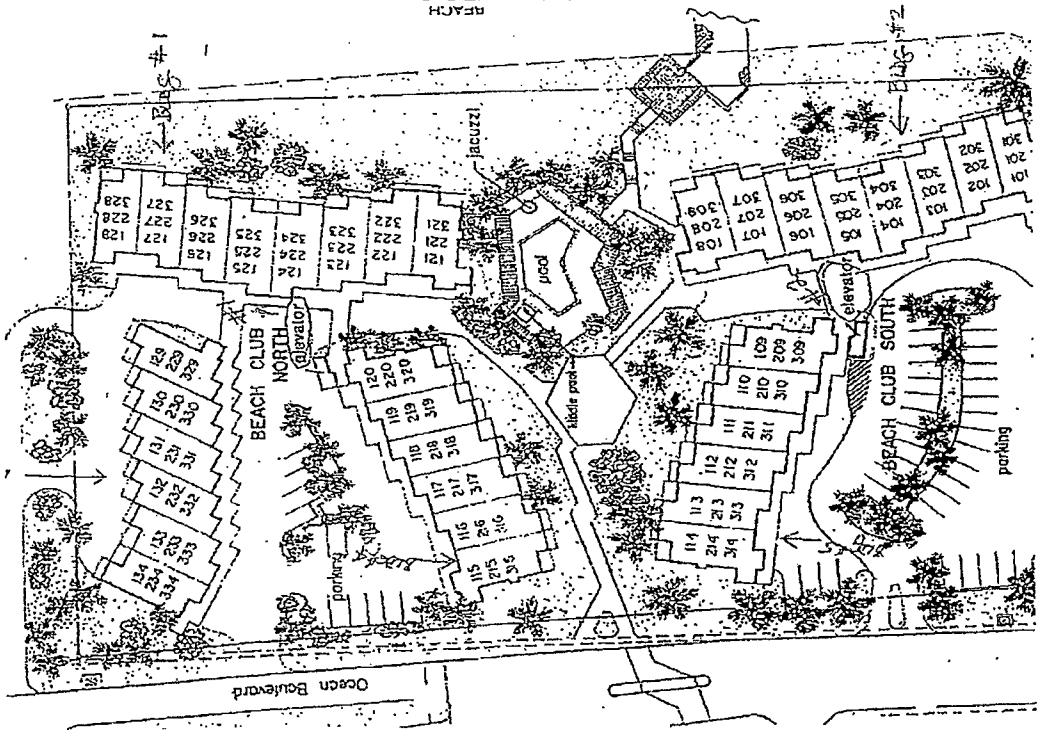
Submitted By

MARTINEZ & ASSOCIATES
STRUCTURAL ENGINEERS, PA

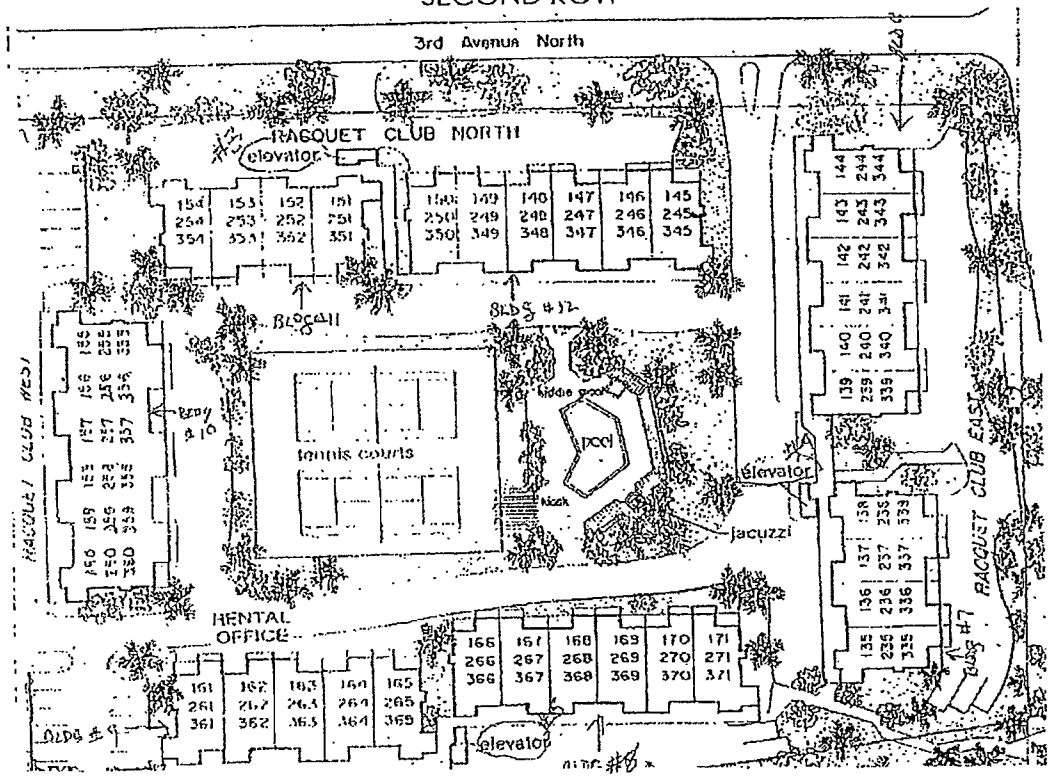
Saul J. Martinez, PE
Martinez & Associates Structural Engineers
843-839-1620
saulm@sccoast.net

SITE MAP

OCEAN FRONT



SECOND ROW



MARTINEZ & ASSOCIATES
STRUCTURAL ENGINEERS, PA
1107 48TH AVE NORTH 310C • MYRTLE BEACH, SC 29577
O: 843.839.1620 • F: 843.839.1623

Phase I: Existing Condition Evaluation

Inspection Dates: June 2015

Project: Tilghman Beach & Racquet Club

Location: 2nd Avenue North
North Myrtle Beach, SC

Current Owner: Tilghman Beach & Racquet Club Horizontal Property Regime
2nd Avenue North
North Myrtle Beach, SC

Property Manager: K.A. Diehl
c/o Earl Collins, CMCA, AMS
11822 Highway 17 Bypass
Murrells Inlet, SC 29576

Consultant: Martinez & Associates Structural Engineers, PA
1107 48th Ave North 310C
Myrtle Beach, SC 29577
Phone: (843)839.1620, Fax: (843)839-1623
marteng1@sccoast.net

Project Number: 14-701

Present: Saul J. Martinez, PE

General

Constructed in the early 1980s, Tilghman Beach & Racquet Club consists of 12 three-story above timber piling pre-fabricated buildings. 5 buildings are located on the east side of Ocean Boulevard while 7 buildings are located west of Ocean Boulevard. Several building "types" comprise the 12 buidlings which consist of two stairwells, common area corridors, and two balconies per unit. Several buildings are jointed with cross walk corridors.

This study focuses predominantly on the structural system and building exterior envelope (siding, windows, doors, flashing, etc). Issues related to storm water

drainage, plumbing, mechanical or electrical components have not be included in this assessment.

This report is a general summary report and is not exhaustive in detail, and does not change the contractual responsibilities between parties for correction of deficiencies or non-complying items, whether or not all were discovered and noted in this report. Where items regarding one "trade" or "system" are mentioned on only specific areas of the building, check all other similar areas and correct all such similar occurrences.

Field Observations

I. General Property Walk-Through
Conducted By: Saul J. Martinez, PE, Jon Black, PE, Helio Martinez, and Toriano Watts

The following is an itemization of observations along with maintenance/repair items depicted by this firm. Items will be categorized by building components corresponding with the attached existing building drawings. It should be stated that a thorough inspection of each story balcony was completed with specific attention to the condition of each component listed on the Field Itemization Table for each building. Photos of specific items have been listed in walk-through sequence and described individually.

Levels of criticality will also be designated with a 1 – 5 with **-1-** being **Less Critical** or No Issues (no maintenance), **-2-** being **Consideration** (consider repair for property appearance), **-3-** being **Monitor** (on-going observation), **-4-** being **More Critical** (issue likely to become severe in the near future) and **-5-** being **Severe** (in need of immediate attention due to compromise of property integrity or occupant safety).

II. Corridors

Corridor components consist of guard railing, floor framing, ceiling soffit, post connections, entry doors, cedar trim/siding, and cradle beam/girder system at the first level only. While not each component of each unit was available for visual inspection, those areas that were were graded based on the following:

- Guard Railing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 3-4 years.*
  - 4 – Indicates existing presents a life safety hazard and should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Floor Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing possesses few "soft spots" within the subflooring, floor depressions, or delaminated subflooring and should be monitored for repair or replacement *within 1-2 years.*
  - 4 – Indicates existing possesses numerous "soft spots" within the subflooring, floor depressions, or delaminated subflooring and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing presents a Severe version of Level 4 and life safety hazard. Should be considered for replacement ***immediately.***

- Ceiling Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of sag or displacement and should be monitored for repair or replacement *within 2-3 years.*
  - 4 – Indicates existing shows signs of water damage and should be considered for examination and possible replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Post Connections
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing shows signs of oxidation and may require aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of moderate oxidation and should be monitored for repair or replacement *within 2-4 years.*
  - 4 – Indicates existing shows More Critical signs of oxidation and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing shows Severe signs of oxidation and presents a life safety hazard. Should be considered for replacement ***immediately.***

- Entry Louvre Doors
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years.*
  - 4 – Not utilized.
  - 5 – Not utlized.

- Cedar Trim/Siding/Flashing
  - 1 – Indicates existing needs no modification.

- 2 – Indicates existing requires aesthetic rehabilitation.
- 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years.*
- Indicates existing requires dynamic water test due to More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cradle Framing (at first level only)
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing end fibers are delaminated due to exposure should be monitored for repair *within 6-12 months.*
  - 4 – Indicates existing end fibers are delaminated due to exposure and deflection of the girder is greater than L/240 (0.4" for 8 foot span). Presents a life safety hazard and should be considered for replacement ***within 24 months.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

III. Balconies

Balcony components consist of guard railing, floor framing, ceiling soffit, post connections, entry doors, cedar trim/siding/flashing, and cradle beam/girder system at the first level only. While not each component of each unit was available for visual inspection, those areas that were were graded based on the following:

- Guard Railing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 3-4 years.*
  - 4 – Indicates existing presents a life safety hazard and should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Floor Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing possesses few "soft spots" within the subflooring, floor depressions, or delaminated subflooring and should be monitored for repair or replacement *within 1-2 years.*

- 4 – Indicates existing possesses numerous "soft spots" within the subflooring, floor depressions, or delaminated subflooring and presents a life safety hazard. Should be considered for replacement ***within 1 year***.
- 5 – Indicates existing presents a Severe version of Level 4 and life safety hazard. Should be considered for replacement ***immediately***.

- Ceiling Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of sag or displacement and should be monitored for repair or replacement *within 2-3 years*.
  - 4 – Indicates existing shows signs of water damage and should be considered for examination and possible replacement ***within 1 year***.
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately***.

- Post Connections
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing shows signs of oxidation and may require aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of moderate oxidation and should be monitored for repair or replacement *within 2-4 years*.
  - 4 – Indicates existing shows More Critical signs of oxidation and presents a life safety hazard. Should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing shows Severe signs of oxidation and presents a life safety hazard. Should be considered for replacement ***immediately***.

- Post Boots
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years*. Caulking or sealant required.
  - 4 – Indicates existing requires dynamic water test. Should be monitored for potential to allow moisture penetration and cause framing damage due to in situ plastic membrane and particle-board sheathing below. Should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage due to in situ plastic membrane and particle-board sheathing below. Should be considered for replacement ***immediately***.

- Balcony Sliding Doors/End Bay Windows

- 1 – Indicates existing has been replaced within past 5 years and needs no modification.
- 2 – Indicates existing requires dynamic water test for sill or pan deterioration.
- 3 – Indicates existing requires dynamic water test for sill or pan deterioration and should be monitored for repair or replacement *within 1-2 years.*
- 4 – Indicates existing should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cedar Trim/Siding/Flashing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for repair or replacement *within 3-4 years..*
  - 4 – Indicates existing requires dynamic water test due to More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cradle Framing (at first level only)
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing end fibers are delaminated due to exposure should be monitored for repair *within 6-12 months.*
  - 4 – Indicates existing end fibers are delaminated due to exposure and deflection of the girder is greater than L/240 (0.4" for 8 foot span). Presents a life safety hazard and should be considered for replacement ***within 24 months.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

IV. Stair Towers

- Stringer Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation (painting).
  - 3 – Indicates existing, due to member splitting or cracking. should be monitored for repair or replacement *within 3-4 years.*

- 4 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered for replacement ***within 1 year***.
- 5 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered fore replacement ***immediately***.

- Landing Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation (painting).
  - 3 – Indicates existing, due to member splitting or cracking. should be monitored for repair or replacement *within 3-4 years*.
  - 4 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered fore replacement ***immediately***.

V. Exterior Walls

- Gable End Walls and Stair Tower Walls (Field Engineer to indicate N / S / E / W wall examined for each side of building).
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for siding repair or replacement *within 3-4 years*.
  - 4 – Indicates existing shows More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately***.

VI. Roof System

- Shingles, Fascia, Gable Vent, Skylights (Field Engineer to indicate N / S / E / W roof areas examined).
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for shingle repair or replacement *within 4-5 years*.
  - 4 – Indicates existing shows More Critical signs of shingle loss, material distress, loss of caulking beads, fogged skylights or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year***.

- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately***.

- Pop-Up Gable components including Fascia, Kick-Out Flashing, Wall-Roof interface Flashing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for shingle repair or replacement *within 4-5 years.*
  - 4 – Indicates existing shows More Critical signs of shingle loss, material distress, loss of caulking beads, delaminated subroofing, lack of kick-out flashing, lack of wall-roof flashing or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately***.

VII. Piling Conditions

A minimum group of 5 pilings to be examined in the North, South, East, and West areas of the ground/parking area. Of the 5 pilings examined, the approximate percentage of the total piling surface area affected to the following degrees of criticality should be recorded:

- Splitting
  - 1 – Fibers showing normal lines of striation and high levels of creosote saturation for moisture protection.
  - 2 - Fibers showing normal lines of striation and low to moderate levels of creosote saturation.
  - 3 - Fibers showing gaps of approximately 1/8" over more than 25% of the group surface area.
  - 4 – Fibers showing gaps of approximately 1/4" over more than 25% of the group surface area.
  - 5 – Fibers showing gaps of approximately 1/4" to 1/2" over more than 25% of the group surface area.
- Base Deterioration
  - 1 – No signs of section loss at base of timber piling.
  - 2 – Darker region indicating moisture penetration with no section at base of timber piling.
  - 3 – Indicates existing shows Moderate levels of moisture fluctuation with less than 5% section loss.
  - 4 – Indicates existing shows More Critical levels of dry-rot with greater than 5% section loss. Piling base to require future excavation.

- 5 - Indicates existing shows Severe levels of dry-rot with greater than 10% section loss. Piling base to require future excavation.

Summary and Recommendations

With consideration to the time of original constructions, the condition of the building indicates need for maintenance and remediation.

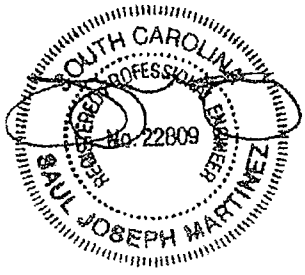
As described above, structures in an oceanfront environment possess a certain life span after which considerable and costly repairs must be accepted. While an amount of the items observed are cosmetic, data reported in this assessment is primarily structural and building envelope based. Items deemed as More critical to Severe in the field itemization tables should be addressed in a timely manner by qualified professionals in the remediation of timber structures. Furthermore, remediation must be performed by a General Contractor certified by the repair material manufacturer in the preparation and systematic repair of damaged wood along with shoring techniques.

The attached Building Summary and Field Itemization table for each building represents a summary of each item Less Critical, for Consideration, to Monitor, More Critical, and Severe. The "Phasing Method" with sensitivity to budget matters may be considered when examining the table.

This firm will be glad to provide guidance for the evaluation of this report and implementation of "Phase II Remediation". Further questions or concerns may be directed to our office without hesitation.

Sincerely,

Saul J. Martinez, PE



Building Inspection Tables

Building	Corridor							Balconies										Slab #1 - North		Slab #2 - South	
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing		Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 127		3	3		3	3				3							3				
Unit # 125		3	3		3	3															
Unit # 123		3	3		3	3															
Unit # 121		3	3		3	3															
2nd																					
Unit # 227		3	3		3	3				3							NA				
Unit # 225		3	3		3	3											NA				
Unit # 223		3	3		3	3											NA				
Unit # 221		3	3		3	3											NA				
3rd																					
Unit # 327		3	3		3	3											NA				
Unit # 325		3	3		3	3											NA				
Unit # 323		3	3		3	3											NA				
Unit # 321		3	3		3	3				3							NA				
Exterior Walls / Floor Level	North / Gable End Walls	South / Gable End Walls	Stair #1: North / Stair Wall	North / Stair Wall	Stair #2: South / Stair Wall	South / Stair Wall	Roof	Parapet	Fascia	North / Gable Vent	South / Gable Vent	Skylights	Pop-Up Gables	Fascia	Rot-Out Framing	Weathered Flashing	Gutters / Down Spouts	Pilings (Groupings of 5)	Splitting	Rot / Deterioration	Bracing Connections
Ground to 1st		4	4	4	4	4	South Area	3	3			3		3	3	3	3	South Area	3 / 85 1%	3 / 85 1%	4 / 100 1%
1st to 2nd		4	4	4	4	4	East Area														
2nd to 3rd		4	3	3	4	4	West Area					3		3	3	3	3	West Area			

Description — Comments

1 - Most Critical
2 - Consideration
3 - Monitor
4 - Moderate
5 - Replace Now

Nuts and bolts at each bay at piling must be replaced. The same scenario at all the supporting post, the nuts and bolts need to be replaced. Cedar siding and trim in particular on the North and South wall may require partial or complete replacement.

All corridors have sustained subflooring damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.

Several corridor outer beam bands showed signs of dishes due to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.

The Cradle beam with longer cantilevers have been shored to alleviate deflection.

Pilings: All sections that are exposed and have normal wearing on Roof System using a pair of binoculars show signs of shingle lost in a few areas.

#123 - The balcony structure showing deterioration at all the components.

#127- Soil flooding swamp. Balcony components are in significant need of replacement.

Perimeter subflooring of balconies are exposed showing signs of severe delamination.

Summary and Preliminary Recommendations

Building 1

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Specific areas of wall coverings and wood studs at the base of the stair towers have been damaged from moisture penetration. Sheathing should be removed during the remediation process to examine for further damage.

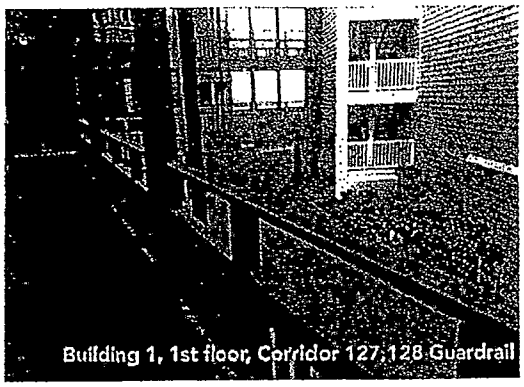
Stucco cladding at the south end gable is at a "Severe" level and has allowed moisture penetration and damage to all end units. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Plank siding is present at the north end gable.

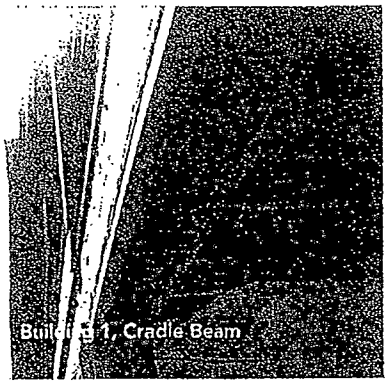
Visual inspection of the roof and flashing systems was limited due to accessibility. While the roof shingle installation is newer, several shingles were observed to be missing. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

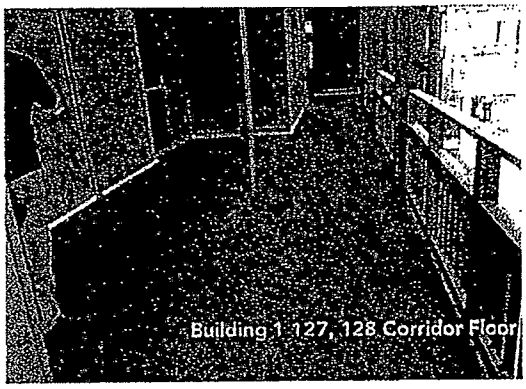
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" to "More Critical" where splits exceeded ¼" in more than 15% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

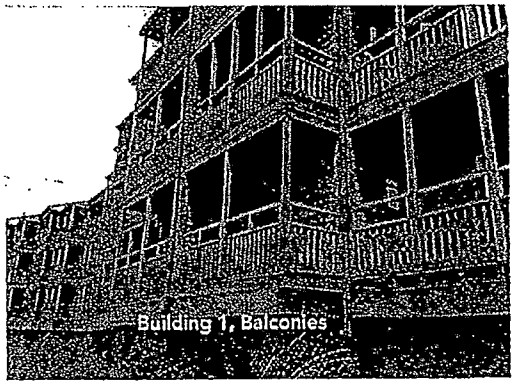
Photo Documentation

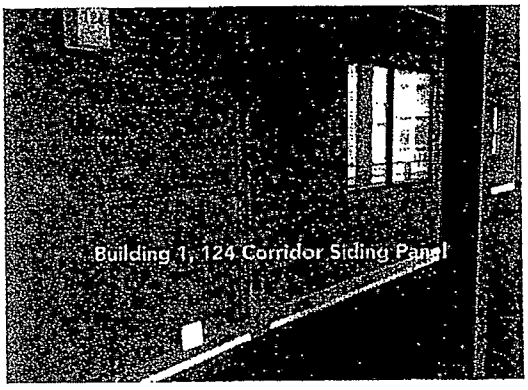
Building 1

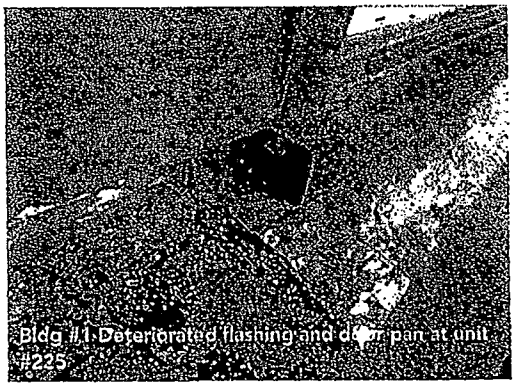

Building 1, 1st floor, Corridor 127,128 Guardrail

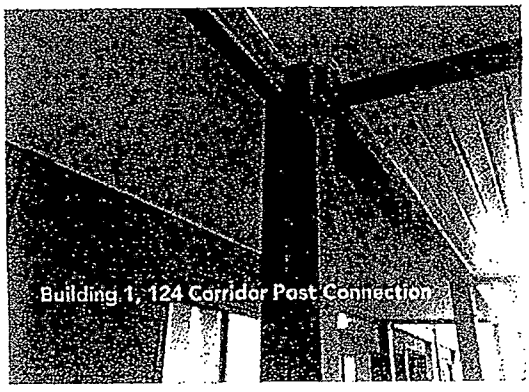

Building 1, Cradle Beam


Building 1 127, 128 Corridor Floor

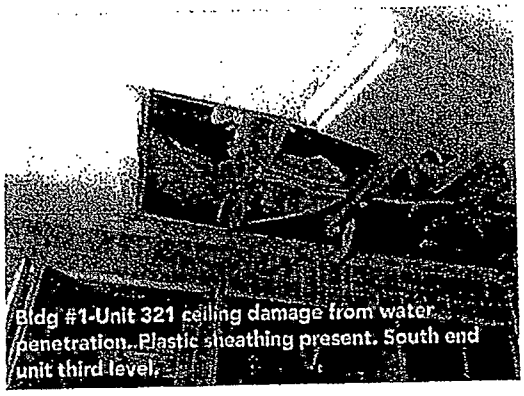

Building 1, Balconies


Building 1, 124 Corridor Siding Panel

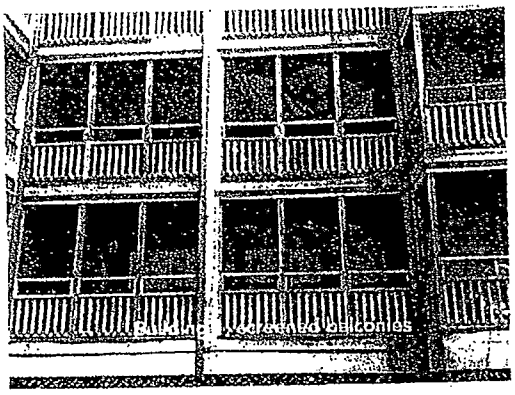

Bldg #1 Deteriorated flashing and drip pan at unit #225

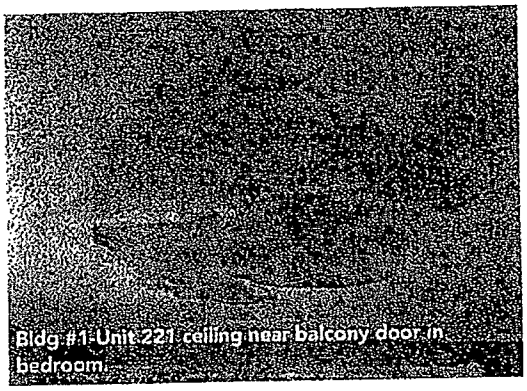

Building 1, 124 Corridor Post Connection

Bldg #1 trim gaps at balconies allowing water entry

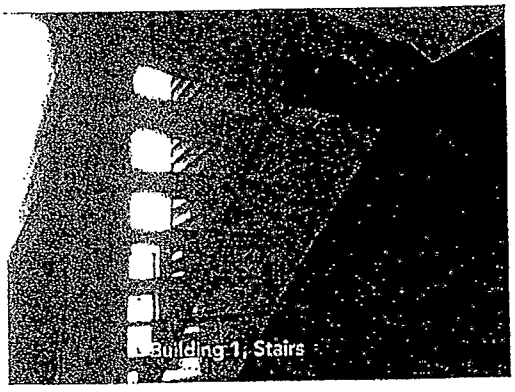


Bldg #1-Unit 321 ceiling damage from water penetration. Plastic sheathing present. South end unit third level.

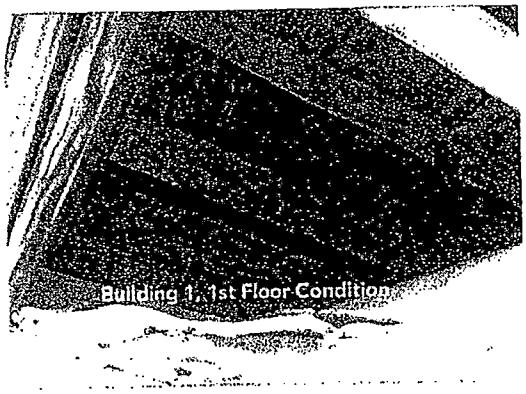




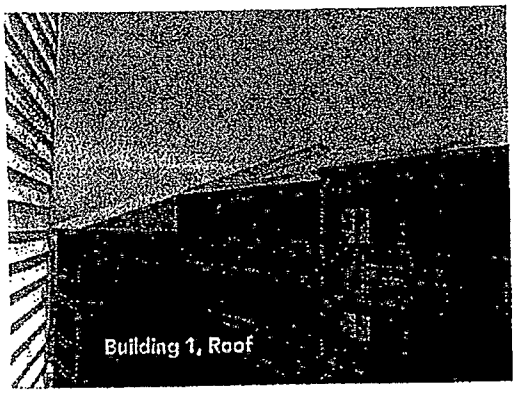
Bldg #1-Unit 221 ceiling near balcony door in bedroom.



Building 1, Stairs

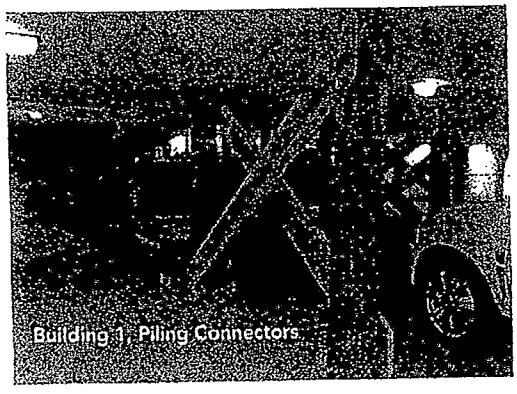


Building 1, 1st Floor Condition



Building 1, Roof

Building 1, 128 Balcony



Building 1, Piling Connectors

Building Investigation Tables

Building	Corridors							Balconies										Stair #1 - North		Stair #2 - South	
Component	Guardrail	Roof Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 109																					
Unit # 107		3	3		3	3	3														
Unit # 105		3	3		3	3	3														
Unit # 103		3	3		3	3	3														
Unit # 101		3	3		3	3	3			3											
2nd																					
Unit # 207		3	3		3	3	NA										NA				
Unit # 205		3	3		3	3	NA										NA				
Unit # 203		3	3		3	3	NA			3				3	3		NA				
Unit # 201		3	3		3	3	NA										NA				
3rd																					
Unit # 309																	NA				
Unit # 307		3	3		3	3	NA										NA				
Unit # 305		3	3		3	3	NA										NA				
Unit # 303		3	3		3	3	NA										NA				
Unit # 301		3	3		3	3	NA										NA				
Exterior Walls			Stair #1-N		Stair #2-S		Roof						Pop-Up Gables					Fillings			
Floor Level	N/S/E/W	N/S/E/W	N/S/E/W	N/S/E/W	N/S/E/W	N/S/E/W		Stringers	Fascia	N/S/E/W	N/S/E/W	Soffits		Fascia	Kick-Out Flashing	Roof Flashing	Gutters Down Spouts	(Groupings of 5)	Splicing	Base Deterioration	Bracing Connections
	Gable End Walls	Gable End Walls	Stair Wall	Stair Wall	Stair Wall	Stair Wall				Gable Vent	Gable Vent										
Ground to 1st							Stair #1														
1st to 2nd	3		3	3	3	3	South Area											South Area	1/8" / 85 %	2 / 45 %	4 / 100 %
2nd to 3rd							Stair #2														
3rd to Roof	3	3	3		3		West Area	3		3								West Area	1 / 35 %	1 / 35 %	1 / 35 %

Description	Comment
	Cedar siding base boards needs fixing to prevent moisture from entering condos (All Floors)
	All corridors have notched subfascing damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing cornet
1 - Less Critical	Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia configuration of the balconies and corridors may be contributing to water penetration.
2 - Consideration	The Cradle beam with longer cantilevers have been shored to alleviate deflection.
3 - Monitor	Nearly 90% of continuous length of southside cradle beam displays signs of severe fatigue and delamination.
4 - Moderate	#101 Ceiling showing moisture. Balcony showing severe damage.
5 - Critical	Perimeter supporting of balconies are exposed showing signs of severe delamination.

R-709

Summary and Preliminary Recommendations

Building 2

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe". Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure (south end wall support) or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Trim components typically show signs of moisture damage at the stairs.

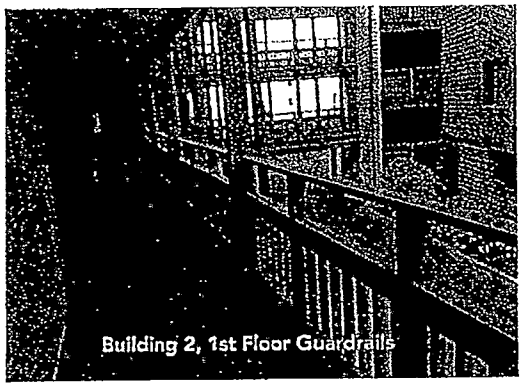
Panel siding is present at both the north and south gable ends and were graded at level "Monitor" with no current issues observed or reported. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

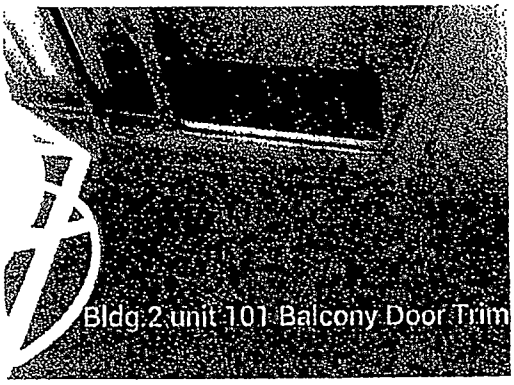
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

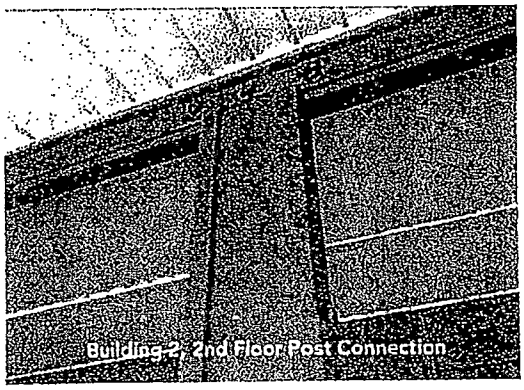
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

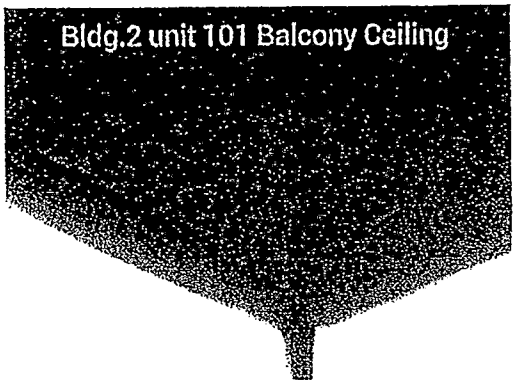
Photo Documentation

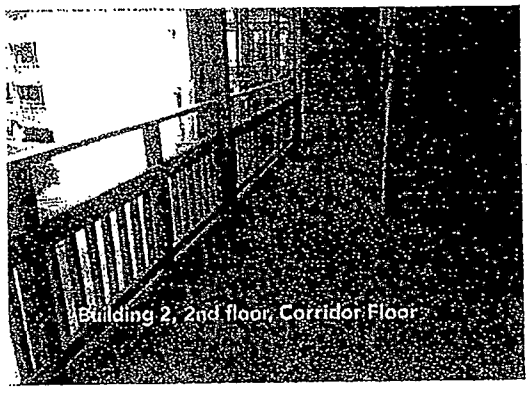
Building 2

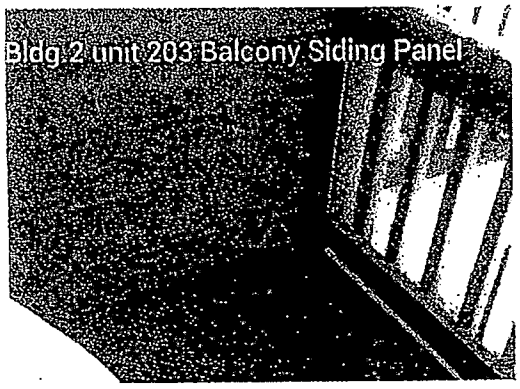

Building 2, 1st Floor Guardrails


Bldg.2 unit 101 Balcony Door Trim

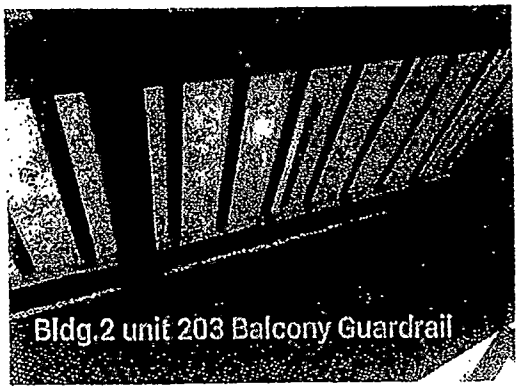

Building 2, 2nd Floor Post Connection

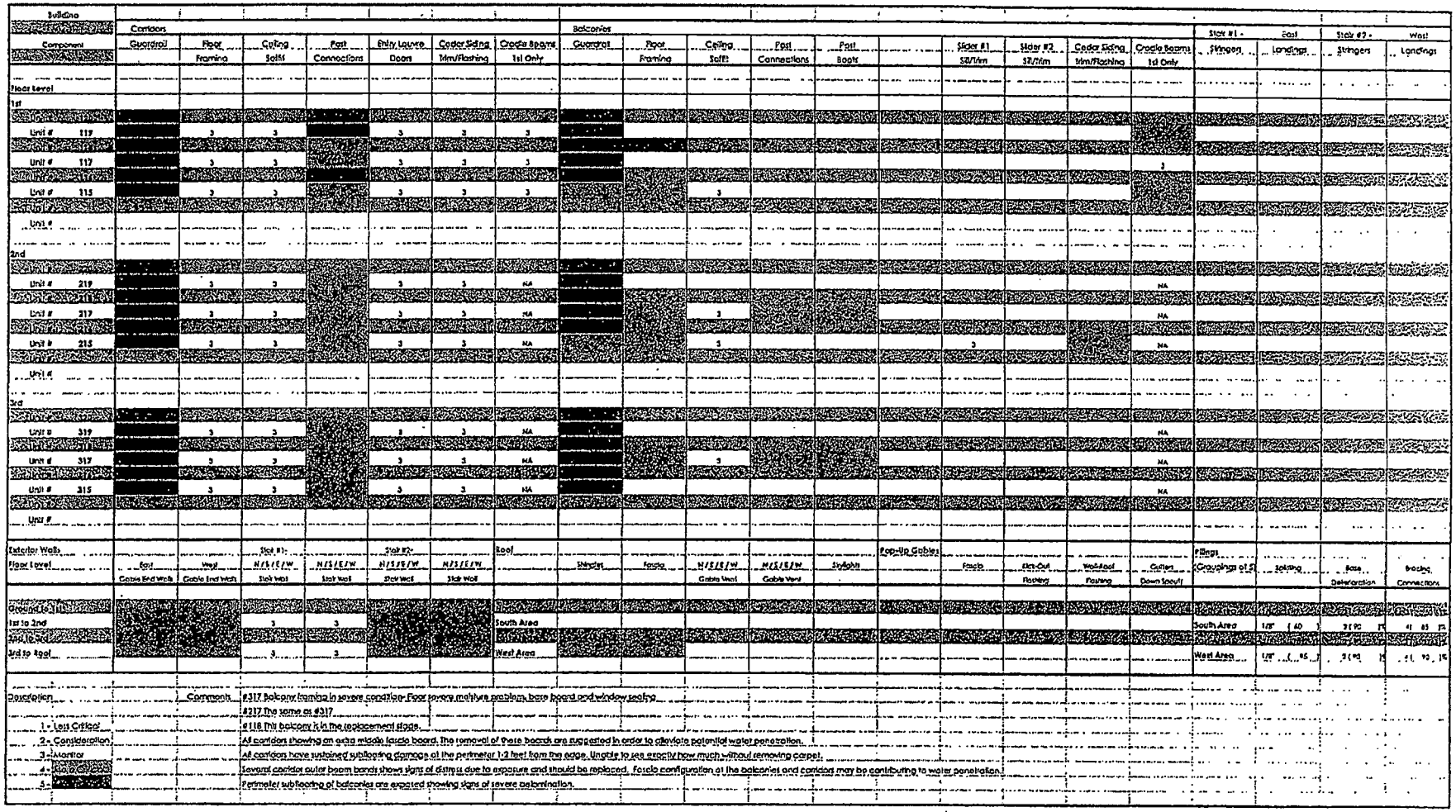

Bldg.2 unit 101 Balcony Ceiling


Building 2, 2nd floor, Corridor Floor


Bldg.2 unit 203 Balcony Siding Panel

Bldg.2 unit 101 Balcony Guardrail


Bldg.2 unit 203 Balcony Guardrail



Building	Corridors							Balconies										Stair #1 - East		Stair #2 - West	
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Bogs		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 119		3	3		3	3	3														
Unit # 117		3	3		3	3	3										3				
Unit # 115		3	3		3	3	3			3											
Unit #																					
2nd																					
Unit # 219		3	3		3	3	NA										NA				
Unit # 217		3	3		3	3	NA			3							NA				
Unit # 215		3	3		3	3	NA			3				2			NA				
Unit #																					
3rd																					
Unit # 319		3	3		3	3	NA										NA				
Unit # 317		3	3		3	3	NA			3							NA				
Unit # 315		3	3		3	3	NA										NA				
Unit #																					

Exterior Walls			Stair #1:		Stair #2:		Roof						Pop-Up Gables					Fillings			
Floor Level	East Gable End Walls	West Gable End Walls	N/S/E/W Stair Wall	N/S/E/W Stair Wall	N/S/E/W Stair Wall	N/S/E/W Stair Wall	Sheathing	Fascia	N/S/E/W Gable Vent	N/S/E/W Gable Vent	Skylights		Fascia	Eave Out Flashing	Wallhead Flashing	Gutters Down Spouts	Cracks/gaps at S	Soffiting	Base Deterioration	Brackets Connections
Ground to 1st							South Area										South Area	1/8" (40 %)	3 (90 %)	41 (85 %)
1st to 2nd			3	3																	
2nd to 3rd							West Area										West Area	1/8" (85 %)	3 (90 %)	41 (90 %)
3rd to Roof			3	3																	

Description	Comments
1 - Less Critical	#317 balcony framing in severe condition. Floor joists moisture problem, bare board and window sealing.
2 - Consideration	#217 the same as #317.
3 - Monitor	#118 this balcony is in the replacement stage.
4 - Repair	All corridors showing an extra middle fascia board, the removal of these boards are suggested in order to alleviate potential water penetration.
5 - Replace	All corridors have sustained subflooring damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.
	Several corridor outer beam bands shows signs of damp due to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.
	Perimeter subflooring of balconies are exposed showing signs of severe delamination.

Summary and Preliminary Recommendations

Building 4

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Specific areas of wall coverings and wood studs at the base of the stair towers have been damaged from moisture penetration. Sheathing should be removed during the remediation process to examine for further damage.

Stucco cladding is present at the east end gable. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

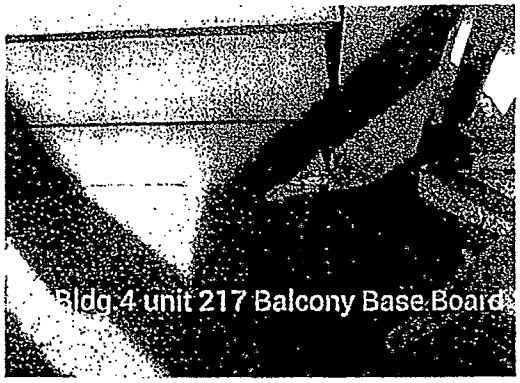
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

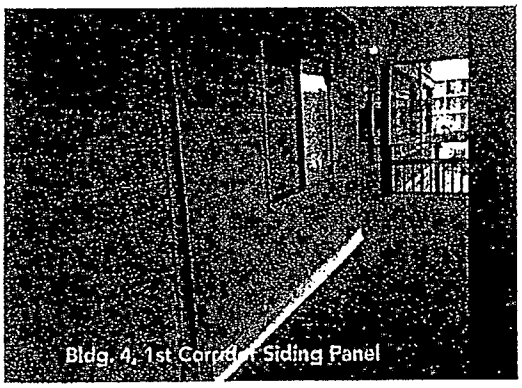
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" in more than 75% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage while others may require below grade evaluation. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

Photo Documentation

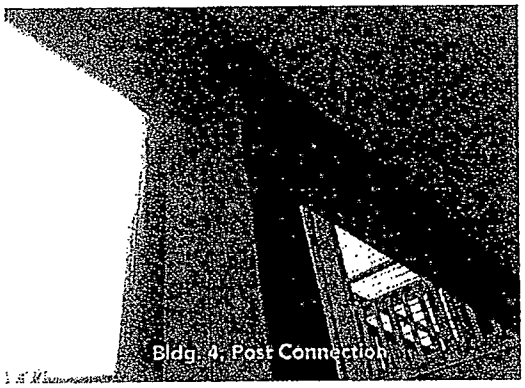
Building 4

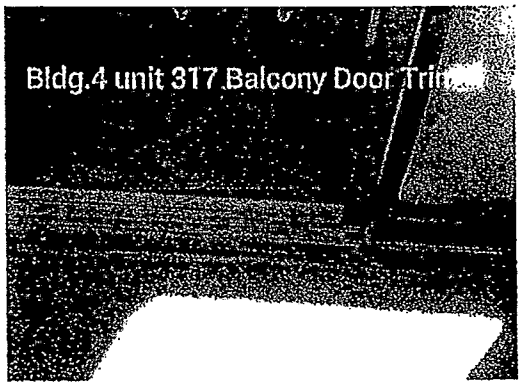
Bldg. 4, 1st Fl. Corridor Guardrails


Bldg.4 unit 217 Balcony Base Board

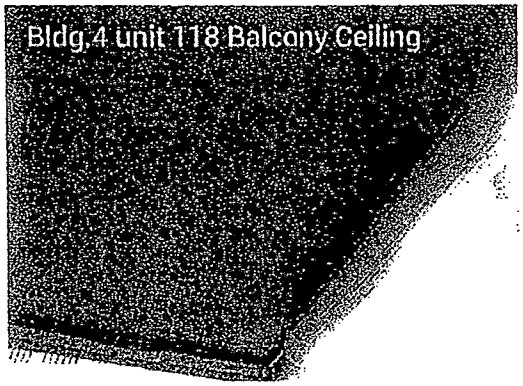

Bldg. 4, 1st Corridor Siding Panel

Bldg.#2 Water dam and ga[illegible] balc[illegible]
Unit 220. Correction Bl[illegible]4


Bldg. 4, Post Connection


Bldg.4 unit 317 Balcony Door Tri[illegible]

Bldg.4 unit 217 Balcony Guardrail


Bldg.4 unit 118 Balcony Ceiling

Building Component	Corridors							Balconies										Stair #1 -		Stair #2 -	
	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Slider #1 sill/trim	Slider #2 sill/trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	East Stringers	East Landings	West Stringers	West Landings
Floor Level																					
1st																					
Unit # 116		3	3		3	3															
Unit # 112		3	3		3	3															
Unit # 114		3	3		3	3		3						3	3						
Unit #																					
2nd																	NA				
Unit # 210		3	3		3	3	NA										NA				
Unit # 212		3	3		3	3	NA			3				3	3		NA				
Unit # 214		3	3		3	3	NA														
Unit #																					
3rd																	NA				
Unit # 310		3	3		3	3	NA										NA				
Unit # 312		3	3		3	3	NA										NA				
Unit # 314		3	3		3	3	NA														
Unit #																					
Exterior Walls / Floor Level	N/S/E/W Gable End Wall	N/S/E/W Gable End Wall	Stair #1: N/S/E/W Stair Wall	N/S/E/W Stair Wall	Stair #2: N/S/E/W Stair Wall	N/S/E/W Stair Wall	Roof	Beams	Joists	N/S/E/W Gable Vent	N/S/E/W Gable Vent	Sheeting	Pop-Up Gables	Fascia	Slab-Out Framing	Roof Flashing	Gutters Down Spouts	Pilings (Groupings of 5)	Splicing	Bolts Deterioration	Bracing Connections
Ground to 1st							South Area											South Area			
1st to 2nd	4	3	3	3	3	3															
2nd to 3rd							West Area											West Area	16"	50	21 50 35
3rd to Roof	4	3	3	3	3	3															41 100 15

Description

1 - Less Critical

2 - Consideration

3 - Monitor

4 - Major

5 -

Comments

#111 Baseboard- Balcony structure More Critical reading

#113 Baseboard- Both walls needs replacement

#114 As far as the balcony structure no wearing and leaking. Flooring is ok

#214 Baseboard- East wall balcony structure effected by the weather

#310 Baseboard- Both walls, balcony and flooring system has been effected by moisture and weather

Nailhead drain plugs by pins.

Perimeter subdecking of balconies are exposed showing signs of severe delamination.

Summary and Preliminary Recommendations

Building 5

Corridor post connections are in "More Critical" to "Severe" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Specific areas of wall coverings and wood studs at the base of the stair towers have been damaged from moisture penetration. Sheathing should be removed during the remediation process to examine for further damage.

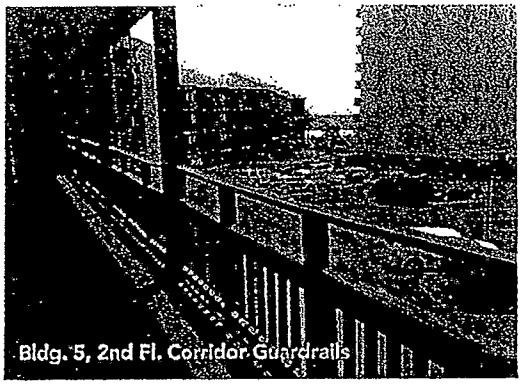
Stucco cladding is present at the west end gable. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Panel siding is present at the east gable end and was graded at level "More Critical" with further investigation recommended.. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

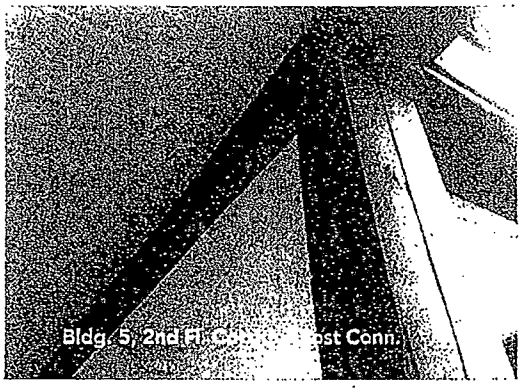
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" to "More Critical" where splits exceeded ¼" in more than 50% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage while others require subsurface investigation. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

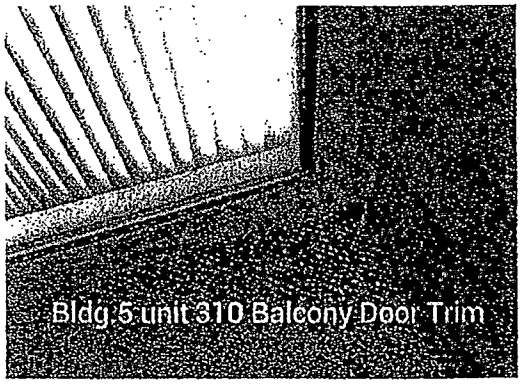
Photo Documentation

Building 5


Bldg. 5, 2nd Fl. Corridor Guardrails

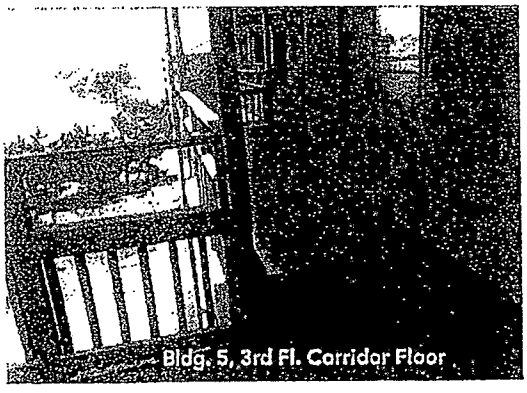

Bldg. 5, 2nd Fl. C[illegible]st Conn.

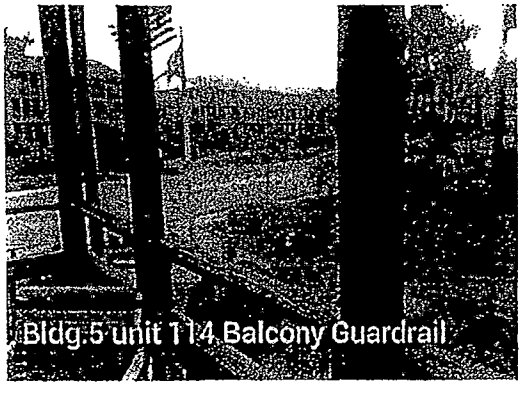
Bldg. 5, 3rd Fl. Damaged Post

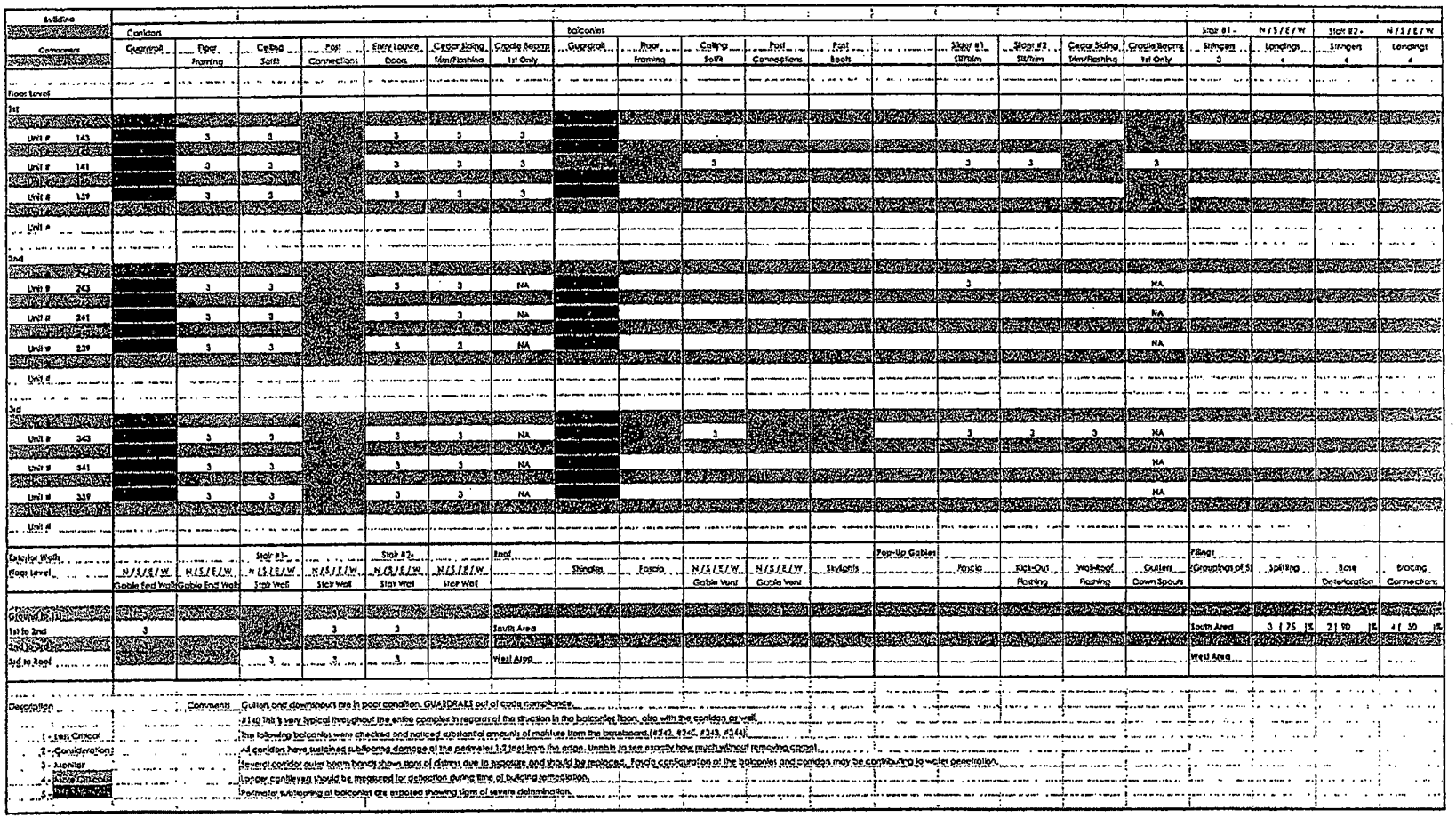

Bldg.5 unit 310 Balcony Door Trim

Bldg. 5, 2nd Fl. Peeling

Bldg.5 unit 310 Balcony Door Trim


Bldg. 5, 3rd Fl. Corridor Floor


Bldg.5 unit 114 Balcony Guardrail



Building																												
	Corridors								Balconies														Stair #1 - N / S / E / W		Stair #2 - N / S / E / W	
Components	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cripple Beams 1st Only		Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Beam		Stair #1 Stringers	Stair #2 Stringers	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Stringers 3	Landings 4	Stringers 4	Landings 4
Floor Level																						
1st																						
Unit # 143		3	3		3	3	3															
Unit # 141		3	3		3	3	3				3				3	3		3				
Unit # 139		3	3		3	3	3															
Unit #																						
2nd																						
Unit # 243		3	3		3	3	NA								3			NA				
Unit # 241		3	3		3	3	NA											NA				
Unit # 239		3	3		3	3	NA											NA				
Unit #																						
3rd																						
Unit # 343		3	3		3	3	NA				3				3	3	3	NA				
Unit # 341		3	3		3	3	NA											NA				
Unit # 339		3	3		3	3	NA											NA				
Unit #																						
Exterior Walls			Stair #1-		Stair #2-		Roof						Pop-Up Gables						Rafter			
Floor Level	N / S / E / W	N / S / E / W	N / S / E / W	N / S / E / W	N / S / E / W	N / S / E / W			Shingles	Fascia	N / S / E / W	N / S / E / W	Skylights		Fascia	Kick-Out	Wall-Roof	Gutters	Connection of S	Splitting	Base	Bracing
	Gable End Wall	Gable End Wall	Stair Wall	Stair Wall	Stair Wall	Stair Wall					Gable Vent	Gable Vent				Flashing	Flashing	Down Spouts			Deterioration	Connections
Ground to 1st																						
1st to 2nd	3			3	3		South Area												South Area	3 (75 1%	2) 90 1%	4 (50 1%
2nd to 3rd																						
3rd to Roof			3	3	3		West Area												West Area			

Description

Comments: Gutters and downspouts are in poor condition. GUARDRAILS out of code compliance.

1 - Less Critical

2 - Consideration

3 - Monitor

4 - Major Concern

5 - Unsafe

#140 This is very typical throughout the entire complex in regards of the erosion in the balconies floor, also with the corridors as well.

The following balconies were checked and noticed substantial amounts of moisture from the breakboard (#242, #245, #243, #244).

All corridor have switched ballooning damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.

Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Roof's configuration of the balconies and corridors may be contributing to water penetration.

Longer cantilevered should be measured for deflection during time of re-siding remediation.

Perimeter subporing at balconies are exposed showing signs of severe delamination.

Summary and Preliminary Recommendations

Building 6

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

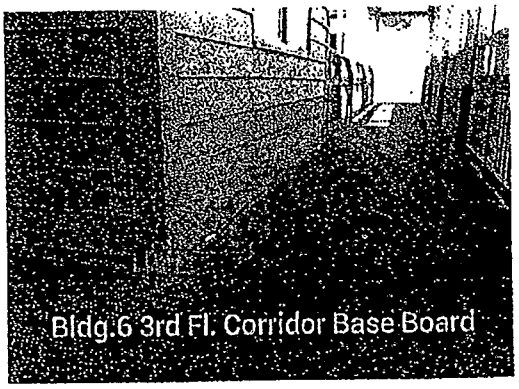
Stucco cladding is present at the north and south end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

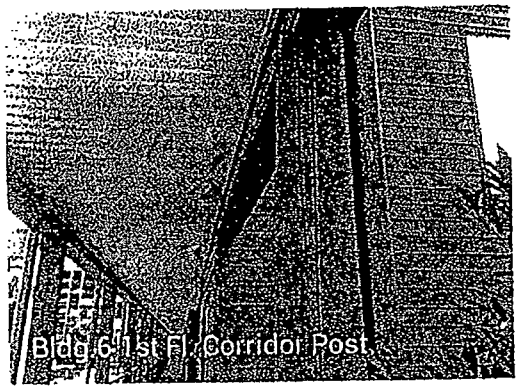
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

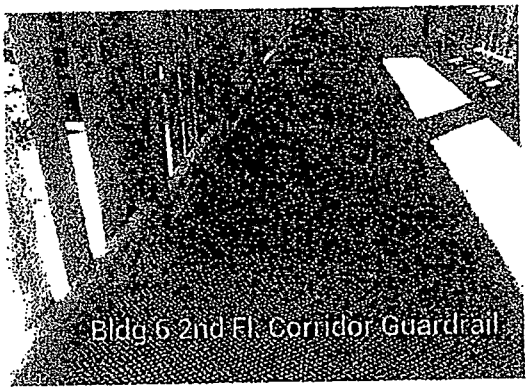
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded ¼" in more than 75% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage while others will require subsurface investigation. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

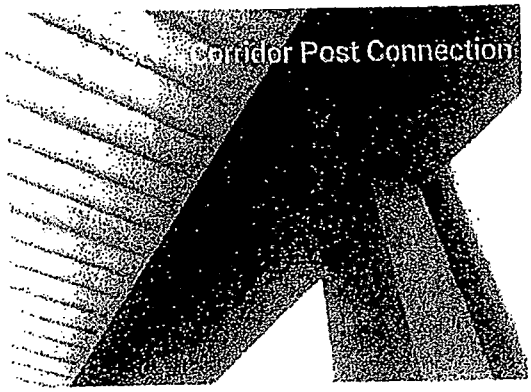
Photo Documentation

Building 6









Building Hamilton Tables

Building	Corridors							Balconies									Stair #1 - North		Stair #2 - South	
Component	Overall	Floor Framing	Ceiling Soffit	Post Connections	Entry Doors	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Guardrail	Roof Framing	Ceiling Soffit	Post Connections	Post Boots		Stair #1 SB/Trim	Stair #2 SB/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 137			3		3																
Unit # 135			3		3					3				3	3						
Unit #																					
Unit #																					
2nd																					
Unit # 237		3	3		3		NA										NA				
Unit # 235		3	3		2		NA										NA				
Unit #																					
Unit #																					
3rd																					
Unit # 337			3		3		NA										NA				
Unit # 335			3		3		NA			2				3	3	3	NA				
Unit #																					
Unit #																					
Exterior Wall / Floor Level	N/S/E/W Gable End Wall	N/S/E/W Gable End Wall	Stair #1 - N/S/E/W Stair Wall	Stair Wall	Stair #2 - N/S/E/W Stair Wall	N/S/E/W Stair Wall	Roof	Shingles	Fascia	N/S/E/W Gable Vent	N/S/E/W Gable Vent	Skylights	Pop-Up Gables	Fascia	Pick-Out Flashing	Wallpost Flashing	Gutters Down Spouts	Stringers Groupings of 5	Spacing	Bore Deterioration	Bracing Connections
Ground to 1st																					
1st to 2nd	3	3		3			South Area											South Area	3 | 75 1%	3 | 95 1%	4 | 90 1%
2nd to 3rd																					
3rd to Roof	3	3		3			West Area											West Area			

Description: Comments: Unable to see the plywood under the carpet because the constant motion the dependability of the floor system is being challenged.
The same goes for the roof system. A closer evaluation is required.
#335, #238, #236, #136, #135 balcony components have conditions at the Monitor or More Critical levels.
All corridors have sustained postjacking damage at the perimeter 1-2 feet from the edges. Unable to see exactly how much without removing carpet.
Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia continuation of the balconies and corridors may be contributing to water penetration.
Longer cantilevers should be measured for deflection during time of building remediation.
Perimeter subflooring of balconies are exposed showing signs of severe delamination.
Building 6 and 7 share the same stair way. The south stairway for building 6 is actually the north stair way for bldg. 7

1 - Less Critical
2 - Consideration
3 - Monitor
4 - More Critical
5 - Replacement

Summary and Preliminary Recommendations

Building 7

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

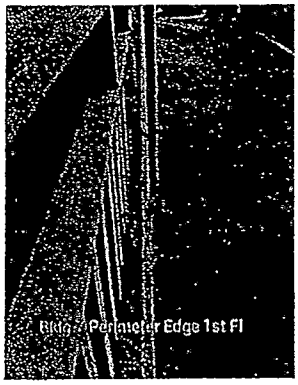
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

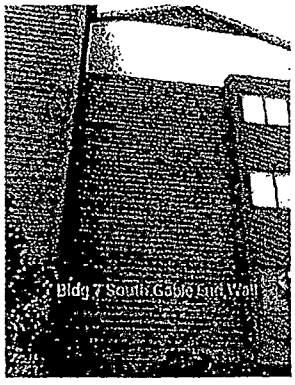
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

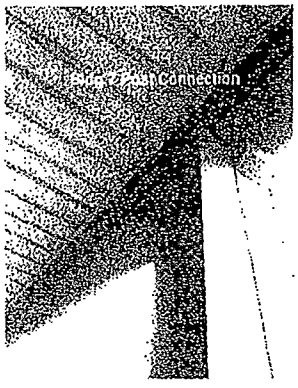
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" – 1/4" in more than 75% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage where others will need future subsurface investigation.

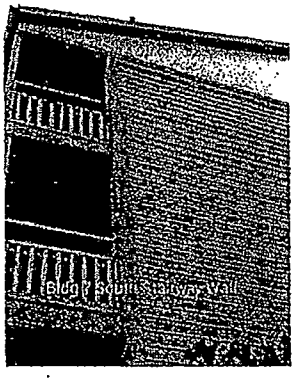
Photo Documentation

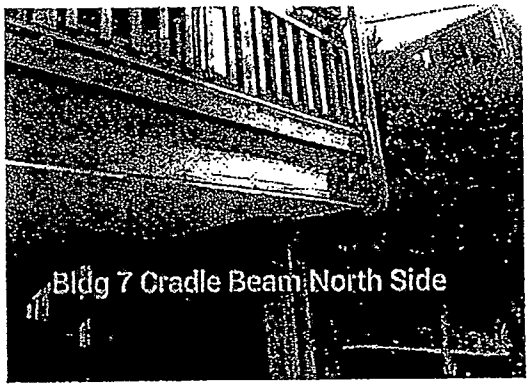
Building 7

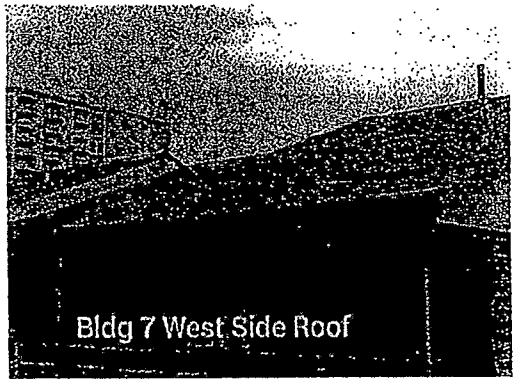


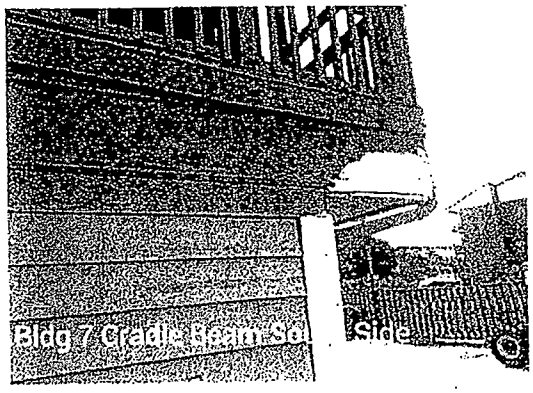


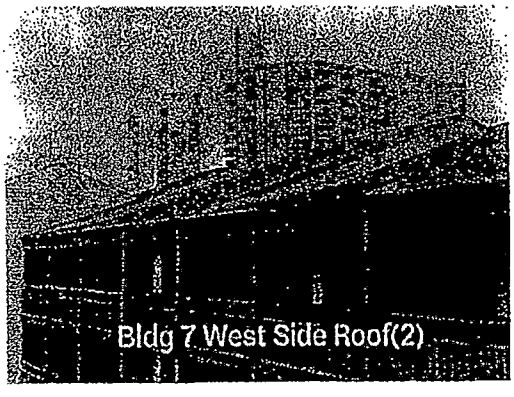


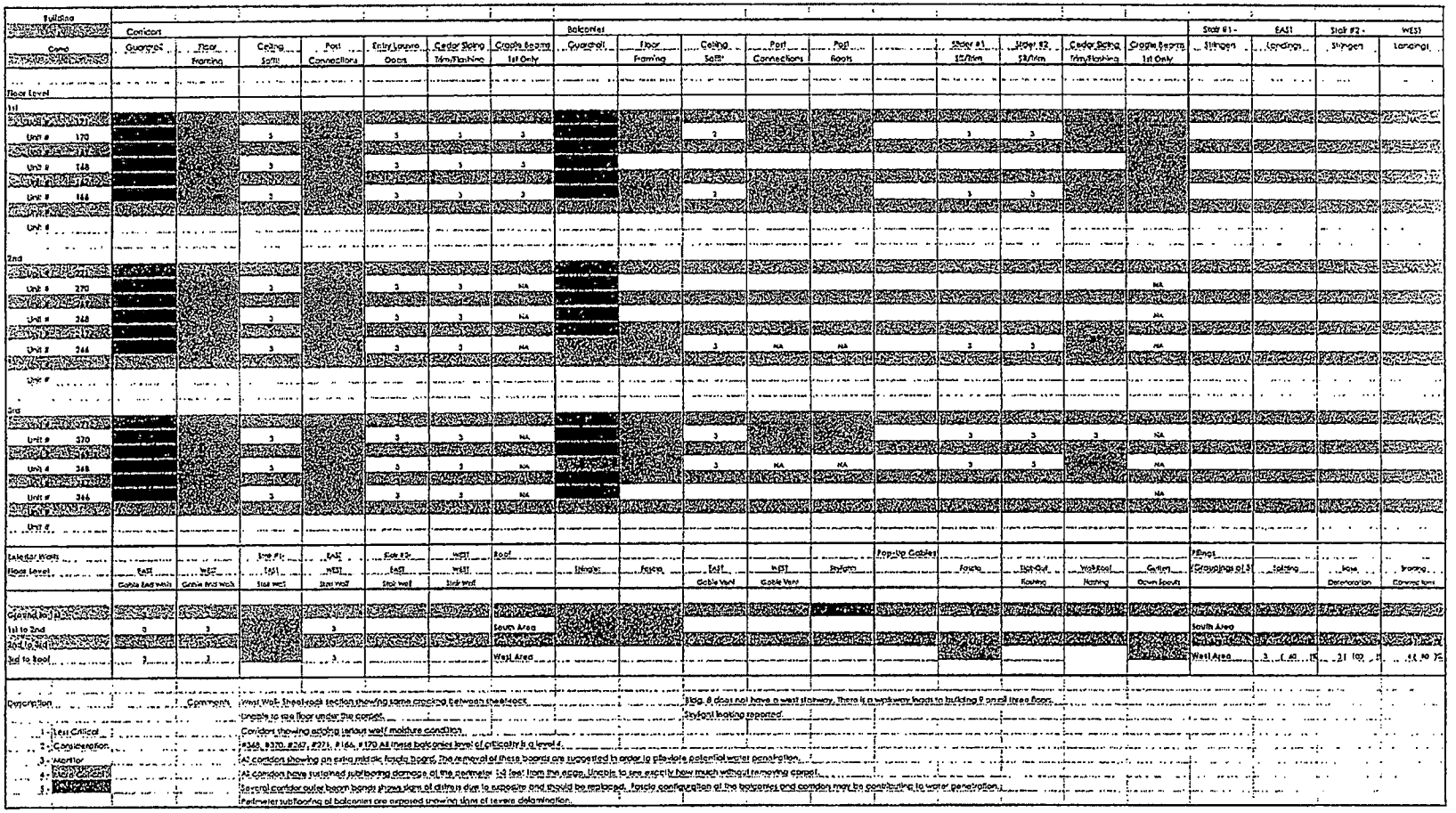












Building																													
Wall	Concert							Balconies													Stair #1 -	EAST	Stair #2 -	WEST					
Comp	Overhgt	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Overhgt	Floor Framing	Ceiling Soffit	Post Connections	Post Roofs		Stair #1 ST/Trim	Stair #2 ST/Trim	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Stringers	Landings	Stringers	Landings								
Floor Level																													
1st																													
Unit # 370			3		3	3	3			3				3	3														
Unit # 368			3		3	3	3																						
Unit # 366			3		3	3	2			3				3	3														
Unit #																													
2nd																													
Unit # 370			3		3	3	NA										NA												
Unit # 368			2		3	3	NA										NA												
Unit # 366			3		3	3	NA			3	NA	NA		3	3		NA												
Unit #																													
3rd																													
Unit # 370			3		3	3	NA			3				3	3	3	NA												
Unit # 368			3		3	3	NA			3	NA	NA		3	3		NA												
Unit # 366			3		3	3	NA										NA												
Unit #																													
Exterior Walls			Stair #1:	EAST	Stair #2:	WEST	Roof						Pop-Up Gables					Pilings											
Floor Level	EAST	WEST	EAST	WEST	EAST	WEST		Hinges	Fascia	EAST	WEST	Bottom		Fascia	Soffit	Wallpost	Gutter	Groupings of 3	Splicing	Rot	Termite								
	Gable End Wall	Gable End Wall	Stair Wall	Stair Wall	Stair Wall	Stair Wall				Gable Vent	Gable Vent				Facing	Framing	Down Spouts			Deterioration	Damage								
Overhang (in.)	0																												
1st to 2nd	0	0		0			South Area											South Area											
2nd to 3rd																													
3rd to Roof	0	0		0			West Area											West Area	3	1.41	15	21	10	15	14.90	15			

Deterioration	Comment	West Wall: Sheathing section showing some cracking between sheathing	Bldg. 8 does not have a west stairway, there is a walkway leads to building 9 on all three floors.
1 - Less Critical		Cracks in the floor under the carpet.	Skylight leaking reported.
2 - Consideration		Corridor showing active water/ moisture condition.	
3 - Monitor		#368, #370, #267, #271, #166, #170 All these balconies level of criticality is a level 4.	
4 - Short Term		At corridors showing an extra middle fascia board. The removal of these boards are suggested in order to provide potential water penetration.	
5 - Immediate		At corridor have sustained subflooring damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.	
		Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia configuration of the balconies and corridors may be contributing to water penetration.	
		Perimeter subflooring of balconies are exposed showing signs of severe delamination.	

Summary and Preliminary Recommendations

Building 8

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" where plywood subflooring is delaminated and water may be penetrating the floor cavity or exterior wall. Several cradle beams are in a "More Critical" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

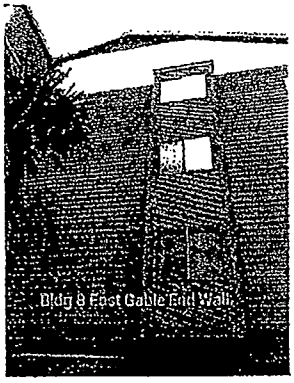
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

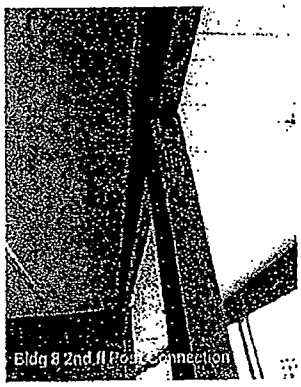
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access. Skylights were graded as "Severe" where water penetration into below units has been reported.

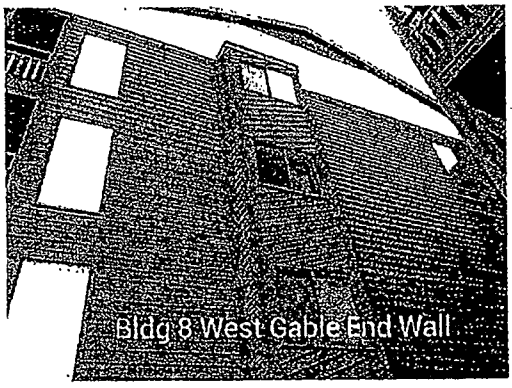
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" – 1/4" in more than 60% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage where others will need future subsurface investigation.

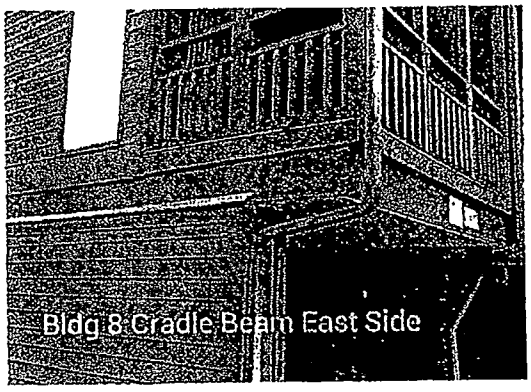
Photo Documentation

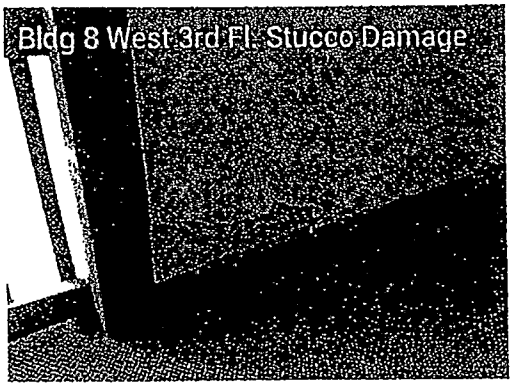
Building 8

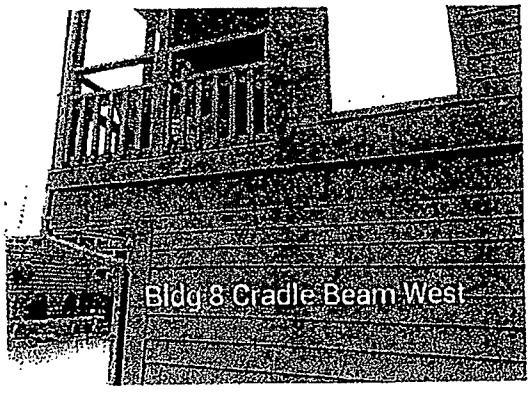


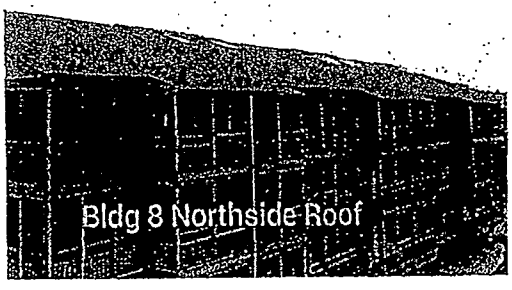












Building Remediation Tables

Building	Corridors							Balconies										Stair #1 -	EAST	Stair #2 -	WEST
Component / Unit #	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Booth		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 144		3	3		3	3	3														
Unit # 142		3	3		3	3	3														
Unit #																					
Unit #																					
2nd																					
Unit # 244		3	3		3	3	NA										NA				
Unit # 242		3	3		3	3	NA										NA				
Unit #																					
Unit #																					
3rd																					
Unit # 344		3	3		3	3	NA										NA				
Unit # 342		3	3		3	3	NA			3	NA	NA		3	3	3	NA				
Unit #																					
Unit #																					
Exterior Walls / Floor Level	EAST Gable End Walls	WEST Gable End Walls	Stair #1 - EAST Stair Wall	Stair #2 - WEST Stair Wall	EAST Stair Wall	WEST Stair Wall	Roof	Beams	Fascia	EAST Gable Vent	WEST Gable Vent	Purlins	Fascia Up Gables	Fascia	Cut-Out Flashing	Weldbar Flashing	Gutters Down Spouts	Stringers / Groupings of 5	Spacing	Joist Deterioration	Bracing Connections
Ground to 1st							South Area														
1st to 2nd	3	3	3	3	3	3	South Area											South Area			
2nd to 3rd																					
3rd to Roof			3		3	3	West Area											West Area	+/- 60 in.	+/- 30 in.	+/- 60 in.

Description	Comments
	#345 - Sedgwick leaks. Entered into the balcony in the unit and the cripple was rotted and wash-plywood.
	#341 - Skylight moderate leak.
	Perimeter scuttlejing of balconies are greatest source of severe deterioration.
1 - Less Critical	Gable vent will require a step to see the condition on these units. At the sheet rock and some of the beams are separating from the wall.
2 - Consideration	Fiber cement maintenance, and the roof needs a closer inspection.
3 - Monitor	Floor framing, Ceiling soffit must be uncovered, these areas stay wet most of the time.
4 - Needs Critical	1st corridor showing an area middle fascia board, the removal of these boards are suggested in order to alleviate potential water penetration.
5 - Urgent	All corridors have splashed scuttlejing damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.
	Several corridor outer beam bands shown signs of distress due to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.

R-730

Summary and Preliminary Recommendations

Building 9

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" where plywood subflooring is delaminated and water may be penetrating the floor cavity or exterior wall. Several cradle beams are in a "More Critical" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

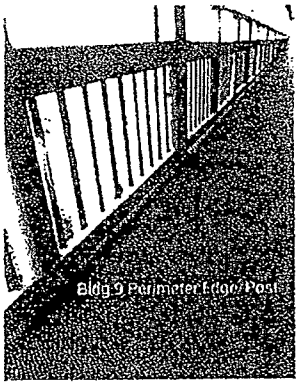
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

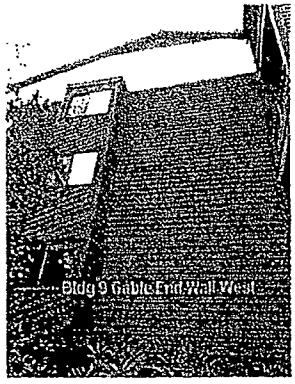
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

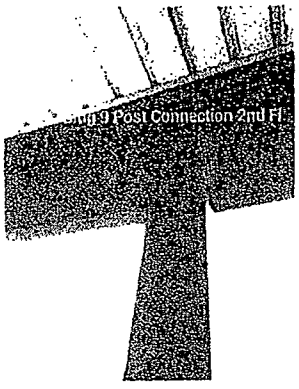
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/4" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage where others will need future subsurface investigation.

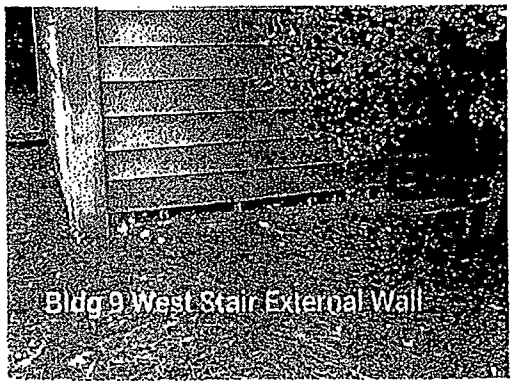
Photo Documentation

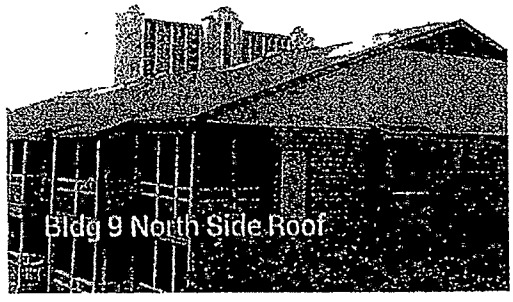
Building 9

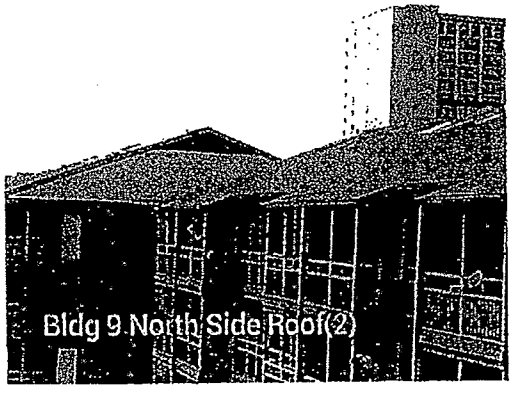




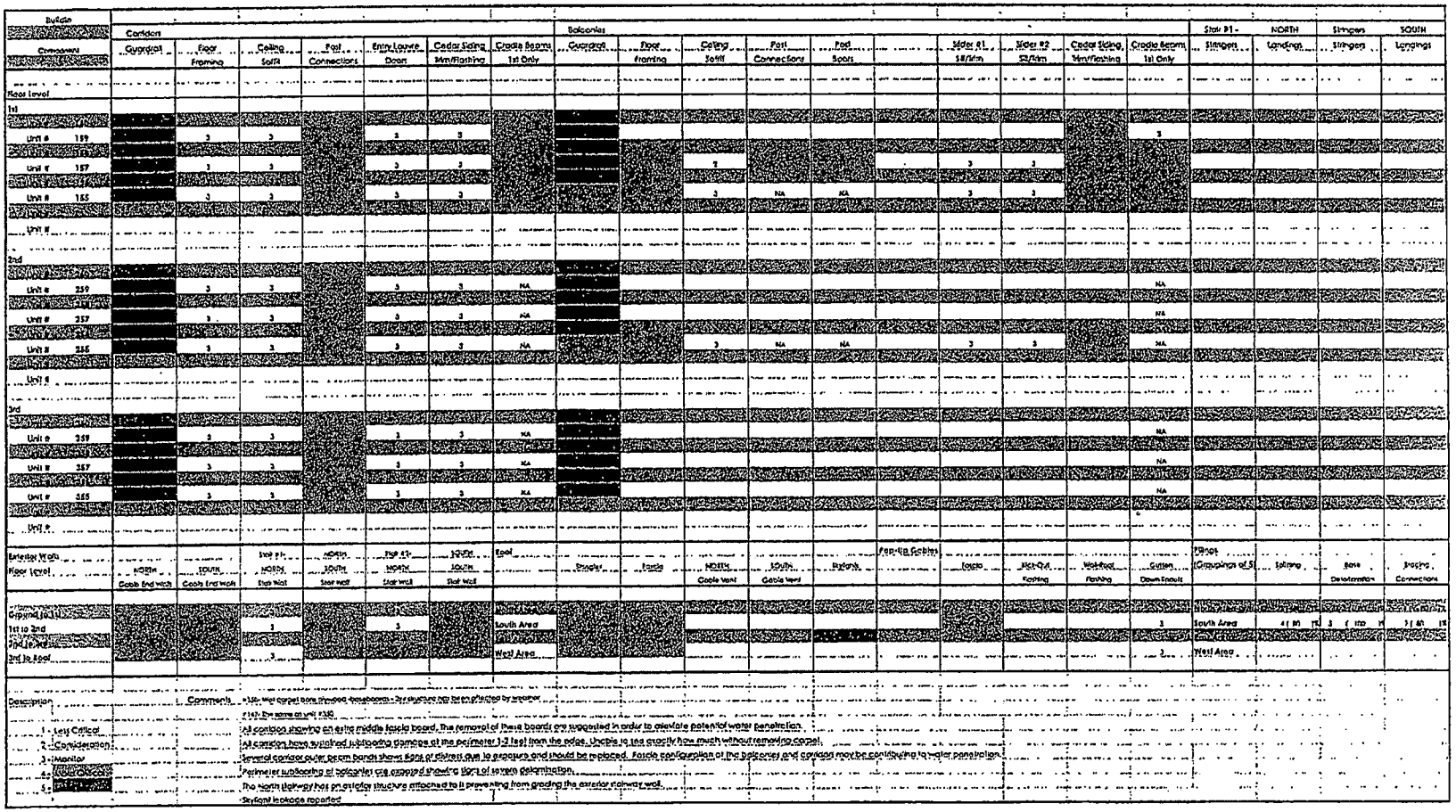








Building Penetration Matrix



Summary and Preliminary Recommendations

Building 10

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" where plywood subflooring is delaminated and water may be penetrating the floor cavity or exterior wall. Several cradle beams are in a "More Critical" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

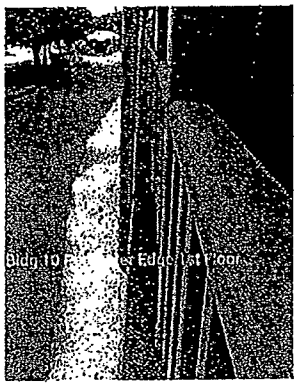
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

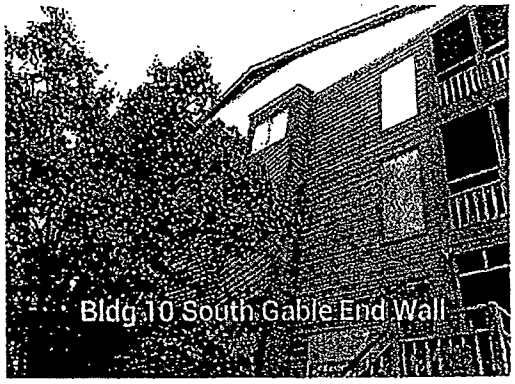
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access. Skylights were graded as "Severe" with water penetration into the units reported.

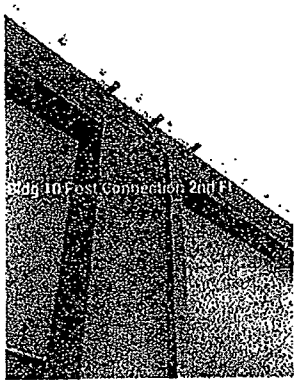
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/4" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage where others will need future subsurface investigation.

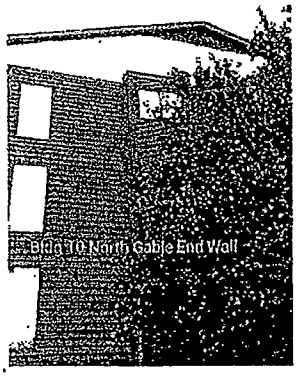
Photo Documentation

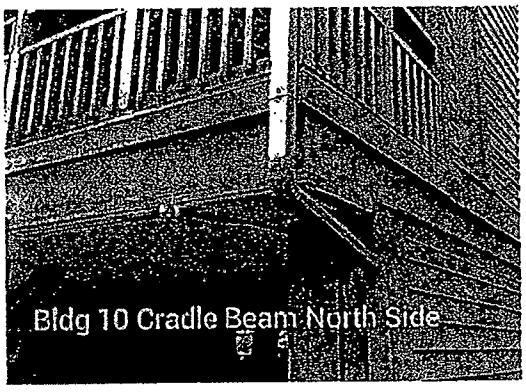
Building 10











Building Investigation Tables

Building	Corridors							Balconies										Stair #1 -	EAST	Stair #2 -	WEST
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Levers Doors	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Seats		Slider #1 SR/Rm	Slider #2 SR/Rm	Cedar Siding Trim/Flashing	Cripple Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 153		3	3		3	3	3			3	NA	NA		3	3						
Unit # 157		3	3		3	3	3														
Unit #																					
Unit #																					
2nd																					
Unit # 253		3	3		3	3	NA				NA	NA		3			NA				
Unit # 251		3	3		3	3	NA										NA				
Unit #																					
Unit #																					
3rd																					
Unit # 353		3	3		3	3	NA										NA				
Unit # 351		3	3		3	3	NA										NA				
Unit #																					
Unit #																					

Exterior Walls / Floor Level			Stair #1 -	EAST	Stair #2 -	WEST	Roof					Pop-Up Gables					Fittings			
	EAST	WEST	EAST	WEST	EAST	WEST		Stringers	Fascia	EAST Gable Vent	WEST Gable Vent	Soffits	Fascia	Stick-Out Flashing	Wall-Roof Flashing	Gutters Down Spouts	Circulation of Air	Splicing	Base Connection	Bracing Connections
	Gable End Wall	Gable End Wall	Stair Well	Stair Well	Stair Well	Stair Well														
Ground to 1st																				
1st to 2nd	3		3			3	South Area 3					NA				3	South Area			
2nd to 3rd																				
3rd to Roof	3						West Area 3			3	NA						West Area		21 66 35	21 40 17

Description	Comment
1 - Less Critical	Building 11 and 12 runs directly into each other. There is no walkway, once you get to the end of the floor there's a doorway that leads into building 12.
2 - Concentration	All corridors have watched subdecting damage at the peiling for 1-2 feet from the edge. Unable to see exactly how much without removing carpet.
3 - Monitor	Several corridor exterior beam bands shows signs of dutch rot to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.
4 - Moderate	Longer corridoven should be monitored for deflection during time of building remediation.
5 - Most Critical	Perimeter subsiding of balconies are evident showing signs of deformation.

Summary and Preliminary Recommendations

Building 11

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" where plywood subflooring is delaminated and water may be penetrating the floor cavity or exterior wall. Several cradle beams are in a "More Critical" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable.

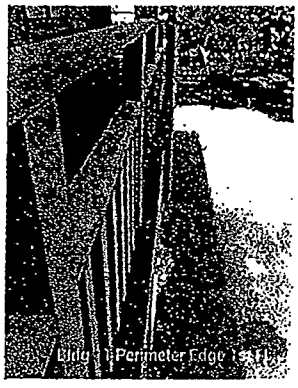
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

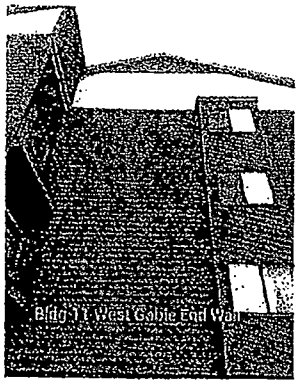
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access. Skylights were graded as "Severe" with water penetration into the units reported.

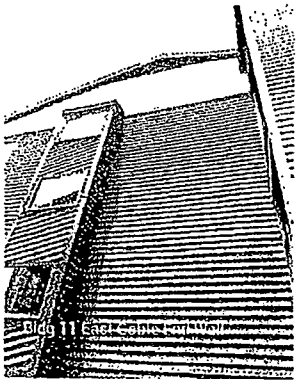
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/4" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage where others will need future subsurface investigation. Bracing connections untreatable with brushing and primer should be replaced.

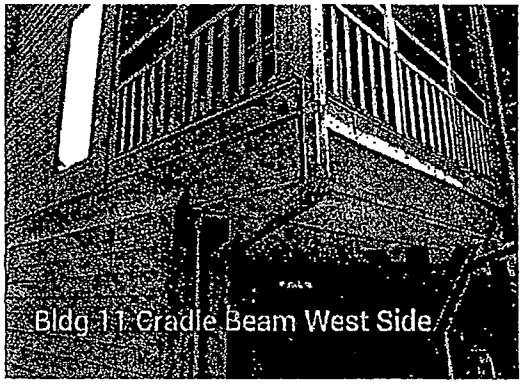
Photo Documentation

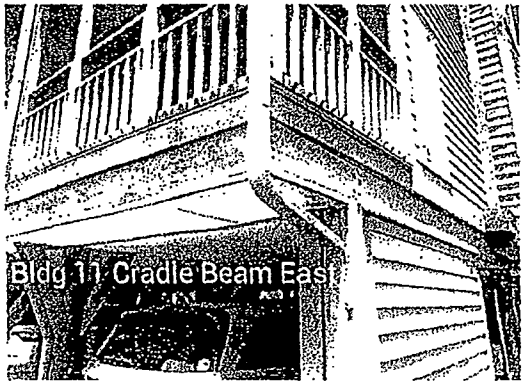
Building 11



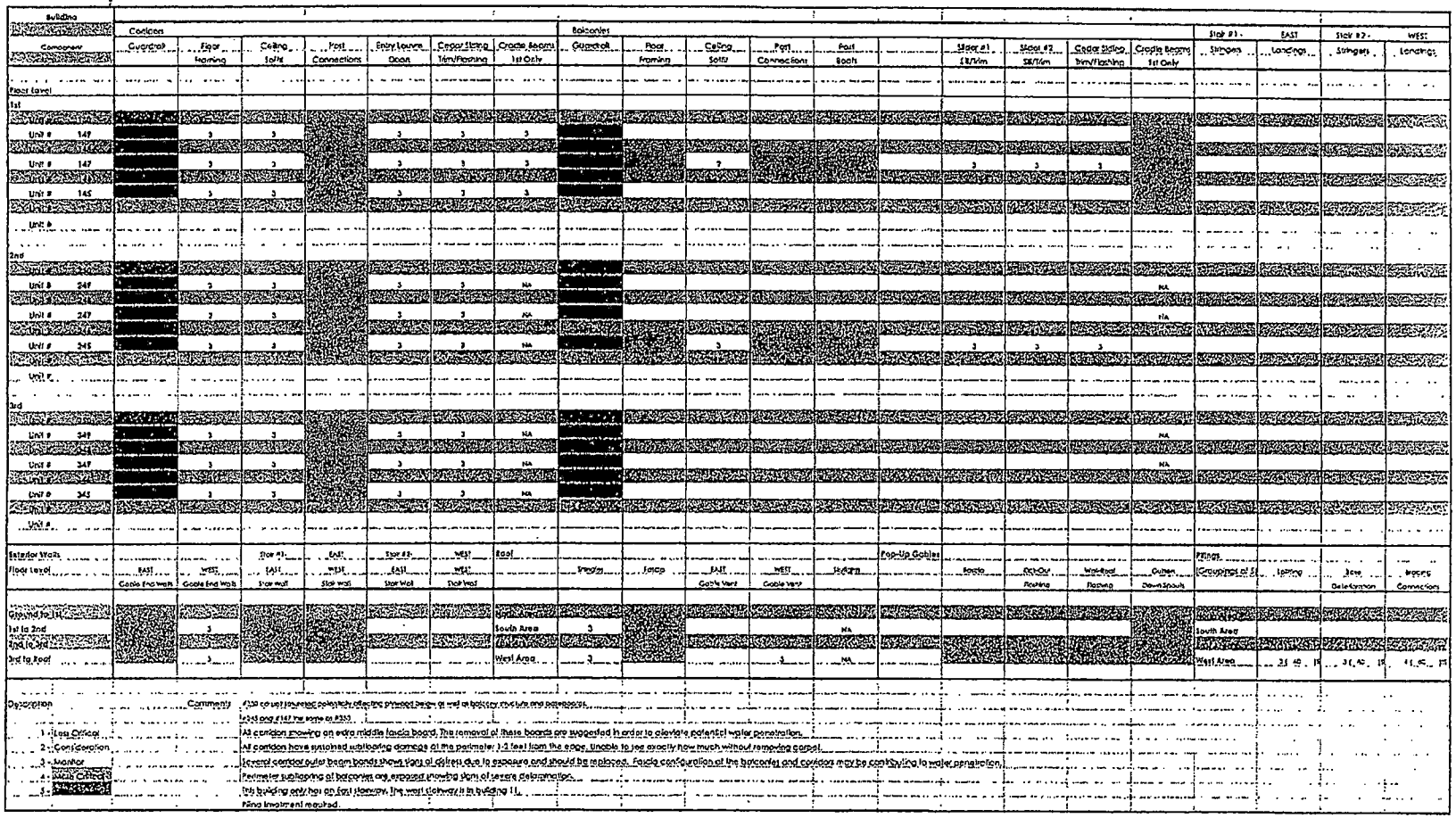








Building Description Table



Building	Corridors							Balconies										Stair #1 - EAST		Stair #2 - WEST	
Component / Description	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Crawl Spring Trim/Flashing	Cradle Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Stair #1 SB/Trim	Stair #2 SB/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Stringers	Landings	Stringers	Landings
Floor Level																					
1st																					
Unit # 147		3	3		3	3	3														
Unit # 147		3	3		3	3	3			?				3	3	3					
Unit # 145		3	3		3	3	3														
Unit #																					
2nd																					
Unit # 249		3	3		3	3	NA										NA				
Unit # 247		3	3		3	3	NA										NA				
Unit # 245		3	3		3	3	NA			3				3	3	3					
Unit #																					
3rd																					
Unit # 249		3	3		3	3	NA										NA				
Unit # 247		3	3		3	3	NA										NA				
Unit # 245		3	3		3	3	NA														
Unit #																					
Exterior Walls			Stair #1 -	EAST	Stair #2 -	WEST	Roof						Pop-Up Gables					Fittings			
Floor Level	EAST	WEST	EAST	WEST	EAST	WEST		Fascia	Soffit	EAST	WEST	Skylight		Fascia	Rake Out	Waterfall	Gutters	Crossings at St	Spring	Base	Bracing
	Gable End Wall	Gable End Wall	Stair wall	Stair wall	Stair Wall	Stair Wall				Gable Vent	Gable Vent				Flashing	Flashing	Down Spouts			Deterioration	Connections
Ground to 1st																					
1st to 2nd		3					South Area	3				NA						South Area			
2nd to 3rd																					
3rd to Roof		3					West Area	3				NA						West Area	25 40	30 40	41 45

Description	Comments
1 - Low Critical	All corridors showing an extra middle fascia board. The removal of these boards are suggested in order to alleviate potential water penetration.
2 - Corrosion	All corridors have sustained subflooring damage at the perimeter 1-2 feet from the edge, unable to see exactly how much without removing carpet.
3 - Monitor	Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia configuration of the balconies and corridors may be contributing to water penetration.
4 - Medium Critical	Perimeter subflooring at balconies and exposed concrete slabs of severe deterioration.
5 - Most Critical	This building only has an East stairwell. The west stairwell is in building 11.
	Final treatment required.

Building 12

Corridor post connections are in "Monitor" to "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these bolted connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected (sections of east side endwall beam) past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Specific areas of wall coverings and wood studs at the base of the stair towers have been damaged from moisture penetration. Sheathing should be removed during the remediation process to examine for further damage.

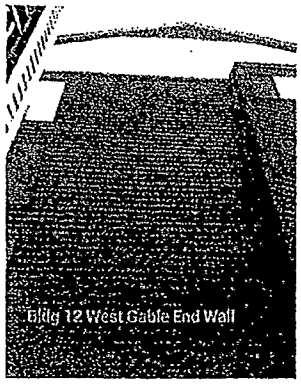
Stucco cladding is present at the east and west end gables. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

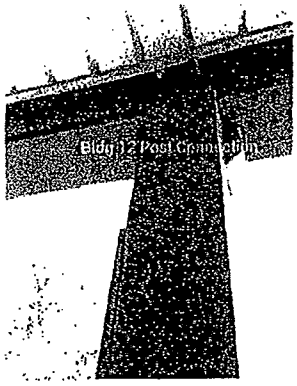
Visual inspection of the roof and flashing systems was limited due to accessibility. While shingle condition was graded as a (3) for "Monitor", roof flashing and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. A closer inspection of the roof sheathing is recommended. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

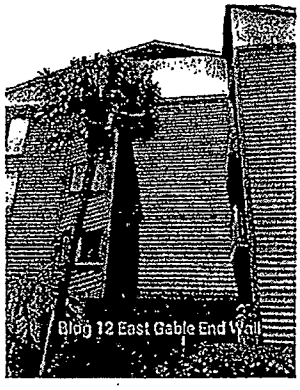
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

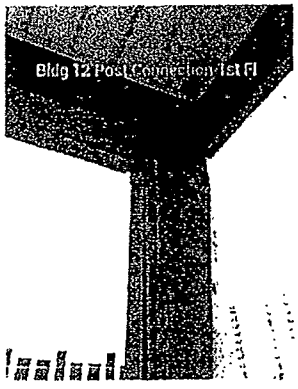
Photo Documentation

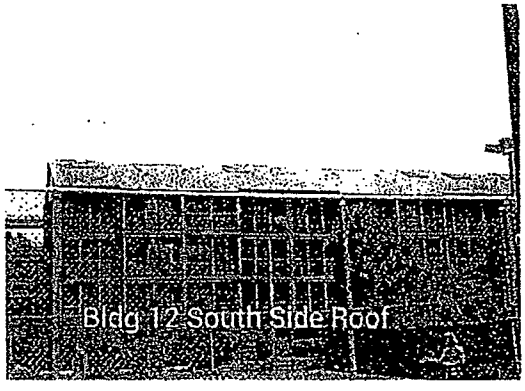
Building 12

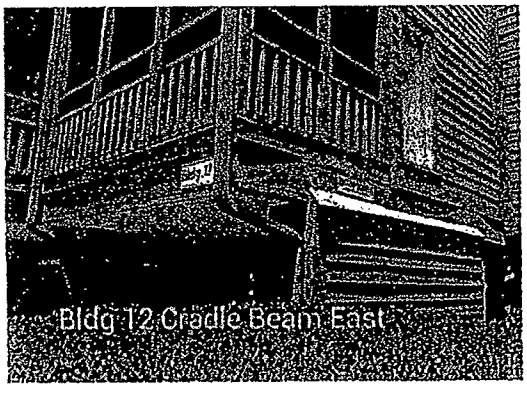












Walkway Buildings							
Info3	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st			3		3	3	
2nd			3		3	3	
3rd	3		3		3		
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3						
2nd	3						
3rd	3						

Description		Comments	Fascia needs to be replaced
			Some shingles have been replaced but the entire roof need replacing.
1 -	Less Critical		
2 -	Consideration		
3 -	Monitor		
4 -	More Critical		
5 -	[redacted]		

2

Walkway Buildings							
Block	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st	3		3		3	3	
2nd	3		3		3		
3rd		3	3		3	3	
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					3	4	
1st	4						
2nd	4						
3rd	3						

Description		Comments	Fascia is splitting needs replacement
			2nd Fl by stairway has stucco damage
1 -	Less Critical		
2 -	Consideration		
3 -	Monitor		
4 -	[illegible]		
5 -	[illegible]		

Walkway Buildings							
[redacted]	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st			3		3	3	
2nd			3		3	3	
3rd	3		3		3		
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3						
2nd	3						
3rd	3						
Description		Comments	Fascia needs to be replaced				
			Some shingles have been replaced but the entire roof need replacing.				
1 - Less Critical							
2 - Consideration							
3 - Monitor							
4 - [redacted]							
5 - [redacted]							

Walkway Buildings							
	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st			3	3	3	3	
2nd			3	3	3	3	
3rd			3		3		
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					4	4	
1st	3						
2nd	3						
3rd	3						
Description		Comments	These buildings run directly into one another. There is no real walkway area like the other buildings				
1 - Less Critical							
2 - Consideration							
3 - Monitor							
4 - More Critical							
5 - [illegible]							

Walkway Buildings							
Bldg. 2	Corridors						
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	End Beams	Trim	
Floor Level							
1st		3	3				
2nd	3		3			3	
3rd			3			3	
	Stucco Walls			Roof			
Floor Level					Shingles	Fascia	
					3	3	
1st	4						
2nd	3						
3rd	4						

Description	Comments
1 - Less Critical	
2 - Consideration	
3 - Monitor	
4 - More Critical	
5 - [illegible]	

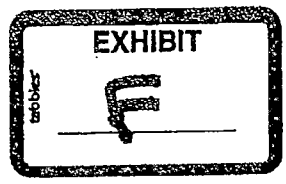
EXHIBIT
"F"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII. IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs,

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.

Civil Action No. 2016-CP-26-



STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26-
Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson, Plaintiffs, v. Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.	AFFIDAVIT OF JOHN SIMKO, PE, S.I., AND SECB

HORRY COUNTY
2016 JUL -7 AM 8:24
MELANIE HUGGINS-WARD
CLERK OF COURT

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

1. My name is John Simko. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in

the field of structural engineering. I attended Catholic University of America in Washington DC, from which I received a B.S. Civil Engineering degree in 1961. I received a Masters Degree in Science from East Carolina University in 1991. I am registered in the States of South Carolina, North Carolina, Florida (Licensed as a Special Inspector), New York, Nevada, Louisiana, California, New Jersey, Oregon, Vermont, District of Columbia, Indiana, Ohio and Maryland. A copy of my Curriculum Vitae, marked **Exhibit "A"**, is attached hereto and incorporated by reference as part of this Affidavit.

2. I am not a party to the above entitled action, and I am unrelated to any of the above- captioned members.

3. I am currently the owner of MS Structural Engineers, LLC ("MS Structural Engineers") located in Ormond Beach, Florida, 32176, as a Chief Structural Engineer. I am individually licensed as an Engineer in the State of South Carolina. My experience includes over fifty (50) years of design work, diagnostic evaluations, building repair design, and construction project management. (See **Exhibit A.**)

4. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Complaint.

5. Tilghman Beach and Racquet Club Condominium Regime ("TB&RC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer, Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983 are located in Horry County, South Carolina.

6. The construction of Tilghman Beach & Racquet Club Condominium Regime was completed in accordance with the building code requirements of the 1981 Edition of the Standard Building Code ("SBCCI").

7. The twelve (12) buildings are elevated three (3) story wood framed structures with walkways on one side and balconies on the other. The pre-fabricated structures are located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

8. Article XXI of the Master Deed states that the Association is responsible for the ***maintenance, repair and replacement*** of all of TB&RC's Common Elements. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

9. Article I, Paragraph 11 of the By-Laws addresses the Association's responsibility to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affirmative duties to collect and maintain a reserve fund for the future replacement of structural Common Elements:

(d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project *shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements* as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. *The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements.*

(e) The Board of Directors of the Association, in establishing said annual budget for operation management and maintenance of the Project, *shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress* when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or *for other reason placing financial stress upon the Association.*

10. I conducted a site visit at TB&RC in May, 2015 at the request of certain unit owners. Observations made during the site visit, including review of other engineering reports, indicated the following defective and deficient conditions:

10.1 Structural Items of Concern

a. Balcony Railings have corroded at base of supports. Pickets were missing.
b. Balcony decks exhibited sponginess.
c. Connection hardware was corroded and delaminating.
d. Balcony beams are corroded and decayed.
e. Stair areas exhibited corrosion, rot and decay.
f. Split Stringers on stairs.
g. Delaminated and decayed band boards around perimeter of buildings.
h. Post anchorage connections have severe metal loss and are corroded at the balconies and corridors.
i. Post to top rail connections have severe metal loss and are corroded at the balconies and corridors.
j. Wood Post base have decayed and corroded at the balconies and corridors.

k. Connections of cradle beams to wood piling have severe metal loss and are corroded.
l. Connections of diagonal bracing to timber piling have severe metal loss and are corroded.
m. Cantilever cradle beams are decayed and delaminating.
n. Spandrel beams are corroded and decayed at the balcony framing.
o. Floor joists have deteriorated and are deflecting at the balcony framing.
p. Module connections to the cradle beams have metal loss and are corroded.
q. Connectors of the metal connecting plate to the module have corroded.

10.2 **Building Envelope Items of Concern**

a. Moisture penetration behind exterior siding, trim, and flashing.
b. Delaminated exterior siding, trim, and flashing.
c. Delaminating stucco below gable end walls.
d. Cracking in stucco below gable end walls.
e. Moisture penetration/leaking ocean side facing windows.
f. Moisture penetration/leaking ocean side facing sliding glass doors.
g. Moisture penetration/leaking sliding glass doors.
h. Corroded window and sliding glass door casings.
i. Corroded sliding glass door sills.
j. Moisture affected and rotten wood framing around sliding glass doors.
k. Rotting fascia boards.
l. Moisture affected and rotten band boards around perimeter of buildings.

10.3 **Interior Items of Concern**

a. Moisture damaged sheetrock.
b. Moisture damaged interior paint, wall paper and textured ceiling materials.
c. Microbial growth in Unit interiors.
d. Moisture affected floor coverings.
e. Moisture damaged paint, wall paper and textured ceiling materials.
f. Moisture damaged carpet padding and carpet.
g. Moisture damaged and rotting carpet tack strips.
h. Corrosion of tack strip fasteners.

10.4 **Roofing Items of Concern**

a. Missing shingles.
b. Numerous patches.
c. Distressed flashing.
d. Rotting fascia boards.
e. Leaking around skylights.
f. Lack of properly fastened and installed singles.

g. Lack of drip edge at rakes and peaks.
h. Poor attic ventilation.
i. A number of existing hurricane ties are missing, corroded and/or improperly installed.
j. Soft areas and visible deflections in roof deck.
k. Tarps on Roofs.
l. Rotten eaves/soffits.

11. My review of the design and other structural aspects pertaining to the construction of the TB&RC condominium buildings included the following findings[1]:

a. Cantilever cradle beams at the balconies are overstressed by approximately Thirty-Three (33) percent.

b. Balcony joists are overstressed by approximately Eight (8) percent.

c. Cradle beam connections at the piling are stressed to approximately Seventy-Six (76) percent of capacity, and are still delaminating.

d. Module connection to cradle beams plates are stressed to approximately Fifty (50) percent of capacity, but the screws and nails are to be investigated for metal loss and corrosion.

e. Module to module connections are stressed to Fifty (50) percent of capacity, but again the connecting nails and screws are to be investigated.

12. Based upon my understanding of the project, the construction documents and electronic media reviewed, the site conditions observed, and the interpretation of the information presented herein, I offer the following professional opinions, which are based upon a reasonable degree of engineering certainty:

a. All the balcony systems of the project are to be immediately removed and replaced, or totally repaired, except for Building III.

b. All the corridor structural elements (plywood, joists and beams) are to be immediately repaired.

---

[1] A copy of John Simko's calculations for the constructed buildings, marked **Exhibit "B"**, is attached hereto and incorporated by reference as part of this Affidavit.

c. All the corridor railing systems (railings, posts and pickets) are to be immediately replaced.

d. All the connections with the loss of metal in excess of Twenty-Five (25) percent are to be immediately replaced with stainless steel hardware.

e. A systematic and comprehensive plan of replacement for the above items is to be put in place immediately. Each building is to be thoroughly investigated for the deficient items mentioned above and replacement to be implemented without delay in order to avoid a complete failure of the balcony systems.

f. A Three (3) year preventive maintenance program shall be installed which includes inspection of all connections that are visible.

g. The existing balcony areas do not meet the Code and represent a high level of overstress, except for Building III.

h. Mold and rot in the closed in areas are accumulating and could possibly cause health concerns in the future if not repaired.

i. The missing spindles and loose guardrails in all corridors are unsafe and violate Section 23-129.3(6) of the Zoning Code for the City of North Myrtle Beach.

j. The exterior wood siding and trim is decayed and rotten at many locations at all Twelve (12) buildings. This current condition for all buildings violates Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

k. The roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are not properly maintained and further do not provide the buildings with a weather resistant exterior wall envelope. Additionally, tarps on buildings VIII, IX, X, XI, and XII are attached to roofs/skylights. As such, the delaminated roofing and water intrusion problems associated with these defective conditions violate Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

l. Complete replacement of the roofing systems on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII is required. While partial replacement of the roofing components on Buildings I and II is needed.

m. All visible termite damage has not been repaired in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. Further, the Board has failed to

adequately investigate and uncover all hidden termite damage probably existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. See termite damage inspection report including pictures referenced in Paragraph 13(l).

n. Unless a major comprehensive and/or complete repair and reconstruction action is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, the eleven (11) buildings, which have a life expectancy of probably less than four (4) years, will become unrepairable due to the total cost of restoration exceeding the current fair market value of the buildings.

o. The Plaintiffs and other similar situated Co-owners will suffer irreparable injury, harm, and loss due to the diminution in value of their buildings as well as their inability to repair them due to the prohibitory cost of restoration if a comprehensive and/or complete repair and reconstruction plan is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

I reserve the right to amend its above stated opinions as additional information is made available to it.

13. Further, I offer additional opinions concerning the Board's inadequate maintenance, replacement and repair of General Common Elements and Limited Common Elements for Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII which are based upon a reasonable degree of engineering certainty:

a. Deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII have been known by the Board for at least Nineteen (19) years. The Board has long ignored the state of disrepair to these buildings. The Board's failure to properly maintain, repair and replace General Common Elements and Limited Common Elements is a clear breach of its fiduciary duty and duty of reasonable care under the common law.

b. The seriousness of the defects and deficiencies of General Common Elements and Limited Common Elements of the buildings have been historically ignored by the Board.

c. The Board has not acted with due care and in good faith in its affirmative duties, pursuant to the governing documents of the Tilghman Beach & Racquet Club Property Regime, to maintain and repair and thereby prevent progressive damages to the General Common Elements and Limited Common Elements of the buildings.

d. The Board did not engage qualified professionals to assess/evaluate the long known suspected deficient conditions before 2013. The Board's failure to do so permitted the distress to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII to reach a severe and nearly unserviceable condition.

e. The failure of the Board to engage qualified professionals prior to 2013 prohibited the design and implementation of a maintenance and repair program which would have greatly lessened the severity of the distress whereby only typical maintenance, repair and replacements would have been necessary.

f. The consultant's reports clearly identified deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII that are the direct result of the Board not properly maintaining or failing to maintain, repair or replace the Common Elements and Limited Common Elements.

g. The governing documents of the Tilghman Beach & Racquet Club Property Regime impose an affirmative duty on the Board to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII. The Board failed to adequately fund reserves for the maintenance, repair and replacement of General Common Elements and Limited Common Elements, and thereby is responsible for the extraordinarily high cost of the repairs to the buildings, which have and will increase substantially over time.

h. The Board's conduct and also inaction, in failing to discharge its affirmative duties under the governing documents for the reasons described above, are not protected by the business judgment rule.

I reserve the right to amend its above stated opinions as additional information is made available to it.

14. Further, please be advised that my above stated opinions are, also, based upon my

review of the following reports, documentation, and/or information provided to me in this matter, including, but not limited to the following:

(a) Project Plans, drawings, architectural floor plans prepared by Bartholomew Associates Architects and structural plans prepared by Lasater-Hopkins consulting Engineers recorded on February 2, 1982 at the RMC Office of Horry County in Plat Book 1, page 142.

(b) Report of Kyzer Timmerman Structural Engineers, Inc. ("Kyzer Timmerman"), prepared by Ashleigh Weatherly, PE for Tilghman Beach & Racquet Club Association, Inc., dated June 19, 2015.

(c) Report of Criterium-Giles Engineers, Inc. ("Criterium-Giles"), prepared by Christopher A. Flythe, PE for Tilghman Beach & Racquet Club Association, Inc., dated June 19, 2015.

(d) Phase I: Existing Condition Evaluation of Assessment for Tilghman Beach & Racquet Club Ocean Front & Second Row Buildings, submitted by Martinez & Associates Structural Engineers, PA dated June 2015.

(e) Letter to Tilghman Beach & Racquet Club dated February 17, 2016, from Ben Caldwell, AICP, Assistant Zoning Administrator for City of North Myrtle Beach.

(f) Master Deed and By-Laws of Tilghman Beach & Racquet Club Property Regime.

(g) All the building permits, inspection reports, and other repair and reconstruction records for Tilghman Beach & Racquet Club Property Regime on file with the City of North Myrtle Beach.

(h) The minutes and financial records of Tilghman Beach & Racquet Club Homeowners Association, Inc.

(i) December 13, 2006 Reserve Study Report prepared for Tilghman Beach & Racquet Club Homeowners Association, Inc., by Reserve Advisors, Inc.

(j) November 17, 2009 Reserve Study Report prepared for Tilghman Beach & Racquet Club Homeowners Association, Inc. by Reserve Advisors, Inc.

(k) January 14, 2010 Roof System Condition Survey prepared Tilghman Beach & Racquet Club Homeowners Association, Inc. by Sutton-Kennerly & Associates, Inc.

(l) Termite inspection report of Tilghman Beach & Racquet Club Property Regime on June 28, 2014 by Dr. Maxcy P. Nolan, III.

(m) January 26, 2016 Letter from SGA Architecture to the Tilghman Beach & Racquet Club Homeowners Association, Inc., Steve Coggins, AIA.

(n) Cost Summary to Homeowners as prepared by Will Atkinson, Board President in 2015.

I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

FURTHER AFFIANT SAYETH NOT.

John Simko, P.E., S.I., SECB

SWORN to and subscribed before me this
5th day of July, 2016.

Lynn R. Heard
Notary Public for
My Commission Expires: 10-12-21

LYNN R HEARL NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES OCTOBER 12, 2021

EXHIBIT
"A"

VITAE

For

JOHN SIMKO M.S., P.E., SECB, SI; M.ASCE

Structural Engineer

FL#30122;FLSI#2029; SC #5037

SECB#1586

JOHN SIMKO SECB.,P.E.,S.I.,M.S.
Structural Engineer
MS Structural Engineers
400 South Atlantic Ave. Suite 106
Ormond Beach, FL. 32176
(386) 672-1214

Email: msstructural@cfl.rr.com

PROFESSION:

Professional Engineer (structural) Reg. #6422NC ;#5307 SC
#8977NV
#30122 FL SI# 2029(Threshold Inspector)

Registered Engineer since 1964; Registered Engineer SC since 1974; Firm since 1968

PERSONAL STATEMENT:

I firmly believe that the foundation of rational decisions and intelligent designs is through thorough, detailed and proficient work. Satisfactory engineering services involve not only knowledge and experience, but detailed study, analysis and investigation. If any of the above items are slighted in order to reduce engineering costs, the owner is the losing party. Sound engineering pays for itself many times over, in correct design and reasonable construction costs. We have been in business since 1968 and understand the impact of proper design and construction.

EDUCATION:

Civil Engineering
Catholic University of America, B.C.E.-1961
Washington, DC

Graduate Studies in School of Industrial Technology
East Carolina University, M.S.-1991
Greenville, NC

LECTURES AND COURSES TAUGHT

East Carolina University (1999)
Courses Taught:
Structural Analysis
Foundation Design
Mechanics of Soils

Coastal Carolina College Myrtle Beach, SC
Course Taught:
Law for Engineers
1979 Semester
Coastal Carolina College Jacksonville, NC
Course Taught:
Blueprint Reading
Strength Materials

Pitt Community College Greenville, NC
Course Taught:
Design of wood Structures
Community college of Southern Nevada Las Vegas, NV
Course Taught:
Drafting
PUBLISHED AUTHOR
"Winds of Change" - 1985
"Changes in code Implementation for Residential Structure"-1993
CIVIL LITIGATION:
QUALIFIED AS AN EXPERT:
U.S. District Court, Charleston, SC
Court of Common Pleas 15th Judicial Circuit
Conway and Georgetown, South Carolina

PROFESSIONAL ASSOCIATIONS
American Society of Civil Engineers
American Concrete Institute
American Institute of Steel Construction
Consulting Engineers Society
National Society of Professional Engineers
National Council of Engineering Examiners
Structural Engineering Certification board

PROFESSIONAL REGISTRATIONS
North Carolina, South Carolina, Indiana, Maryland, Ohio, District of Columbia, Florida, New York, California, Vermont, Virginia, Nevada, New Jersey, Oregon, Oklahoma

CAPABILITIES:
Structural Engineering.. Residential Design.. Working Drawings.. Specifications and Construction Inspection.. Expert Witness Testimony.. Computer Applications: AutoCad and Finite Element Analysis
AWARDS AND HONORS
Honor Award for Design by A.I.A. Long Island New York

BRIEF LIST OF STRUCTURAL DESIGN PROJECTS

PROJECT	DESCRIPTION	CLIENT
Guiness Hall . Of Records	2 Story Steel Frame Myrtle Beach, SC	Sand Investments
Sands Condominiums Myrtle Beach, SC	3 Story Condo W/Wood Piling	Sands Investments
Medical Center Brunswick, NC	1 Story Steel Frame	Jefferies & Faris
Heron Cove Condo's Nags Head, NC	4 Story Concrete Frame	Gordon Jones

St. Moritz Condo's	7 Story Concrete Frame	Century 21
Topsail Beach, NC		
Crest Condominiums	4 Story Wood Frame	Duane, Duane & Cahill
Rehoboth Beach, MD	consisted of composite steel and wood frame design	
Parkdale School	2 Story Composite Steel Frame	Kea, Shaw, Grim & Chrichton
St Luke's Church	Wood Frame Bell Tower	J. Rowland Snyder
Washington, D.C.		
Silver Springs Pres. Church	Laminated Wood Arches	Duane, Duane & Cahill
Lydon Hills Schools	1 Story Bearing Wall	Kea,Shaw, Grim & Chrichton
Klingensmith Project	2 Story Office Whse Complex	Duane, Duane & Cahill
St. Regis	7 Story Concrete	United Carolina Bank
Spring Towers	10 Story Concrete	J.O. Baldwin Co.
Wapleton Mansion	9 Story Steel Frame	Bucher-Meyers
St. Moritz	8-Story Concrete Frame	Century 21
The Links	4-8-Story concrete Frames	Rivermar Constr
Laguna Keyes	15-story concrete Frame	Myrtle Beach,SC
Kingston Towers	7-story concrete Frame	Larry Robinson A.I.A.
St. Kitts	7-story concrete Frame	Larry Robinson A.I.A.
St. Maarten	12-story concrete Frame	Larry Robinson A.I.A.
Cipriani	9-story concrete Frame	Larry Robinson A.I.A.
Las Palmas	8-story concrete Frame	Jim Buie A.I.A.
Sanibel	9-story concrete Frame	Larry Robinson A.I.A.
Islemorada	12-story concrete Frame	Larry Robinson A.I.A.
Nikzad Plaza	one story shopping center	Steven Cruz A.I.A.
Cayman Island	15-story concrete Frame	Larry Robinson A.I.A.
Ocean Keyes	13-3 story steel frames	Russ Baltzer A.I.A.
Ace Plaza	One story shopping center	Larry Robinson A.I.A.

Ground Mount Solar Panel Project-2295 Old Kings Hwy Port Orange FL
Roof Mount Solar Panel Project-1608 Plantation Drive Ormond Beach FL
Roof Mount Solar Panel Project-4129 Pioneer Way New Smyrna Beach FL
Roof Mount Solar Panel Project-136 Interlake Ave Deland FL
Roof Mount Solar Panel Project-3027 Mac Road St. Augustine FL
Sand Dollar Condo concrete restoration

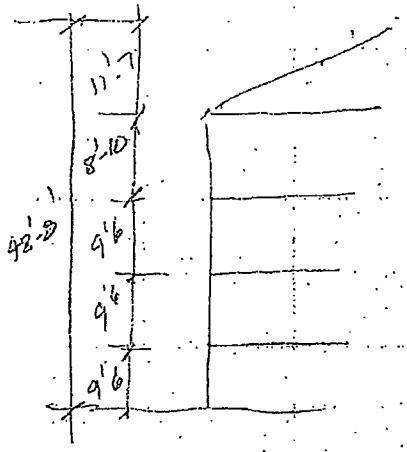
School of Architecture University of Nevada Las Vegas 4 story masonry and steel frame
Fashion Show Mall Las Vegas,NV 1 million s.f. of Mall space design & inspection
Stratosphere Towers Las Vegas,Nv 1200 foot Tower & Casino-Design & inspection

REFERENCES

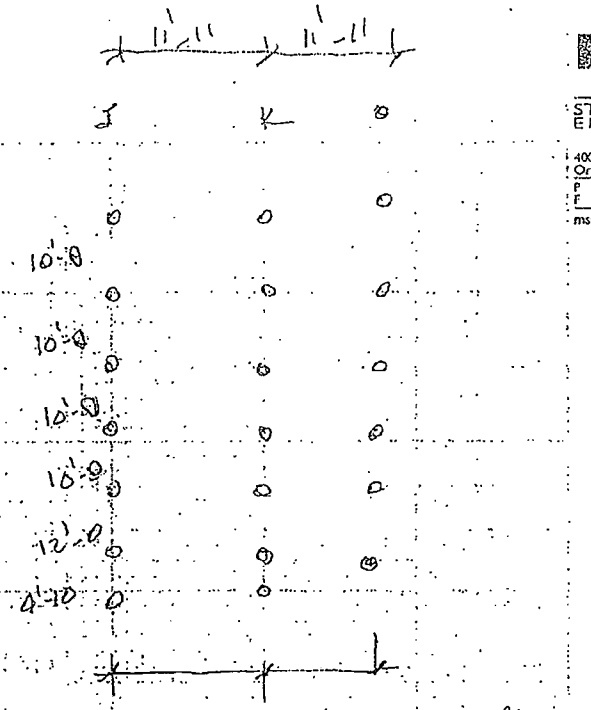
James Monahan, P.E.
Ormond Beach, FL
Phil Delamare, S.E.
Las Vegas, NV
Wayne Mabry, P.E.
Columbia, SC
Gregg Mendenhall S.E
Las Vegas, NV

CALCULATIONS

Tildman Estates



TYP ELEV



TYP PLAN Configuration

Design Loads:

LIVE LOADS:

Roof = 20#/□
Floor = 40#/□
Balcony = 40#/□
Corridor = 100#/□
Stairway = 100#/□

DEAD Loads:

Roof = 10#/□
Ceiling = 4#/□
Floor = 6#/□
EXTERIOR Walls = 8#/□
INTERIOR Walls = 6#/□

WIND LOAD:
120 MPH

SEISMIC LOAD:
Zone 2

STRUCTURAL ENGINEERS

400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tildman Estates
proj no:
date: 5.26.16
by: JS
sheet: S-1

DESIGN WIND LOADS:

120 MPH

Wind - (0'-30') = 29 x 1.1 x 1.15 = 36.7 #/□

(31'-50') = 40 x 1.1 x 1.15 = 50.6 #/□

STRUCTURAL ENGINEERS
400 S. Atlantic Ave. Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

Loads:

WITH 120 MPH WIND, USE ZERO LL ON ROOF & OPEN WALKWAYS. USE FULL LL ON INTERIOR FLOORS (for stud design only)

EXTERIOR walls @ 12'-0" ± Module w/ 8' walkway:

TOP FL STUDS:

Roof: 10 #/□ x 12/2 = 60 #/'

Wall: 8 #/□ x 8.83 = 71

131 #/'

2nd FL STUDS:

From above: 131

Flr CL (40+6+4) x 12/2 = 300

Walkway: (6 #/□ x 4) = 24

Wall: (8 x 9.5) = 76

591

591 #/'

1ST FL. STUDS:

From above: 591 #/'

FL+CL 300

Walkway 24

Wall 76

991

991 #/'

project: Tilghman Estates

proj no

date: 5.26.16

by: BL

sheet: S-2

INTERIOR LOAD BEAR Walls

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

Loads:

TOP FL:

Roof: (20+10) x 12/2 = 180

Wall: (6 x 883) = 53

233 #/'

233 #/'

2ND FL:

FROM ABOVE = 233

FL+Clg (40+10) x 12/2 = 300

+ Walls ( )(6 x 9.5) = 157

590 #/'

590 #/'

1ST FL:

FROM ABOVE = 590 #/'

FL+Clg (40+10) x 12/2 = 300

Walls = = 157

947 #/'

947 #/'

Loading: to INTERIOR CRADLE

BEAMS = 18.94 + wt of beams

+ Additional DL from Roof framing trusses

Total wt to cradle beams:

1894 #/'

Roof DL 20 #/'

beams 10 #/'

total 1924 #/'

OR

each side of piling beam to carry 962 #/'

project: Tidewater Estates

proj no

date: 4.27.16

by: SG

sheet: S-3

Loadings to Pile:

(10.0' x 1.93 K/L) = 19.3 K to ea. pile.

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
mssstructural@cfl.rr.com

SEISMIC check

$V = Z K C W$

$Z = .50$ (zone 2)

$K = 1.33$ (Box system)

$C = \frac{.05}{\sqrt[3]{T}}$

$T = \frac{.5\,hn}{\sqrt{D}}$

W = dead wt. above shear plane

① For Single Stack Configuration — hn + Kf portion

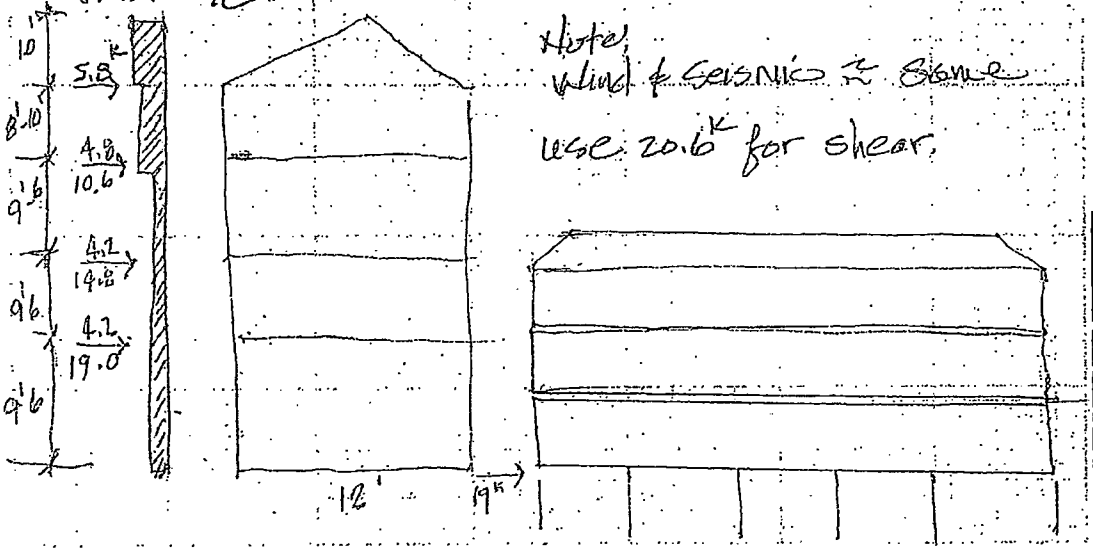
$T = \frac{4.5 \times 28.5}{\sqrt{24}} = 2.91$

$C = \frac{.45}{\sqrt[3]{2.91}} = .35$

W @ base = 88708 #

$V = .50 \times 1.33 \times .35 \times 88708\,\# = 20647\,\#$

Wind V @ base = 19.0 K



Note: Wind & Seismic ≈ Same

use 20.6 K for shear.

project: Tilghman Estate
proj no
date: 5.27.16
by: JS
sheet: S-4

Cradle Beams EXISTING

2-2x12 EA side of 12" dia. Pile.

S of 2x12 = 35.8 in^3

2-2x12 = 71.6 in^3

Using 1/2 side of Member.

$M = 962 \times 9\frac{2}{3} \times 1/9$

$= 8658$ #

$V = 10 \times 962 = 9620$ # at connection - See printout @ 8L' ← use.

$f = M/S = \frac{8658 \text{ #-in} \times 12 \text{ in/ft}}{71.6 \text{ in}^3}$

$= 1451$ #/in^2 #2 SYP Max. — check condition of beam.

Δ =

Soil Data
: brace @ max of 8'-0"

ALLOW Loads for Connections

3/4" ⊥ grain: Double SHEAR = 720 #
Single = 360 #

1/2 = 1 1/2" SYP

3/4" // grain; Double shear = 1892 #
single = 946 #

assume 2-2x2 notched into 12" pile ∴ all Reaction loading taken by shelf of Pile.

STRUCTURAL ENGINEERS

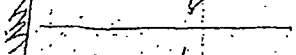
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tilden estate
proj no:
date: 5.27.11
by: SS
sheet: 3-5

Balcony Breezi

Balcony Cantilever = 5'-0" ±

Loading: 962#/1'



$M = 962 \times 5^2/2$
$= 12.01$-K

$\frac{S}{R} = \frac{12.0 \times 12}{7.16}$
$= 2015$ psi

Problem at Cantilever end extending 2-2x12
Cant. overstress is 33%

check
2x6 @ 12" o.c.

loading:
LL = 40
DL = 5
TL = 45psf

$W = .045 \times 12^2 \times .125$
$= .81$K

$R = \frac{.81 \times 1000}{200}$
$= 8.1$ in^3

$S_{2x6} = 1.5 \times 5.5^2/6$
$= 7.6$ in^3

2nd 8% overstressed
w/ distribution & major problem

STRUCTURAL ENGINEERS
400 S. Atlantic Ave. Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tillman estate
proj no:
date: 5.27.16
by: JS
sheet: 5-6

Loss of METAL - Calculations:

unprotected Metal (bolts) have a .002

.002 x .34 = .0068 IN loss or approximately 1/8"

9/16" - 1/8" = 5/8"

∴ Values for 5/8 dia bolts are:

A_b = .301 IN^2
5/8

$f_v = 1.9/.30 = 6.3$ KSI

F_v = 10 KSI

$V_b = F_v \times a_b$
$= 10 \times .3 = 3^K$

∴ w/ loss of Metal
allow stress on bolt is
at 6.3/10 = 63%
Safety allowance of 33% left

If accelerated loss occurs:

.004 IN^2/yr

.004 x 34 = .136 in loss or approx -

.750 - .136 = .614

check 9/16" dia.

A_b = .25 IN^2

$f_v = 1.9/.125 = 7.6$ KSI 7.6/10 = 76% ∴ Still ok

$V_b = 10 \times .25 = 2.5^K$

STRUCTURAL ENGINEERS
400 S Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.677.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Tillman Estates
proj no
date: 5.27.16
by: JH
sheet: 1-7

Metal loss of connection plates:

16ga plates – .0625in

12 plates each grid

$A_p = 10 \times .0625 = .625 in^2$

$V_{per\ pl.} = \frac{19^k}{12} = 1.58^k$

$F_V = 20ksi$ plates

$f_v = \frac{1.58^k}{.625 in^2} = 2.5ksi < 20ksi$

.0625
.0340
.0285

$A_p = (10 \times .0285) = .285 in^2$

$f_v = \frac{1.58^k}{.285} = 5.54ksi$

Metal loss of .068 at .002in/yr –

With the plate (16ga) = .0626in then the plates and connectors are disintegrated.

Even with only a loss of .001 per year the protected plates that is $.001 \times 34 = .034$ or 1/2 of the original plate!

Connector plates need to be investigated.

STRUCTURAL ENGINEERS
400 S. Atlantic Ave. Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

project: Highview Estates
proj no
date: 5.27.16
by: SE
sheet: 5 of 9

3/4" bolts required to carry all lateral loads

STRUCTURAL ENGINEERS
400 S. Atlantic Ave, Ste 106
Ormond Beach, FL 32176
P 386.672.1214
F 386.672.1421
msstructural@cfl.rr.com

INTERIOR Lateral Loading at Pile
= 3.8^K

Loading is 11 grain 1st double shear

bolts req'd = 3.800#/1892# = 2 bolts

Area of 3/4" bolt = 0.44 in^2

A307 shear
allow - single = 4.4^K
double = 8.8^K

Fv = 10 ksi

At Time of Installation
fv = 4.3 ksi
w/allow load of 4.4^K
4.4^K > 1.9^K - 43%

fb = 44
Tb = 20 ksi
fb = T/ab
T = tension force or uplift

fv = V/ab
fv = 1.9/.44 = 4.3 ksi
Fv = 10 ksi
Vb = Fv * ab = 4.4^K

Fv = 10 ksi

project: Tilghman Estates
proj no
date: 5.27.16
by: JJ
sheet: S-9

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block* selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\lipham estates.ec5
ENERCALC, INC: 1983-2016, Build:6.16.5.11, Ver:6.16.5.11

Licensee: KW-06010369 — Licensed to: MS STRUCTURAL

Description : CRADLE BEAMS-EACH SIDE OF PILE

CODE REFERENCES

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10
Load Combination Set : ASCE 7-10

Material Properties

Analysis Method : Load Resistance Factor D
Load Combination ASCE 7-10

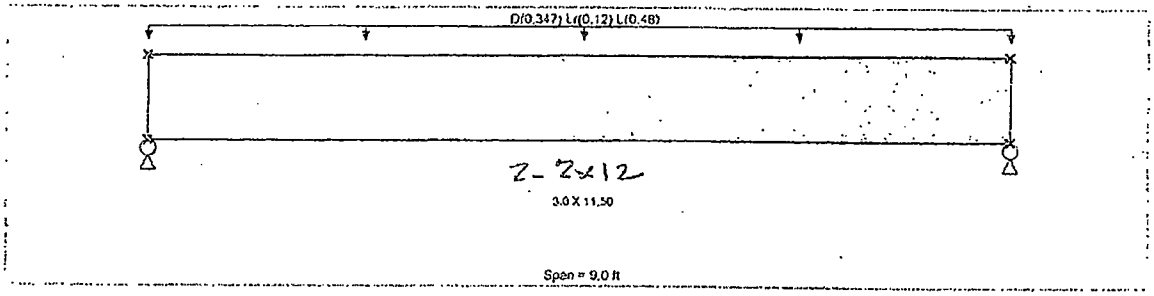
Wood Species : Southern Pine
Wood Grade : No.1: 2" - 4" Thick : 12" Wide

Beam Bracing : Beam is Fully Braced against lateral-torsional buckling

Fb - Tension	1,500.0 psi
Fb - Compr	1,000.0 psi
Fc - Prll	1,400.0 psi
Fc - Perp	565.0 psi
Fv	175.0 psi
Ft	650.0 psi

E : Modulus of Elasticity

Ebend- xx	1,600.0ksi
Eminbend - xx	580.0ksi
Density	34.320pcf



Applied Loads

Service loads entered. Load Factors will be applied for calculations

Beam self weight calculated and added to loads
Uniform Load : D = 0.3470, Lr = 0.120, L = 0.480 , Tributary Width = 1.0 ft, (ROOF-FLOOR)

DESIGN SUMMARY

Design OK

Maximum Bending Stress Ratio	=	0.988 : 1	Maximum Shear Stress Ratio	=	0.640 : 1
Section used for this span		3.0 X 11.50	Section used for this span		3.0 X 11.50
fb : Actual	=	2,304.63psi	fv : Actual	=	193.45 psi
FB : Allowable	=	2,331.72psi	Fv : Allowable	=	302.40 psi
Load Combination		+1.20D+0.50Lr+1.60L+1.60H	Load Combination		+1.20D+0.50Lr+1.60L+1.60H
Location of maximum on span	=	4.500ft	Location of maximum on span	=	8.047 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1

Maximum Deflection

Max Downward Transient Deflection	0.117 in	Ratio =	921 >=360
Max Upward Transient Deflection	0.000 in	Ratio =	0 <360
Max Downward Total Deflection	0.204 in	Ratio =	529 >=240.
Max Upward Total Deflection	0.000 in	Ratio =	0 <240.0

Maximum Forces & Stresses for Load Combinations.

Load Combination		Max Stress Ratios									Moment Values			Shear Values		
Segment Length	Span #	M	V		$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	Mu	fb	Fb	Vu	fv	Fv
+1.40D+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.523	0.338	0.60	1.000	1.00	1.00	0.90	1.00	1.00	5.04	913.77	1748.79	1.76	76.70	226.80
+1.20D+0.50Lr+1.60L+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.988	0.640	0.80	1.000	1.00	1.00	0.90	1.00	1.00	12.70	2,304.63	2331.72	4.45	193.45	302.40
+1.20D+1.60L+0.50S+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.941	0.609	0.80	1.000	1.00	1.00	0.90	1.00	1.00	12.09	2,194.38	2331.72	4.21	184.20	302.40
+1.20D+1.60Lr+0.50L+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.676	0.438	0.80	1.000	1.00	1.00	0.90	1.00	1.00	8.69	1,577.00	2331.72	3.04	132.38	302.40
+1.20D+1.60Lr+0.50W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.487	0.315	0.80	1.000	1.00	1.00	0.90	1.00	1.00	6.26	1,135.02	2331.72	2.19	95.36	302.40
+1.20D+0.50L+1.60S+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\bigham estates ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11

Description : CRADLE BEAMS-EACH SIDE OF PILE

Load Combination / Segment Length	Span #	Max Stress Ratios M	V	λ	$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	Moment Values Mu	fb	Fb	Shear Values Vu	fv	Fv
Length = 9.0 ft	1	0.525	0.340	0.80	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2331.72	2.36	102.76	302.40
+1.20D+1.60S+0.50W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.336	0.217	0.80	1.000	1.00	1.00	0.90	1.00	1.00	4.32	783.24	2331.72	1.51	65.75	302.40
+1.20D+0.50Lr+0.50L+W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.458	0.296	1.00	1.000	1.00	1.00	0.90	1.00	1.00	7.35	1,334.46	2914.65	2.58	112.02	378.00
+1.20D+0.50L+0.50S+W+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.420	0.272	1.00	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2914.65	2.36	102.76	378.00
+1.20D+0.50L+0.20S+E+1.60H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.420	0.272	1.00	1.000	1.00	1.00	0.90	1.00	1.00	6.75	1,224.22	2914.65	2.36	102.76	378.00
+0.90D+W+0.90H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.202	0.130	1.00	1.000	1.00	1.00	0.90	1.00	1.00	3.24	587.43	2914.65	1.13	49.31	378.00
+0.90D+E+0.90H					1.000	1.00	1.00	0.90	1.00	1.00			0.00	0.00	0.00	0.00
Length = 9.0 ft	1	0.202	0.130	1.00	1.000	1.00	1.00	0.90	1.00	1.00	3.24	587.43	2914.65	1.13	49.31	378.00

Overall Maximum Deflections

Load Combination	Span	Max. "-" Defl	Location in Span	Load Combination	Max. "+" Defl	Location in Span
+D+L+H	1	0.2039	4.533		0.0000	0.000

Vertical Reactions

Support notation : Far left is #1 Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	3.759	3.759
Overall MINimum	0.540	0.540
+D+H	1.599	1.599
+D+L+H	3.759	3.759
+D+Lr+H	2.139	2.139
+D+S+H	1.599	1.599
+D+0.750Lr+0.750L+H	3.624	3.624
+D+0.750L+0.750S+H	3.219	3.219
+D+0.60W+H	1.599	1.599
+D+0.70E+H	1.599	1.599
+D+0.750Lr+0.750L+0.450W+H	3.624	3.624
+D+0.750L+0.750S+0.450W+H	3.219	3.219
+D+0.750L+0.750S+0.5250E+H	3.219	3.219
+0.60D+0.60W+0.60H	0.959	0.959
+0.60D+0.70E+0.60H	0.959	0.959
D Only	1.599	1.599
Lr Only	0.540	0.540
L Only	2.160	2.160
S Only		
W Only		
E Only		
H Only		

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\Wigham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11
Licensee : MS STRUCTURAL

Description : BALCONY JOISTS

.CODE REFERENCES

Calculations per NDS 2012, IBC 2012, CBC 2013, ASCE 7-10
Load Combination Set : ASCE 7-10

Material Properties

Analysis Method : Allowable Stress Design
Load Combination ASCE 7-10

Wood Species : Southern Pine
Wood Grade : No.2: 2" - 4" Thick : 5"-6" Wide

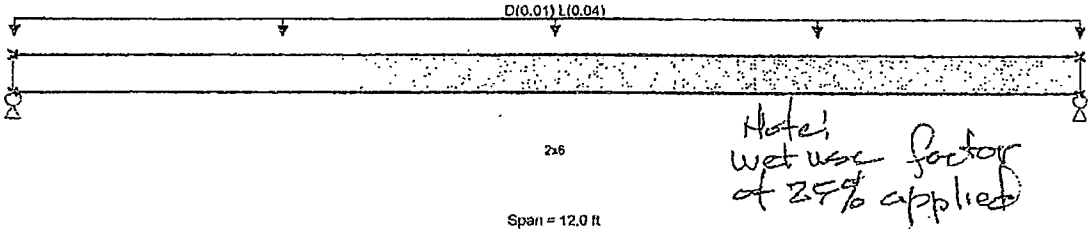
Beam Bracing : Beam is Fully Braced against lateral-torsional buckling

Fb - Tension	1000 psi
Fb - Compr	1000 psi
Fc - Prll	1400 psi
Fc - Perp	565 psi
Fv	175 psi
Ft	600 psi

E : Modulus of Elasticity

Ebend- xx	1400ksi
Eminbend - xx	510ksi
Density	34.32pcf

Repetitive Member Stress Increase



Applied Loads

Service loads entered. Load Factors will be applied for calculations.

Uniform Load : D = 0.010, L = 0.040 , Tributary Width = 1.0 ft, (BALCONY)

DESIGN SUMMARY

Design OK

Maximum Bending Stress Ratio	=	1.656 1	Maximum Shear Stress Ratio	=	0.289 : 1
Section used for this span		2x6	Section used for this span		2x6
fb : Actual	=	1,428.10psi	fv : Actual	=	50.56 psi
FB : Allowable	=	862.50psi	Fv : Allowable	=	175.00 psi
Load Combination		+D+L+H	Load Combination		+D+L+H
Location of maximum on span	=	6.000ft	Location of maximum on span	=	0.000 ft
Span # where maximum occurs	=	Span # 1	Span # where maximum occurs	=	Span # 1

Maximum Deflection

Max Downward Transient Deflection	0.645 in	Ratio =	223 <360
Max Upward Transient Deflection	0.000 in	Ratio =	0 <360
Max Downward Total Deflection	0.806 in	Ratio =	178 <240.0
Max Upward Total Deflection	0.000 in	Ratio =	0 <240.0

Maximum Forces & Stresses for Load Combinations

Load Combination		Max Stress Ratios									Moment Values			Shear Values		
Segment Length	Span #	M	V	C_d	$C_{F/V}$	C_i	C_r	C_m	C_t	C_L	M	fb	F'b	V	fv	F'v
+D+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.368	0.064	0.90	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	776.25	0.06	10.11	157.50
+D+L+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.656	0.289	1.00	1.000	1.00	1.15	0.75	1.00	1.00	0.90	1,428.10	862.50	0.28	50.56	175.00
+D+Lr+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.265	0.046	1.25	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1078.13	0.06	10.11	218.75
+D+S+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.288	0.050	1.15	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	991.88	0.06	10.11	201.25
+D+0.750Lr+0.750L+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.060	0.185	1.25	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1078.13	0.22	40.45	218.75
+D+0.750L+0.750S+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	1.152	0.201	1.15	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	991.88	0.22	40.45	201.25

MS STRUCTURAL ENGINEERS
400 S. Atlantic ave. Ste. 106
Ormond Beach FL 32176
386-672-1214
Title Block" selection.
Title Block Line 6

Wood Beam

File = c:\Users\MSSTRU~1\DOCUME~1\ENERCALC Data Files\Wigham estates.ec6
ENERCALC, INC. 1983-2016, Build:6.16.5.11, Ver:6.16.5.11

Licensee : MS STRUCTURAL

Description : BALCONY JOISTS

Load Combination / Segment Length	Span #	Max Stress Ratios M	V	C_d	C_{FV}	C_i	C_r	C_m	C_t	C_L	Moment Values M	fb	F'b	Shear Values V	fv	F'v
+D+0.60W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.207	0.036	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1380.00	0.06	10.11	280.00
+D+0.70E+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.207	0.036	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.18	285.62	1380.00	0.06	10.11	280.00
+D+0.750Lr+0.750L+0.450W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+D+0.750L+0.750S+0.450W+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+D+0.750L+0.750S+0.5250E+H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.828	0.144	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.72	1,142.48	1380.00	0.22	40.45	280.00
+0.60D+0.60W+0.60H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.124	0.022	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.11	171.37	1380.00	0.03	6.07	280.00
+0.60D+0.70E+0.60H					1.000	1.00	1.15	0.75	1.00	1.00			0.00	0.00	0.00	0.00
Length = 12.0 ft	1	0.124	0.022	1.60	1.000	1.00	1.15	0.75	1.00	1.00	0.11	171.37	1380.00	0.03	6.07	280.00

Overall Maximum Deflections

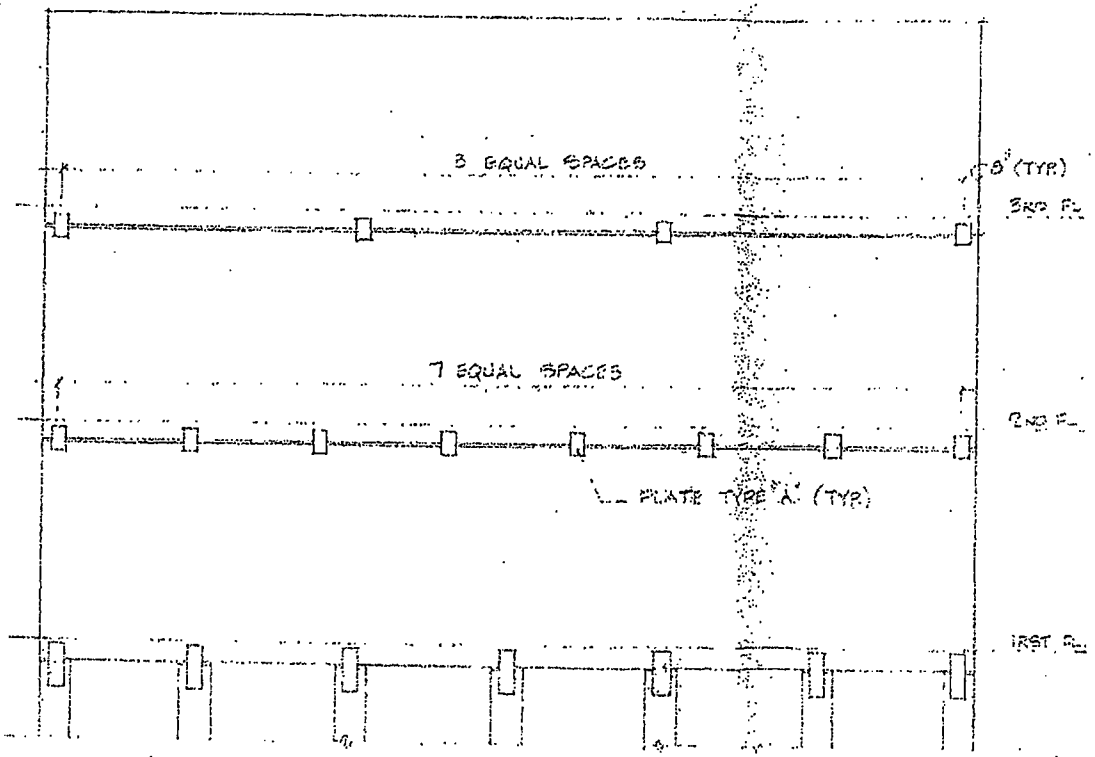
Load Combination	Span	Max. "-" Defl	Location in Span	Load Combination	Max. "+" Defl	Location in Span
+D+L+H	1	0.8059	6.044		0.0000	0.000

Vertical Reactions

Support notation : Far left is #1 Values in KIPS

Load Combination	Support 1	Support 2
Overall MAXimum	0.300	0.300
Overall MINimum	0.036	0.036
+D+H	0.060	0.060
+D+L+H	0.300	0.300
+D+Lr+H	0.060	0.060
+D+S+H	0.060	0.060
+D+0.750Lr+0.750L+H	0.240	0.240
+D+0.750L+0.750S+H	0.240	0.240
+D+0.60W+H	0.060	0.060
+D+0.70E+H	0.060	0.060
+D+0.750Lr+0.750L+0.450W+H	0.240	0.240
+D+0.750L+0.750S+0.450W+H	0.240	0.240
+D+0.750L+0.750S+0.5250E+H	0.240	0.240
+0.60D+0.60W+0.60H	0.036	0.036
+0.60D+0.70E+0.60H	0.036	0.036
D Only	0.060	0.060
Lr Only		
L Only	0.240	0.240
S Only		
W Only		
E Only		
H Only		

2 - S7 ELEVATION OF LONG WALL CONNECTION R. LOCATIONS (INTERIOR PARTY WALL) 3/16



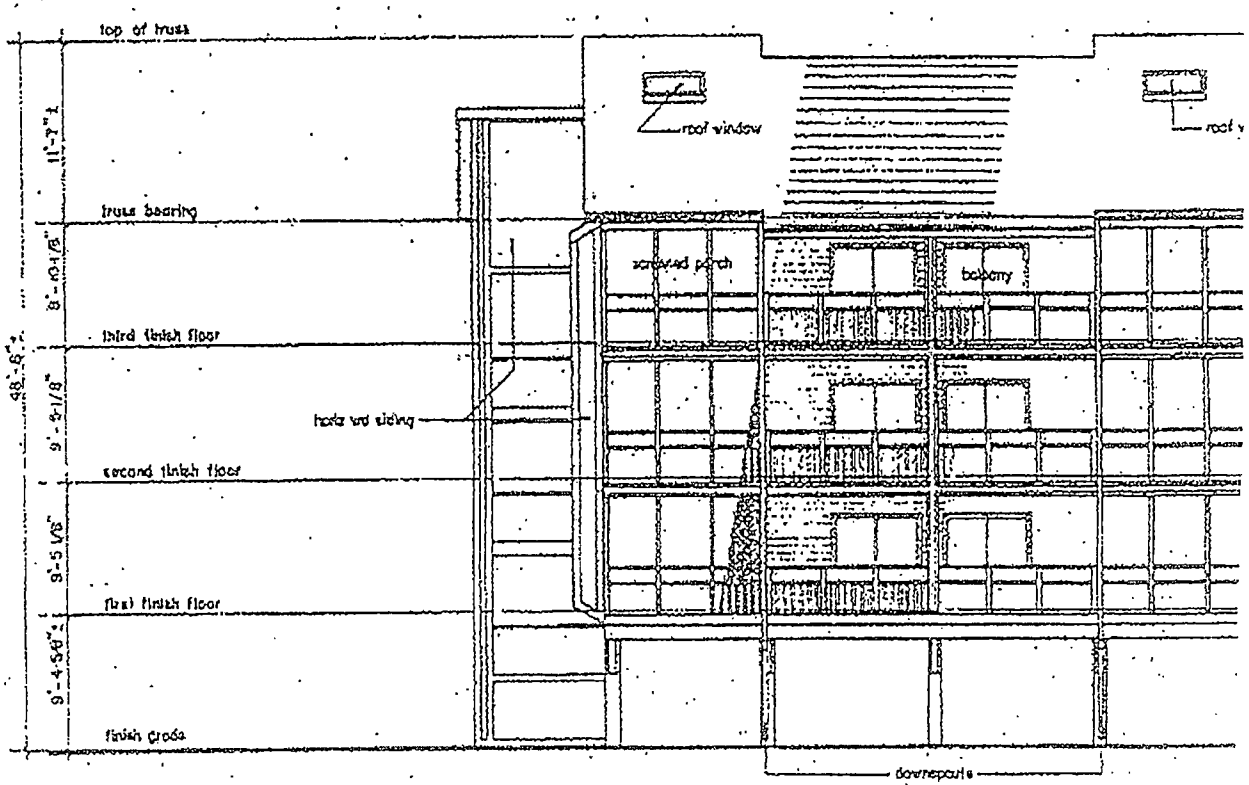
3 - S7 ELEVATION OF LONG WALL CONNECTION R. LOCATIONS (EXTERIOR WALL) 3/16

R-783

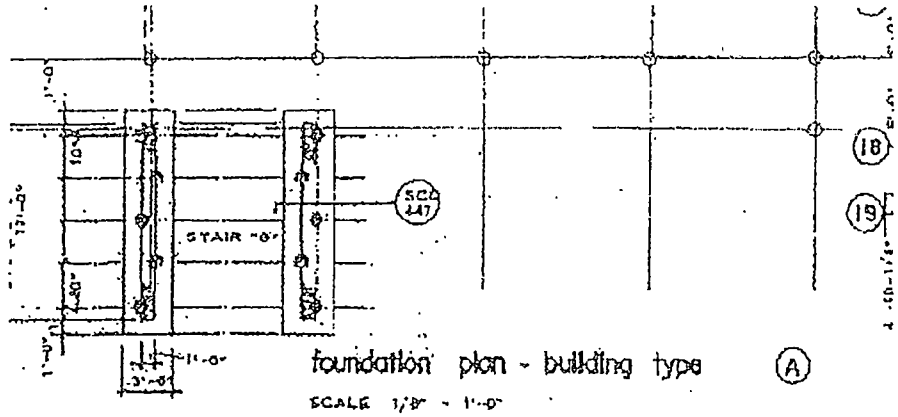
3/16" = 1'-0"
5-S7
ELEVATION OF END WALL - WALKWAY
3/16" = 1'-0
TOP OF 7X10 BAND OF FLOOR SYSTEM
7¼"
3¼"
1"
1¾"
1¾"
1¾"
6"
BOTTOM OF 7X10 BAND OF FLOOR SYSTEM
TOP OF 2 x 6 CLG. SYSTEM
BOTTOM OF 2 x 6 CLG. SYSTEM
7¼" x 10" - 16 GA. GALV. R.
W/ 10 - 10" NAILS
3/16" = 1'-0"
6-S7
PLATE TYPE "A" EXTERIOR & END WALLS 3" = 1

3/16" = 1'-0"	8-S7	TYP. EXTERIOR UNIT to UNIT CONNECTION

1/2" = 1'-0"	9-S7	PLATE TYPE "B" - INTERIOR WALLS 3" = 1'

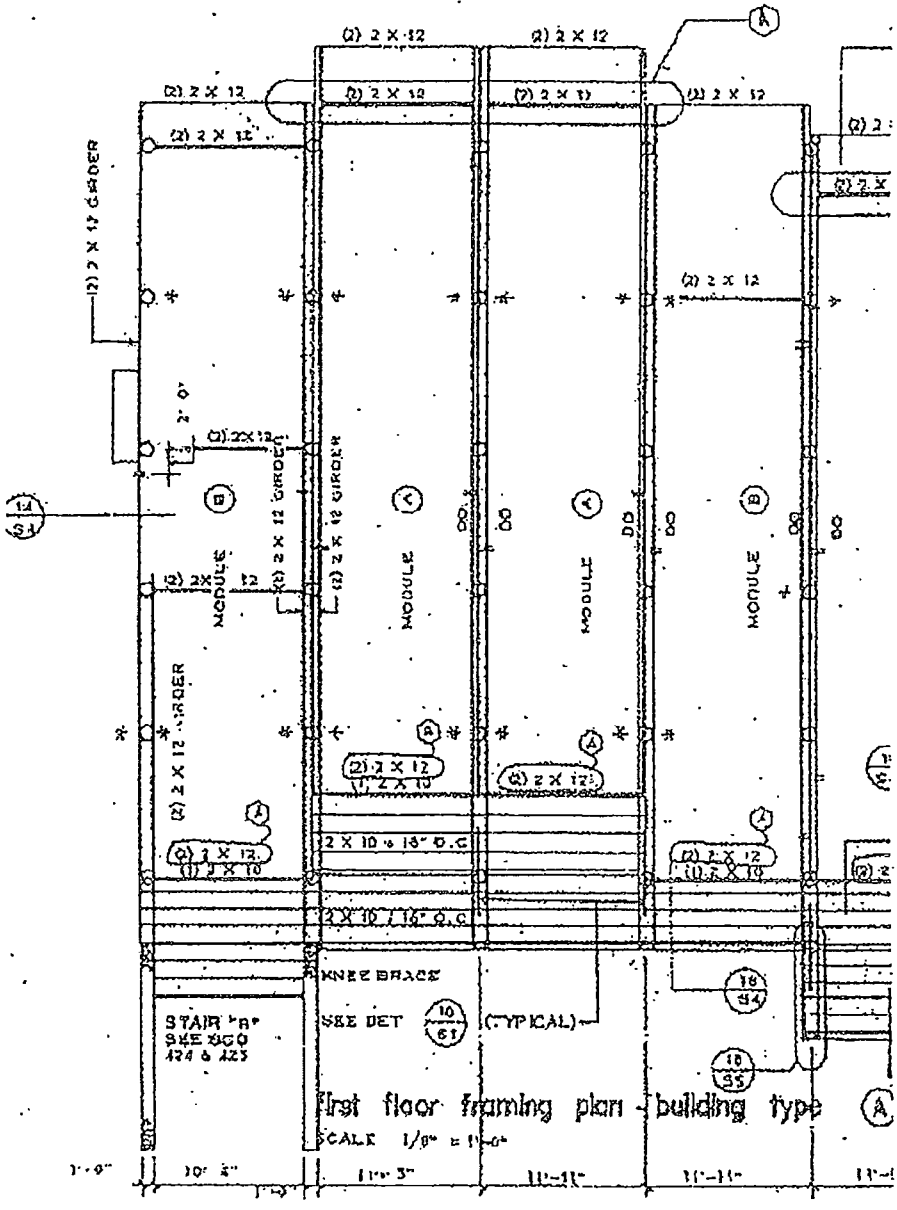

top of truss
roof window
truss bearing
screened porch
balcony
third finish floor
hardi wd siding
second finish floor
first finish floor
finish grade
downspouts
11'-7" ±
8'-10 1/8"
9'-5 1/8"
9'-4 5/8" ±

ELEVATIONS



foundation plan - building type (A)

SCALE 1/8" = 1'-0"



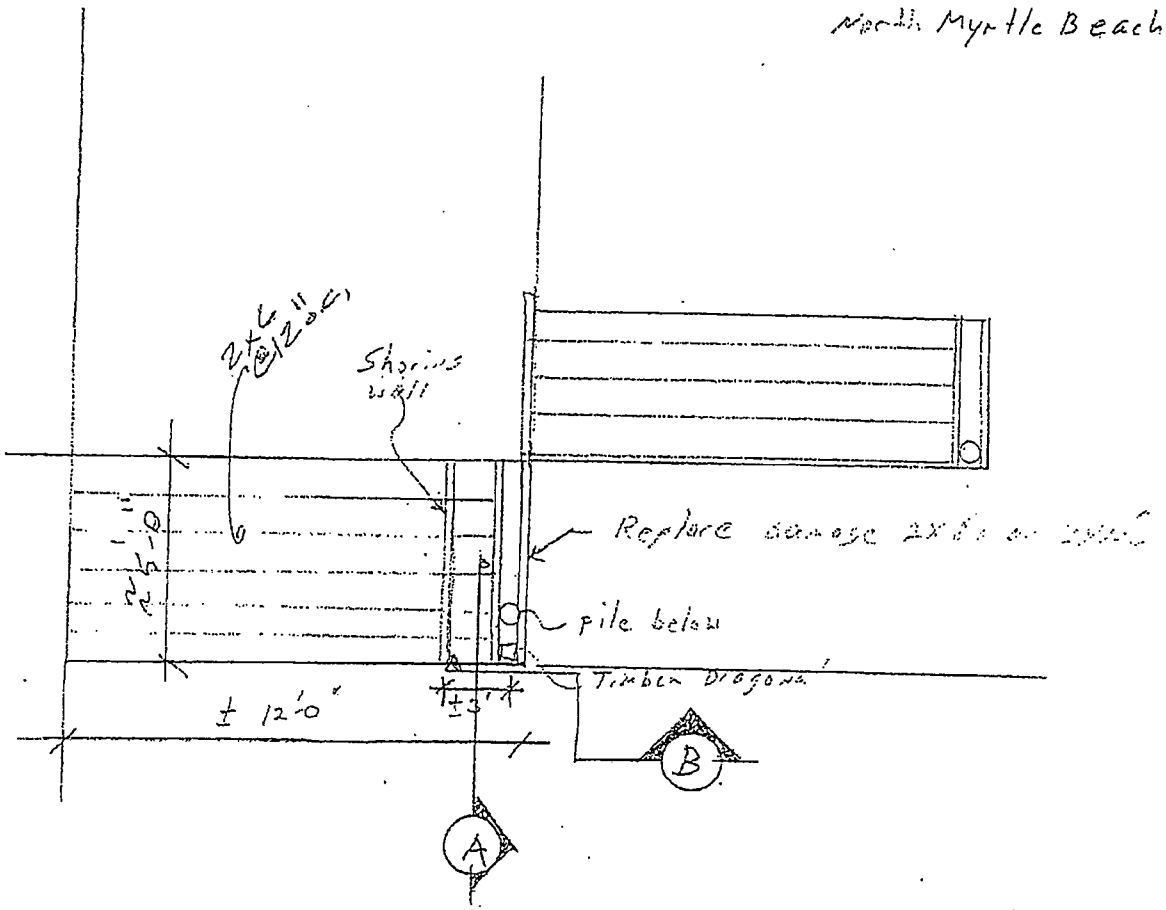
first floor framing plan - building type (A)

SCALE 1/8" = 1'-0"

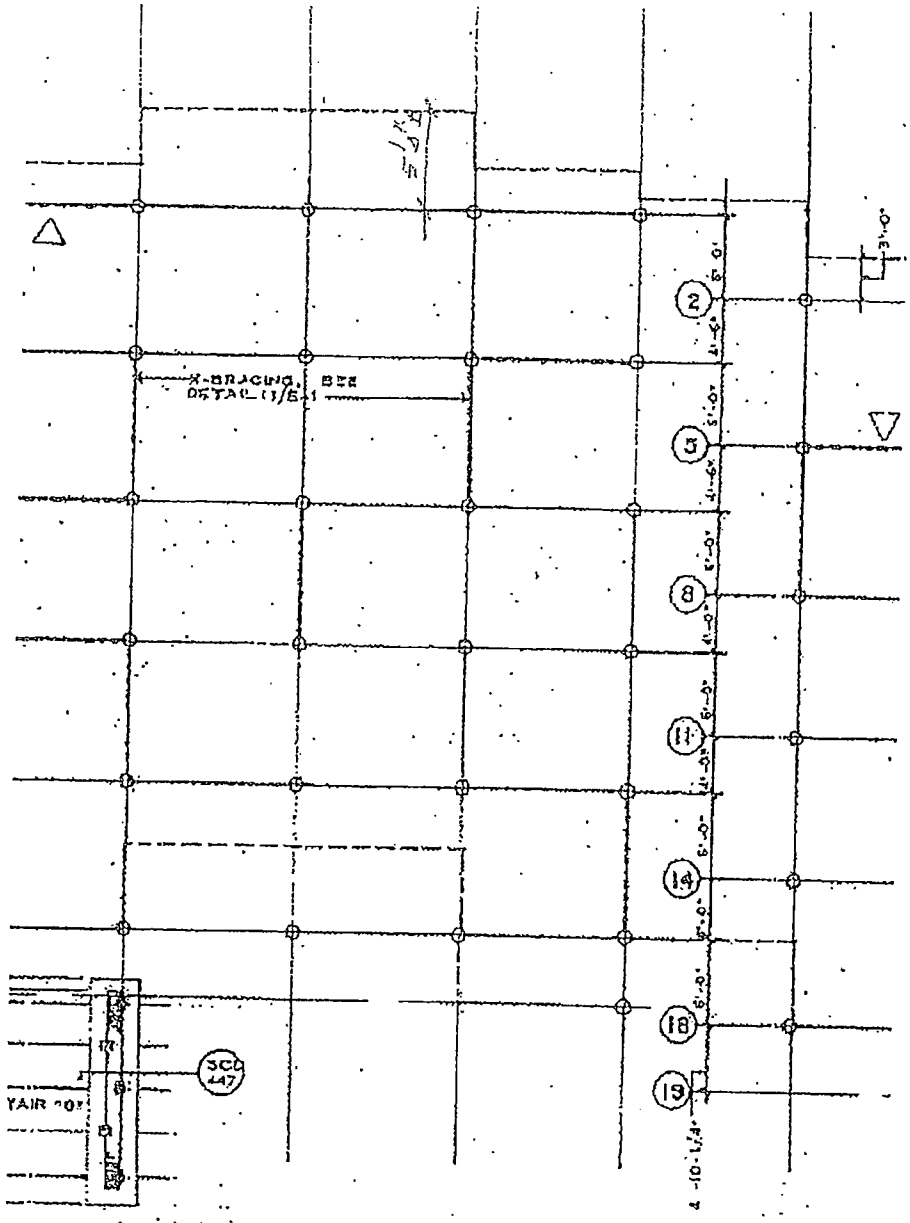
TYP. UNIT Placement

Balcony Framing

Tilghman Beach - Racquet Club
Bldg #3
210 N. Ocean Blvd
North Myrtle Beach, SC

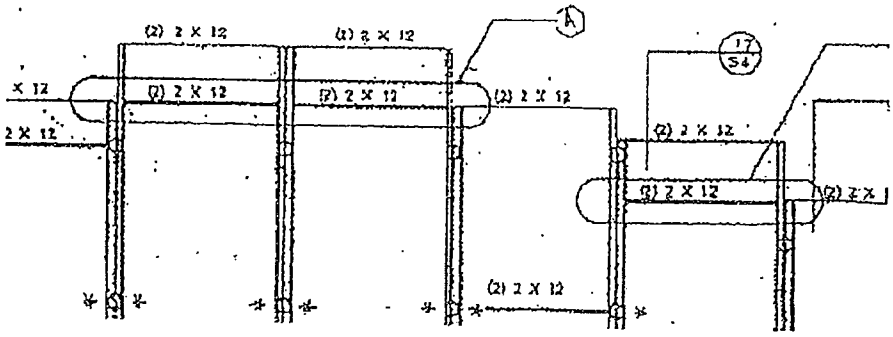


R-788



foundation plan - building type (A)

SCALE 1/8" = 1'-0"



TYP. PILING Placement

EXHIBIT
"G"

Jill Keck Humphries, Dennis L. Johnson, Delona Penny Rice, and Whitmel L. Brown, Individually and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach and Racquet Club Horizontal Property Regime; Gary Steven Robinson and Elizabeth Erin Humphries; Dennis L. Johnson, Jr. and Nancy H. Johnson

vs

Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc.

Civil Action No. 2016-CP-26-

COPY

STOP WORK ORDER

City of North Myrtle Beach
Office of Planning & Development
1018 2nd Avenue South
North Myrtle Beach, SC 29582
843.280.5560

NO. 2245

EXHIBIT G

Permit # 16-0653

ADDRESS/LOCATION: 206 2nd Ave N Bldg D

OWNER: Tilghman Beach Resorts LLC

CONTRACTOR: Statesville Restoration

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐
☐ OTHER _____

VIOLATION: ☐ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: Complete sections of guard rails

REMARKS: Rails being removed. If guard rails are removed they must be brought up to 2012 IRC codes. Also many pickets & railings that have been painted shut must be replaced. Pickets & railings must be painted correctly.

DATE: 4/19/16

SIGNED: Mary Bell

Please contact Mary Bell in Building Department with any questions.

COPY

STOP WORK ORDER

City of North Myrtle Beach
Office of Planning & Development
1018 2nd Avenue South
North Myrtle Beach, SC 29582 B16-2134
843.280.5560

NO. 2031

THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA

EXHIBIT

Ref. Permit Application # 16-02134

ADDRESS/LOCATION: 208 N. Ocean Blvd Bldg 21

OWNER: Tilghman Beach + Race

CONTRACTOR: Statesville Restoration

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐

☐ OTHER _____

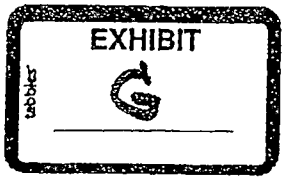
VIOLATION: ☒ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: Exterior Restoration walls and

REMARKS: balconies without required permit. See application on file. Must obtain required permit within 5 business days.

DATE: 6/22/16

SIGNED: Arnold Bolf



February 17, 2016

Tilghman Beach and Racquet Club HOA
C/O Earl Collins
KA Diehl & Assoc. Inc.
11822 High. 17 Bypass
Murrells Inlet, SC 29576

Dear Mr. Collins:

The City of North Myrtle Beach has an ordinance pertaining to exterior maintenance of properties. The ordinance requires that all properties maintain a minimum appearance standard as described in the attached text. The ordinance is codified as part of the Zoning Ordinance and thus enforced through the Zoning Office.

There are multiple violations on multiple buildings at the Tilghman Beach and Racquet Club. Specifically the violations are as follows:

- **Siding – exterior coverings shall be properly maintained and provide the building with a weather resistant exterior – wood siding is decayed and/or rotted in some areas – replace all decayed/rotted siding.**
- **Torn screens in windows – screens shall be maintained in good condition - repair, remove or replace all screens that are torn**
- **Decks (stairways) – missing spindles and loose railings – decks (stairways) shall be maintained in a safe condition – replace all missing spindles and replace or reinforce loose railings**
- **Roof – roofing shall be properly maintained and provide the building with a weather resistant exterior – several tarps are attached to roofs/skylights – remove tarps and repair/replace skylights**

Please take note of these items and take corrective measures to comply with the ordinance. The enforcement section of the attached ordinance states that **you shall have repaired the above stated violations within ninety (90) days of receipt of this letter.**

You have the right to file an appeal of this matter with the City of North Myrtle Beach's Board of Zoning Appeals if you believe this letter to be in error.

Contact the Building Inspections department with any question on obtaining the required permits for this work. If you have any questions regarding this matter please call me at (843) 280-5554.

Sincerely,

File Copy

Ben Caldwell, AICP
Assistant Zoning Administrator
City of North Myrtle Beach

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO. 2016-CP-26-4464
)	
Jill Keck Humphries, Dennis L. Johnson, Jr.,) Delona Penny Rice, and Whitmel L. Brown,) Jr., Gary Steven Robinson and Elizabeth Erin) Humphries, and Nancy H. Johnson,)	
)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
Tilghman Beach and Racquet Club) Condominium Association, Inc., James H.) Austin, III, Daniel G. Coe, C. Doug) Madison, George P. White and Steele Brice) Windle, III, individually and as Members of) the Board of Directors of the Tilghman) Beach and Racquet Club Condominium) Association, Inc.,)	CERTIFICATE OF MAILING
)	
Defendants.)	
)	

HORRY COUNTY
2016 OCT 26 AM 9:05
MELANIE [illegible]
CLERK OF COURT

I, Lynn Hearl, employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., Counsel for the Plaintiffs, in the above-captioned action, certify that I have this day sent a copy of the Amended Complaint of The Plaintiffs, Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, with sufficient postage attached thereto, to the address listed below.

H. Sam Mabry, III, Esquire
Haynsworth Sinkler Boyd, PA
O, I, Box 2048
Greenville, South Carolina 29602

Lynn Hearl

Myrtle Beach, South Carolina

October 28, 2016

COPY

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26-4464
Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs, vs. Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants.	**THIRD AMENDED COMPLAINT OF THE PLAINTIFFS, JILL KECK HUMPHRIES, DENNIS L. JOHNSON, JR., DELONA PENNY RICE, WHITMEL L. BROWN, JR., GARY STEVEN ROBINSON, ELIZABETH ERIN HUMPHRIES, AND NANCY H. JOHNSON (NEGLIGENCE/GROSS NEGLIGENCE, BREACH OF CONTRACT, DECLARATORY JUDGMENT RELIEF, INJUNCTIVE RELIEF, *ULTRA VIRES* CONDUCT, SPECIFIC PERFORMANCE, INDEMNIFICATION, APPOINTMENT OF A RECEIVER BY THE CIRCUIT COURT)** **(JURY TRIAL REQUESTED)**

FILED
17 MAR -8 PM 1:11
HORRY COUNTY
CLERK OF COURT
HORRY COUNTY, SC

The Plaintiffs, by and through their attorneys, Howell V. Bellamy, III., and Howell V. Bellamy, Jr., of the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, PA., complaining of the Defendants, Tilghman Beach and Racquet Club Condominium Association, Inc. (the "Association"), and James H. Austin, III., Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III., individually and in their official capacities as the current Board Directors of the Council of Co-Owners (collectively, the "Directors") state as follows:

JURISDICTION AND VENUE

1. At all times relevant the Plaintiff, Jill Keck Humphries ("Humphries"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Humphries is a citizen and resident of Chatham County, North Carolina.

2. At all times relevant the Plaintiff, Dennis L. Johnson, Jr. ("Johnson"), was and is an interest owner of fee simple title to Condominium Unit No. 367 in Building VIII of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Johnson is a citizen and resident of Mecklenburg County, North Carolina.

3. At all times relevant the Plaintiff, Delona P. Rice ("Rice"), was and is an interest owner of fee simple title to Condominium Unit No. 227 in Building I of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Rice is a citizen and resident of Alamance County, North Carolina.

4. At all times relevant the Plaintiff, Whitmel L. Brown, Jr. ("Brown"), was and is an interest owner of fee simple title to Condominium Unit No. 353 in Building XI of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Brown is a citizen and resident of Horry County, South Carolina.

5. At all times relevant the Plaintiff, Gary Steven Robinson ("Robinson"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Plaintiff Robinson is a citizen and resident of Chatham County, North Carolina.

6. At all times relevant the Plaintiff, Elizabeth Erin Humphries ("Elizabeth Humphries"), was and is an interest owner of fee simple title to Condominium Unit No. 219 in Building IV of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Upon information and belief, Plaintiff Elizabeth Humphries is a citizen and resident of Chatham County, North Carolina.

7. At all times relevant the Plaintiff, Nancy H. Johnson ("Nancy Johnson") was and is an interest owner of fee simple title to Condominium Unit No. 367 in Building VIII of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Plaintiff Nancy Johnson is a citizen and resident of Mecklenburg County, North Carolina.

8. That Plaintiffs have attempted in good faith to resolve all differences with the Defendants, regarding the particular assertions made in this Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration, maintenance, and repair of the regime property in accordance with governing documents, the Act, and South Carolina law, no resolution could be reached on the allegations raised by Plaintiffs in this Third Amended Complaint.

9. At all relevant times, the Plaintiffs above were and are shareholders and/or members of the Tilghman Beach and Racquet Club Condominium Association, Inc., when the Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle, acting individually, failed to act in good faith, and/or committed their improper, illegal, and unauthorized conduct as set forth below in the subsequent paragraphs.

10. Defendant Association is a nonprofit corporation organized and existing in the State of South Carolina, County of Horry. Defendant Association was and is at all times relevant hereto responsible for the management and operation of the condominium regime commonly known as the Tilghman Beach and Racquet Club Horizontal Property Regime ("Project") consisting, in part, of twelve (12) residential buildings commonly referred to as Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, and related common facilities, all being more particularly described and delineated by the Master Deed recorded on February 2, 1982, and all amendments thereto (the "Master Deed").

11. Defendant Association acts by and through its Board of Directors ("Board"), the members of which are elected by a majority vote of the co-owners. The Board is charged with the general administration, operation, and maintenance and repair of the condominium regime on behalf of and for the benefit of all Co-owners and with due regard for (a) the rights of each Co-owner and (b) the terms of the Act, the Master Deed, and By-Laws of the Condominium Project. As part of those duties, the Board is responsible for the selection and supervision of a "Manager of the Regime" as that term is defined in the By-Laws of the Defendant Association.

12. Defendant Steele Brice Windle, III ("Windle") is holder of the fee simple title to Condominium Unit No. 127 in Building I of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of

Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. At all times relevant hereto, Defendant Windle acted individually and/or in his official capacity as an agent, representative, and member of the Board of Directors of the Defendant Association. Defendant Windle's specific acts, omissions, failures to act, and/or breaches of affirmative duties are described in detail hereinbelow. Further, the acts of Defendant Windle, while acting individually, were "independent acts" as that term is described the under South Carolina case law. Upon information and belief, Defendant Windle is a citizen and resident of York County, South Carolina.

13. Defendant Daniel P. Coe ("Coe") is holder of the fee simple title to Condominium Unit No. 361 in Building IX of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. At all times relevant hereto, Defendant Coe acted individually and/or in his official capacity as an agent, representative, and member of the Board of Directors of the Defendant Association. Defendant Coe's specific acts, omissions, failures to act, and/or breaches of affirmative duties are described in detail hereinbelow. Further, the acts of Defendant Coe, while acting individually, were "independent acts" as that term is described under the South Carolina case law. Upon information and belief, Defendant Coe is a resident and citizen of Horry County, South Carolina.

14. Defendant C. Doug Madison ("Madison") is holder of the fee simple title to Condominium Unit No. 106 in Building II of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant

Association. At all times relevant hereto, Defendant Madison acted individually and/or in his official capacity as an agent, representative, and member of the Board of Directors of the Defendant Association. Defendant Madison's specific acts, omissions, failures to act, and/or breaches of affirmative duties are described in detail hereinbelow. Further, the acts of Defendant Madison, while acting individually, were "independent acts" as that term is described the under South Carolina case law. Upon information and belief, Defendant Madison is a citizen and resident of Iredell County, North Carolina.

15. Defendant George P. White ("White") is holder of the fee simple title to Condominium Unit No. 133 in Building III of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. At all times relevant hereto, Defendant White acted individually and/or in his official capacity as an agent, representative, and member of the Board of Directors of the Defendant Association. Defendant White's specific acts, omissions, failures to act, and/or breaches of affirmative duties are described in detail hereinbelow. Further, the acts of Defendant White, while acting individually, were "independent acts" as that term is described under the South Carolina case law. Upon information and belief, Defendant White is a citizen and resident of Pender County, North Carolina.

16. Defendant, James H. Austin, III ("Austin") is holder of the fee simple title to Condominium Unit No. 357 in Building X of the Tilghman Beach and Racquet Club Horizontal Property Regime, located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina, and is a member of the Board of Directors of the Defendant Association. At all times relevant hereto, Defendant Austin acted individually and/or in his

official capacity as a member of the Board of Directors of the Defendant Association. Defendant Austin's specific acts, omissions, failures to act, and/or breaches of affirmative duties are described in detail hereinbelow. Further, the acts of Defendant Austin, while acting individually, were "independent acts" as that term is described under the South Carolina case law. Upon information and belief, Defendant Austin is a citizen and resident of Moore County, North Carolina.

17. The real property which is the subject of this matter is located in Horry County, South Carolina, and more particularly described as follows:

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase 1 of the Tilghman Beach and Racquet Club Condominium Project located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R. L. S., South Carolina No. 2075 and dated January 20, 1982, and filed for record in the office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most current and accurate description of the parcels, and which plat description is reference to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M. W. Tilghman, Catherine H. Tilghman, and. Mary Elizabeth T. Dent by deed dated September 2, 1982, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

18. Venue is proper in Horry County, South Carolina.

19. This Court has subject matter and personal jurisdiction over the above-named parties hereto.

BACKGROUND FACTS

A. RELEVANT PROVISIONS OF THE MASTER DEED AND BY-LAWS

20. The Tilghman Beach and Racquet Club Horizontal Property Regime ("Regime") was established in 1982 in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §§ 27-31-10 et seq. (2007) ("Act") by the execution and recording of Master Deed in Deed Book 736, at page 360 on February 2, 1982 in the Office of

Clerk of Court for Horry County, South Carolina. The Master Deed and By-Laws are the governing documents of the Regime and define various aspects and duties of the Co-owners, Association, and Property Manager regarding the maintenance, replacement, and repair of the Common Elements. A copy of Regime's Master Deed and By-Laws is attached hereto as (**Exhibit "A"**) and incorporated by reference as part of this Complaint.

21. Insofar as is relevant to the assertions in this Third Amended Complaint, Article XXXIV defines certain terms used in this Master Deed and its Exhibits as follows:

> **"Apartment"** means a part of the property intended for any type of independent use (whether it be for residential, recreational, storage, or business) including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building or if not in a building in a separately delineated place whether open or enclosed and whether for the storage of an automobile, moorage of a boat, or other lawful use, and with a direct exit to a public street or highway, or to a common area leading to such street or highway.
>
> **"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.
>
> **"Majority of co-owners"** means fifty-one percent or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of S.C. Code Ann. §27-31-60.
>
> **"Building"** means an existing or proposed structure or structures, containing in the aggregate two or more apartments, comprising a part of the property.
>
> **"Property"** means and includes (1) the land whether leasehold or in fee simple and whether or not submerged, (2) the building, all improvements, and structures on the land, in existence or to be constructed, and (3) all easements, rights, and appurtenances belonging thereto.
>
> **"Master deed"** or **"master lease"** means the deed or lease establishing and recording the property of the horizontal property regime.

22. Article V 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 the paragraphs of this Article in pertinent part:

Each Unit is comprised of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings, and building material enclosed within the following boundaries:

(a) The upper boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the ceiling of the Unit. The lower boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the floor.

(b) The perimetrical boundaries or the Unit shall extend to the unfinished interior surfaces of the perimeter walls of the Unit, excluding loud-bearing structural interior walls or components.

(c) Each Unit shall also encompass and include and each Co-owner shall be responsible for maintenance and repair of 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 window openings of the Unit; (iii) the plumbing, wiring, and mechanical vents which exclusively serve the Unit; (iv) the appliances, air conditioning and heating units, hot water heaters, lavatories, bath tubs, toilets, carpeting, floor covering, trim finished surface of ceilings and walls, insulation, and other fixtures and furnishings which are within or serve the Unit when delivered to the initial Co-owner; (v) all appurtenances which are integral and exclusive to the Unit, including but not limited to lamps attached to the exterior of the Unit, and water and sewer pipes exclusively serving the Unit.

23. Article V of the Master Deed also 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"**[1] of this Master Deed graphically depict the areas encompassing the Common Elements in Phase I.

a) **General Common Elements** means and includes:

(1) The Real Property (excluding the Limited Common Elements and the Apartments), including but not limited to the land on which the buildings containing the Apartments are constructed;

[1] **Exhibits A and B** of the Master Deed are referred to throughout the Master Deed. **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.

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;

(3) The basements, flat roofs, yards and gardens, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, 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;

(6) Any elevators, garbage incinerators and, in general, all devices und installations existing for common use;

(7) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety, including but not necessarily limited to the following:

(a) The additional improvements designated as General Common Elements on **Exhibit "B"** attached hereto;

(b) All swimming pools, tennis courts and related and supporting facilities, all parking areas, roads, walkways, paths, trees, shrubs, yards, gardens, bodies of water, bridges, gazebos, and Regime entrance signs and lighting on the Real Property (outside of the Apartments); and

(c) A non-exclusive easement and right-of-way for access, egress and ingress to and from the Regime and each Apartment and Improvements contained therein across the public roads and streets of Ocean Drive Section, North Myrtle Beach, to and from U.S. Highway 17, and any other public streets or highways adjoining or abutting such private roads and streets of Ocean Drive Section of North Myrtle Beach;

b) **Limited Common Elements** means and includes:

(1) Those Common Elements which are agreed upon by all the Apartment 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, balconies, sanitary services common to the Apartments of a particular floor, and the like; and

(2) The additional improvements designated as Limited Common Elements on **Exhibit "B"** attached hereto. Maintenance and repair of Limited Common Elements rest with the owner(s) of the Apartment to which they abut, adjoin, or service.

24. Article XX of the Master Deed states specific requirements regarding the maintenance and repair of each Apartment by the owner. This Article provides in pertinent part:

> Every Co-owner **must perform promptly all maintenance and repair work within his Apartment,** . . . if omitted, could adversely affect the Regime in its entirety or in a part belonging to other Co-owners, being expressly responsible for the damages and liability which, his failure to do so may engender. . . . **Such Co-owner shall . . . be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces . . ..** ***The floor and interior walls and windows or screens of any balcony or deck attached to his Apartment shall be maintained by the Co-owner at his expense.***

25. Article XXI of the Master Deed states specific requirements regarding the maintenance and repair of the Common Elements by the Association. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

26. Article XXVII of the Master Deed provides remedies for described defaults committed by the Co-owner or Co-owners of any Apartments, or the Association due to their failure to discharge their duties under the governing documents. The following described

defaults in Paragraphs A and B of this Article entitles an ***aggrieved Co-owner or Co-owners of other Apartments*** to the following legal[2] and/or equitable relief:

A. Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, or its rules and regulations, ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages, injunctive relief,*** foreclosure of lien ***or any combination thereof and which relief may be sought by Association, or, if appropriate, by an aggrieved Co-owner of an Apartment, or both.***

B. The Co-owner or Co-owners of each Apartment ***shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness***, or by that of any member of his family, or his or their guests, employed, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association.

27. The By-laws of the Regime further define the specific duties and responsibilities of the Association's Board of Directors ("Board") regarding the operation, funding, maintenance, repair, and replacement of the Common Elements. Specifically, Article I, Paragraph 4(j) (ii) of the By-Laws addresses the Board's affirmative duties regarding its ***"maintenance, repair, and replacement . . . of the general and limited elements"***:

> The Board of Directors shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws . . The Board of Directors ***shall*** exercise such duties and responsibilities as ***shall*** be encumbent upon it by law, the Master Deed, these By-Laws, or as it ***may deem necessary*** or appropriate in the exercise of its powers and ***shall*** include, without limited the generality of the foregoing, the following:
> . . .
>
> (ii) To ***carry out the maintenance, care, upkeep, repair, replacement, operation, . . and the management of the general and limited elements***, services and facilities or the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members.

[2] Murphy v. Yacht Cove Homeowners Ass'n., 289 S.C.367, 345 S.E.2d 709 (1986)(The South Carolina Court found **"that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association"** for failure to discharge its duties related to maintenance and repair of the common elements under the Master Deed and Bylaws. Id. at 369, 345 S.E.2d at 710).

28. Article I, Paragraph 7 of the By-Laws defines the Board's affirmative duties and responsibilities for the "fiscal management" of the Association. Specifically, the Board's budgetary funding responsibilities ***necessary for maintenance and operation of Common Elements*** are addressed in subparagraph 7(b) in pertinent part:

> The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:
>
> (i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts ***necessary for maintenance and operation of Common Elements***, landscaping, street and walkways, office expense, swimming pool, utility services, casualty insurance, liability insurance, ***administration and reserves (operating and replacement)***; and

29. Lastly, Article I, Paragraph 11 of the By-Laws addresses the Association's authority to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affirmative duties to establish an annual operating budget for the maintenance and repair of the Regime's Common Elements, and to collect and maintain a reserve fund for the future replacement of structural common elements:

> (d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project ***shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements*** as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. ***The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements***.
>
> (e) The Board of Directors of the Association, in establishing said annual

budget for operation management and maintenance of the Project, ***shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress*** when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or ***for other reason placing financial stress upon the Association.***

B. THE GENERAL PLAN OF DEVELOPMENT OF THE PROJECT

30. Tilghman Beach and Racquet Club Condominium Regime ("TB&RC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983.

31. There are six (6) building design types which consist of two (2) stairwells, common area corridors, and two (2) balconies per Apartment, as graphically depicted in the certified architect's plans ("Plans"), recorded in the Horry County Register of Deeds in Plat Book 1, Page 42. Specifically, the twelve (12) buildings are pre-fabricated structures located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

C. EVALUATIONS OF BUILDINGS PRIOR TO 2010

32. Since completion of the Condominium Project, the Board has failed to implement or to require the Manager of the Regime to implement a program for the inspection, maintenance and repair of the Project's Common Elements that would have timely identified and thereby minimized the cost of remediating the current damage to Buildings I, II, III, IV, V, VI, VII, VIII,

IX, X, XI and XII, all in breach of the Board's obligations to the Co-owners under the Master Deed and By-Laws. Further, this factual proposition is supported by the building, inspection, and zoning records of the City of North Myrtle Beach.

33. The Board, from its inception, also consistently failed to establish a reasonable reserve for the payment of future Common Expenses costs arising out of damage to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII as a consequence of the effects of the ocean environment of which they were or should have been aware.

D. EVALUATIONS OF BUILDINGS SINCE 2010

34. Extensive evaluations of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII have been made since 2010 as the result of historic and persistent concerns raised by various Co-owners, past board members, managers, and consultants. Specifically, the following consultants were engaged for the purpose of evaluating and/or developing various repair and reconstruction plans for the deficient and defective condition in the buildings since 2010:

a. Kyzer & Timmerman Engineers, Inc;
b. Criterium-Giles Engineers, Inc;
c. Martinez & Associates Structural Engineers, PA;
d. SGA Architecture, LLC;
e. Procon & Associates, Inc;
f. Spann Roofing & Sheet Metal, Inc;
g. ABS, Inc;
h. Keystone R&C, Inc;
i. Sutton-Kennerly and Associates, Inc;
j. Maxey P. Nolan III, PhD., Entomologist;
k. A & I Construction;
l. Shoreline/Stewart Construction; and
m. Reserve Advisors, Inc.

35. The above listed consultants identified numerous defective and deficient conditions resulting in building distress in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, which can be separated into structural, building envelope,

interior, and roofing conditions. A general summary[3] of the deficient conditions, by category, found by them includes:

Structural Items of Concern

a. Balcony Railings have corroded at base of supports. Pickets were missing;
b. Balcony decks exhibited sponginess;
c. Connection hardware was corroded and delaminating;
d. Balcony beams are corroded and decayed;
e. Stair areas exhibited corrosion, rot and decay;
f. Split Stringers on stairs;
g. Delaminated and decayed band boards around perimeter of buildings;
h. Post anchorage connections have severe metal loss and are corroded at the balconies and corridors;
i. Post to top rail connections have severe metal loss and are corroded at the balconies and corridors;
j. Wood Post base have decayed and corroded at the balconies and corridors;
k. Connections of cradle beams to wood piling have severe metal loss and are corroded;
l. Connections of diagonal bracing to timber piling have severe metal loss and are corroded;
m. Cantilever cradle beams are decayed and delaminating;
n. Spandrel beams are corroded and decayed at the balcony framing;
o. Floor joists have deteriorated and are deflecting at the balcony framing;
p. Module connections to the cradle beams have metal loss and are corroded;
q. Connectors of the metal connecting plate to the module have corroded; and
r. Soffits are corroded and decayed.

Building Envelope Items of Concern

a. Moisture penetration behind exterior siding, trim, and flashing;
b. Delaminated exterior siding, trim, and flashing;
c. Delaminating stucco below gable end walls;
d. Cracking in stucco below gable end walls;
e. Moisture penetration/leaking ocean side facing windows;
f. Moisture penetration/leaking ocean side facing sliding glass doors;
g. Moisture penetration/leaking sliding glass doors;
h. Corroded window and sliding glass door casings;
i. Corroded sliding glass door sills;
j Moisture affected and rotten wood framing around sliding glass doors;
k. Rotting fascia boards; and

[3]The Plaintiffs have photographed the numerous defective and deficient conditions existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, which are attached hereto as (**Exhibits "G-1, G-2, and G-3"**) and incorporated by reference as part of this Third Amended Complaint.

l. Moisture affected and rotten band boards around perimeter of buildings.

Interior Items of Concern

a. Moisture damaged sheetrock;
b. Moisture damaged interior paint, wall paper and textured ceiling materials;
c. Microbial growth in Unit interiors;
d. Moisture affected floor coverings;
e. Moisture damaged paint, wall paper and textured ceiling materials;
f. Moisture damaged carpet padding and carpet;
g. Moisture damaged and rotting carpet tack strips; and
h. Corrosion of tack strip fasteners.

Roofing Items of Concern

a. Missing shingles;
b. Numerous patches;
c. Distressed flashing;
d. Rotting fascia boards;
e. Leaking around skylights;
f. Lack of properly fastened and installed singles;
g. Lack of drip edge at rakes and peaks;
h. Poor attic ventilation;
i. A number of existing hurricane ties are missing, corroded and/or improperly installed;
j. Soft areas and visible deflections in roof deck;
k. Tarps on Roofs; and
l. Rotten eaves/soffits.

36. Based upon the severe level of distress in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, the consultants agreed that these defective conditions did not just develop within the past few years. The consultants' repair and replacement recommendations and approaches for executing the repairs and replacements varied, but typically included:

a. Replacement of the floor sheathing and flashing, and installation of waterproofing on all balconies and corridors;

b. Replacement of the remaining stucco on the gable ends with fiber cement siding to prevent future water intrusion and reduce maintenance;

c. Remove and replace deteriorated cedar siding, trim, and flashing on all balconies and corridors;

d. Remove and replace deteriorated and damaged guardrails on all balconies and corridors;

e. Replacement of the deteriorated post connections on all balconies and corridors;

f. Replacement of the delaminated cradle framing on all balconies and corridors;

g. Replacement of all balcony sliding glass doors that have exceeded their typical life expectancy (greater than 20 years since installed);

h. Replacement of all corroded bolts, nuts, and washers with stainless steel;

i. Remove and replace windows and sliding glass doors and contiguous damaged framing;

j. Repair or replace distressed exterior trim, siding, and flashing;

k. Replacement of the roofing systems and/or defective roofing components on all buildings;

l. Replacement of visible and/or hidden termite damage in all buildings;

m. Repair and replacement of all leaks currently occurring in all building envelopes; and

n. Replacement of all existing defective building components in violation of §23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

E. THE BOARD'S SUBSEQUENT ACTIONS IN 2016

37. In June of 2015, the Board hired Saul Martinez, P.E. ("Martinez") of Martinez & Associates Structural Engineers, PA ("Martinez & Associates"), and requested that it assess the current condition of the structural systems and the exterior envelope of the Project's twelve (12) buildings.

38. Martinez & Associates' field observations of the maintenance and repair condition of the various building components was itemized in a "Building Summary and Field Itemization Table" for each building included in its investigative report entitled Phase I: Existing

Condition Evaluation of Assessment for Tilghman Beach & Racquet Club Ocean Front & Second Row Buildings, submitted by Martinez & Associates Structural Engineers, PA dated June 2015 ("Investigative Report of Martinez & Associates").

39. In January of 2016, the Board hired Steve Goggans, AIA of SGA Architecture, LLC, ("SGA") to prepare a comprehensive capital improvement plan to complete all the necessary repair and restoration work on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. This restoration plan for the remaining eleven (11) building was based upon the reports prepared by professional engineers focusing on the structural systems and exterior envelope systems of the buildings in the Regime as well as the combined experience and knowledge gained from making and completing all necessary repairs to Building III. Specifically, SGA agreed to provide professional management services to assemble the contract documents, put the project out to competitive bid, and provide construction administration through the duration of the construction. A copy of their AIA Document B101-2007 Standard Form Agreement is attached hereto as (**Exhibit "B"**) and incorporated by reference as part of this Third Amended Complaint.

40. In January of 2016, Goggans issued a Letter from SGA Architecture to the Tilghman Beach & Racquet Club Homeowners Association, Inc., ("Association") which provides in pertinent part:

> 3. Given the damage to Building 6, which is similar to Building 2, ***my concern at this point is that the structural problems are systemic throughout the whole property. The damage to Building 6 is severe. Further delay in curing these problems will lead to further damage, increasingly costly repairs, and ultimately, structural failure***. Therefore, I respectfully recommend that the Board convene a meeting to discuss a more comprehensive and expeditious approach to affecting a long term repair and stabilization solution for the entire property. I will make myself as available as possible for such a meeting. Given the issues and damage observed thus far, this matter should be treated with urgency. A copy of the January 2016 Letter from SGA to the Association, Inc., is attached

hereto as (**Exhibit "C"**) and incorporated by reference as part of this Third Amended Complaint.

41. At the February 6, 2016 special meeting, in response to questions from Co-owners, the Board's consultants, Martinez and Goggans, concurred in advising the Board and the Co-owners regarding the urgency of making necessary repairs to the Project's defective and deficient buildings. A summary of their opinions and recommendations, recorded and accepted by former Board President Carl W. Atkinson, Jr., is as follows:

a. That TB&RC has major structural and water intrusion damage issues;

b. The problems with water intrusion in the eleven (11) buildings are at a point where the damage is increasing at an even greater acceleration rate;

c. The handrail systems in the eleven (11) buildings are dangerous and unsafe;

d. Unless major corrective action is taken immediately the buildings are likely to have a life expectancy of not more than four (4) years after which they will be unrepairable due to the prohibitory cost of repair;

e. That the best repair approach would be a systematic, comprehensive approach to repairs for each building. Stated differently, repair all defects and/or problems with each building in its entirety as you proceed;

f. That a systemic comprehensive repair approach is needed to accomplish the repairs for the defective buildings rather than a piecemeal, patch and repair approach; and

g. That a systemic comprehensive repair approach would also be the most economical and cost effective restoration plan for the defective buildings in the long run.

42. Further, current Board members Madison, Coe as well as unit owner Windle, in February 2016 recommended a construction process[4] for the Board to follow for identifying and implementing all necessary repair work in the future at TB&RC. Specifically, the construction

[4] A copy of the construction process for future repairs to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, prepared and recommended by current board members Madison, Coe and Windle, is attached hereto as (**Exhibit "D"**) and incorporated by reference as part of this Complaint.

process proposed for future repair (outlined by Madison, Coe and Windle) included following particulars in pertinent part:

a. The Board shall have a detailed forensic analysis performed on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII by an architectural/engineering firm (not just a structural engineer) to determine all necessary repairs for the Project's General Common Elements and Limited Common Elements;

b. The Board shall have an architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs for the Project's General Common Elements and Limited Common Elements; and

c. The Board shall submit design drawings and specifications for the repairs to at least three (3) commercial contractors to obtain proposals from the contractor for the performance of the required repairs.

43. Notwithstanding the opinions and/or recommendations from Martinez and Goggans, the Defendant Association and its current individual Directors Austin, Coe, Madison, White, and Windle have failed or otherwise refused to undertake these necessary repairs to eliminate the major structural and water intrusion damage, the leaks, and to protect the General Common Elements and Limited Common Elements from future damage, or even to assess the Co-owners for the necessary repair cost thereof, all as required under the Master Deed and By-Laws.

44. The individual Defendants Austin, Coe, Madison, White, and Windle, upon information and belief, while acting outside their official capacity as Members of the Board of Directors for the Defendant Association, have conspired together for the unlawful purpose of masking the true state of disrepair of the Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII of the Defendant Association, thus deceiving Co-owners regarding the necessary repairs needed to fix the aforementioned buildings as recommended by the Defendant Association's consultants and experts as described above.

45. Furthermore, the existing and ongoing water intrusion problems and defective building conditions at the Project are the result of the Defendant Association and the individual Defendants Coe, Madison, and Windle's failure to follow their own recommended construction procedure and/or process for determining and completing all necessary repairs to defective and deficient General Common Elements and Limited Common Elements as well as their failure to comply with their expressed affirmative duties under the governing documents and State law.

46. The defects in the maintenance, replacement, and repair of the General Common Elements and Limited Common Elements complained of include, but are not limited to, the following:

a. Failure and/or lack of a waterproofing system has caused severe damage to the structural components of the buildings by allowing water to infiltrate the buildings;

b. Waterproofing was not installed at some areas requiring waterproofing;

c. Lack of proper door/window flashing has caused water to infiltrate buildings;

d. Mold has contaminated portions of the buildings due to water intrusion;

e. Termite damage has occurred in portions of the buildings due to water intrusion;

f. Improper maintenance and/or repair of roofs and roofing materials;

g. Improper maintenance and/or repair of cedar siding, trim, and flashing;

h. Improper maintenance and/or repair of the pier system's bracing connections;

i. Improperly maintained and/or inadequately repaired guardrails throughout the Project including corridors and balconies;

j. Improperly maintained and/or inadequately repaired guardrail posts and post connectors throughout the Project including corridors and balconies;

k. Improperly maintained and/or inadequately repaired floor framing

throughout the Project including corridors and balconies;

l. Improperly maintained and/or inadequately repaired cradle beam/girder systems at the first level only of the building corridors and balconies;

m. Improperly maintained and/or inadequately repaired ceiling soffits throughout the Project including corridors and stairwells;

n. Improperly maintained and/or repaired exterior decks and balconies which are suffering deterioration and damage to the structural components;

o. Improperly maintained and/or repaired gable end walls and stair tower walls which are suffering deterioration and damage throughout the Project;

p. Failure to maintain and/or repair the buildings in accordance with the applicable building codes and/or in conformance with the product manufacturer's installation instructions; and

q. Failure to maintain detailed records of repair projects to the common elements to include dates of repair, material brand/type, color, material warranty information, and name and contact information of contractor and contractor warranty information.

47. Actual property damage to the Project has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, and intersections, resulting from the negligent and grossly negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements performed by the Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle. Consequently, continuous, and repeated water intrusion has resulted in physical property damage, including severe damage, rot and deterioration of the buildings and their structural components. Due to the lack of proper maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements in violation of its governing documents, continuous and repeated exposure to harmful conditions,

including water intrusion, has occurred, resulting in physical and consequential damages, including but not limited to the following:

a. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly maintained, replaced, and repaired common elements, including doors and windows; and

b. physical injury to tangible property, premature deterioration of building components and/or damage and deterioration to the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around negligently maintained, replaced, and repaired exterior cladding, sealants, joints, caulk, and waterproofing systems.

48. The negligent and grossly negligent acts of omission and commission by the Association and individual Defendants and damage that resulted therefrom were foreseeable.

49. Upon information and belief, the defective maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements by the Defendants was inspected by its insurance agents, none of whom detected the inadequate maintenance nor comprehended the resulting damage therefrom. Further, upon information and belief, the damage which exists at the Project were unintended from the stand point of these Defendants.

50. As a direct and proximate result and consequence of the safety defects and structural problems at the Project, the Project has been severely damaged as a result of moisture intrusion and Plaintiffs have spent, and will continue to spend, substantial sums of money for the extraordinary repairs and reconstruction of major portions of the General Common Elements and Limited Commom Elements at the Project. The buildings at the Project have suffered actual damage caused by exposure to water seeping into the walls that resulted from the grossly negligent maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to Tilghman Beach and Racquet Club Condominium Association, Inc.)

51. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

52. Defendant Association owed a duty of due care to the Plaintiffs to appropriately manage the affairs of the regime, and to investigate, maintain and repair the General Common Elements and Limited Common Elements with respect to any water intrusion problems, unsafe building conditions, and structural defects and deficiencies discovered in them. Lastly, Defendant Association had an affirmative duty to adequately assess the Co-owners to fund the reserves and make all necessary repairs in the Common Elements including building components in a timely manner, and also to prevent similar defects and deficiencies from occurring in the future.

53. Defendant Association breached its affirmative duties as set forth above, and was negligent, grossly negligent, reckless, willful and wanton in failing to discharge them in one or more of the following particulars, to wit:

a. In failing to plan for the necessary maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements since its inception;

b. In failing to have a detailed forensic analysis performed on Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII by an architectural/engineering firm to determine all necessary repairs for the Project's General Common Elements and Limited Common Elements;

c. In failing to have an architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs for the Project's General Common Elements and Limited Common Elements;

d. In failing to submit any design drawings and specifications for known defective conditions in the Project's General Common Elements and

Limited Common Elements to at least three (3) commercial contractors to obtain proposals from them for the performance of the required repairs;

e. In failing to completely repair and replace all defective and deficient conditions in the Project's General Common Elements and Limited Common Elements in timely and code compliant manner as recommended by their consultants and legal advisors;

f. In failing to assess the Co-owners for the necessary repairs needed to fix the Project's defective and deficient General Common Elements and Limited Common Elements as recommended by their consultants and legal advisors;

g. In failing to adequately fund the reserves for the necessary maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements since its completion and certification of occupancy;

h. In failing to employ experienced contractors, architects, and engineers to inspect, maintain, and completely repair the Project's defective and deficient General Common Elements and Limited Common Elements prior to 2013;

i. In failing to pursue a recovery and institute litigation against all responsible parties for the original construction defects and deficiencies associated with the design and construction of the buildings;

j. In failing to conduct a timely reserve study to plan and prepare for the future maintenance, replacement, and repair cost associated with the Project's General Common Elements and Limited Common Elements;

k. In failing to assess the co-owners or otherwise adequately fund the reserves so that necessary funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned defects and deficiencies in the Project's General Common Elements and Limited Common Elements due to inadequate maintenance and repairs;

l. In failing to maintain, repair, and replace all defective building components in accordance with the applicable building codes and zoning ordinance for the city of North Myrtle Beach, and/or in conformance with the product manufacturer's installation instructions;

m. In failing to perform timely and necessary repair work to the Project's General Common Elements and Limited Common Elements which has

caused substantial and ongoing damages to these buildings stemming from water infiltration;

n. In failing to levy any assessment or even adequate assessment against all the co-owners needed to fix the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII since the reserve fund is currently inadequate to finance the costs for fixing these buildings. This unreasonable delay in facilitating repairs to the regime property has caused substantial and ongoing damages to these buildings' Common Elements stemming from water infiltration;

o. In failing to fully investigate and obtain reports concerning the structural integrity of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as well as a complete forensic analysis and scope of repair addressing all of their water infiltration problems;

p. In failing to obtain competitive bids from qualified and experienced contractors for the extensive and necessary repair and reconstruction work being performed on the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII. This *ultra vires* action violates State law;

q. In failing to ensure that current repair and reconstruction work being performed on the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII complies with the applicable building codes, regulations, product specifications, and guidelines in the design and reconstruction of these buildings;

r. In failing to previously identify, reserve for, and implement a more rational and economically palatable program to systematically maintain the buildings' exterior building envelope over time, through normal annual assessment fee collections from the Co-owners. This inaction and violation of the governing documents resulted from the mismanagement of the Association;

s In failing to pursue those responsible for the maintenance defects and damages; and

t. In acting unreasonably in other such ways as may be revealed during the discovery and as shown at the trial of this action.

54. As a direct and proximate result and consequence of the negligence, gross

negligence, and/or willful and wanton conduct of the Defendant Association, the Plaintiffs have suffered injuries and damages in their pro-rata share of the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, or, in the alternative, the loss of use, and depreciation in fair market value of their individual units, and such punitive damages as may be appropriate. Furthermore, the Plaintiffs will be subject to economic loss damages due to the budget deficits, inadequate reserves (resulting from failure to plan for future maintenance and repair of building components), and special repair and reconstruction assessment directly resulting from Defendant Association's negligent and reckless conduct. These monetary damages are a direct and proximate result of the Defendant Association's errors, omissions, and breaches of affirmative duties directly related to its management and operation of the regime property as described above. Accordingly, the Plaintiffs are entitled to recover a judgment against the Defendant Association for all direct, indirect, resulting consequential and punitive damages in an amount to be determined at trial of this case.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence as to Individual Defendants James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

55. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

56. At all times relevant hereto, the individual Defendants Austin, Coe, Madison, hite, and Windle, as the current Board of Directors for the Association, owed a duty of due care to the Plaintiffs to appropriately manage the affairs of the Association, and to investigate, maintain and repair the General Common Elements and Limited Common Elements with respect to any water intrusion problems, unsafe building conditions, and structural defects and

deficiencies discovered in them. Lastly, the individual Defendants Austin, Coe, Madison, White, and Windle had an affirmative duty to adequately assess the Co-owners to fund the reserves and make all necessary repairs in the Common Elements in a timely manner, and also to prevent similar defects and deficiencies from occurring in the future.

57. The individual Defendants Austin, Coe, Madison, White, and Windle, while acting outside their official capacity as members of the Board of Directors for the Defendant Association, have breached and continue to breach their affirmative duties and State law as set forth above, and were grossly negligent, reckless, wilful, and wanton in failing to discharge them in one or more of the following particulars, to wit:

a. In failing to have a detailed forensic analysis performed on Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII by an architectural/engineering firm to determine all necessary repairs for the Project's General Common Elements and Limited Common Elements;

b. In failing to prepare a comprehensive capital improvement plan to complete all the necessary repair and restoration work on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII including hiring an architectural/engineering firm to prepare design drawings and specifications in relation to all necessary repairs for the Project's General Common Elements and Limited Common Elements;

c. In failing to submit any design drawings and specifications for known defective conditions in the Project's General Common Elements and Limited Common Elements to at least three (3) commercial contractors to obtain proposals from them for the performance of the required repairs;

d. In failing to completely repair and replace all defective and deficient conditions in the Project's General Common Elements and Limited Common Elements in timely and code compliant manner as recommended by their consultants and legal advisors;

e. In failing to assess the Co-owners for all necessary repairs needed to fix the Project's defective and deficient General Common Elements and Limited Common Elements as recommended by their consultants and legal advisors;

f. In failing to adequately fund the reserves for the necessary maintenance, replacement, and repair of the Project's General Common Elements and Limited Common Elements since its completion and certification of occupancy from February 26, 2016 to the present;

g. In failing to employ experienced contractors, architects, and engineers to inspect, maintain, and completely repair the Project's defective and deficient General Common Elements and Limited Common Elements from February 26, 2016 to the present date;

h. In failing to pursue a recovery and institute litigation against all responsible parties for the original construction defects and deficiencies associated with the design and construction of the buildings from February 26, 2016 to the present date;

i. In failing to conduct a timely reserve study to plan and prepare for the future maintenance, replacement, and repair cost associated with the Project's General Common Elements and Limited Common Elements from February 26, 2016 to the present date;

j. In failing to assess the Co-owners or otherwise adequately fund the reserves so that necessary funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned defects and deficiencies in the Project's General Common Elements and Limited Common Elements due to inadequate maintenance and repairs from February 26, 2016 to the present;

k. In failing to maintain, repair, and replace all defective building components in accordance with the applicable building codes and zoning ordinance for the city of North Myrtle Beach, and/or in conformance with the product manufacturer's installation instructions from February 26, 2016 to the present;

l. In failing to perform timely and necessary repair work to the Project's General Common Elements and Limited Common Elements which has caused substantial and ongoing damages to these buildings stemming from water infiltration from February 26, 2016 to the present;

m. In failing to levy any assessment or even adequate assessment against all the co-owners needed to fix the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII since the reserve fund is currently inadequate to finance the costs for fixing these buildings. This unreasonable delay in facilitating repairs to the regime property has caused substantial and ongoing damages to these buildings' Common

Elements stemming from water infiltration from February 26, 2016 to the present;

n. In failing to fully investigate and obtain reports concerning the structural integrity of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as well as a complete forensic analysis and scope of repair addressing all of their water infiltration problems;

o. In failing to obtain competitive bids from qualified and experienced contractors for the extensive and necessary repair and reconstruction work being performed on the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII after terminating the employment. This *ultra vires* action violates State law; and

p. In failing to ensure that current repair and reconstruction work being performed on the defective and deficient General Common Elements and Limited Common Elements for Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII complies with the applicable building codes, regulations, product specifications, and guidelines in the design and reconstruction of these buildings.

58. The actions, omissions, and/or failures to act of individual Defendants, Austin, Coe, Madison, White, and Windle, acting individually as set forth hereinabove, were not in good faith and involved gross negligence and reckless conduct on their part as well as knowing violations of State law as described above. Further, individual Defendants Austin, Coe, Madison, White, and Windle as the current Board members have participated in, authorized, or otherwise directed affairs of the Association through their acts, omissions, and/or failures to discharge their affirmative duties in good faith under the Master Deed and By-laws.

59. As a direct and proximate result and consequence of gross negligence, and/or willful and wanton conduct of the individual Defendants, Austin, Coe, Madison, White, and Windle, while acting outside their official capacity, the Plaintiffs have suffered injuries and damages and continue to suffer the same in the amount of their pro-rata share of the extraordinary repair, maintenance and reconstruction cost required and to be

required over the expected life of the structures, the loss of use, and depreciation in fair market value of their individual units, and such punitive damages as may be appropriate.

60. For the foregoing reasons, the Plaintiffs are entitled to a judgment against the individual the Defendants, Austin, Coe, Madison, White, and Windle, acting individually, for all direct, indirect, resulting consequential and punitive damages in an amount to be determined at trial of this case.

FOR A THIRD CAUSE OF ACTION
(Breach of the Master Deed's Covenants and Restrictions as to Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

61. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

62. The condominium's recorded documents, such as declarations or By-Laws, constitute a contract between the Regime on the one side and the Co-owners on the other side. The failure of the Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle to comply with the provisions of the restrictions and/or the governing documents gives rise to an action for breach of contract by an aggrieved Co-owner.[5] Specifically, Article XXVII of the Master Deed provides in pertinent part:

> Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, . . . ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages . . . by an aggrieved Co-owner of an Apartment.*** . . .

63. Article VIII of the Master Deed makes "[e]ach every apartment and the Common

[5] See Murphy v. Yacht Cove Homeowners Ass'n., 289 S.C. 367, 345 S.E.2d 709 (1986), where the South Carolina Supreme Court held "***that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association***" for failure to discharge its duties under the Bylaws related to the maintenance and repair of the common elements. 289 S.C. at 369, 345 S.E.2d at 710.

Elements . . . subject to the restrictions, easements, conditions and covenants prescribed and established herein, . . . set[s] forth the obligations and responsibilities incident to ownership of each Apartment. . . ."

64. Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle have breached their affirmative duties as set forth above, and have specifically violated and continue to violate §§§ 4(j)(ii) and (vii), 7(b)(I), and 11(a)(b) and (e) of the By-Laws and Articles XX, XXI, and XXVII of the Master Deed by failing to discharge their affirmative duties through inadequate maintenance, repair, and replacement of the Project's General Common Elements and Limited Common Elements, and also failing to adequately fund the reserves to rectify all known defects and deficiencies in the Common Elements, and to prevent similar defects and deficiencies in the future.

65. As a direct and proximate result and consequence of the Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle's failure to discharge their above-referenced affirmative duties in good faith, the Plaintiffs have suffered and continue to suffer injuries and damages in a pro-rata share of the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, or, in the alternative, the loss of use and depreciation in fair market value of their individual units; therefore, they are entitled to recover from Defendants all their direct, consequential, and actual damages in amount to be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment as to Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

66. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

67. This is an action for declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 et seq., of the South Carolina Code of Laws, 1976, as amended, to determine the rights, status or other legal relations of the parties regarding the current and future maintenance, repair, and replacement of the Project's defective and deficient General Common Elements and Limited Common Elements.

68. Specifically, § 15-53-30 provides:

> Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

69. A justiciable controversy exists between the parties regarding their rights, status, and legal relations with respect to Project's Master Deed and By-Laws, the Act, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach for the reasons described in Paragraphs 31 through 47 of the Third Amended Complaint.

70. Plaintiffs may not have an adequate remedy at law.

71. Plaintiffs desire a judicial determination for one or more of the following declarations as relief:

a. For a declaration that the TB&RC's governing documents impose an affirmative duty on the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to timely repair and replace all defective and deficient General Common Elements and Limited Common Elements identified and currently existing in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII. To find and declare the Defendants have failed to timely maintain, repair and replace the defective and deficient General Common Elements and Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, and thereby are responsible for the extraordinarily high cost of the repairs or restoration of these

deficient buildings, which have and will increase substantially over the structures' remaining useful life.

b. For a declaration that the TB&RC's governing documents, as well as State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to take immediate action to effectuate the complete removal and replacement of all distressed building components, including, but not limited to:

(1) All the defective balcony systems in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(2) All the defective corridor structural elements (plywood, joists and beams) in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(3) All the defective corridor railing systems (railings, posts and pickets) in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(4) All the defective connectors with the loss of metal in excess of Twenty-Five (25) percent in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(5) The defective roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII identified by the Defendants' consultants and the Plaintiffs' expert;

(6) All the decayed and rotten exterior wood siding/trim and flashing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert; and

(7) All the defective sliding glass doors in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII identified by the Defendants' consultants and the Plaintiffs' expert.

c. For a declaration that the TB&RC's governing documents, together with State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to

develop a systematic and comprehensive plan for the timely and economically feasible removal and replacement of all defective building components located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII instead of piecemeal approach that is currently being utilized by the Defendants which is not cost effective reconstruction.

d. For a declaration that the TB&RC's governing documents, together with the State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively require to the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to thoroughly investigate all known and/or reasonably suspected defective and deficient conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII without delay in order to avoid a complete failure of the building systems rendering them unsafe as well as economically unfeasible to reconstruct.

e. For a declaration that the TB&RC's governing documents impose an affirmative duty on the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to adequately fund reserves for the necessary maintenance, repair and replacement of the General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

f. For a declaration that the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, have failed to adequately fund reserves for the necessary maintenance, repair and replacement of the General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. To find and declare that the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, have failed to adequately fund reserves for the necessary maintenance, repair and replacement of the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, and thereby are responsible for the extraordinarily high cost of the repairs or restoration of these deficient buildings, which have and will increase substantially over the structures' remaining useful life.

g. For a Declaration that the TB&RC's governing documents, together with the State law and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, affirmatively provide the Plaintiffs with the right to consider and decide whether Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are repairable from a practical standpoint, as well

as whether it is economically feasible to reconstruct these deficient and defective buildings under the current building code.

h. For a declaration that the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle's bad faith conduct, *ultra vires* acts, and failure to discharge their affirmative duties, regarding the maintenance, repair, and replacement of the regime's General Common Elements and Limited Common Elements, are not protected by the business judgment rule.

i. For a declaration that the TB&RC's governing documents as well as State law impose an affirmative duty on the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as directors, as the underlying agents and representatives of the Co-owners, to levy an assessment against all Co-owners for establishing the necessary repair funds to fix the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII stemming from past and ongoing water infiltration.

j. Any and all other relief that deemed to be necessary and proper by the Court.

72. Such declarations are necessary and proper at this time in order that the Plaintiffs may ascertain their rights and duties as co-owners against the Defendants.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief as to Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

73. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

74. Plaintiffs have suffered injuries, harm, and damages in an amount equal to their pro-rata share of the extraordinary repair, maintenance and reconstruction cost required to fix their structures, including depreciation in value of their units as a result of the Defendant Association and Defendants Austin, Coe, Madison, White, and Windle's continual failure to discharge their affirmative duties related to the inadequate maintenance, repair, and replacement of the Project's defective, deficient, and unsafe General Common Elements and Limited

Common Elements. These allegations are supported by the factual findings set forth in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) and incorporated by reference as part of this Third Amended Complaint.

75. Injunctive relief is necessary to remedy the past violations of the Defendants' conduct and to prevent future injury, harm, and depreciation in value to the Plaintiffs' property interest including their individual units and the Regime's Common Elements.

76. Both S.C. Code Ann. § 27-31-170 (2007) and Article XXVII of Master Deed authorize the Plaintiffs as "aggrieved Co-owners" with the contractual right to bring an action for injunctive relief to compel the Board to comply with its affirmative duties under the By-Laws to repair and replace the Project's defective and deficient General Common Elements and Limited Common Elements. Specifically, Article XXVII of the Master Deed provides in pertinent part:

> Failure to comply with any of the terms of the Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, . . . ***shall be grounds for relief which may include, but not be limited to an action to recover sums due for damages, injunctive relief, . . . which relief may be sought, . . . by an aggrieved Co-owner of an Apartment*** . . . .

77. Plaintiffs have no adequate remedy at law for the above-described acts of omission and commission of the Defendants, and Plaintiffs will suffer irreparable harm as evidenced by the findings set forth in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) unless they obtain injunctive relief for the reasons described below.

78. Plaintiffs seek injunctive relief from the Court in one or more of the

following particulars:

a. To issue a mandatory injunction requiring the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to immediately comply with their affirmative duties, under the TB&RC's governing documents, State law, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, to completely replace and totally repair all distressed building conditions in the Project's General Common Elements and Limited Common Elements previously identified by the Defendant's consultants and the Plaintiffs' expert, including, but not limited to:

(1) All the defective balcony systems located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(2) All the defective corridor structural elements (plywood, joists and beams) located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(3) All the defective corridor railing systems (railings, posts and pickets) located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(4) All the defective bolts, and/or connectors with the loss of metal in excess of Twenty-Five (25) percent located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII;

(5) The defective roofing systems installed on Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII;

(6) All the decayed and rotten exterior wood siding/trim and flashing located in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII; and

(7) All the defective sliding glass door systems located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII.

b. To issue a mandatory injunction requiring the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to immediately comply with their affirmative duty, under the TB&RC's governing documents, State law, and the adopted Building Codes and Zoning Ordinance for the City of North Myrtle Beach, to completely investigate all known and/or reasonable suspected defective conditions currently existing in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII in

order to determine the proper scope of repair as well as the actual replacement cost needed for all of the damaged buildings components;

c. To issue a mandatory injunction requiring the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to obtain reports concerning the structural integrity of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, the current state of the subflooring, balcony systems, and other structural elements. To also obtain reports regarding the performance standards of the windows and sliding glass door systems, the mold content of each building, and then fund the remediation of any problems noted through the use of reserves and a subsequent assessment applicable to all co-owners;

d. To issue a mandatory injunction requiring the Defendant Association and the Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to levy an assessment against all the co-owners for the necessary repairs to fix the defective and deficient General Common Elements and Limited Common Elements of Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII due to the fact that the reserve fund is currently inadequate to finance the costs for fixing these defective and deficient buildings ; and

e. For such other and further injunctive relief as this Court may deem just and proper.

FOR A SIXTH CAUSE OF ACTION
(Specific Performance as to Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, aniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

79. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

80. Defendant Association and Defendants Austin, Coe, Madison, White, and Windle in their capacity as directors have breached and continue to breach their affirmative duties and obligations owed to the Plaintiffs through their failure to repair damage to the General Common Elements and Limited Common Elements, as prescribed by the Project's Master Deed and By-Laws.

81. Defendant Association and individual Defendants Austin, Coe, Madison, White,

and Windle, acting individually, and/or as the underlying agents and representatives of the Co-owners, have further breached their affirmative duties and obligations owed to the Plaintiffs by failing to effect the necessary repairs to the damaged General Common Elements and Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as evidenced by the factual findings set forth in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) and incorporated by reference as part of this Third Amended Complaint.

82. Plaintiffs request an Order of the Court entering a judgment on their behalf requiring the Defendant Association and Defendants Austin, Coe, Madison, White, and Windle, acting individually, and/or as the underlying agents and representatives of the Co-owners, to specifically perform their affirmative duties and obligations under the Master Deed and By-Laws by making all necessary repairs to the defective and deficient General Common Elements and Limited Common Elements and individual units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII.

FOR A SEVENTH CAUSE OF ACTION
(*Ultra Vires* Acts as to Daniel G. Coe and C. Doug Madison)

83. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.

84. Individual Defendants Coe and Madison, as members of the Board of of Directors of the Defendant Association from March 2015 through present date, voted (along with Plaintiffs, Jill Humphries and Dennis Johnson, Jr.) to make necessary repairs approximately in the amount of Five Hundred and Fifty-Three Thousand No/100 ($553,000.00) Dollars to Building III of the TB&RC pursuant to the advise and recommendations of their consultants,

Martinez & Associates Structural Engineers, PA, and A & I Construction as well as their construction attorney Amanda Bailey.

85. However, the Defendant Association now asserts a Counterclaim against the Plaintiffs, Jill Humphries and Dennis Johnson, Jr., for allegedly committing ***ultra vires*** **acts,** specifically in Paragraph 135, by contending that ***"[t]he work performed on Building 3 altered, modified, and improved upon that which was there and substantially changed the aesthetics, or "look" of Building 3,"*** violated Article XIX of the Master Deed. Defendant Association further alleges that the ***"alterations, modifications, and improvements"*** which violated of Article XIX of the Master Deed included "a new roof, new skylights, new gutters, new PVC handrails, new steel beams (the cost of which exceeded the cost of utilizing new wood beams), changing the paint color, changing the screened in porches by using a metal grid system as opposed to the wooden system, and decreasing the size of each screened in porch."

86. Pursuant to Article XIX of the Master Deed any ***"alterations, modifications, and improvements"*** that exceed ten (10%) percent of the Association's budget for the prior year must be approved by fifty-one (51%) percent of the Association's ownership.

87. Defendant Association alleges, specifically in Paragraph 135 of its Answer and Counterclaim that "alterations, modifications, and improvements" were approved by Plaintiffs, Jill Humphries and Dennis Johnson, Jr., without obtaining the approval of fifty-one (51%) percent of the Association as required by the Master Deed and in breach of the Master Deed which is expressly denied by them.

88. Assuming the allegations are true in Paragraphs 133 through 138 of Defendant Association's Answer and Counterclaims, which is expressly denied, then the individual Defendants Coe and Madison, acting individually, would also be liable too for their direction,

authorization, or otherwise direct participation in the alleged *ultra vires* conduct as described above. For the record, the Plaintiffs Jill Humphries and Dennis Johnson, Jr., specifically deny all allegations asserted in Paragraphs 133 through 138 of Defendant's Answer and Counterclaims

FOR AN EIGHTH CAUSE OF ACTION
(*Ultra Vires* Acts and Reckless, Wilful, and Wanton Conduct as to James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

89. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.

90. As of March 17, 2016, the individual Defendants Austin, Coe, Madison, White and Windle were serving as the current Board of Directors for the Defendant Association.

91. Article I, Paragraph 4(j) (ii) of the By-Laws addresses the Board's affirmative duties regarding its *"maintenance, repair, and replacement . . . of the general and limited elements"*:

> Paragraph 4(j) (ii) of the By-Laws addresses the Board's affirmative duties regarding its ***"maintenance, repair, and replacement . . . of the general and limited elements"***:
>
> > The Board of Directors shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws . . The Board of Directors ***shall*** exercise such duties and responsibilities as ***shall*** be encumbent upon it by law, the Master Deed, these By-Laws, or as it ***may deem necessary*** or appropriate in the exercise of its powers and ***shall*** include, without limited the generality of the foregoing, the following:
> > . . .
> >
> > (ii) To ***carry out the maintenance, care, upkeep, repair, replacement, operation, . . and the management of the general and limited elements***, services and facilities or the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members.

92. Article I, Paragraph 7 of the By-Laws defines the Board's affirmative duties and

responsibilities for the "fiscal management" of the Association. Specifically, the Board's budgetary funding responsibilities for the ***necessary maintenance and operation of Common Elements*** are addressed in subparagraph 7(b) in pertinent part:

> The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:
>
> (i) Common expense budget, which ***shall include*** without limiting the generality of the foregoing, the estimated amounts ***necessary for maintenance and operation of Common Elements***, landscaping, street and walkways, office expense, swimming pool, utility services, casualty insurance, liability insurance, ***administration and reserves (operating and replacement)***; and

93. Lastly, Article I, Paragraphs 11(d) and (e) address the Board's affirmative duties to establish an annual operating budget for the operation, maintenance and repair of the Project's Common Elements, and to collect and maintain a reserve fund for the future replacement of structural common elements. These paragraphs provide in pertinent part:

> (d) The Board of Directors . . . ***shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements*** as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. ***The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements;*** and
>
> (e) The Board of Directors . . . ***shall include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress*** when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or ***for other reason placing financial stress upon the Association.***

94. Based upon the above cited provisions of the By-Laws, the individual

Defendants Austin, Coe, Madison, White and Windle, have the exclusive responsibility to investigate, maintain and repair, and replace the Common Elements and other building components in a timely manner. These affirmative duties and other non-delegable duties cannot be assigned to a Third-Party, nor can they be delegated to a majority of Co-owners under Article XIX of the Master Deed.

95. Further, current Board members Austin, Coe, Madison, White and Windle all agree admittedly that any necessary repairs, including, but not limited to: ***water intrusion problems, safety and health issues, and replacement of all structural defects and deficiencies, including correcting all building code violations***, shall require immediate attention and correcting and are not subject to "51% vote of the Co-owners" under Article XIX of the Master Deed.

96. As of March of 2016, the individual Defendants Austin, Coe, Madison, White and Windle had actual knowledge of and were already aware of Martinez and Goggan's opinions and recommendations, which were recorded and accepted by former Board President Carl W. Atkinson, Jr. A summary of Martinez and Goggan's opinions and recommendations as discussed in Paragraph 41 provides in pertinent part:

a. That TB&RC has major structural and water intrusion damage issues;

b. The problems with water intrusion in the eleven (11) buildings are at a point where damage is increasing at an even greater acceleration rate;

c. The handrail systems in the eleven (11) buildings are dangerous and unsafe; and

d. Unless major corrective action is taken immediately the buildings are likely to have a life expectancy of not more than four (4) years after which they will be unrepairable due to the prohibitory cost of repair.

97. Further, the individual Defendants Austin, Coe, Madison, White and Windle

had actual knowledge of and were already aware that the City of North Myrtle Beach ("City") had sent a letter dated February 16, 2016 to KA Diehl & Assoc., Inc. on behalf of Tilghman Beach and Racquet Club HOA regarding violations § 23-129.3[6] of their Property and Building Maintenance and Appearance Ordinance. Specifically, the City's letter to the Association cited multiple violations of § 23-129.3 on multiple buildings at the TB&RC as follows:

- Siding – exterior coverings shall be properly maintained and provide the building with a weather resistant exterior – wood siding is decayed and/or rotted in some areas – replace all decayed/rotted siding;
- Torn screens in windows – screens shall be maintained in good condition – repair, remove or replace all screens that are torn;
- Decks (stairways) – missing spindles and loose railings – decks (stairways) shall be maintained in a safe condition – replace all missing spindles and replace or reinforce loose railings;
- Roof – roofing shall be properly maintained and provide the building with a weather resistant exterior – several tarps are attached to roofs/skylights – remove tarps and repair/replace skylights;

98. City's letter further provided that all corrective measures had to comply with the ordinance and that all of the above stated violations had to be repaired within ninety (90) days of receipt of its February 17, 2016 letter. A copy of the City of North Myrtle

[6] § 23-129.3 of the Property and building maintenance and appearance ordinance of the City of North Myrtle Beach sets forth the standard of maintenance for buildings in pertinent part as follows:

> (1) Exterior siding and roofing shall be properly maintained and provide the building with a weather resistant exterior wall envelope.
>
> (2) Window frames and glass shall be reasonably weather tight and shall have panes without cracks or holes and the sash shall fit properly. Missing or broken panes shall be promptly repaired. Windows and any other structural openings in the building shall not be boarded up for a period exceeding thirty (30) calendar days in any given calendar year.
>
> . . .
>
> (6) Platforms, landings, decks and steps shall be provided, where appropriate, to serve exits and shall be maintained in safe condition.

Beach's letter dated February 17, 2016 is attached hereto as (**Exhibit "H"**) and incorporated by reference as part of this Third Amended Complaint. Upon information and belief, the individual Defendants Austin, Coe, Madison, White and Windle, acting individually, have not yet corrected any of the above cited violations under § 23-129.3.

99. From March 8, 2016 through August 25, 2016, the City of North Myrtle Beach has issued the following "Stop Work Orders" for maintenance and repair work that was done by the current Board members in violation of the applicable building codes:

a. Stop Work Order #2206 on March 8, 2016 for failure to obtain building permits and performing work required to be performed by a licensed South Carolina General Contractor;

b. Stop Work Order #2244 on June 14, 2016 for repairs to thresholds without required permit;

c. Stop Work Order #2245 on June 14, 2016 for complete sections of guardrails removed without being brought up to 2012 IBC Codes;

d. Stop Work Order #2001 on June 22, 2016 for exterior walls and balconies being repaired without permit;

e. Stop Work Order #2014 on August 25, 2016 for sliding glass door frames being removed from opening without being brought up to code on Unit 339; and

f. Stop Work Order #2015 on August 25, 2016 for sliding glass door frames being removed from opening without being brought up to code on Unit 121.

Upon information and belief, the individual Defendants Austin, Coe, Madison, White and Windle, acting individually, were aware of all "Stop Work Orders" issued by the City of North Myrtle Beach between March 8, 2016 through August 25, 2016, but chose to ignore them and not correct the applicable building code violations. A copy of the Stop Work Orders issued by the City of North Myrtle Beach between March and August of 2016 are attached hereto as (**Exhibit "I"**) and incorporated by reference as part of this Third Amended Complaint.

100. Further, factual and professional opinions of structural engineers, Martinez and Simko, recorded in July of 2016 and also served on the current Board that same month, establish with a reasonable degree of engineering certainty the dire condition and total state of disrepair of the building components as well as parts of the individual units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as follows:

a. All the balconies of the project are to be immediately removed and replaced, or totally repaired, except for Building III.

b. All the corridor structural elements (plywood, joists and beams) are to be immediately repaired.

c. All the corridor railing systems (railings, posts and pickets) are to be immediately replaced.

d. All the connections with the loss of metal in excess of Twenty-Five (25) percent are to be immediately replaced with stainless steel hardware.

. . .

e. The existing balcony areas do not meet the Code and represent a high level of overstress, except for Building III.

f. Mold and rot in the closed in areas are accumulating and could possibly cause health concerns in the future if not repaired.

g. The missing spindles and loose guardrails in all corridors are unsafe and violate § 23-129.3(6) of the Zoning Code for the City of North Myrtle Beach.

h. The exterior wood siding and trim is decayed and rotten at many locations at all Twelve (12) buildings. This current condition for all buildings violates § 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

i. The roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are not properly maintained and further do not provide the buildings with a weather resistant exterior wall envelope. Additionally, tarps on buildings VIII, IX, X, XI, and XII are attached to roofs/skylights. As such, the delaminated roofing and water intrusion problems associated with these defective conditions violate §23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

j. Complete replacement of the roofing systems on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII. Partial replacement of the roofing components on Buildings I and II.

k. All visible termite damage has not been repaired in the buildings. Further, the Board has failed to adequately investigate and uncover all hidden termite damage probably existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. See termite damage inspection report including pictures.

l. Unless a major comprehensive and/or complete repair and reconstruction action is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII, the eleven (11) buildings which have a life expectancy of probably less than four (4) years, will become unrepairable due to the total cost of restoration exceeding the current fair market value of the buildings.

m. The Plaintiffs and other similar situated Co-owners will suffer irreparable injury, harm, and loss due to the diminution in value of their buildings as well as their inability to repair them due to the prohibitory cost of restoration if a comprehensive and/or complete repair and reconstruction plan is not immediately implemented by the Board to correct all defective building envelope conditions as well as structural problems currently existing in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

101. Upon information and belief, the individual Defendants Austin, Coe, Madison, White and Windle, acting individually, have not yet repaired any of the structural defects, nor fixed all the water intrusion problems, and/or otherwise started a major comprehensive and/or complete repair and reconstruction action of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII as described above in subparts (a through o).

102. Furthermore, as additional evidence of their abdication of their affirmative maintenance, repair, and replacement duties, the current Board members Austin, Coe, Madison, White and Windle, acting individually, have participated in, directed, or otherwise adopted the annual budget for 2017 without levying an assessment against the Co-owners for all necessary repairs previously identified in Paragraphs 35, 36, 37, 38, 39, 40, 41, 93, and 95 of Plaintiffs'

Third Amended Complaint, including Exhibits C, D, E, F, and G, H, I, J, K, and L. A copy of the Board's Annual Budget for 2017 is attached hereto as (**Exhibit "J"**) and incorporated by reference as part of this Third Amended Complaint. Lastly, based upon the investigation and recommendation made by the Board's prior consultants and experts, they have calculated that cost to perform all necessary repairs to Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII will probably exceed Six Million and No/100 ($6,000,000.00) Dollars.

103. The January 6, 2017 letter from Henry H. Beckham, GAA of Beckham Appraisal Service, LLC ("Beckham Letter") addresses the decline in value of condominium regime and units in TB&RC due to lack of repairs and typical maintenance being performed at the Project by the current Board members. The Beckham letter provides in pertinent part:

> Based upon our preliminary inspection and review of sales activities, it is my opinion that the condition and appeal of the property ***due to lack of repairs and typical maintenance has led to a decline in values***. The lack of repairs and typical maintenance is confirmed by a review of a series of property maintenance violation reports and stop-work orders by the City of North Myrtle Beach. A copy of the January 6, 2017 letter from Henry H. Beckham, GAA of Beckham Appraisal Service, LLC is attached hereto as (**Exhibit "K"**) and incorporated by reference as part of this Third Amended Complaint.

104. For the foregoing reasons, the individual Defendants Austin, Coe, Madison, White and Windle, acting individually, have acted and continue to act in a grossly negligent, reckless, wilful and wanton manner in failing to discharge their affirmative duties as described above in one or more of the following particulars:

a. In failing to make all necessary repairs identified in the Affidavits of structural engineers Martinez and Simko, which were recorded in the Office of the Clerk of Court for Horry County in July of 2016 and subsequently served on the Board that same month;

b. In failing in 2016 as well as 2017 to levy an assessment for a sum exceeding Six Million No/100 ($6,000,000.00) Dollars, as recommended by their consultants and experts, in order to complete all necessary repairs

previously identified by their consultants and experts in 2014 through 2016;

c. In failing in 2016 as well as 2017 to assess all Co-owners for the common expenses needed to make all necessary repairs as previously identified in the Affidavits of Martinez and Simko, which were recorded in the Office of the Clerk of Court for Horry County in July of 2016 and subsequently served on the Board that same month;

d. In failing in 2016 as well as 2017 to preform a detailed forensic analysis on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII from top to bottom by an architectural/engineering firm in order to determine and also document all additional repairs for the previously known defective and deficient General Common Elements and Limited Common Elements;

e. In failing in 2016 as well as 2017 to correct all known and continuing violations of the City's property maintenance ordinance and 2012 International Residential Building Code, including permit and stop work order violations as reported by the City of North Myrtle Beach's Zoning Department since February of 2016 to the present date;

f. In failing to seek any recovery from all liability carriers regarding a covered event or loss under the applicable policies for economic loss damages;

g. In improperly advancing expenses for the defense of the individual Board members Austin, Coe, Madison, White and Windle, upon information and belief, who have not conducted themselves in good faith, have not acted in their official capacity, and have not acted in the best interest of the corporation in violation S.C. Code Ann § 33-8-851 *et seq.* (2006);

h. In failing to correct all previously known and ongoing water intrusion problems occurring in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII where the damage is increasing at an even greater acceleration rate due to lack of timely maintenance and repairs.

105. Further, the factual and professional opinions set forth in the Affidavit of Mike Parades, PCAM ("Parades"), clearly establish that individual Defendants Austin, Coe, Madison, White and Windle, while acting individually: have committed *ultra vires* acts, have engaged in reckless, wilful, and wanton conduct, and have knowingly violated and continue to violate State law all resulting from their ongoing failure to act in good faith and discharge their affirmative

duties regarding the necessary repair and replacement of Common Elements, including building components as mandated under governing documents. Specifically, the individual Defendants Austin, Coe, Madison, White and Windle's ongoing violations of the City of North Myrtle Beach's property maintenance and repair ordinance as well as other applicable building codes constitutes negligence per se. Their failure to make all necessary repairs as well as to correct previously known violations of the applicable building code including their Stop Work Order violations, constitutes reckless, wilful, and wanton conduct on their part. Their reckless, wilful, and wanton conduct has depreciated the fair market value of the Plaintiffs' individual units as well as the Project evidenced by the Beckham letter dated January 6, 2017. These causative violations of the City of North Myrtle Beach's property maintenance and repair ordinance as well as other applicable building codes, which the current Board members Austin, Coe, Madison, White and Windle, acting individually, participated in, and directed in the management and operation of the Project, constitutes actionable negligence and is evidence of their recklessness, wilfulness and wantonness. A copy of the Affidavit of Parades is attached hereto as (**Exhibit "L"**) and incorporated by reference as part of this Third Amended Complaint.

106. As a direct and proximate result and consequence of gross negligence, and/or willful and wanton conduct of the individual Defendants, Austin, Coe, Madison, White, and Windle, while acting individually, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary investigation, repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, loss of use, diminution in fair market value of their individual units, and for such punitive damages as may be appropriate.

107. As a direct and proximate result and consequence of gross negligence, and/or

willful and wanton conduct of the individual Defendants, Austin, Coe, Madison, White, and Windle, while acting individually, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, loss of use, diminution in fair market value of their individual units, and for such punitive damages as may be appropriate.

108. For the foregoing reasons, the Plaintiffs are entitled to a judgment against the individual the Defendants, Austin, Coe, Madison, White, and Windle, acting individually, for all direct, indirect, resulting consequential and punitive damages in an amount to be determined at trial of this case.

FOR A NINTH CAUSE OF ACTION
(Indemnification from Tilghman Beach and Racquet Club Condominium Association, Inc.)

109. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.

110. Plaintiff, Jill Humphries, was a member of the Board of Directors of the Association from March 2, 2013 to February 6, 2016.

111. Plaintiff, Dennis Johnson, Jr., was a member of the Board of Directors of the Association from March 7, 2015 to February 6, 2016.

112. The Answer and Counterclaims of the Defendant Association allege in Paragraphs 133 through 138 that Plaintiffs, Jill Humphries and Dennis Johnson, Jr., personally committed *ultra vires* acts by approving of ***"alterations, modifications, and improvements"*** to Building III without first obtaining the approval of fifty-one (51%) percent of the Co-owners of Association as required by Article XIX of the Master Deed and in breach of the Master Deed which is expressly denied by them.

113. Plaintiffs Jill Humphries and Dennis Johnson, Jr. assert, at all times relevant, that

they have conducted themselves in good faith and acted in their official capacity in the best interest of the corporation.

114. S.C. Code Ann § 33-8-851 (2006) concerns a corporation's authority to indemnify a former director made a party to a proceeding. This section provides in pertinent part as follows:

> (a) Except as provided in subsection ***(d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:***
>
> (1) ***he conducted himself in good faith; and***
>
> (2) ***he reasonably believed:***
>
> ***(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interest; and***
>
> ***(ii) in all other cases, that his conduct was at least not opposed to its best interest; and***
>
> (3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

115. Additionally, S.C. Code Ann. §33-31-852 (2006) concerns the mandatory indemnification of a director who is wholly successful in the defense of a proceeding to which he was a party. This section provides in pertinent part:

> Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of a proceeding to which the director was a party because he is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

116. The Plaintiffs Jill Humphries and Dennis Johnson, Jr., fall within the scope and protection of S.C. Code Ann. §§ 33-8-851 and 33-31-852 (2006). Furthermore, the Defendant's counterclaims asserted against them are without evidentiary support, baseless, and frivolous.

117. Upon information and belief, Plaintiffs Jill Humphries and Dennis Johnson, Jr. have complied with all the requirements of S.C. Code Ann. §§ 33-8-851 and 33-31-852 (2006) as discussed above and are entitled to indemnification from the Defendant Association under the above provisions of the South Carolina Nonprofit Corporation Act ("Act")for their reasonable expenses including attorney fees in defending themselves against these baseless, meritless, and frivolous counterclaims filed by the current Board members in bad faith.

FOR A TENTH CAUSE OF ACTION
(Appointment of a Receiver as to Tilghman Beach and Racquet Club Condominium Association, Inc., James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III)

118. The Plaintiffs reiterate each and every relevant allegation set forth above as if fully incorporated herein.

119. Article I, Paragraph 4(j) (ii) of the By-Laws makes the current Board responsible for the *"maintenance, repair, and replacement . . . of the general and limited elements"* of TB&RC.

120. The Project and/or the regime property for the reasons described above is also in immediate need of substantial repair, in that Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are infested with dry rot and termites requiring immediate correction to avoid extensive and permanent structural damage to these building. The roofs of Buildings I, II, IV, and V leak, which condition, if not immediately repaired, will allow water to enter these buildings when it rains. The extreme urgent need for substantial repair of these and other items is listed in the Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., who are duly licensed structural Engineers. Their Amended Affidavits are attached hereto as (**Exhibits "E" and "F"**), and incorporated by reference as part of this Third Amended Complaint.

121. Plaintiffs have an interest as unit owners, including their undivided interest in the Common elements, in the safe and economical management of the condo Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

122. On numerous occasions, the Plaintiffs have requested that the individual Defendants Austin, Coe, Madison, White and Windle special assess the Co-owners for the necessary repairs of the described conditions in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., but the current Board members have failed and refused, and continue to fail and refuse to levy the required assessment to make the necessary repairs as recommended by their consultants and other experts in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII or to take any other steps to substantially repair or maintain these buildings in good repair.

123. S.C. Code Ann. §15-65-10 (2005) provides a receiver may be appointed by a judge of the circuit court, either in or out of court:

> (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
>
> (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
>
> (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

124. The Plaintiffs contend they fall within the scope and protection of S.C. Code Ann §15-65-10 (2005) regarding the appointment of a receiver by the circuit court.

125. Upon information and belief, the Plaintiffs have satisfied all conditions precedent for a receiver to be appointed by the circuit court with respect to this pending lawsuit.

126. Unless a receiver is appointed and instructed to take possession of the Project and to collect assessments, and immediately apply the assessments to the repair of the Project, the Project will be materially injured. In addition, Plaintiffs may be subject to serious personal civil liability to third parties for any injury or damage sustained by them as a result of the described defects and dangerous conditions identified in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

127. For the forgoing reasons, the Plaintiffs request that a receiver be appointed by the circuit court to take possession of the Project and/or the regime property, to manage, control, care for, preserve, and maintain it, and incur the expenses necessary for the management, control, care, preservation, and maintenance of the regime property, and to special assess the Co-owners and apply the same to the immediate repair of the described defects and dangerous condition of the regime property as described in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and Plaintiffs Expert John Simko, P.E., and thereafter to maintain the property in good and habitable condition pending the determination of this lawsuit, to pay any taxes or assessments falling due during the period of receivership, and to otherwise employ labor as may be necessary, purchase supplies, and incur the risks and obligations ordinarily incurred by the Board of Directors, managers, and operators of similar horizontal property regimes.

WHEREFORE, having fully set forth their Third Amended Complaint, the Plaintiffs pray for the following relief:

a. For an Order of the Court finding the Defendant Association and individual Defendants Austin, Coe, Madison, White, and Windle, while acting outside their official capacity as members of the Board of Directors for the Defendant Association, have breached and violated, including, but not limited to, Sections 4(j)(ii) and (vii), 7(b)(i), and 11(a)(b)and (e) of the By-Laws, and Articles XX,

XXI, and XXVII of the Master Deed of Tilghman Beach and Racquet Club Property Regime;

b. As to the **First Cause of Action,** the Plaintiffs are entitled to an award of actual damages in an amount to be proven at trial; and, also, to an award of punitive damages based upon the Defendant Association's willful violations of the provisions of the TB&RC's Master Deed and By-Laws and State law;

c. As to the **Second, Sixth, Seventh, and Eighth Causes of Action**, the Plaintiffs are entitled to an award of actual damages in an amount to be proven at trial; and, also, to an award of punitive damages based upon the individual Defendants Austin, Coe, Madison, White, and Windle's *ultra vires* conduct and willful violations of the provisions of the TB&RC's Master Deed and By-Laws and State law;

d. As to the **Third Cause of Action**, the Plaintiffs are entitled to an award of actual damages in an amount to be proven at trial;

e. As to the **Fourth Cause of Action**, Plaintiffs are entitled to declaratory relief as demanded in one or more of the following particulars requested under subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of Paragraph 71 of the Third Amended Complaint;

f. As to the **Fifth Cause of Action**, Plaintiffs are entitled to a mandatory injunction compelling one or more of the following particulars requested under subparagraphs (a), (b), (c), (d), and (e) of Paragraph 78 of the Third Amended Complaint;

g. As part of the **Fifth Cause of Action,** the Plaintiffs request the issuance of a mandatory injunction from the Court requiring the Defendant Association and Defendants Austin, Coe, Madison, White, and Windle, as the underlying agents and representatives of the Co-owners, to immediately comply with their affirmative duties and responsibilities under the Master Deed and By-Laws by levying an assessment against all Co-owners to repair and replacement of all defective and deficient conditions of the General Common Elements and the Limited Common Elements located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII as recommended by the Defendants' prior consultants, legal advisers; and, further supported by the findings set forth in the Amended Affidavits of Saul J. Martinez, P.E. of Martinez & Associates Structural Engineers, PA and John Simko, P.E., attached hereto as (**Exhibits "E" and "F"**) and incorporated by reference as part of this Third Amended Complaint;

h. As to the **Ninth Cause of Action**, the Plaintiffs Jill Humphries and Dennis Johnson have complied with all the requirements of S.C. Code Ann. §§ 33-8-851 and 33-31-852 (2006) as discussed above and are entitled to indemnification from the Defendant Association under the applicable provisions of the South Carolina

Nonprofit Corporation Act for their reasonable expenses, including attorney fees, in defending themselves against these baseless, meritless, and frivolous counterclaims as alleged by the current Board members in bad faith;

i. As to the **Tenth Cause of Action**, the Plaintiffs request that a receiver be appointed by the Circuit Court to take possession of the regime property, to manage, control, care for, preserve, and maintain the regime property, and incur the expenses necessary for the management, control, care, preservation, and maintenance of the regime property, and to special assess the Co-owners and apply the same to the immediate repair of the described defects and dangerous condition of the regime property, and thereafter to maintain the property in good and habitable condition pending the determination of this lawsuit, to pay any taxes or assessments falling due during the period of receivership, and to otherwise employ labor as may be necessary, purchase supplies, and incur the risks and obligations ordinarily incurred by the Board of Directors, managers, and operators of similar horizontal property regimes;

j. For attorneys fees, costs and expenses incurred in bringing this action;

k. For a trial by Jury; and

l. For such other and further relief as the Court may deem proper.

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.

Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com
Howell V. Bellamy, Jr. (S.C. Bar #68543)
nrichardson@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

March 8, 2017

EXHIBIT
"A"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464

Filed for Rec 25 108 1
Pg 260
2-2-87

EXHIBIT
tabbies
A

MASTER DEED

OF

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

Developer:

SUMMEY BUILDING SYSTEMS, INC.
Post Office Box 497
Dallas, North Carolina 28034

Prepared by:

Law Offices of
Richard M. Lovelace, Jr., P.A.
Post Office Box 1704
Conway, South Carolina 29526

BOOK 736 PG 360

INDEX

TO

MASTER DEED

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

ARTICLE	TITLE	PAGE
I	Horizontal Property Regime Created	4
II	General Description of Plan of Development	4
III	Legal Description	5
IV	Survey and Description of Improvements	5
V	Apartments, General Common Elements and Limited Common Elements	5
VI	Ownership of Apartments and Appurtenant Interest in Common Elements	6
VII	Restriction against Further Subdividing of Apartments and Separate Conveyance of Appurtenant Common Elements, Etc.	7
VIII	Regime Subject to Restrictions	8
IX	Perpetual Non-Exclusive Easement in Common Elements	8
X	Easement for Unintentional and Non-Negligent Encroachments	8
XI	Restraint upon Separation and Partition of Common Elements	8
XII	Percentage of Undivided Interest in Common Elements Appurtenant to Each Apartment	9
XIII	Residential Use Restriction Applicable to Apartments; Prohibition Against "Time-Sharing"	9
XIV	Use of Common Elements Subject to Rules of Association; Restrictions on Use of Lagoons	9
XV	Regime to be used for Lawful Purposes, Restriction against Nuisances, Etc.	10
XVI	Right to Entry into Apartments in Emergencies	10
XVII	Right of Entry for Maintenance of Common Elements	10
XVIII	Limitation upon Right of Co-Owners to Alter and Modify Apartments	10
XIX	Right of Association to Alter and Improve Common Elements and Assessment Therefor	11
XX	Maintenance and Repair by Co-Owners of Apartments	11
XXI	Maintenance and Repair of Common Elements by the Association	11
XXII	Personal Liability and Risk of Loss of Co-Owner of Apartment and Separate Insurance Coverage	12

7.4 361

ARTICLE	TITLE	PAGE
XXIII	Eminent Domain	12
XXIV	Insurance	13
XXV	Apportionment of Tax or Special Assessment if Levied and Assessed against the Regime as a Whole	13
XXVI	Amendment to Master Deed	14
XXVII	Remedies in Event of Default	14
XXVIII	Use or Acquisition of Interest in the Regime to Render User or Acquirer Subject to Provisions of Master Deed, Rules and Regulations	15
XXIX	Right of Developer to Representation on Board of Directors of Association	15
XXX	Annual Reports to be Provided to Lender	16
XXXI	Severability	16
XXXII	Master Deed Binding Upon Developer, Its Successors and Assigns, and Subsequent Co-Owners	16
XXXIII	Developer's Easements and Reservations	17
XXXIV	Definitions	17
XXXV	Miscellaneous	17
	EXHIBIT "A" — Description of Real Property	19
	EXHIBIT "B" — Apartment Description & Numbers	20
	EXHIBIT "C" — Schedule of Percentage Interests	21
	EXHIBIT "D" — Architect's Certificate	23
APPENDIX "A"	By-Laws of Tilghman Beach and Racquet Club Condominium Association, Inc.	24
APPENDIX "B"	Certificate of Incorporation of Tilghman Beach and Racquet Club Condominium Association, Inc.	40

MASTER DEED

for

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

****

I.

HORIZONTAL PROPERTY REGIME CREATED

SUMMEY BUILDING SYSTEMS, INC., a South Carolina corporation ("the Developer"), having its principal office at Myrtle Beach, Horry County, South Carolina, as the sole owner in fee simple of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands and buildings hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime to be known as Tilghman Beach and Racquet Club Horizontal Property Regime ("the Regime"), in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §27-31-10 et seq. (1976) ("the Act"). By the execution and recording of this Master Deed, the Developer further states that:

(1) The Developer proposes to create and does hereby create, with respect to the property described above, the Regime containing not less than one (1) phase nor more than two (2) phases to be governed by and to be subject to the provisions of this Master Deed and of the Act;

(2) The Regime, and all property and/or interest in property contained therein, shall be owned, occupied, used, conveyed, encumbered, leased, improved in phases, maintained and governed in accordance with the provisions of the Act and in accordance with the covenants, restrictions, encumbrances, and obligations set forth or incorporated by reference in this Master Deed, all of which shall be deemed to be covenants, restrictions, encumbrances and obligations running with the land.

In conformity with §27-31-30 and §27-31-100 of the Act, the Developer sets forth the following particulars with respect to the Regime:

II.

GENERAL DESCRIPTION OF PLAN OF DEVELOPMENT

The Developer intends to develop the property hereinafter described as a phased horizontal property regime containing not less than one (1) phase nor more than two (2) phases. The maximum number of Apartments in each phase shall be one hundred eight (104). The Developer hereby submits Phase I to the Regime. The Developer shall elect on or before December 31, 1982, whether to submit Phase II to the Regime. A chart showing the percentage interest in the common elements of each Apartment owner at each stage of development (if the Developer elects to proceed with Phase II) is attached hereto as Exhibit "C" and made a part hereof by reference.

BK 736 PG 363

III.

LEGAL DESCRIPTION

The land ("the Real Property") which is hereby submitted to the Regime is described as Phase I on Exhibit "A" attached hereto and made a part hereof by reference. The land comprising Phase II, which may be submitted to the Regime, is also described in said Exhibit "A" and shall be a part of the Real Property when submitted to the Regime. The Real Property as so described has an area set forth on said Exhibit "A".

IV.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Attached hereto at the time this Master Deed is filed for record and incorporated herein by reference as if set forth in full herein are one or more boundary surveys, an as-built survey (Phase I submitted and Phase II to be submitted) and site plan showing the location of all buildings and other improvements, a set of floor plans of the buildings which show graphically the dimensions, area and location of each Apartment therein and the dimensions, area, and location of the General Common Elements and Limited Common Elements affording access to each Apartment. Each Apartment is identified thereon by specific number and no Apartment bears the same designation as any other Apartment. Said surveys, site plan and set of floor plans (hereinafter collectively called "the Regime Plans") are recorded as a separate Horizontal Property Regime plat in the office of the Clerk of Court for Horry County in Plat Book I at Page 142. The buildings containing the Apartments have the areas set forth on Exhibit "B" attached hereto.

V.

APARTMENTS, GENERAL COMMON ELEMENTS

AND LIMITED COMMON ELEMENTS

The Regime consists of Apartments, General Common Elements and Limited Common Elements, as said terms are hereinafter defined.

Apartments, as the term is used herein, shall mean and comprise the separate and numbered Apartments which are designated in Exhibit "B" to this Master Deed. Each Unit is composed of the interior cubic space, fixtures, appliances, furnishings, walls, floors, ceilings, and building material enclosed within the following boundaries:

(a) The upper boundary of the Unit shall extend to the unfinished surface of the structural slab constituting the ceiling of the Unit. 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 and each Co-owner shall be responsible for maintenance and repair of the following: (i) doors (including screen doors) opening into the Unit and which may be exclusively reserved to the use of a Unit, including the frames, thresholds, knobs, handles, and other fixtures which are part of the doors; (ii) windows, glasses, screens, frames, and sashes which are part of such apertures in the Unit; (iii) the plumbing, pipes, and mechanical units which exclusively serve the Unit; (iv) the appliances, air conditioning and heating units, hot water heaters, lavatories, bath tubs, toilets, carpeting, floor tiles, and unfinished surfaces of ceilings and walls, insulation, and other fixtures and furnishings which are within or serve the Unit alone (subject to the rights of Co-owners; (v) all appurtenances which are internal and exclusive to the Unit, including but not limited to lamps attached to the exterior of the Unit, and water and sewer pipes exclusively serving the Unit.

Bk 715 Pg 264

General Common Elements means and includes:

(1) The Real Property (excluding the Limited Common Elements and the Apartments), including but not limited to the land on which the buildings containing the Apartments are constructed;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;

(3) The basements, flat roofs, yards and gardens, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, 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;

(6) Any elevators, garbage incinerators and, in general, all devices and installations existing for common use;

(7) All other elements of the property rationally of common use or necessary to its existence, upkeep and safety, including but not necessarily limited to the following:

(a) The additional improvements designated as General Common Elements on Exhibit "B" attached hereto;

(b) All swimming pools, tennis courts and related and supporting facilities, all parking areas, roads, walkways, paths, trees, shrubs, yards, gardens, bodies of water, bridges, gazebos, and Regime entrance signs and lighting on the Real Property (outside of the Apartments);

(c) A non-exclusive easement and right-of-way for access, egress and ingress to and from the Regime and each Apartment and improvements contained therein across the public roads and streets of Ocean Drive Section, North Myrtle Beach, to and from U.S. Highway 17, and any other public streets or highways adjoining or abutting such private roads and streets of Ocean Drive Section of North Myrtle Beach;

Limited Common Elements means and includes:

(1) Those common elements which are agreed upon by all the Apartment 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, balconies, sanitary services common to the Apartments of a particular floor, and the like;

(2) The additional improvements designated as Limited Common Elements on Exhibit "B" attached hereto. All internal and repair of Limited Common Elements rest with the owner(s) of the Apartment to which they abut, adjoin, or service.

The General Common Elements and the Limited Common Elements are hereinafter occasionally collectively referred to as "the Common Elements".

VI.

OWNERSHIP OF APARTMENTS AND APPURTENANT

INTEREST IN COMMON ELEMENTS

Once the Real Property and Common Elements are submitted to the Regime, an Apartment in the Regime may be individually conveyed and

7:6 385

encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other Apartments in the Regime of which it forms a part, and the corresponding individual titles and interests shall be recordable.

Any Apartment may be held and owned by more than one person as tenants in common or in any other recognized form of real property ownership, subject to the provisions of Article XIII hereof.

An Apartment owner shall have the exclusive ownership of his Apartment and shall have a common right to a share, with the other co-owners, in the Common Elements of the Regime, equivalent to the percentage representing the value of the individual Apartment, with relation to the value of the whole Regime. All unit voting rights, percentage of assessments, monthly or special and every other Apartment right or liability are based on this percentage. This percentage is set forth on Exhibit "C" attached hereto and made a part hereof by reference, shall have a permanent character, shall not be altered without the acquiescence of the co-owners representing all the Apartments of the Regime (subject, however, to the provisions of Article XI hereof), but will change (decrease) as additional phases may be submitted to the Regime as shown on Exhibit "C".

The basic value, (identified as the "Value for Statutory Purposes" on said Exhibit "C") which shall be fixed for the sole purpose of this Master Deed and irrespective of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

VII.

RESTRICTION AGAINST FURTHER SUBDIVIDING

OF APARTMENTS AND SEPARATE CONVEYANCE

OF APPURTENANT COMMON ELEMENTS, ETC.

No Apartment may be divided or subdivided into a smaller Apartment or smaller Apartments than as described in Exhibit "B" attached hereto, nor shall any Apartment, or portion thereof, be added to or incorporated into any other Apartment. The undivided interest in the Common Elements declared to be an appurtenance to each Apartment shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Apartment, and the undivided interest in the Common Elements appurtenant to each Apartment shall be deemed conveyed, devised, encumbered, or otherwise included with the Apartment even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Apartment. Any conveyance, mortgage, or other instrument which purports to effect the conveyance, devise or encumbrance, or which purports to effect any right, interest or lien in, to, or upon, an Apartment, shall be null, void and of no effect insofar as the same purports to affect any interest in an Apartment and its appurtenant undivided interest in the Common Elements, unless the same purports to convey, devise, encumber or otherwise deal in or affect the entire Apartment. Any instrument conveying, devising, encumbering or otherwise dealing with any Apartment which describes said Apartment by the Apartment Number assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Apartment and its appurtenant undivided interest in the Common Elements, notwithstanding the fact that the provisions of this paragraph VII may not be recited or mentioned in any such instrument. No part of the ownership of any Apartment and its appurtenant undivided interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or any other recognized form of real property ownership,

Book 736 Page 386

VIII.

REGIME SUBJECT TO RESTRICTIONS

Each and every Apartment and the Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein, governing the use of said Apartment and the Common Elements, and setting forth the obligations and responsibilities incident to ownership of each Apartment and its appurtenant undivided interest in the Common Elements and said Apartments and the Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the Real Property and/or the improvements thereon.

IX.

PERPETUAL NON-EXCLUSIVE EASEMENT

IN COMMON ELEMENTS

The General Common Elements shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the co-owners of Apartments in the Regime for their use and the use of their immediate families, tenants, lessees, licensees, guests, and invitees, for all proper and normal purposes, for the furnishing of services and facilities for which the same are reasonably intended, and for the enjoyment of said co-owners of Apartments. Notwithstanding anything above provided in this article, Tilghman Beach and Racquet Club Condominium Association, Inc. (a South Carolina eleemosynary corporation, hereinafter called "the Association"), shall have the right to establish the rules and regulations pursuant to which the co-owner or co-owners of any Apartment may be entitled to the exclusive use of any parking space or spaces as well as any other Common Elements (whether General or Limited).

X.

EASEMENT FOR UNINTENTIONAL AND

NON-NEGLIGENT ENCROACHMENTS

In the event that any portion of the Common Elements now or hereafter encroaches upon any Apartment, or vice versa, or in the event that any portion of one Apartment now or hereafter encroaches upon another Apartment, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, does and shall exist.

XI.

RESTRAINT UPON SEPARATION AND PARTITION

OF COMMON ELEMENTS

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.

All the co-owners or the sole owner of the Regime may waive the Regime and regroup or merge the records of the individual Apartments with the Real Property, provided that the individual Apartments are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Subject to the other provisions of this Article XI, unless all of the first mortgagees (based upon one vote for each first mortgage owned), and

BOOK 736 PAGE 367

owners (other than the Developer) of the Apartments have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Regime;

(b) change the pro rata interest or obligations of any Apartment for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Apartment in the Common Elements;

(c) partition or subdivide any Apartment;

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Regime shall not be deemed a transfer within the meaning of this subparagraph (d).

XII.

PERCENTAGE OF UNDIVIDED INTEREST IN

COMMON ELEMENTS APPURTENANT TO EACH APARTMENT

The undivided interest in the Common Elements appurtenant to each Apartment is that percentage of undivided interest which is set forth and assigned to each Apartment in Exhibit "C" attached hereto and made a part hereof by reference.

XIII.

RESIDENTIAL USE RESTRICTION APPLICABLE TO APARTMENTS;

PROHIBITION AGAINST "TIME-SHARING"

Each Apartment is hereby restricted to residential use by the co-owner or co-owners thereof, their immediate families, guests, tenants, lessees, licensees and invitees; provided, however, the developer may retain title to and use of Apartment No. 150, to be utilized by the Developer, its successors or assigns, for a sales office, model, rental office, management office, or any and all related activities related to sale, resale, rental, and management of this designated unit. All draperies or other window coverings on a window facing the exterior of any Apartment and visible from any Common Element or public or private street or area shall be lined with a white lining with the white lining exposed to the exterior of the Apartment. No "For Sale" signs or the like shall be permitted on any Common Element or in any Apartment so as to be visible from any Common Element or public or private street or area. No Apartment shall be "time-shared", nor shall any Apartment be owned, used or operated under the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. §27-32-10 et seq. (1980 Supp.), as the same may be amended from time to time, nor shall any Apartment be owned, used or operated so as to constitute such Apartment as a "time-sharing unit" within the meaning of such statutory provisions.

XIV.

USE OF COMMON ELEMENTS SUBJECT

TO RULES OF ASSOCIATION; RESTRICTIONS ON USE OF LAUNDRY

The use of the Common Elements by the co-owner or co-owners of the Apartments, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the Directors of the Association.

XV.

REGIME TO BE USED FOR LAWFUL PURPOSES.

RESTRICTION AGAINST NUISANCES, ETC.

No immoral, improper, offensive or unlawful use shall be made of any Apartment or of the Common Elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Regime shall be observed. No co-owner of any Apartment shall permit or suffer any thing to be done or kept in his Apartment, or on the Common Elements, which will increase the rate of insurance on the Regime, or which will obstruct or interfere with the rights of other occupants of the building or annoy them by unreasonable noises, nor shall any such co-owner undertake any use or practice which shall create and constitute a nuisance to any other co-owner of an Apartment, or which interferes with the peaceful possession and proper use of any other Apartment or the Common Elements.

XVI.

RIGHT OF ENTRY INTO APARTMENTS IN EMERGENCIES

In case of any emergency originating in or threatening any Apartment, regardless of whether the co-owner is present at the time of such emergency, the Board of Directors of the Association or any other person or firm authorized by it, or the building superintendent or managing agent, shall have the right to enter such Apartment for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the co-owner of each Apartment if required by the Association, shall deposit under the control of the Association a key to such Apartment.

XVII.

RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS

Whenever it is necessary to enter any Apartment for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements, the co-owner of each Apartment shall permit other co-owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Apartment, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVIII.

LIMITATION UPON RIGHT OF CO-OWNERS

TO ALTER AND MODIFY APARTMENTS

Any co-owner of an Apartment may make any modifications or alterations within his/her/their Apartment without first obtaining the written consent of the [illegible] of Apartment owners however if the modification or alteration desired by the co-owner of any Apartment involves the removal of any permanent interior partition, the Association shall have the right to permit such removal so long as the portion of the interior partition to be removed is not a load-bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting Common Elements located therein. No co-owner shall cause any balcony or deck abutting his Apartment to be enclosed, or cause any improvements or changes to be made on the exterior of the building, including painting or other decoration, or the installation of electrical wiring, television antennae, machines or air conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of any portion of the building not within the walls of such Apartment, nor shall storm panels or awnings be affixed, without the written consent of the Association being first obtained.

7.56 .59

XIX.

RIGHT OF ASSOCIATION TO ALTER AND IMPROVE

COMMON ELEMENTS AND ASSESSMENT THEREFOR

The Association shall have the right to make or cause to be made such alterations, modifications and improvements to the Common Elements, provided such alterations, modifications or improvements are first approved in writing by the Board of Directors of the Association; provided further, that such alterations, modifications or improvements do not adversely affect the value of the Common Elements or Apartments in the Regime; and the cost of such alterations, modifications or improvements shall be assessed as common expenses and collected from the co-owners of all Apartments according to their percentage of ownership of the Common Elements; provided, however, that the cost of any improvement contemplated under this section may not exceed an amount equal to ten (10%) percent of the Association's budget for the prior year, without approval of fifty-one (51%) percent of the Association ownership.

XX.

MAINTENANCE AND REPAIR BY CO-OWNERS OF APARTMENTS

Every co-owner must perform promptly all maintenance and repair work within his Apartment, to include any plumbing or electrical connections providing service to such Apartment, which, if omitted, could adversely affect the Regime in its entirety or in a part belonging to other co-owners, being expressly responsible for the damages and liability which his failure to do so may engender. The co-owner of each Apartment shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Apartment and which may now or hereafter be situated in his Apartment. Such co-owner shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces, painting, decorating and furnishings, and all other accessories which such co-owner may desire to place or maintain in his Apartment. Whenever the maintenance, repair and replacement of any items for which the co-owner of an Apartment is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by Association, the proceeds of the insurance received by Association, or the insurance trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of any insurance maintained by the co-owner of such Apartment, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement received by such co-owner on account of any insurance maintained by the co-owner of such Apartment. The floor and interior walls and windows or screens of any balcony or deck attached to his Apartment shall be maintained by the co-owner at his expense. Reference is made to S.C. Code Ann. §27-31-250 (1976), which code section is controlling of insurance proceeds when said code section is applicable by its terms.

XXI.

MAINTENANCE AND REPAIR OF

COMMON ELEMENTS BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility services to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common

Elements, the Association shall, at its expense, repair such incidental damage.

XXII.

PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER OF APARTMENT AND SEPARATE INSURANCE COVERAGE

The co-owner of each Apartment may, at such co-owner's own expense, obtain insurance coverage for loss of or damage to any furniture, appliances, plumbing, fixtures, furnishings, carpet, floor, and ceiling, and wall coverings, personal effects and other personal property belonging to such co-owner and may, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while within such co-owner's Apartment or upon the Common Elements. All such insurance obtained by the co-owner of each Apartment shall, where available, provide that the insurer waives its right of subrogation as to any claims against other co-owners of Apartments, the Association, and the respective servants, agents and guests of said other co-owners and Association. Risk of loss of or damage to any furniture, appliances, furnishings, personal effects and other personal property (other than such furniture, appliances, furnishings and personal property constituting a portion of the Common Elements) belonging to or carried on the person of the co-owner located in or upon the Common Elements shall be borne by the co-owner of each such Apartment. All furniture, appliances, furnishings, carpet, floor, ceiling, and wall coverings and personal property constituting a portion of the Common Elements and held for the joint use and benefit of all co-owners of all Apartments shall be covered by such insurance as shall be maintained in force and effect by Association as hereinafter provided. The co-owner of an Apartment shall have no personal liability for any damages caused by the Association or in connection with the use of the Common Elements. The co-owner of an Apartment shall be liable for injuries or damage resulting from an accident in his own Apartment, to the same extent and degree that the co-owner of a house would be liable for an accident occurring within the house.

XXIII.

EMINENT DOMAIN

(1) Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the Common Elements or one or more Apartments or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board of Directors of the Association and each Apartment owner shall be entitled to notice thereof and the Board of Directors shall, and the Apartment owners at their respective expense may, participate in the proceedings incident thereto.

(2) With respect to Common Elements, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Apartment owner's interest therein. After such determination, each Apartment owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest in the Common Elements and facilities. This provision does not prohibit a majority of Apartment owners from authorizing the Board of Directors to use such damages or awards for replacing or restoring the Common Elements so taken on the remaining land, or on other acquired land, provided that this Master Deed and Regime Plans are duly amended.

(3) With respect to one or more Apartments or portions thereof, the damages or awards for such taking shall be determined in proceedings for insurance on account of damage or destruction and pursuant to the By-Laws of the Association, and shall be deposited with the Insurance Trustee as so defined therein. Even though the damages or awards may be payable to one or more Apartment owners, the Apartment owners shall deposit the damages or awards with the Insurance Trustee, and in the event of failure to do so, at the option of the Board of Directors, either a special assessment shall be

BK 736 · 371

made against a defaulting Apartment owner on his unit at the amount of the award or the amount of such award shall be set off against the sums hereafter made payable to such Apartment owner. The proceeds of the damages or awards shall be distributed or used in the manner provided for in the By-Laws of the Association and the owners of affected Apartments shall have the rights provided in the By-Laws of the Association for insurance proceeds provided the damaged Apartments or parts thereof are removed from the Regime and from the provisions of the Act as may be allowed by applicable law. If the property is not removed from the Regime and from the provisions of the Act, and one or more Apartments are taken, in whole or in part, the taking shall have the following effects:

(a) If the taking reduces the size of an Apartment and the remaining portion of the unit may be made tenantable, the Apartment shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the Apartment. In the event of any surplus in the award the balance shall be distributed to the mortgagee (if any) of the Apartment to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Apartment owner. If there is a balance of the award distributed to the Apartment owner or a mortgagee, the Apartment owner's percentage of undivided interest in the Common Elements and facilities shall be equitably reduced to the extent allowed by law. This reduction shall be done by reducing such interest in the proportion by which the floor area of the Apartment is reduced by the taking, and then recomputing the percentages of undivided interest of all Apartment owners in the Common Elements.

(b) If the taking destroys or so reduces the size of an Apartment that it cannot be made tenantable, the award shall be paid to the mortgagee (if any) of the Apartment to the extent of the unpaid balance of its mortgage and the excess, if any, shall be distributed to the Apartment owner, and the remainder of the Apartment shall become a part of the Common Elements and shall be placed in condition for use by all Apartment owners in the manner approved by the Board of Directors. The percentages of undivided interests in the Common Elements appurtenant to the Apartment that continue as part of the property shall, to the extent allowed by law, be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Apartment owners.

(c) Changes in Apartments, in the Common Elements, and in the ownership of the Common Elements that are affected by the taking referred to in this Article XXIII shall be evidenced by an appropriate amendment to this Master Deed and Regime Plans, which must be approved by a majority of the owners of the Apartments, together with the unit mortgagee if any.

XXIV.

INSURANCE

The Association shall insure the Regime against risks, as is set forth in the By-Laws of the Association attached hereto (as the same may be amended from time to time), without prejudice to the right of each co-owner to insure his Apartment on his own account or for his own benefit.

XXV.

APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED AND ASSESSED AGAINST THE REGIME AS A WHOLE

In the event that any taxing authority having jurisdiction over the Regime shall levy or assess any tax or special assessment against the Regime as a whole, as opposed to levying and assessing such tax or special assessment against each Apartment and its appurtenant undivided interest in the Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a common expense by the Association, and any taxes or special assessments which are to be levied shall be included, wherever possible, in the estimated annual budget of the

R-869

Association, or shall be separately levied and collected as an assessment by the Association, against all of the co-owners of Apartments and said Apartments if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by Association in the event that such tax or special assessment is levied against the Regime, as a whole, instead of against each separate Apartment and its appurtenant undivided interest in the Common Elements shall be apportioned among the co-owners of all Apartments so that the amount of such tax or special assessment so paid or to be paid by Association and attributable to and to be paid by the co-owner or co-owners of each Apartment shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in the Common Elements appurtenant to each Apartment bears to the total undivided interest in the Common Elements appurtenant to all Apartments. In the event that any tax or special assessment shall be levied against the Regime in its entirety, without apportionment by the taxing authority to the Apartments and appurtenant undivided interests in the Common Elements, then the assessment by Association, which shall include the proportionate shares of such tax or special assessment attributable to each Apartment and its appurtenant undivided interest in the Common Elements, shall separately specify and identify the amount of such assessment attributable to such tax or special assessments, and the amount of such tax or special assessment so designated shall be and constitute a lien prior to every other claim, save lien claims for taxes, state or federal, and claims of prior mortgage holders, upon any Apartment and its appurtenant undivided interest in the Common Elements to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Apartment and its appurtenant undivided interest in the Common Elements.

XXVI.

AMENDMENT OF MASTER DEED

Subject to the provisions of Article XI of this Master Deed and subject to any applicable laws requiring a greater majority, neither this Master Deed nor any of its provisions shall be revoked or amended without the approval of the co-owners owning at least sixty-six per cent (66%) of the Apartments and at least sixty-six per cent (66%) of the total interest in the Common Elements and the record holders of first mortgages affecting at least sixty-six per cent (66%) of the Apartments and at least sixty-six per cent (66%) of the total interest in the Common Elements, except that the system of administration as set forth in the Charter and By-Laws of the Association may be amended and modified from time to time in accordance with the provisions of the Act and other applicable law, the Charter, and By-Laws of the Association. Any such amendment or revocation shall be executed and subscribed with the same formalities required in South Carolina for the making of deeds, and recorded in the public records of Horry County. Scrivener's errors, upon affidavit of counsel preparing this Master Deed, may be corrected by filing of such affidavit, attached to any such amendment.

XXVII.

REMEDIES IN EVENT OF DEFAULT

The co-owner or co-owners of each Apartment shall be governed by and shall comply with the provisions of this Master Deed, and the Charter and/or the By-Laws of the Association and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. The following described defaults by the co-owner or co-owners of any Apartment shall entitle the Association or the co-owner or co-owners of other Apartment or Apartments to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Charter, or By-Laws of the Association, or its rules and regulations, shall be grounds for relief which may include, but not be limited to, an action to recover sums due for damages, injuctive relief, foreclosure of lien or any combination thereof and

BOOK 736 PAGE 373

which relief may be sought by Association, or, if appropriate, by an aggrieved co-owner of an Apartment, or both.

B. The co-owner or co-owners of each Apartment shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of an Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of any such alleged default by the co-owner of any Apartment, the Association, if successful, shall be entitled to recover against the Apartment and have a lien for the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the co-owner of any Apartment be entitled to such attorney's fees.

D. The failure of the Association or of the co-owner of an Apartment to enforce any right, provision, covenant, or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of the Association or of the co-owner of an Apartment to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to Association or the co-owner or co-owners of an Apartment pursuant to any terms, provisions, covenants, or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies, or privileges as may be available to such party at law or in equity.

F. The failure of the Developer or of any mortgagee to enforce any right, privilege, covenant or condition which may be granted to them, or either of them, by this Master Deed or other above mentioned document shall not constitute waiver of the right of either of said parties to thereafter enforce such right, provision, covenant or condition in the future.

XXVIII.

USE OR ACQUISITION OF INTEREST IN THE

REGIME TO RENDER USER OR ACQUIRER SUBJECT

TO PROVISIONS OF MASTER DEED, RULES AND REGULATIONS

All present or future co-owners, tenants, or any other person who might use the facilities of the Regime in any manner, are subject to the provisions of this Master Deed and all documents appurtenant hereto and incorporated herewith, and the mere acquisition or rental of any Apartment, or the mere act of occupancy of any Apartment, shall signify: (1) that the provisions of this Master Deed are accepted and ratified in all respects; and (2) that the owner(s) of such Apartment covenances in the decreasing percentage set forth in Article VI and Exhibit "C" of this Master Deed.

XXIX.

RIGHT OF DEVELOPER TO REPRESENTATION ON BOARD

OF DIRECTORS OF ASSOCIATION

So long as the Developer is the co-owner of Five (5) or more Apartments in the Regime, the said Developer shall have the right to designate and select all of the persons who shall serve as members of each Board of Directors of the Association; and so long as the Developer is the

7:6 374

2,114

co-owner of at least One (1) but not more than Four (4) Apartments, the Developer shall have the right to designate and select a majority of the persons who shall serve as a member of each Board of Directors of the Association. Whenever the Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association the manner in which such person or persons shall be designated shall be as provided in the Charter, and/or By-Laws of the Association, and the Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by the Developer need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Developer to designate directors shall terminate on December 31, 1984.

Any representative of the Developer serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote upon any management contract or other matter between Developer and Association where the Developer may have a pecuniary or other interest. Similarly, Developer as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between the Developer and the Association where the Developer may have a pecuniary or other interest.

XXX.

ANNUAL REPORTS TO BE PROVIDED TO LENDER

So long as any lender is the co-owner or holder of mortgages encumbering five (5) or more Apartments in the Regime, the Association shall furnish said lender with at least one copy of the annual financial statement and report of the Association audited satisfactorily to such lender and setting forth such details as the said lender may reasonably require, including a detailed statement of annual carrying charges or income collected, and operating expenses, such financial statement and report to be furnished upon written request of such lender(s) within ninety (90) days following the end of each fiscal year.

Such statement shall be prepared in accordance with generally accepted accounting principles and shall contain the certificate of a Certified Public Accountant to that effect. Further, the accountant or accounting firm shall include as a special item(s) any information to which a reasonable man would attach importance in the management of his own financial affairs, should said information not appear readily from the face of the statement.

XXXI.

SEVERABILITY

In the event that any of the terms, provisions or covenants of this Master Deed are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

XXXII.

MASTER DEED BINDING UPON DEVELOPER, ITS SUCCESSORS

AND ASSIGNS, AND SUBSEQUENT CO-OWNERS

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Apartment and its appurtenant undivided interest in the Common Elements and this Master Deed shall be binding upon the Developer, its successors and assigns, and upon all

16
MP 7.38 1.75

215

parties who may subsequently become Co-owners of Apartments in the Regime, and their respective heirs, legal representatives, successors and assigns.

XXXIII.

DEVELOPER'S EASEMENTS AND RESERVATIONS

Developer, its successors and assigns, shall have the right of ingress and egress over, upon, and across the Common Elements, and/or any phases which may now or hereafter be submitted to the Regime in accordance with the provisions of this Master Deed, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to construction, development and sales of the Apartments and operation of the Apartments and Common Elements, the Regime and the overall development of the Property of which the Regime is a part. Developer, its successors and assigns, shall retain the right to use the sales office and any model Apartments and the Common Elements in connection therewith during the period of development and sale of the Regime, including additional phases of development.

Developer also reserves unto itself, its successors and assigns, the right to submit additional phases to the Regime in accordance with this Master Deed and applicable law.

Developer also reserves unto itself, its successors and assigns, a perpetual, non-exclusive easement across Phase I of the Regime for access, egress, ingress, utilities, drainage and all other purposes reasonably necessary and/or appropriate (in the Developer's sole discretion) for the development of and construction of improvements upon the land described as Phase II on Exhibit "A" of the Master Deed, whether or not the Developer elects to submit said Phase II to the Regime.

At the time of submission of Phase II to the Regime, the Developer shall be deemed to have reserved to itself and its successors and assigns an identical easement across the phase so submitted for the benefit of the remaining phase or parcel, whether or not so stated in the instrument of submittal.

XXXIV.

DEFINITIONS

Unless the context requires otherwise, the terms used in this Master Deed and the Exhibits attached hereto shall have the meanings contained in S.C. Code Ann. §27-31-20 (1976) and in the remainder of the Act.

XXXV.

MISCELLANEOUS

Attached hereto as Exhibit "D" and made a part hereof by reference is the Architect's Certificate required by S.C. Code Ann. § 27-31-110 (1976).

Attached hereto as an Appendix and made a part hereof by reference is a copy of the By-Laws of the Association, as required by S.C. Code Ann. §27-31-150 (1976).

IN WITNESS WHEREOF, the Developer has executed this Master Deed this 29th day of January, 1982.

Signed, sealed and delivered
in the presence of:

Lynette Rogers

Catherine Finley

SUMMEY BUILDING SYSTEMS, INC.

(SEAL)

By: David W. Hoyle, President

17

BOOK 736 PAGE 276

316

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

Personally appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw Sunmey Building Systems, Inc. by David W. Hoyle, Its President, sign, seal and deliver the within Master Deed and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Lynette Rogers

SWORN to and subscribed before me this 28th day of January, 1982.

Deacon Tarleer (L.S.)
Notary Public for South Carolina

My Commission expires: 7-11-82

IB

BK 736 PG 377

371

EXHIBIT "A"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

DESCRIPTION OF REAL PROPERTY

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which Is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1982, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

BK 736 PG 378

3,078

EXHIBIT "B"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Apartment Description and Numbers

Exhibit "B" incorporates into the Master Deed a boundary survey, an as-built survey and site plan, showing the location of the buildings and other improvements, and a set of floor plans of the buildings which show graphically the dimensions, area, and location of the Common Elements appurtenant to and affording access to each Apartment.

The aforementioned survey and plans (hereinafter collectively called "the Regime Plans") were prepared by Bartholomew Associates, Architects, and are recorded in the Office of the Clerk of Court for Horry County in Condominium Plat Book 1 at Page 142, and are hereby incorporated herein and made a part hereof by reference.

The Regime Plans and the as-built survey show that the 108 Apartments in Phase I of the Regime are contained in 5 buildings. The Regime Plans, filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book 1 at Page 142 show, in detail, the individual units, together with their specifications and dimensions, and also show the location of the swimming pool and related facilities.

All kitchen and other electrical appliances, air-conditioning, wherever installed, and heating units and hot water heaters located within each Apartment are neither General Common Elements nor Limited Common Elements, but are the personal property of the Apartment owners.

Included in the General Common Elements are asphalt parking areas, concrete and wood walks, a pool, wood and concrete sundeck (if any) around the pool, and landscaping. Specific designations of General Common Elements contained herein are for clarification only and are to be read in conjunction with the definitions of such elements contained elsewhere in the Master Deed and also in conjunction with the Regime Plans.

Included in the Limited Common Elements are decks, exclusive of individual unit decks and porches, exterior stairways, exterior fences, and entry courts, exterior storage areas, and permanent exterior trash collection areas. Skylights, where applicable, are Limited Common Elements, but responsibility for maintenance and repair of skylights is upon unit owners who/which have skylights.

Bk 716 Pg 329

3'1/

EXHIBIT "C"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Schedule of Percentage of Undivided Interest in the Common Elements Appurtenant to Apartments in Tilghman Beach and Racquet Club Horizontal Property Regime (Phase I), pursuant to S.C. Code Ann. §27-31-60 (1976):

Apartment Number	Value for Stautory Purposes	Apartments' Percentage of Undivided Interest in the Common Elements Upon Subdivision to the Regime	
		Phase I	Phase II
Building 1			
121	$90,000.00	0.9259	0.4695
221	90,000.00	0.9259	0.4695
321	90,000.00	0.9259	0.4695
122	90,000.00	0.9259	0.4695
222	90,000.00	0.9259	0.4695
322	90,000.00	0.9259	0.4695
123	90,000.00	0.9259	0.4695
223	90,000.00	0.9259	0.4695
323	90,000.00	0.9259	0.4695
124	90,000.00	0.9259	0.4695
224	90,000.00	0.9259	0.4695
324	90,000.00	0.9259	0.4695
125	90,000.00	0.9259	0.4695
225	90,000.00	0.9259	0.4695
325	90,000.00	0.9259	0.4695
126	90,000.00	0.9259	0.4695
226	90,000.00	0.9259	0.4695
326	90,000.00	0.9259	0.4695
127	90,000.00	0.9259	0.4695
227	90,000.00	0.9259	0.4695
327	90,000.00	0.9259	0.4695
128	90,000.00	0.9259	0.4695
228	90,000.00	0.9259	0.4695
328	90,000.00	0.9259	0.4695
Building 3			
129	90,000.00	0.9259	0.4695
229	90,000.00	0.9259	0.4695
329	90,000.00	0.9259	0.4695
130	90,000.00	0.9259	0.4695
230	90,000.00	0.9259	0.4695
330	90,000.00	0.9259	0.4695
131	90,000.00	0.9259	0.4695
231	90,000.00	0.9259	0.4695
331	90,000.00	0.9259	0.4695
132	90,000.00	0.9259	0.4695
232	90,000.00	0.9259	0.4695
332	90,000.00	0.9259	0.4695
133	90,000.00	0.9259	0.4695
233	90,000.00	0.9259	0.4695
333	90,000.00	0.9259	0.4695
134	90,000.00	0.9259	0.4695
234	90,000.00	0.9259	0.4695
334	90,000.00	0.9259	0.4695
Building 4			
115	90,000.00	0.9259	0.4695
215	90,000.00	0.9259	0.4695
315	90,000.00	0.9259	0.4695
116	90,000.00	0.9259	0.4695
216	90,000.00	0.9259	0.4695
316	90,000.00	0.9259	0.4695
117	90,000.00	0.9259	0.4695

R-877

Apartment Number	Value for Statutory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Subdivision to the Regime	
		Phase I	Phase II
Building 4 (cont'd)			
217	$90,000.00	0.9259	0.4695
217	90,000.00	0.9259	0.4695
118	90,000.00	0.9259	0.4695
218	90,000.00	0.9259	0.4695
318	90,000.00	0.9259	0.4695
119	90,000.00	0.9259	0.4695
219	90,000.00	0.9259	0.4695
319	90,000.00	0.9259	0.4695
120	90,000.00	0.9259	0.4695
220	90,000.00	0.9259	0.4695
320	90,000.00	0.9259	0.4695
Building 10			
155	90,000.00	0.9259	0.4695
255	90,000.00	0.9259	0.4695
355	90,000.00	0.9259	0.4695
156	90,000.00	0.9259	0.4695
256	90,000.00	0.9259	0.4695
356	90,000.00	0.9259	0.4695
157	90,000.00	0.9259	0.4695
257	90,000.00	0.9259	0.4695
357	90,000.00	0.9259	0.4695
158	90,000.00	0.9259	0.4695
258	90,000.00	0.9259	0.4695
358	90,000.00	0.9259	0.4695
159	90,000.00	0.9259	0.4695
259	90,000.00	0.9259	0.4695
359	90,000.00	0.9259	0.4695
160	90,000.00	0.9259	0.4695
260	90,000.00	0.9259	0.4695
360	90,000.00	0.9259	0.4695
Building 11			
145	90,000.00	0.9259	0.4695
245	90,000.00	0.9259	0.4695
345	90,000.00	0.9259	0.4695
146	90,000.00	0.9259	0.4695
246	90,000.00	0.9259	0.4695
346	90,000.00	0.9259	0.4695
147	90,000.00	0.9259	0.4695
247	90,000.00	0.9259	0.4695
347	90,000.00	0.9259	0.4695
148	90,000.00	0.9259	0.4695
248	90,000.00	0.9259	0.4695
348	90,000.00	0.9259	0.4695
149	90,000.00	0.9259	0.4695
249	90,000.00	0.9259	0.4695
349	90,000.00	0.9259	0.4695
150	90,000.00	0.9259	0.4695
250	90,000.00	0.9259	0.4695
350	90,000.00	0.9259	0.4695
151	90,000.00	0.9259	0.4695
251	90,000.00	0.9259	0.4695
351	90,000.00	0.9259	0.4695
152	90,000.00	0.9259	0.4695
252	90,000.00	0.9259	0.4695
352	90,000.00	0.9259	0.4695
153	90,000.00	0.9259	0.4695
253	90,000.00	0.9259	0.4695
353	90,000.00	0.9259	0.4695
154	90,000.00	0.9259	0.4695
254	90,000.00	0.9259	0.4695
354	90,000.00	0.9259	0.4695

EXHIBIT "D"

TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Architect's Certificate

Pursuant to S.C. Code Ann. §27-31-110 (1976), I certify that the Regime Plans described in the attached Exhibit "B" of Tilghman Beach and Racquet Club Horizontal Property Regime (situate upon real estate described in the attached Exhibit "A"), fully depict (within reasonable construction tolerances) the layout, location, number identification, and dimensions of the buildings and improvements contained in Phase I of the Regime, said plans being dated April 24, 1981.

Norman R. Bartholomew, A.I.A.
Bartholomew Associates, Architects
S. C. License No. 2274

Myrtle Beach, South Carolina

January 29, 1982.

STATE OF SOUTH CAROLINA
NORMAN R. BARTHOLOMEW
RALEIGH, N.C.
2274
REGISTERED ARCHITECT

BOOK 736 PAGE 382

2.84

APPENDIX "A"

BY-LAWS

OF

TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

I. INTRODUCTION

These are the By-Laws of Tilghman Beach and Racquet Club Condominium Association, Inc., an electrosynary corporation organized and existing under the laws of the State of South Carolina (hereinafter called "the Association"), which has been organized for the purpose of administering Tilghman Beach and Racquet Club Horizontal Property Regime, a horizontal property regime established pursuant to S.C. Code Ann. §27-31-10 et seq. (1976) (hereinafter called "the Regime"). The Regime is identified by the name Tilghman Beach and Racquet Club and is located upon the real property in Horry County, South Carolina, described on Exhibit "A" attached hereto and made a part hereof by reference.

(a) The provisions of these By-Laws are applicable to the Regime, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Charter of the Association and in the Master Deed of the Regime (hereinafter "the Master Deed") which has been recorded herewith in the public records of Horry County, South Carolina, at the time portions of said property and the improvements now or hereafter situate thereon were submitted to the plan of condominium ownership. The terms and provisions of said Charter and Master Deed shall be controlling wherever the same may be in conflict with these By-Laws.

(b) All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the Regime or any of the facilities thereof in any manner, are subject to the regulations set forth in these By-Laws and in said Charter and Master Deed (and any amendments thereto).

(c) The office of the Association shall be 210 North Ocean Boulevard, North Myrtle Beach, South Carolina, or such other place as the Board of Directors of the Association may designate from time to time.

(d) The fiscal year of the Association shall be the calendar year.

(e) The seal of the Association shall bear the name of the Association and the word "South Carolina".

(f) There shall be no dividends or profits paid to any [illegible] nor shall any part of the [illegible] of the Association be distributed to [illegible] of Directors or [illegible]. In the event there are any [illegible] disbursements in excess of [illegible] applied [illegible] in a manner [illegible] rendered, may [illegible] purpose and [illegible] agreed upon [illegible] performance of [illegible] dissolution of [illegible] members as [illegible] such payment, benefit or distribution shall be deemed [illegible] distribution of income.

This Association shall have no power of [illegible] nature whatsoever. [illegible] as well as the number of [illegible] provided in the Master Deed of the Regime and [illegible] Association and the voting rights of the owners of interests in said [illegible]

BOOK 726 PG 383

shall be as set forth in the Master Deed of the Regime and/or the By-Laws of the Association.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

(a) All persons who are owners of Apartments in the Regime shall be members of this Association. Such membership shall automatically terminate when such person is no longer the owner of such Apartment and membership shall be limited to such owners.

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

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

(d) Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of the meeting for which their use is sought.

(e) Approval or disapproval of an Apartment co-owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such co-owner if in an Association meeting.

(f) Except where otherwise required under the provisions of the Charter of the Association, these By-Laws, the Master Deed, or where the same may otherwise be required by law, the affirmative vote of the co-owners of fifty-one (51%) per cent of the Apartments represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(a) The annual members' meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, at a time to be designated on the first Saturday in March of each year for the purpose of electing directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Saturday. The first organizational meeting shall be held in 1982.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from the members of the Association representing a majority of Apartment ownership.

(c) Notice of all members' meetings, annual or special, shall be given by the President, Vice President or Secretary of the Association, or other officers of the Association in the absence of said persons, to each member, unless waived in writing, as hereinafter provided, and shall state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than ten (10) nor more than sixty (60) days prior to the date set for the meeting, and notice shall be mailed or presented personally to each member within such time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed properly given when deposited in the United States mails addressed to the member at his post office address as it appears on the records of the Association, the postage thereon prepaid. Proof of

735 384

such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, whenever the latter percentage of attendance may be required as set forth in the Charter, these By-Laws or the Master Deed, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.

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

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

i) Calling of the roll and certifying proxies
ii) Proof of notice of meeting or waiver of notice
iii) Reading of minutes
iv) Reports of officers
v) Reports of committees
vi) Appointment by chairman of inspectors of election
vii) Election of directors
viii) Unfinished business
ix) New business
x) Adjournment

4. BOARD OF DIRECTORS

(a) The first Board of Directors of the Association and succeeding Boards of Directors, shall consist of seven (7) persons, four (4) serving for two (2) years, and three (3) serving for one (1) year. At least a majority of the Board of Directors shall be members of the Association, or shall be authorized representatives, officers, or employees of a corporate member of the Association. The first Board of Directors of the Association shall be comprised of the four (4) persons designated to act and serve by the Association President, which President is named in the Charter, which said persons shall serve until their successors are elected at the first meeting of the members of the Association called after Phase I of the property identified herein have been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Horry County, South Carolina. Should any member of said first Board of Directors be unable to serve for any reason, a majority of the remaining members of the Board of Directors shall have the right to select and designate a party to act and serve as a director for the unexpired term of said director who is unable to serve. So long as Sunney Building Systems, Inc., hereinafter referred to as the "Developer", is the owner of five (5) or more Apartments in the Regime, the Developer shall have the right to designate and select all of the persons who shall serve as members of each Board of Directors of the Association; and so long as the Developer is the owner of at least one, but not more than four (4) Apartments, the Developer shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association, which power of the Developer to designate directors as above recited to serve until the earlier of (i) [illegible], 1982. The Developer has hereto (by the Charter of the Association) designated the initial Board of Directors and Officers of the Association. Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina corporations for profit.

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

1) The Developer, as Sponsor of the Regime, shall at the beginning of the election of the Board of Directors, designate and select that number of the members of the Board of Directors which it should be entitled to designate and select in accordance with the provisions of these By-Laws,

B 736 P 185

and upon such designation and selection by the Developer by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by the Developer shall be deemed and considered for all purposes directors of the Association, and shall thereforth perform the offices and duties of such directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws.

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

iii) Vacancies in the Board of Directors shall be filled for the balance of the unexpired term of the Director(s) replaced by the remaining directors, except that should any vacancy in the Board of Directors be created in any directorship previously filled by any person designated and selected by the Developer, such vacancy shall be filled by the Developer designating and selecting, by written instrument delivered to any officer of the Association, the successor director to fill the vacated directorship for the unexpired term thereof.

iv) At the first annual meeting of the members held after Phase I of the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Horry County, South Carolina, the term of office of the four (4) directors receiving the highest plurality of votes shall be established at two (2) years, and the term of office of the other three (3) directors shall be established at one year. Thereafter, as many directors of the Association shall be elected at the annual meeting as there are regular terms of office of directors expiring at such time, and the term of the directors so elected at the annual meeting of the members each year shall be for two (2) years expiring at the second annual meeting following their election, and thereafter until their successors are duly elected and qualified or until removed in the manner elsewhere provided or as may be provided by law for the removal of directors of South Carolina corporations for profit. If at the time of the first annual meeting, the Developer is the co-owner of at least one (1), but not more than four (4) Apartments, then the Developer shall have the right to designate and select two (2) directors whose term of office shall be established at two (2) years, and one director whose term of office shall be established at one (1) year.

v) In the election of directors, there shall be appurtenant to each Apartment as many votes for directors as there are directors to be elected (regardless of the percentage interest in common elements appurtenant to such Apartment); provided, however, that no member or co-owner of any Apartment may cast more than one vote for any person nominated as director, it being the intent hereof that voting for directors shall be non-cumulative.

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

(c) The organizational meeting of the newly elected Board of Directors shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which it

was elected, and no further notice of the organization meeting shall be necessary provided a quorum shall be present.

(d) Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegram, at least three (3) days prior to the day named for such meeting, unless notice is waived.

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

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

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

(h) The presiding officer of directors' meetings shall be the President of the Association. In the absence of the President, the directors present shall designate one of their number to preside.

(i) Directors will serve without compensation, save reimbursement for out-of-pocket expenses incurred in the ordinary conduct of Association affairs.

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

(i) To prepare a budget, make, levy and collect [illegible] against members and members' Apartments to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

(ii) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the general and limited elements, services and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members;

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

(iv) To make and amend regulations governing the use of the property, real and personal, in the Regime so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Master Deed;

(v) To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Apartments in the Regime, as may be necessary or convenient in the operation and management of the Regime, and in accomplishing the purposes set forth in the Master Deed; provided, however, that any agreement for professional management of the Regime, or any other contract providing for services of the Developer, may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice;

(vi) Subject to the provisions of subparagraph (v) above, to contract for the management of the common areas and facilities in the Regime and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Master Deed to have approval of the Board of Directors or membership of the Association;

(vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the Master Deed and the regulations hereinafter promulgated governing use of the property in the Regime;

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

(ix) To carry insurance for the protection of the Regime, the members of the Association, and the Association against casualty, liability and other risks;

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

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

5. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS

(a) Notwithstanding anything contained in these By-Laws to the contrary any meeting of members or directors may be held at any place within or without the State of South Carolina.

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

6. OFFICERS

(a) The executive officers of the Association shall be the President and Secretary, who shall also be directors; a Treasurer; and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. Any person may hold two (2) or more offices. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

BOOK 736 PAGE 389

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

(c) Any Vice President, unless the majority may select a presiding officer, shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

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

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

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

7. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Master Deed shall be supplemented by the following provisions:

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

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

(i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of Common Elements, landscaping, street and walkways, office expense, swimming pool, utility services, security [illegible], liability insurance, administration and reserves (operating and replacement); and

(ii) Proposed assessments against each member. Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 1st of the year for which the budget is [illegible]. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each member concerned. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to at any time in its sole discretion levy an

Book 7.6 Page 389

additional assessments in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

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

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

(e) An audit of the accounts of the Association shall be made annually by a certified public accountant and a copy of the report shall be furnished to each member not later than April 1st of the year following the year for which the report is made.

(f) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

8. PARLIAMENTARY RULES

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

9. AMENDMENTS TO BY-LAWS

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

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

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

(c) In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than fifty-one per cent (51%) of the value of the Regime (subject to any right to have proposed amendments considered). Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of Horry County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members.

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the

BK 736 PG 390

Association shall be recognized if such member be not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

(c) Notwithstanding the foregoing provisions of this Article 9, no amendment to these By-Laws which shall abridge, amend or alter the right of the Developer to designate and select members of each Board of Directors of the Association, as provided in Article 4 hereof, may be adopted or become effective without the prior written consent of the Developer. Neither will any right of any Apartment mortgagee be affected with the express written consent of said mortgagee(s).

10. INSURANCE

Section 1. Insurance Required. The Board of Directors shall obtain and maintain, to the extent available, at least the following insurance:

A. Hazard Insurance. The Association shall insure all Apartments and all Common Elements against floods and against all hazards and risks normally covered by a standard hazard policy, including fire and lightning, the hazards and risks covered by "extended coverage", and vandalism and malicious mischief. All Apartments and all Common Elements shall be insured for the full replacement cost thereof (without deduction or allowance for depreciation), and the policy of insurance shall have a full replacement cost rider. Such insurance shall cover only the Apartments and the Common Elements. The hazard insurance obtained by the Association may provide that an amount not to exceed one thousand dollars ($1,000.00) shall be deductible from any indemnity payable on account of a single loss, but any such deductible portion shall be borne by the Association as a common expense, regardless of the number of co-owners or Apartments directly affected by the loss. The hazard insurance obtained by the Association shall provide coverage for common expenses with respect to the Apartments and Common Elements during any period of repair or reconstruction.

B. Liability Insurance. The Association shall also obtain premises liability insurance on all Apartments and Common Elements and the Association providing for a single-limit indemnity of not less than one million dollars ($1,000,000.00) and covering bodily and personal injury and property damage. Such liability insurance shall cover claims of one or more Co-Owners against one or more other Co-Owners as well as claims of third parties against one or more Co-Owners or the Association. The Association shall not be required, however, to obtain public liability insurance covering accidents occurring within the limits of an Apartment or off the Regime Property. If available at a reasonable cost, the Association shall cause to be included within the policy of liability insurance premises medical payment coverage. The policy shall not be cancelled or reduced as to coverage limits without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto.

C. The Association shall also obtain and maintain workmen's compensation insurance to the extent necessary to comply with any applicable law.

D. The Association shall also obtain and maintain such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this article 7, shall be subject to the following provisions:

A. Company Minimum Rating. All [illegible] and General [illegible] of the Association [illegible] shall be a [illegible] company or companies not [illegible] most recent [illegible] Reports. [illegible] permitted to expire except upon resolution of a majority of [illegible]

that effect. Certificates of all policies of hazard insurance obtained on the Regime by the Board of Directors, together with proof of payment of the premiums thereon, shall be delivered upon request to any Co-Owner or any entity holding a lien upon or security interest in any Apartment.

B. Hazard and Flood Policy Provisions. All policies of hazard and flood insurance on the Apartments and the Common Elements obtained by the Board of Directors shall provide as follows:

1. The indemnity payable on account of any damage to or destruction of the Apartments or the Common Elements shall be payable to any mortgagees holding mortgages on any damaged Apartments as their interests may appear;

2. The policy shall not be cancelled or reduced as to coverage limits without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto;

3. No Co-Owner shall be prohibited from insuring his own Apartment for his own benefit;

4. No insurance obtained by a Co-Owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors.

5. If the Board of Directors determines that it is possible to obtain such a provision, no right of subrogation shall exist against any Owner or members of his household or his social guests;

6. The insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the Owners determine in the manner provided in the Master Deed or by applicable law not to repair or restore the damaged property; and

7. The policy shall not be cancelled on account of the actions of one or more, but fewer than a majority, of the Co-Owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions (except provisions 1 and 2 above) may be waived by unanimous resolution of the Board of Directors preceded by ten (10) days' notice to every Co-Owner or by resolution of a majority of the Co-Owners.

C. Claims. The Board of Directors of the Association shall have exclusive authority to prosecute and settle on behalf of the Owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors. In the event of damage to or destruction of any portion of the Apartments or the Common Elements, the Board of Directors shall promptly file claims for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any security interests in any Apartment which may be entitled to participate in such claim of the filing of the same.

D. Insurance Proceeds. The net proceeds received by or due to the Board of Directors [illegible] insurance policies shall be paid by the Board of Directors to the Insurance Trustee as trustee for the Co-Owners and their mortgagees. The Insurance Trustee shall be a state or federal [illegible] the Board of Directors and [illegible] five million dollars ($5,000,000.00) per [illegible] hold the insurance proceeds in trust and [illegible] deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-Owners by a vote of eighty (80%) percent of the voting rights or by applicable law decide not to reconstruct the damaged property, the Insurance Trustee shall distribute the insurance proceeds

Liber 736 : 592

among all the Owners and/or mortgagees with liens upon the Apartment, as their respective interest may appear, in proportion to their respective undivided interests in the portion or portions of the property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the damaged property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the Co-Owners and their respective mortgagees in proportion to their interests in the portion or portions of the Property repaired or restored. In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely without further inquiry upon the written authorizations submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance or filing claims for any payments due under any such insurance.

E. Insurance by Owners. Each Co-Owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on his Apartment for his own benefit;

2. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and

3. Liability insurance covering accidents occurring within the boundaries of his Apartment.

Any Owner who obtains hazard insurance on his Apartment for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a certificate of the policy of insurance, if requested.

F. Where the insurance proceeds are insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the co-owners directly affected by the damage, in proportion to the value of their respective Apartments; and if any one or more of those Co-Owners owning a minority of Apartments in the Regime directly affected by the damage shall refuse to make such payments, the majority of such Co-Owners directly affected by such damage may proceed with the reconstruction at the expense of all the co-owners benefitted thereby, upon proper resolution setting forth the circumstances of the case and the cost of the works, with the intervention of the Association.

11. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Regime, it being recognized that the delegation of such duties to one entity is in the best interests of the co-owners of all Apartments. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the co-owners of Apartments, costs and expenses which will be continuing or non-recurring costs, as the case may be, which costs and expenses are sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation and management, the said Association has heretofore been granted the right to make, levy and collect assessments against the co-owners of all Apartments and said Apartments. In furtherance of said grant of authority to Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Regime, the following provisions shall be operative and binding upon the co-owners of all Apartments, to wit:

FILED 734 P.M. 00

(a) All assessments levied against the co-owners of Apartments shall unless otherwise provided for in these By-Laws, be in the same proportion to the total assessment made against all co-owners of Apartments and their Apartments as the undivided interest in the Common Elements appurtenant to each Apartment bears to the total undivided interest in the Regime. Should the Association be the co-owner of any Apartment or Apartments, the assessment which would otherwise be payable to Association by the co-owner of such Apartment or Apartments, reduced by the Apartment or Apartments by the Association, shall be apportioned and assessment therefor levied ratably among the co-owners of all Apartments which are not owned by the Association, based upon their proportionate interests in the Common Elements exclusive of interests therein appurtenant to any Apartment or Apartments owned by Association.

(b) The assessment levied against the co-owner of each Apartment and his Apartment shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year which shall correspond to the calendar year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Regime, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amount required to be collected as an assessment each year. Upon adoption of such annual budget by the Board of Directors of Association, copies of said budget shall be delivered to each co-owner of an Apartment and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each co-owner shall not affect the liability of any co-owner for such assessment. Should the Board of Directors at any time determine, in the sole discretion of said Board of Directors, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Regime, or in the event of emergencies, said Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

(d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to provide and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by Association, although nothing herein contained shall limit Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the project in the event of emergencies, or in the event the sums collected from the co-owners of Apartments are insufficient to meet the then fiscal requirements of Association, but it shall not be a requirement that these monies be used for such latter purposes, as a special assessment may be levied therefor if deemed to be preferable by the Board of Directors of the Association in the sole discretion of said Board of Directors.

(e) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project, shall include therein a sum to be collected and maintained as a working operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by co-owners of Apartments, as a result of emergencies or for other reason placing financial stress upon the Association.

(f) Except as to special assessments, all monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of the operating and managing the Regime, or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws and the Master Deed and as the monies for any assessment are paid unto the Association by any co-owner of an Apartment the same may be commingled with the monies paid to the Association by the other co-owners of Apartments. Although all funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, who shall own any common surplus in the proportions of their percentage of undivided interest in the Regime, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer this membership interest therein, except as an appurtenance to his Apartment.

(g) The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto Association, on or before the due dates for such payment. When in default, the Board of Directors may accelerate the remaining installments of any annual assessment upon notice thereof to the Apartment co-owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice, which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within thirty (30) days after their due date, the Association, through its Board of Directors, may proceed to enforce and collect the said assessments against the Apartment co-owner owing the same in any manner provided for by the Act, including the right of foreclosures and sale. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear a monthly penalty of Twenty-Five and 00/100 ($25.00) Dollars per month until such delinquent assessment or installment thereof, and all interest due thereon, has been paid to Association.

(h) The co-owner or co-owners of each Apartment shall be personally liable to Association for the payment of all assessments, regular or special, which may be levied by Association while such party or parties are co-owner or co-owners of an Apartment in the Regime. In the event that any co-owner or co-owners are in default in payment of any assessment or installment thereof owed to the Association, such co-owner or co-owners of any Apartment shall be personally liable for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

(i) No co-owner or an Apartment may exempt himself from liability for any assessment levied against such co-owner and his Apartment by waiver of the use or enjoyment of any of the General Common Elements, or by abandonment of the Apartment, or in any other manner.

(j) Recognizing that the necessity for providing proper operation and management of the project entails the continuing payment of costs and expenses therefor, which results in benefit to all of the co-owners of Apartments, and that the payment of such common expense represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of the co-owner of each Apartment, Association is hereby granted a lien upon each Apartment and its appurtenant undivided interest in the Common Elements, which lien shall secure the monies due for all assessments now or hereafter levied against the co-owner of each Apartment, which lien shall also secure all costs and expenses, which may be due on the amount of any delinquent assessment in favor of the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Apartment and its appurtenant undivided interest in the the Common Elements. The lien granted to Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to rental from the co-owner of any Apartment

from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Apartment. The rental required to be paid shall be equal to the rental charged on comparable type of Apartments in North Myrtle Beach, South Carolina. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of eight percent (8%) per annum on any such advances made for such purpose.

(k) The lien herein granted unto Association shall be effective from and after the time of recording in the public records of Horry County, South Carolina, a claim of lien stating the description of the Apartment encumbered thereby, the name of the record co-owner, the amount due and the date when due, and the lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed, and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The claim of lien filed by the Association shall be subordinate to the lien of any mortgage encumbering the Apartment.

In the event that any person, firm or corporation shall acquire title to any Apartment and its appurtenant undivided interest in the Common Elements by virtue of any foreclosure, judicial sale or deed in lieu of foreclosure, such person, firm or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Apartment and its appurtenant undivided interest in the Common Elements subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title subject to the lien of any assessment by Association representing an apportionment of taxes or special assessment levied by taxing authorities against the Regime in its entirety. In the event of the acquisition of title to an Apartment by foreclosure, judicial sale or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all co-owners of all Apartments as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or as preventing the enforcement of collection of such payment by means other than foreclosure.

(l) Whenever any Apartment may be sold by the co-owner thereof, which sale shall be concluded only upon compliance with other provisions of these By-Laws, the Association upon written request of the co-owner of such Apartment shall furnish to the proposed purchaser a statement verifying the status of payment of any assessment which shall be due and payable to Association by the co-owner of such Apartment. Such statement shall be executed by an officer of the Association and any purchaser may rely upon such statement in concluding the proposed purchase transaction, and Association shall be bound by such statement. Any holder of any mortgage on any Apartment shall have the right at all reasonable times and frequency to inquire as to the past due status of any assessment payments, and the Association shall, upon request, promptly notify any such mortgagee when any assessment payment becomes more than sixty (60) days past due, or when any default in the performance of any obligation required by the Master Deed or these By-Laws as to such Apartment is not cured within sixty (60) days.

In the event that an Apartment is to be sold at the time when payment of any assessment against the co-owner of said Apartment and said Apartment due to Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase shall, after payment of those sums given priority by S.C. Code Ann. §27-31-240 (1976) be applied by the purchaser first to payment of any then delinquent assessment or installment thereof due to Association before the payment of any proceeds of purchase to the co-owner of any Apartment who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of an Apartment (other than a deed in lieu of foreclosure as set forth above), the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

Notwithstanding anything in these By-Laws to the contrary, it is declared that until December 31, 1985, each Apartment shall be exempt from the assessment created herein until such time as the Apartment is conveyed by the Developer to a Grantee owner. Except as expressly provided herein, no Apartment and its appurtenant percentage interest shall be exempt from said assessment. Moreover, until such time as an Apartment is conveyed by the Developer to a Grantee, the Developer shall be assessed and pay to the Association in lieu of an assessment thereof a sum equal to the actual amount of actual operating expenditures assessed by the Association against co-owners of Apartments other than those owned by the Developer. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 1986, the Developer shall be subject to assessments as provided for in these By-Laws so that it will pay assessments on the same basis provided for under these By-Laws as the same are paid by Apartment co-owners.

12. DEFINITIONS

All terms defined in the Master Deed shall have the same meaning in these By-Laws as in the Master Deed.

13. CONFLICTS

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

EXHIBIT "A"

TO BY-LAWS OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

DESCRIPTION OF REAL PROPERTY

A. Legal Description of Real Property Submitted to Regime by the Execution and Recording of the Master Deed:

PHASE I:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

B. Legal Description of Real Property Which Developer May Elect to Submit to the Regime by the Execution and Recording of a Subsequent Appropriate Instrument, but Which is Not Submitted by the Master Deed:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Seaway Building Systems, Inc. by deed of Charles T. Tilghman, H. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 3, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

APPENDIX "B"

The State of South Carolina

EXECUTIVE DEPARTMENT

CERTIFICATE OF INCORPORATION

BY THE SECRETARY OF STATE

WHEREAS, Lynette Rogers, 211 Laurel St., Conway, SC
Richard H. Lovelace, Jr., 211 Laurel St., Conway, SC

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

TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

which has been duly and regularly organized, did on the 7th day of January, A. D. 19 82, file with Secretary of State a written declaration setting forth:

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

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

And Whereas, Said Declarants and Petitioners further declared and affirmed:

FIRST: Their names and residences are as above given.

SECOND: The name of the proposed Corporation is TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.

S.N 736 ... 159

THIRD: The place at which it proposes to have its headquarters or be located is 210 North Ocean Blvd. North Myrtle Beach, SC

FOURTH: The purpose of the said proposed Corporation is to operate and manage the Tilghman Beach and Racquet Club Condominium Association and all duties and responsibilities incident thereto.

R-896

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

Lynette Rogers	P. O. Box 1708, Conway, SC	President
Richard H. Lovelace, Jr.	P. O. Box 1708, Conway, SC	Vice President/Secretary

SIXTH: That they desire to be incorporated: in perpetuity.

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

GIVEN under my hand and the seal of the State, at Columbia, this 7th day of January in the year of our Lord one thousand nine hundred and 82 and in the two hundred and sixth year of the Independence of the United States of America.

John T. Campbell

JOHN T. CAMPBELL,
Secretary of State.

Bk 736 Pg 400

400

R-897

SUPPLEMENT

TO

MASTER DEED

OF

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

Developer:

SUMMEY BUILDING SYSTEMS, INC.
Post Office Box 487
Dallas, North Carolina 28034

Prepared by:

Law Offices of
Richard M. Lovelace, Jr., P.A.
Post Office Box 1704
Conway, South Carolina 29526

BK 746 PG 313

313

5-11-82
11-27479

SUPPLEMENTAL

MASTER DEED

for

TILGHMAN BEACH AND RACQUET CLUB

Horizontal Property Regime

Ocean Drive Section, North Myrtle Beach
Horry County, South Carolina

****

I.

HORIZONTAL PROPERTY REGIME CREATED

SUMMEY BUILDING SYSTEMS, INC., a South Carolina corporation ("the Developer") having its principal office at Myrtle Beach, Horry County, South Carolina, is the sole owner in fee simple of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands and buildings hereinbelow described, together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime to be known as Tilghman Beach and Racquet Club Horizontal Property Regime ("the Regime"), in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §27-31-10 et seq. (1976) ("the Act"), which Regime is set forth in Master Deed of Tilghman Beach and Racquet Club Horizontal Property Regime executed by Summey Building Systems, Inc., dated January 29, 1982, recorded in the Office of the Clerk of Court for Horry County on February 2, 1982, in Deed Book 736 at Page 360.

The real property and improvements thereon hereby submitted to the Regime is more fully described as follows:

PHASE II:

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as the remainder of Block 22, and the remainder of Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Enlpten, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises to be submitted to the Horizontal Property Regime for Phase II, Tilghman Beach and Racquet Club.

Derivation of Title:

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M.

BOOK 746 PAGE 314

314

W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

Attached hereto as Exhibit "A" and made a part hereof by reference is the Architect's Certificate required by S.C. Code Ann. §27-31-110 (1976). Exhibit "B" attached hereto sets forth and designates the Phase II units.

IN WITNESS WHEREOF, the Developer has executed this Supplement to Master Deed this 6th day of May, 1982.

Signed, Sealed, and Delivered in the Presence of:

SUMMEY BUILDING SYSTEMS, INC.

By: (L.S.)
David W. Hoyle, President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, deposes and says that (s)he saw Summey Building Systems, Inc., by David W. Hoyle, its President, sign, seal, and as its act and deed, deliver the within Supplement to Master Deed; and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

SWORN to before me this

6th day of May, 1982.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 7-14-82

BOOK 746 PAGE 315

315

EXHIBIT "A"

TO SUPPLEMENT TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Architect's Certificate

Pursuant to S.C. Code Ann. §27-31-110 (1976), I certify that the Regime Plans described in the Exhibit "B" attached to the Master Deed of Tilghman Beach and Racquet Club Horizontal Property Regime (situate upon real estate described in the attached Supplement), fully depict (within reasonable construction tolerances) the layout, location, number identification, and dimensions of the buildings and improvements contained in Phase II of the Regime, said plans being dated April 24, 1981

Herman E. Bartholomew, A.I.A.
Bartholomew Associates, Architects
S. C. License No. 2274

Myrtle Beach, South Carolina

May 6, 1982.

*(For original Architect's Certificate as to Phase I, see title page of Regime Plans and Exhibit "D" to Master Deed)

EXHIBIT "B"

TO SUPPLEMENT TO MASTER DEED OF

TILGHMAN BEACH AND RACQUET CLUB HORIZONTAL PROPERTY REGIME

Schedule of Percentage of Undivided Interest in the Common Elements Appurtenant to Apartments in Tilghman Beach and Racquet Club Horizontal Property Regime (Phase I), pursuant to S.C. Code Ann. §27-31-60 (1976):

Apartment Number	Value for Statutory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Subdivision to the Regime Phase I	Phase II
Building 2			
101	$90,000.00	0.9259	0.4695
201	$90,000.00	0.9259	0.4695
301	$90,000.00	0.9259	0.4695
102	$90,000.00	0.9259	0.4695
202	$90,000.00	0.9259	0.4695
302	$90,000.00	0.9259	0.4695
103	$90,000.00	0.9259	0.4695
203	$90,000.00	0.9259	0.4695
303	$90,000.00	0.9259	0.4695
104	$90,000.00	0.9259	0.4695
204	$90,000.00	0.9259	0.4695
304	$90,000.00	0.9259	0.4695
105	$90,000.00	0.9259	0.4695
205	$90,000.00	0.9259	0.4695
305	$90,000.00	0.9259	0.4695
106	$90,000.00	0.9259	0.4695
206	$90,000.00	0.9259	0.4695
306	$90,000.00	0.9259	0.4695
107	$90,000.00	0.9259	0.4695
207	$90,000.00	0.9259	0.4695
307	$90,000.00	0.9259	0.4695
108	$90,000.00	0.9259	0.4695
208	$90,000.00	0.9259	0.4695
308	$90,000.00	0.9259	0.4695
Building 3			
109	$90,000.00	0.9259	0.4695
209	$90,000.00	0.9259	0.4695
309	$90,000.00	0.9259	0.4695
110	$90,000.00	0.9259	0.4695
210	$90,000.00	0.9259	0.4695
310	$90,000.00	0.9259	0.4695
111	$90,000.00	0.9259	0.4695
211	$90,000.00	0.9259	0.4695
311	$90,000.00	0.9259	0.4695
112	$90,000.00	0.9259	0.4695
212	$90,000.00	0.9259	0.4695
312	$90,000.00	0.9259	0.4695
113	$90,000.00	0.9259	0.4695
213	$90,000.00	0.9259	0.4695
313	$90,000.00	0.9259	0.4695
114	$90,000.00	0.9259	0.4695
214	$90,000.00	0.9259	0.4695
314	$90,000.00	0.9259	0.4695
Building 4			
139	$90,000.00	0.9259	0.4695
239	$90,000.00	0.9259	0.4695
339	$90,000.00	0.9259	0.4695
140	$90,000.00	0.9259	0.4695
240	$90,000.00	0.9259	0.4695
340	$90,000.00	0.9259	0.4695
141	$90,000.00	0.9259	0.4695

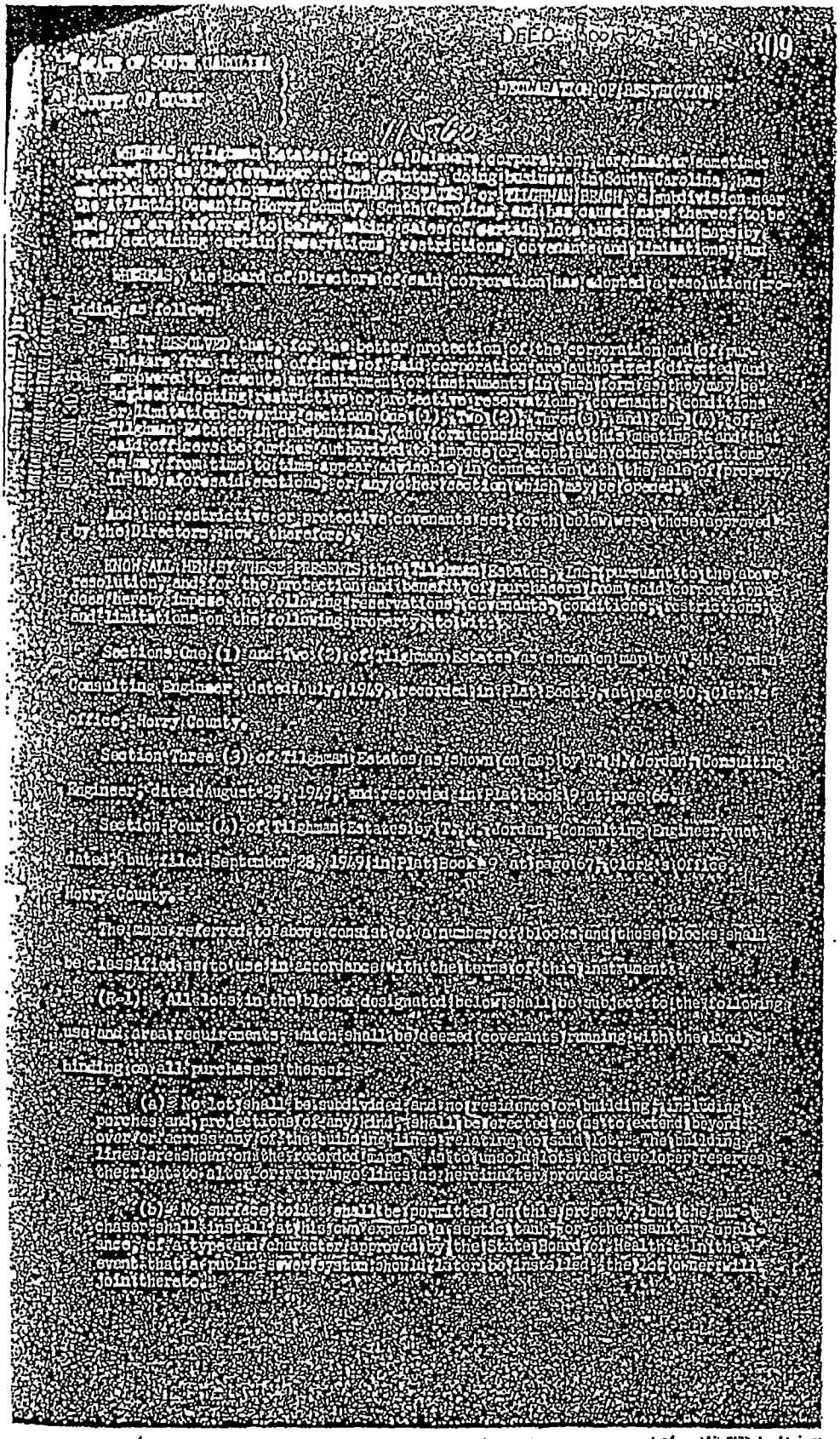
BOOK 746 PAGE 337

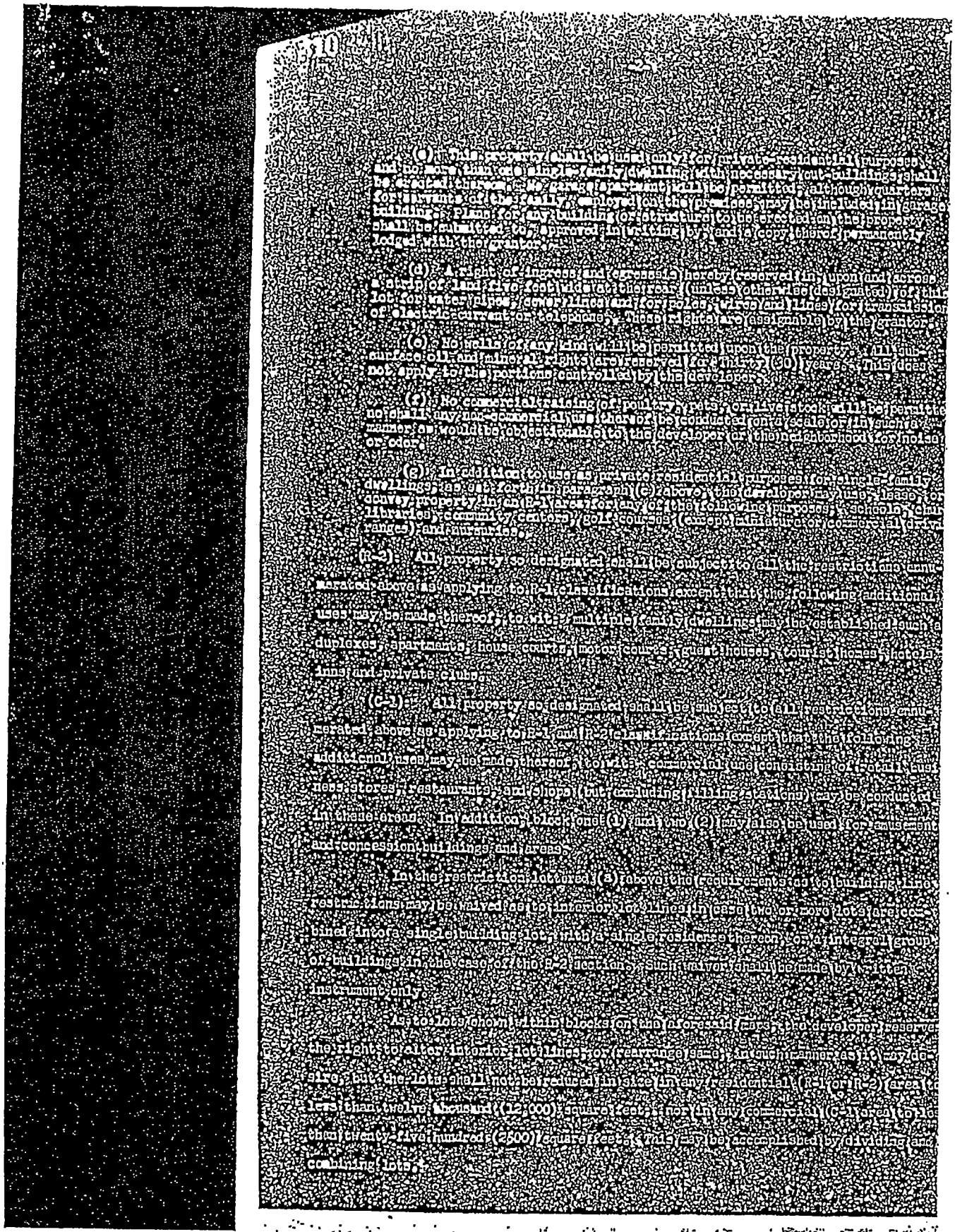
317

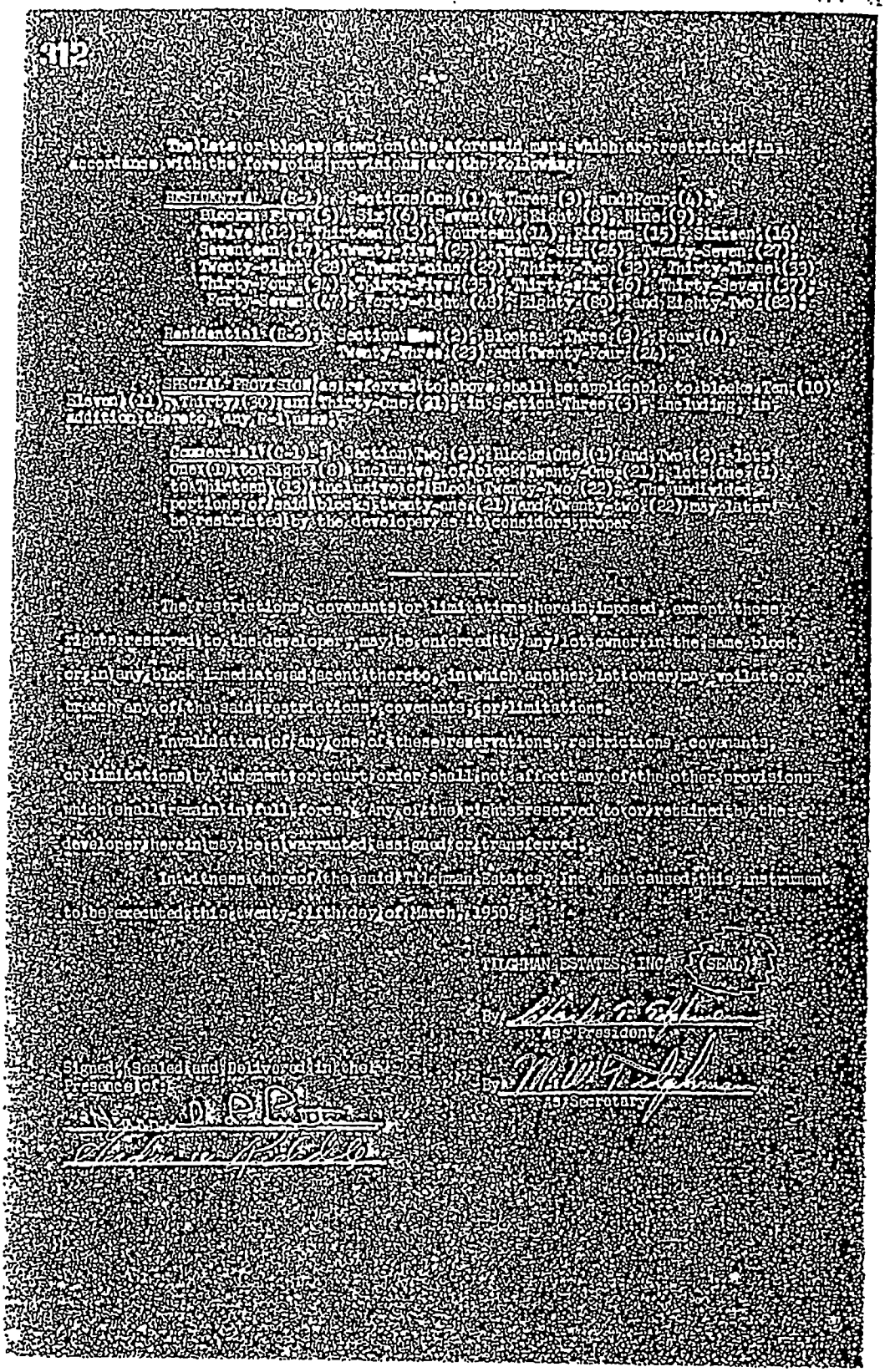
Apartment Number	Value for Statutory Purposes	Apartments Percentage of Undivided Interest in the Common Elements Upon Submission to the Regime	
		Phase I	Phase II
Building 6 (cont'd)			
241	$90,000.00	0.9259	0.4695
341	90,000.00	0.9259	0.4695
142	90,000.00	0.9259	0.4695
242	90,000.00	0.9259	0.4695
342	90,000.00	0.9259	0.4695
143	90,000.00	0.9259	0.4695
243	90,000.00	0.9259	0.4695
343	90,000.00	0.9259	0.4695
144	90,000.00	0.9259	0.4695
244	90,000.00	0.9259	0.4695
344	90,000.00	0.9259	0.4695
Building 7			
125	90,000.00	0.9259	0.4695
225	90,000.00	0.9259	0.4695
325	90,000.00	0.9259	0.4695
126	90,000.00	0.9259	0.4695
226	90,000.00	0.9259	0.4695
326	90,000.00	0.9259	0.4695
127	90,000.00	0.9259	0.4695
227	90,000.00	0.9259	0.4695
327	90,000.00	0.9259	0.4695
128	90,000.00	0.9259	0.4695
228	90,000.00	0.9259	0.4695
328	90,000.00	0.9259	0.4695
Building 8			
166	90,000.00	0.9259	0.4695
266	90,000.00	0.9259	0.4695
366	90,000.00	0.9259	0.4695
167	90,000.00	0.9259	0.4695
267	90,000.00	0.9259	0.4695
367	90,000.00	0.9259	0.4695
168	90,000.00	0.9259	0.4695
268	90,000.00	0.9259	0.4695
368	90,000.00	0.9259	0.4695
169	90,000.00	0.9259	0.4695
269	90,000.00	0.9259	0.4695
369	90,000.00	0.9259	0.4695
170	90,000.00	0.9259	0.4695
270	90,000.00	0.9259	0.4695
370	90,000.00	0.9259	0.4695
171	90,000.00	0.9259	0.4695
271	90,000.00	0.9259	0.4695
371	90,000.00	0.9259	0.4695
Building 9			
161	90,000.00	0.9259	0.4695
261	90,000.00	0.9259	0.4695
361	90,000.00	0.9259	0.4695
162	90,000.00	0.9259	0.4695
262	90,000.00	0.9259	0.4695
362	90,000.00	0.9259	0.4695
163	90,000.00	0.9259	0.4695
263	90,000.00	0.9259	0.4695
363	90,000.00	0.9259	0.4695
164	90,000.00	0.9259	0.4695
264	90,000.00	0.9259	0.4695
364	90,000.00	0.9259	0.4695
165	90,000.00	0.9259	0.4695
265	90,000.00	0.9259	0.4695
365	90,000.00	0.9259	0.4695

BOOK 746 PAGE 318

318







13908

Deed Book 741 Page 385

FILED
HORRY COUNTY
'82 MAR 25 PM 2:50
BILLIE G. RICHARDSON
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) AMENDMENT TO MASTER DEED
COUNTY OF HORRY)

WHEREAS, Summey Building Systems, Inc. is the developer of a condominium project located in the City of North Myrtle Beach, Horry County, South Carolina, popularly known as Tilghman Beach and Racquet Club; and

WHEREAS, by Master Deed filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Deed Book 736 at Page 360, the property subject to said Master Deed was encumbered and controlled pursuant to the terms and conditions of said Master deed; and

WHEREAS, Paragraph XXVI of said Master Deed set out the provisions for the amendment of said Master Deed; and

WHEREAS, Summey Building Systems, Inc. is the owner and holder of more than the requisite number of units to amend the Master Deed;

NOW, THEREFORE, the Master Deed, as previously filed, as reflected in the recitations above, is hereby amended as follows:

1. Page 22 should reflect that the following units are in Building 11:

151
251
351
152
252
352
153
253
353
154
254
354

Page 22 should reflect that the following units are in Building 12:

145
245
345
146
246
346
147
247
347

BOOK 741 PAGE 385

385

148
248
348
149
249
349
150
250
350

2. Page 29, Paragraph 6, OFFICERS, Subparagraph (a), should read as follows:

> (a) The executive officers of the Association shall be the President and Secretary, who shall also be Directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. No person may hold two (2) or more offices. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

3. The following provision is added to the Master Deed as Article XXXIV:

THE PIER AND PROVISOS THEREOF

> Anything in this Master Deed to the contrary notwithstanding, Tilghman Beach and Racquet Club Condominium Association, Inc. shall have the power to establish, and enforce at law or equity, rules and regulations as to access, use, control and maintenance of the Pier abutting the property and to the easements and improvements which are a part of same. Said Pier is not a Common Element as same are established and defined in this Master Deed, but has been or shall be conveyed to the Association by the Grantor for the use and benefit of the Association and its members. It is hereby declared and agreed upon by the Grantor, for itself and for each dwelling hereinabove established or to be established pursuant to the provisions of this Master Deed, that the costs and expenses of maintaining, owning, and enjoying said Pier and its appurtenances are proper expenses to be shared by the Co-owners of the Dwellings and such expenses are hereby agreed to be and are declared to be valid and proper Common Expenses to be included in the budget of the Association and collectible in the same manner as, and together with the assessments pursuant to the provisions of Article XIX of this Master Deed. Nothing in the Master Deed shall be construed as prohibiting the Association from charging fees for use of said Pier and the improvements thereon nor from admitting members of the general public thereto, provided any such activity is for the benefit of the Association and its members.

4. Article XXXIV of said Master Deed is hereby changed to Article XXXV.

5. Article XXXV of said Master Deed is hereby changed to Article XXXVI.

Witness the due execution hereof this 19th day of March, 1982.

Signed, Sealed, and Delivered
In the Presence of:

SUMMEY BUILDING SYSTEMS, INC.

By: _____ (L.S.)
David W. Hoyle, President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Summey Building Systems, Inc., by David W. Hoyle, its President, sign, seal, and as the corporate act and deed, deliver the within Amendment to Master Deed; and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

SWORN to before me this
19th day of March, 1982.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 4-7-86

BOOK 741 PAGE 387

387

FILED
6-18-84
JN 18 P2:45
BILLIE S. [illegible]
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) MASTER DECLARATION OF INTENT AND SUPPLEMENT TO TITLE TO REAL ESTATE
COUNTY OF HORRY)

WHEREAS SUMMEY BUILDING SYSTEMS, INC. was the owner and developer of the condominium project known as Tilghman Beach and Racquet Club, a two-phased condominium development erected on Block 2 and Block 22, Tilghman Estates, Ocean Drive Section, North Myrtle Beach, Horry County, South Carolina; and

WHEREAS some question has arisen as to the nature and quality of title passed by various individual unit deeds; and

WHEREAS it was and is the intention of the Grantor to convey title to each unit in fee simple absolute, together with a covenant of general warranty;

NOW, THEREFORE, in order to set to rest any questions as to the nature and quality of title which passed from SUMMEY BUILDING SYSTEMS, INC. to any individual unit (as purchaser(s)) his/her/their heirs, successors, or assigns, to whom/which a deed from the Grantor has been heretofore delivered and recorded, for and in consideration of the sum of Five and 00/100 ($5.00) Dollars and the recitation set forth above, the undersigned, as Grantor, has granted, bargained, sold and released; and by these presents, does grant, bargain, sell and release unto the said Purchaser(s) of record from Summey Building Systems, Inc., his/her/their/its Heirs and Assigns forever, in and to any unit erected on the premises described below:

HORRY COUNTY ASSESSOR
Map Blk Parcel
001

ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying, and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in Real Estate Plat Book 72 at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete,

BOOK 877 PAGE 016

and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

These two blocks were conveyed to Summey Building Systems, Inc. by deed of Charles T. Tilghman, M. W. Tilghman, Catherine H. Tilghman, and Mary Elizabeth T. Dent by deed dated September 2, 1981, filed for record September 4, 1981, and recorded in Real Estate Deed Book 722 at Page 711, Office of the Clerk of Court for Horry County, South Carolina.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said title holders of record, his/her/their/its Heirs and Assigns forever.

AND Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said title holders of record, his/her/their/its Heirs and Assigns, against it and its Successors and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by grantor this 18th day of June, in the year of our Lo. one thousand nine hundred and four and in the two hundred eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered in the Presence of:

Harriett H. Coles

Witness

SUMMEY BUILDING SYSTEMS, INC.

By: David W. Hoyle, President

BOOK 877 PAGE 598

BOOK 877 PAGE 017

17

STATE OF NORTH CAROLINA)
COUNTY OF Horry)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Summey Building Systems, Inc., by David W. Hoyle, its President sign, seal, and as its act and deed, deliver the within Title to Real Estate; and that deponent, with the other witness whose name is subscribed above, witnessed the execution thereof.

Harriett H. Coles

SWORN to before me this
18th day of June, 1984.

Notary Public for North Carolina (L.S.)
My Commission Expires: 8-4-90

BOOK 877 PAGE 018

BOOK 878 PAGE 599

-3-

18

CAT. NO. NN00848
TO 2134 PNTI (7-78) American Land Title Association Single Form Policy — 1970 or Loan Policy — 1970

Schedule B

No. L 81370

Part I

This policy does not insure against loss or damage by reason of the following:

1. 1982 City and County Property taxes, liens not yet due and payable, and all subsequent years.

2. Declaration of Restrictions dated March 25, 1950, and recorded in Deed Book 78, at Page 309, records of Horry County.

3. A right of ingress and egress reserved in, upon and across a strip of land five (5') feet wide at the rear of the lot for utility purposes as set forth in the above set out restrictions.

4. Covenants, Conditions, Restrictions, Reservations, Easements, Liens for Assessments, Options, Powers of Attorney and Limitations on title created by the South Carolina Horizontal Property Act and as set forth in the Master Deed dated January 29, 1982, and recorded February 2, 1982, in Deed Book 736, at Page 360, and thereafter amended by an Amendment dated March 19, 1982, and recorded March 25, 1982, in Deed Book 741, at Page 385, and thereafter supplemented by a Supplement to Master Deed dated May 6, 1982, and recorded May 11, 1982, in Deed Book 746, at Page 313, records of Horry County.

5. Such matters of survey occuring subsequent to January 20, 1982, being the date of survey by C. B. Berry, R.L.S.

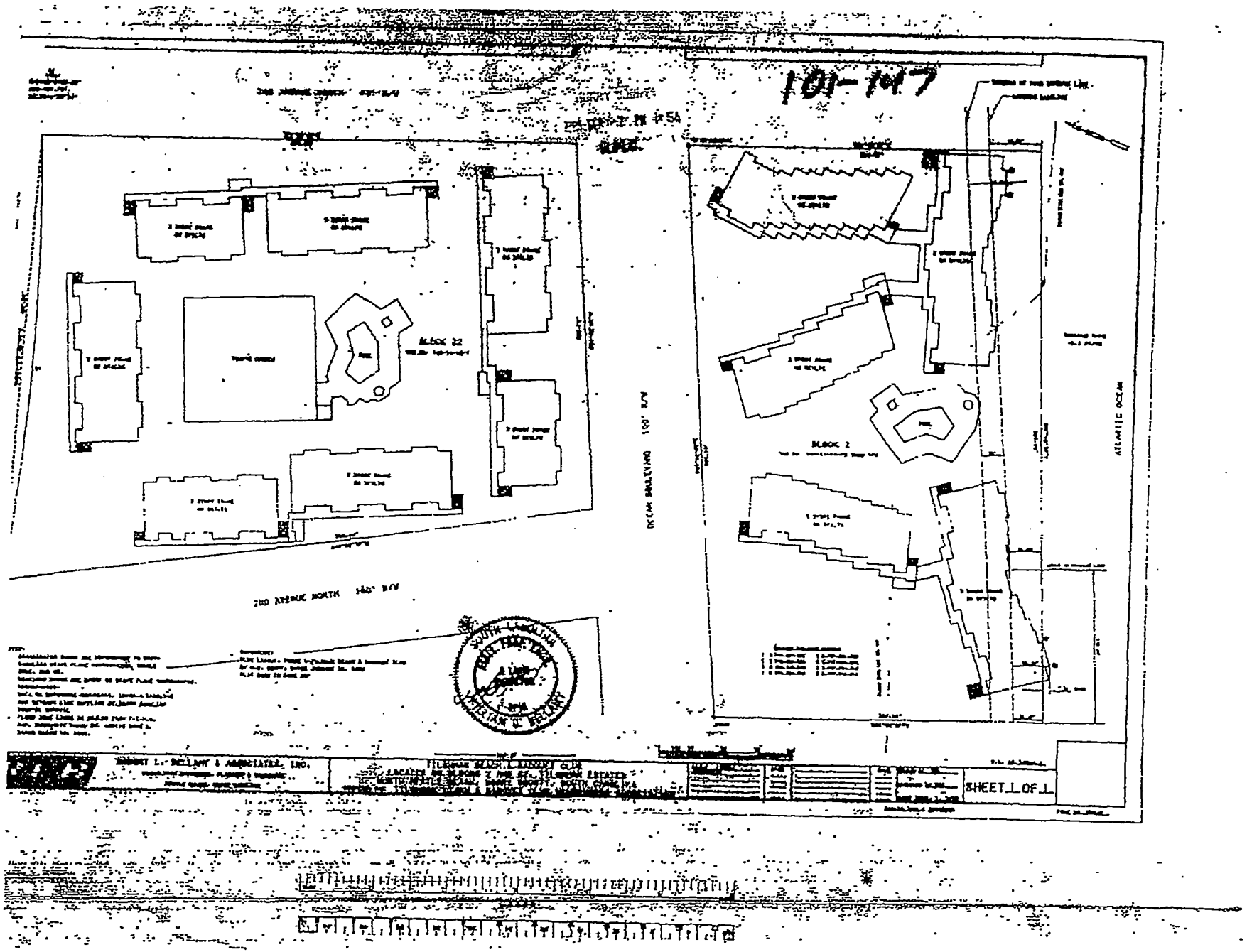
Part II

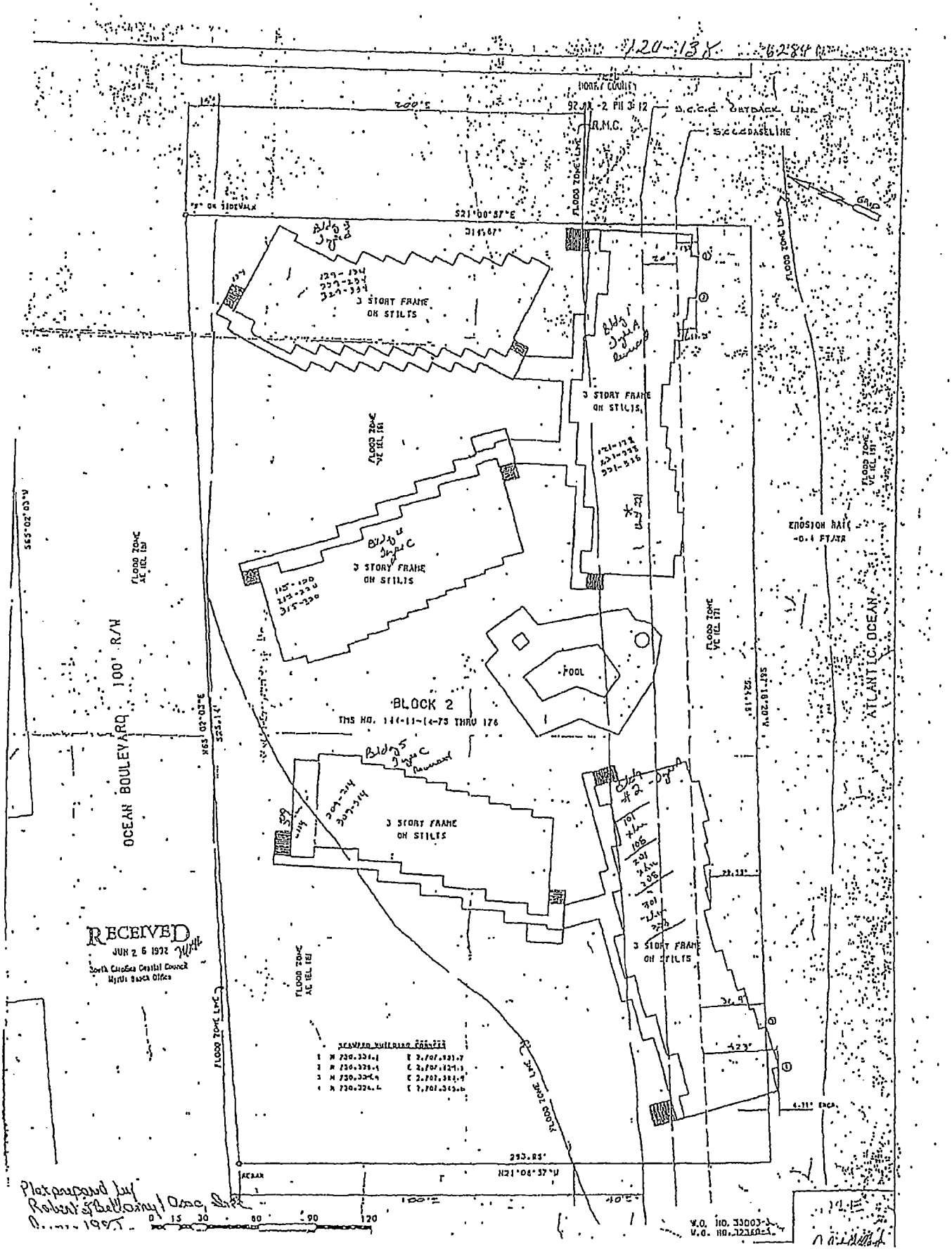
In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest.

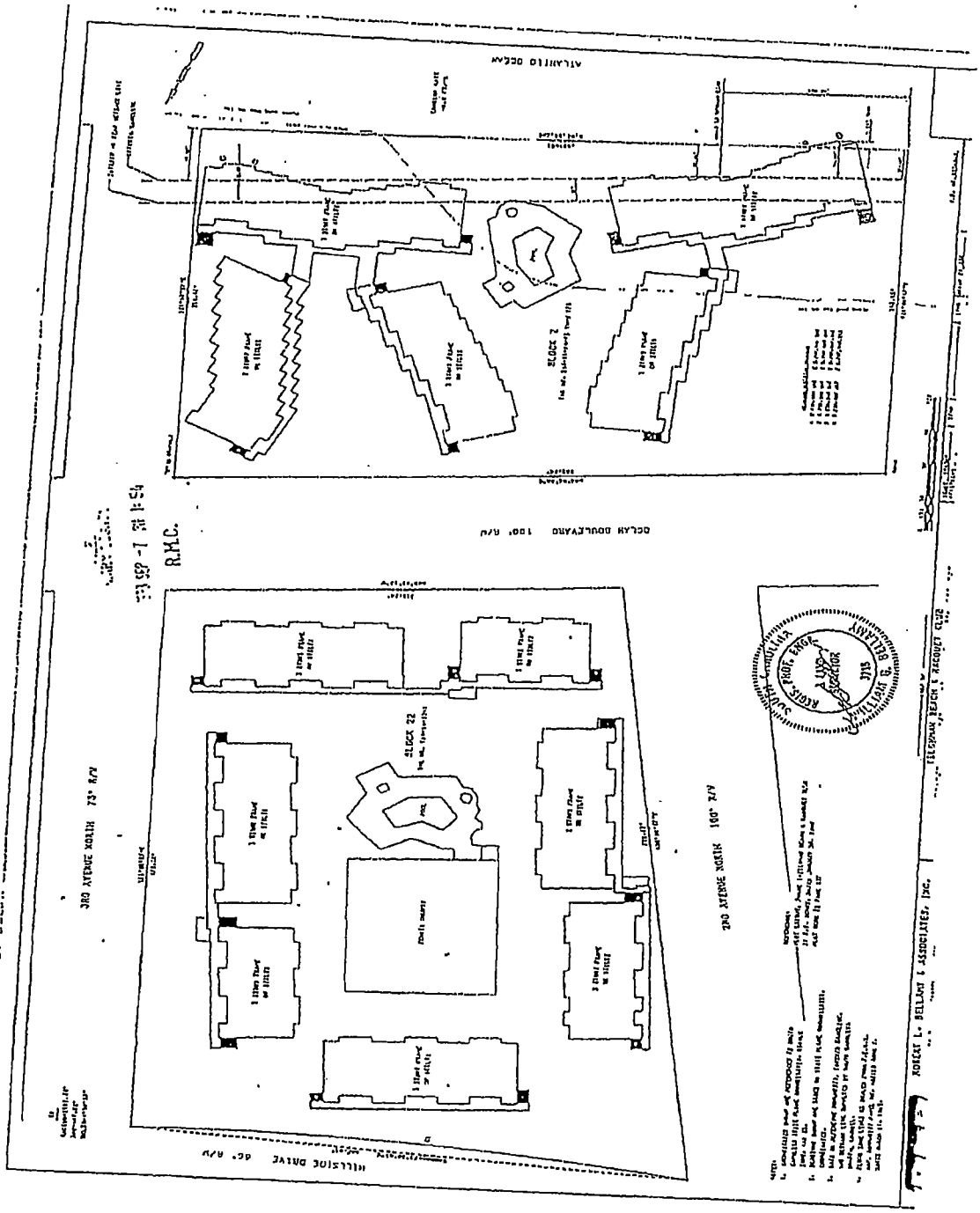
DWELLING NO. 111 (Phase II) of Tilghman Beach and Racquet Club, a Horizontal Property Regime established by the Grantor pursuant to the South Carolina Horizontal Prperty Act, Sections 27-31-10, et seq., South Carolina Code of Laws, as amended and submitted by Master Deed dated January 29, 1982, and recorded February 2, 1982, in the Office of the Clerk of Court for Horry County, South Carolina, in Deed Book 736, at Page 360, and as amended by Supplement to Master Deed recorded May 11, 1982, in Deed Book 746, at Page 313, as shown upon plans by Bartholomew Associates, Architects, which such plans are recorded in the Office of the Clerk of Court for Horry County, in Condominium Plat Book 1, at Page 142.

The real estate upon which the said Dwelling is situate is described as ALL AND SINGULAR, those certain pieces, parcels, or tracts of land, situate, lying and being in Little River Township, the City of North Myrtle Beach, Horry County, South Carolina, and being more particularly described and delineated as Phase I, Block 22, and Phase I, Block 2, as shown on that certain plat prepared to set out and delineate the property for Phase I of the Tilghman Beach and Racquet Club Condominium Project, located on Blocks 2 and 22, Tilghman Estates, as more particularly shown and depicted on a plat of this property prepared by C. B. Berry, R.L.S., South Carolina No. 2075, and dated January 20, 1982, and filed for record in the Office of the Clerk of Court for Horry County, South Carolina, in real estate Plat Book 72, at Page 237, which plat contains the most correct and accurate description of the parcels, and which plat description is referred to herein and incorporated by reference herein, for the most full, complete, and accurate description of the premises being submitted herewith to the Horizontal Property Regime for Phase I, Tilghman Beach and Racquet Club.

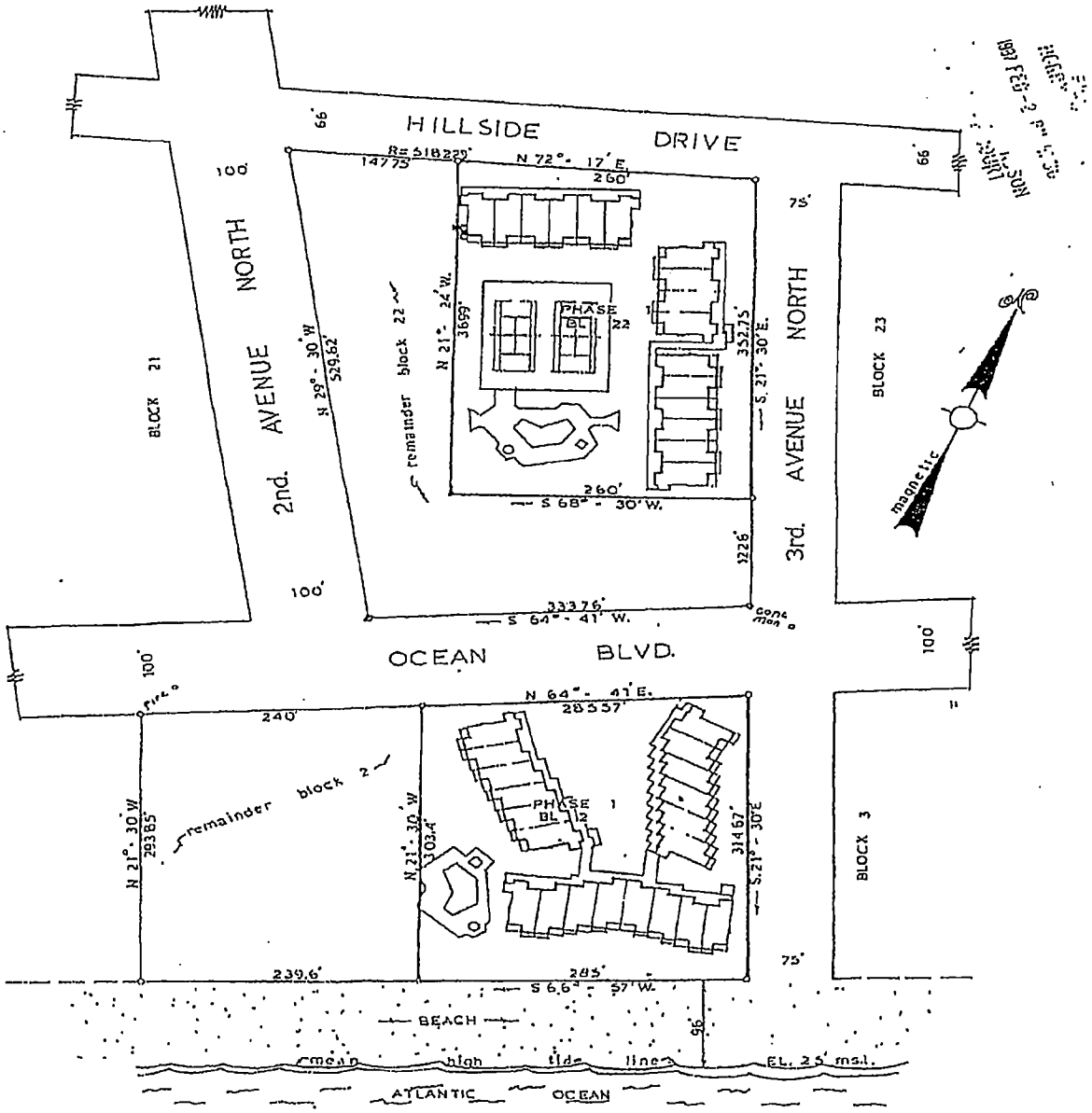
SUBJECT to all of the provisions of the aforesaid Master Deed.


101-M7
BLOCK 22
BLOCK 2
OCEAN BOULEVARD 100' R/W
ATLANTIC OCEAN
2ND AVENUE NORTH 160' R/W
SHEET 1 OF 1


BLOCK 2
THS NO. 144-11-14-75 THRU 176
3 STORY FRAME ON STILTS
POOL
OCEAN BOULEVARD
100' R/W
ATLANTIC OCEAN
FLOOD ZONE VE EL 19'
EROSION RATE -0.1 FT/YR
RECEIVED
JUN 2 6 1972
South Carolina Coastal Council
Myrtle Beach Office
293.83'
N21°08'37"W
S21°00'37"E
Plat prepared by
Robert F. Bellamy, Inc.



Plat Book 72. Page 2



PLOT LAYOUT
PHASE 1 - TILGHMAN BEACH & RACQUET CLUB
LOCATED ON BLOCKS 2 AND 22, TILGHMAN ESTATES
NORTH MYRTLE BEACH
LITTLE RIVER TOWNSHIP - HORRY COUNTY, S. C.
OWNED BY
TILGHMAN BEACH & RACQUET CLUB

I Hereby Certify that the Measurements as shown Are Correct and there are No Encroachments or Projections other than shown.

C. B. BERRY, R.L.S., S.C. NO. 2075
NORTH MYRTLE BEACH, S. C. 29582
JANUARY 20, 1982
SURVEYED BY TERRY McLAMB

EXHIBIT
"B"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464

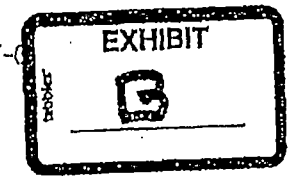
EXHIBIT
"B"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464



AIA Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifth day of January in the year Two Thousand Sixteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Tilghman Beach & Racquet Club Condominium Association, Inc.,
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576

and the Architect:
(Name, legal status, address and other information)

SGA Architecture, LLC
245 Business Center Lane, Ste. 4B
P.O. Box 1859
Pawleys Island, SC 29585

for the following Project:
(Name, location and detailed description)

Tilghman Beach & Racquet Club Homeowners Association Property Regime
Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.
/

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.6791657119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003544459)

1

TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

See "Exhibit A", Initial Information, which is attached hereto and incorporated herein by reference.
Tilghman Beach and Racquet Club, "TBRC", is a horizontal property regime managed by the Owner, by and through its Board of Directors, pursuant to a Master Deed and By-Laws, as amended, hereinafter referred to as the "Governing Documents"; recorded in the Horry County Register of Deeds, Deed Book 739, Page 360. TBRC is an apartment style development containing 213 units in 12 three-story buildings located in the City of North Myrtle Beach. Of the 12 Buildings, Buildings 1 through 5 are located east of Ocean Boulevard and Buildings 6 through 12 are located west of Ocean Boulevard. There are six building design types based on the original construction plans, hereinafter referred to as the "Plans", recorded in the Horry County Register of Deeds, Plat Book 1, Page 142. The Owner recently completed structural repairs to Building 3. The scope of work of the repairs and project administration was completed by Martinez & Associates, Saul Martinez, P.E. The general contractor was A & I Fire and Water Restoration. The Owner is currently contracted for engineering services and project administration with Martinez & Associates for Building 1 and portions of Building 2. In addition the Owner is currently contracted with Shoreline Remodel, LLC for portions of Building 2 and 6.

The Owner completed a Reserve Study in 2006 and forensic reports by Criterium-Giles Engineers, report dated June 19, 2015, and Martinez & Associates, report dated July 1, 2015. Based upon the Governing Documents, the Plans, the 2006 Reserve Study, experience with Building 3, and the forensic reports, the Owner desires to retain an Architect for a maintenance and repair program for the Project to be determined after consultation with Engineer, Architect, and

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0791687119_1 which expires on 04/23/2016, and is not for resale.
User Notes: (2008144459)

Init.

other consultations approved by Owner pursuant to the proposal attached as "Exhibit C", as modified herein, and "Exhibit D". In the event of any conflict between the Exhibits A-D and the terms of this Agreement, the terms of this Agreement shall control.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

TBD

.2 Substantial Completion date:

TBD

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5

The Architect shall maintain all forms of insurance required by law in the state in which the Project is located and the state in which the Architect's primary office is located. In addition to professional liability insurance, the Architect shall also maintain insurance coverage for comprehensive general liability, automobile liability, and workers' compensation by a carrier satisfactory to the Owner, which carrier shall be licensed to provide such coverage in the above-noted states, in forms and amounts satisfactory to the Owner. The Architect shall ensure that any and all Consultants engaged or employed by the Architect carry and maintain similar insurance covering their respective portions of the Services. The Architect and its Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice to the Owner, at the anniversary date(s) of the submittal, and at any time when a material change in coverage, carriers, or underwriters occurs. The Owner may require that the proof of coverage be in the form of a true and accurate copy of the policies of insurance, themselves. The maintenance of such coverage shall be a condition precedent to the Owner's obligation to pay under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty days prior to any cancellation, nonrenewal, or material modification of a policy.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/11/2016 under Order No. 8701697119_1 which expires on 04/28/2016, and is not for resale.
User Notes: (2000644450)

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

$1,000,000 per occurrence; $3,000,000 per aggregate

.2 Automobile Liability

$1,000,000; $500,000 coverage with $500,000 per occurrence

.3 Workers' Compensation

As required by the State of South Carolina

.4 Professional Liability

In addition to other insurance required by statute or under provisions of this Agreement, the Architect shall, at no additional cost to the Owner, provide professional liability insurance, issued by an insurance carrier approved in advance by the Owner and licensed to provide such coverage in the State of South Carolina to compensate the Owner for all negligent acts, errors, and omissions by the Architect, its agents, its employees, and its Consultants arising out of this Agreement. The Owner shall be a named additional insured on this insurance policy, which shall provide a coverage amount not less than $1,000,000 per occurrence, with a deductible not exceeding $20,000 per occurrence. Upon execution of this Agreement, and at every date for renewal of that policy, the Architect shall cause a Certificate of Insurance to be issued to the Owner by an insurance agent licensed in the above-noted state. Provision to the Owner of a valid Certificate of Insurance and (upon request by the Owner) a true and correct copy of the policy with coverage that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to the Architect by the Owner. This policy shall remain in effect for the benefit of the Owner at least through any warranty period covering the Project but in no case for less than thirty-six (36) months after the Date of Substantial Completion of the Project or thirty-six (36) months after the date of Termination of this Agreement, whichever period ends later

ARTICLE 3 SCOPE OF ARCHITECTS' BASIC SERVICES:

§ 3.1

The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees, that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0791687110_1 which expires on 01/28/2016, and is not for resale.
User Notes: (2003e44459)

Init.

Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other initial information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:04:30 on 01/14/2016 under Order No. 8791687119_1 which expires on 04/20/2016, and is not for resale.
User Notes:

Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall indicate in detail the materials, systems, and other requirements for construction of the Work.

§ 3.4.2 The Architect shall prepare Construction Documents that conform with the laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
.3 organizing and conducting a pre-bid conference for prospective bidders;
.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

Init. AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0791007118_1 which expires on 04/20/2016, and is not for resale.
User Notes: (2003644458)

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors; and

.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming Work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents, and, if the Contractor's efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating: (a) the problem; (b) the reasons for the actions taken by the Architect; (c) what, if any, response has been forthcoming from the Contractor; and (d) what actions by the Owner and/or Contractor are needed or expected. The Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.3791697119_1 which expires on 04/26/2016, and is not for resale.
User Notes: (2003844465)

§ 3.6.2.3 The Architect shall interpret and advise the Owner of that interpretation matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement, nor in A201-2007 (as amended), shall make a decision of the Architect binding upon the Owner in the absence of the Owner's express written approval thereof in writing.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the requirements indicated in or reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Where approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

Init. / AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/18/2016 under Order No.8791057119_1 which expires on 04/28/2016, and is not for resale.
User Notes:
(2003644459)

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain a complete set of change orders and documents incorporated in them.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Owner may request other Additional Services of the Architect. Additional Services will be requested by the Owner, and confirmed in writing. Should the Owner request services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Init. /

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:01:30 on 01/18/2016 under Order No.8791587119_1, which expires on 04/28/2016, and is not for resale.
User Notes:

(2033644450)

Additional Services		Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1	Programming (B202™–2009)		
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™–2007)		
§ 4.1.6	Building Information Modeling (E202™–2008)		
§ 4.1.7	Civil engineering		
§ 4.1.8	Landscape design		
§ 4.1.9	Architectural Interior Design (B252™–2007)		
§ 4.1.10	Value Analysis (B204™–2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site Project Representation (B207™–2008)		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As-Designed Record drawings		
§ 4.1.15	As-Constructed Record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™–2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™–2007)		
§ 4.1.22	Commissioning (B211™–2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™–2012)		
§ 4.1.25	Fast-track design services		
§ 4.1.26	Historic Preservation (B205™–2007)		
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Additional services and exclusions are listed in Exhibit C

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8701687119_1 which expires on 04/29/2016, and is not for resale.
User Notes:

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
.7 Preparation for, and attendance at, a public presentation, meeting or hearing;
.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
.9 Evaluation of the qualifications of bidders or persons providing proposals;
.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:
.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
.4 Evaluating an extensive number of Claims as the Initial Decision Maker;
.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:
.1 Two (2) reviews of each Shop Drawing, Product Data Item, sample and similar submittal of the Contractor
(Paragraph deleted)
.3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:20 on 01/14/2016 under Order No.0716687110_1 which expires on 04/22/2016, and is not for resale.
User Notes:

(2003644450)

Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the Contract for Construction and the General Conditions of the Contract for Construction (as amended). The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs,

bnlf.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8791687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect as part of the Basic Services, represent the Architect's judgment as a design professional familiar with the construction industry.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.0781607119_1 which expires on 04/28/2016, and is not for resale.
User Notes: (2003544455)

Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 The Architect shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the Owner.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statutes of limitations shall commence to run, either upon the date of Substantial Completion (for acts or failures to act occurring before Substantial Completion of which the Owner was aware) or upon the Owner's discovery of the acts, omissions, events, or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; but in no case shall an action be brought more than twelve years after the Date of Substantial Completion.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

(Paragraph deleted)

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

hnl.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:29 on 01/14/2016 under Order No.0791607710_1 which expires on 04/28/2016, and is not for resale.
User Notes:

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 The method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 8.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 The Architect waives all objections to joinder of the Architect as a party to any Project-related mediation, arbitration, or litigation in which the Owner is joined or is otherwise positioned as a party or in which the Architect's conduct or its performance of professional services is in any way relevant to the subject of a dispute. The Architect also agrees to prepare or modify all documents used or prepared by the Architect, including, but not limited to, agreements between the Architect and its Consultants, agreements between the Owner and other parties (including, without limitation, the Contract for Construction), and any General and Supplemental Conditions for Construction for this Project, to reflect this waiver.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement within thirty days of the date due hereunder, the Architect shall be entitled give the Owner twenty-one (21) days' written notice of the Architect's intention to terminate or suspend provision of Services. This notice shall detail the Architect's specific reason(s) for its intended termination or suspension and shall state with specificity the means by which the Owner may cure the alleged reason and the reasons why the Owner is not justified in withholding payment to the Architect. Thereafter, if the Owner fails either to pay or justify its lack of payment in accordance with the terms of this Agreement, Architect may give notice of its intention to suspend the Services five days thereafter. Services shall otherwise be performed continually and expeditiously during the pendency of disputes.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No. 9701687118_1 which expires on 04/20/2016, and is not for resale.
User Notes:
(2003844450)

(Paragraph deleted)

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 This Agreement may be terminated by the Owner, with or without cause, for the Owner's convenience upon not less than seven (7) days' written notice to the Architect. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraph deleted)

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect may not assign its interests or obligations under this Agreement without the written consent of the Owner, which consent may be withheld by the Owner for any reason. The Owner reserves the right, upon notice to the Architect, to assign this Agreement to an institutional lender providing financing for the Project or to other persons or other entities who are ready and capable of performing the Owner's obligations under the Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.5.1 The Owner shall enjoy the same benefits and rights as to the Architect's Consultants as the Architect enjoys with respect to its Consultants. The Architect shall enter written contracts with its Consultants that impose upon its Consultants the same duties and obligations to the Owner as the Consultant has to the Architect. Should the Owner terminate this Agreement with the Architect, the Owner shall, upon Owner's request, obtain assignment of the Consultant's agreement(s) with the Architect. That assignment does not change the fact that the Owner has no obligation to pay Consultants any amounts whatsoever on this Project, except prospective fees expressly agreed to by the Owner after Owner's acceptance of assignment of the Consultant's agreement(s). As a condition precedent to the Owner's payment of Architect's invoices, the Architect shall supply the Owner with copies of the Architect's agreements with its Consultants.

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/11/2016 under Order No.8791607119_1 which expires on 04/29/2016, and is not for resale.
User Notes:
(2000444459)

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit C, as modified to provide that Construction Administration fees shall be 2.6% of the cost of construction not to exceed $185,000.00, not including reimbursable expenses. In addition, the parties agree that Owner's payment of Invoice Dated 11/23/15 in the amount of $13,109.07 shall be credited against Architect's fees under this Contract.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit B, upon approval by Owner

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Exhibit B, upon approval by Owner

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty-five percent (25.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	N/A	percent (	N/A	%)
Design Development Phase	N/A	percent (	N/A	%)
Construction Documents Phase	N/A	percent (	N/A	%)
Bidding or Negotiation Phase	N/A	percent (	N/A	%)
Construction Phase	N/A	percent (	N/A	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8701687119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Exhibit B

Employee or Category	Rate
N/A	

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses; and
.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus See Exhibit B percent (See Exhibit B %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

A fixed fee of $5,000.00 and provided the Architect is indemnified and held harmless from all claims relating from the use of the Architects instruments of service.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Five Thousand Dollars and Zero Cents ($ 5,000.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

8.00 % per annum

Init. AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:40 on 01/14/2016 under Order No.8791827110_1, which expires on 04/28/2016, and is not for resale.
User Notes: (2000644459)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.3.1 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the negligence, errors, omissions, or failure to perform by the Architect, its employees, its agents, or its Consultants.

§ 12.3.2 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the breach of this Agreement or any implied covenants deemed to be applied thereto, intentional acts, omissions, or other failures to perform by the Architect, its employees, its agents, or its Consultants.

§ 12.3.3 The indemnity provisions of the previous sections in this Article 12 shall not be construed so that one provision cancels, limits, or abrogates the indemnities and protections afforded the Owner in the others; and duties of the Architect to indemnify, defend, and hold the Owner harmless in each of those sections shall be construed cumulatively.

§ 12.3.4 A maximum number of visits to the site by the architect over the duration of the project during construction shall be as follows:

.1 Phase 2 Roofing - 11 Visits
.2 Phase 3 Building - 14 Visits
.3 Phase 4 Building - 14 Visits
.4 Phase 5 Building - 12 Visits

Phase are proposed in Exhibit D

§ 12.3.5 A maximum of 4 bid packages and 4 competitive bidding processes shall be prepared and conducted by the Architect with packages and bidding to be in accord with Exhibit D.

§ 12.3.6 Special meetings with the POA/HOA/Board/Committees/ or Association representatives affiliated with the above shall be additional services.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

"Exhibit A", Initial Information

Init.

AIA Document B101™–2007 (formerly B151™–1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2010 under Order No.8791607719_1 which expires on 04/22/2010, and is not for resale.
User Notes: (2003544452)

"Exhibit B", SGA Architecture Standard Hourly Rate Sheet
"Exhibit C", Architecture Proposal dated July 15, 2015, as modified herein.
"Exhibit D" TBRC Envelope Repairs and Building Project

This Agreement entered into as of the day and year first written above.

OWNER

(Signature)

Carl W. Atkinson Jr President

(Printed name and title)

8 of 002

ARCHITECT

(Signature)

(Printed name, and title)

PRINCIPAL

AIA Document B101™ – 2007 (formerly B151™ – 1997), Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:04:30 on 01/14/2016 under Order No.8781667119_1 which expires on 04/28/2016, and is not for resale.
User Notes:

Init.

/

EXHIBIT D

Tilghman Beach and Raquet Club Potential Building Project

Phase 1 Historical Data		Est Cost	Act Cost	Est Duration	Act Duration	Est A/E Fees	Prelim Schedule
Building Three	Whole Building		$ 567,245	17 weeks	15 weeks		Complete
Building One	Roofs						Complete
Building Two	Roofs						Complete
	Critical Repairs	$ 15,140		3 weeks			Pending
Project Initiation						$ 6,400	Complete
Phase 2 Roofing							
Buildings 4-12	Bid Docs Prep			2 weeks		$ 6,400	Nov. 2015
	Bid Period			2 weeks		$ 1,800	Dec. 2015
	Construction	$ 817,190		16 weeks		$ 16,000	Jan. - June 2016
Phase 3 Bldgs							
Buildings 1,2,&5	Bid Docs Prep			6 weeks		$ 12,500	July - Aug. 2016
	Bid Period			3 weeks		$ 2,400	Sep. 2016
	Construction	$ 1,706,000		28 weeks		$ 42,000	Oct. - May 2017
Phase 4 Bldgs							
Buildings 6,8,10,&12	Bid Docs Prep			6 weeks		$ 11,800	July - Aug. 2017
	Bid Period			3 weeks		$ 2,400	Sep. 2017
	Construction	$ 1,944,000		28 weeks		$ 38,000	Oct. - June 2018
Phase 5 Bldgs							
Buildings 4,7,9,&11	Bid Docs Prep			6 weeks		$ 11,600	July - Aug. 2018
	Bid Period			3 weeks		$ 2,400	Sep. 2018
	Construction	$ 1,696,000		24 weeks		$ 34,000	Oct. - April 2019
Totals		$ 6,877,330	$ 567,245			$ 189,500	

SGA Architecture 1/14/2016

Tilghman Beach and Raquet Club Potential Building Project

Item				Estimated Cost
Building Three	Base Contract	$ 625,000	Base Bid	$ 567,245
	Change Order 1	$ 28,345	Replace gutter system, Bolts at front walkways, (4) back porch flashing details, Unforeseen conditions (rotted corner rim)	
	Change Order 2	$ 13,900	Corridor Drains, Unforeseen conditions (rotted trim, siding, and joists), add post base trim, parking ceiling repairs	
Building Two	Critical Repairs	$ 15,140	South end cradle beam and porch repairs	$ 15,140
Roofs 4-12	Roofing & Skylights:	$ 485,000	Spann Roofing Estimate	$ 817,190
	Carpentry	$ 105,000	Fascias, Cheekwalls, Gable End Walls, Demo and Siding - Based on Reserve Study numbers (4,500LF + 12,000SF)	
	Paint	$ 15,000	All woodwork above eave lines and fascias (15,000SF)	
	Gutters	$ 40,000	$5,000/building	
	Contingency	$ 64,600	10% - Includes Unforeseen	
	GC &OH&P	$ 105,590	15%	
Bldgs 1,2,&5		$ 1,705,000	$26,000/unit times 66 units	$ 1,705,000
Bldgs 6,8,10,&12		$ 1,944,000	$27,000/unit times 72 units - 3.5% annual inflation	$ 1,944,000
Bldgs 4,7,9,&11		$ 1,596,000	$28,000/unit times 57 units - 3.5% annual inflation	$ 1,596,000
				$ 6,644,575

EXHIBIT C

SGA ARCHITECTURE

ARCHITECTURE | LAND PLANNING | LANDSCAPE ARCHITECTURE

Myrtle Beach · Charleston · Pawleys Island

PROPOSAL
for
Professional Project Management Services

Tilghman Beach and Raquet Club Building Project

2nd Ave North
North Myrtle Beach, SC 29582
July 15, 2015

1.0 PROJECT DESCRIPTION

SGA has been asked to provide a proposal for Professional Project Management Services to the Tilghman Beach and Racquet Club Horizontal Property Regime for the completion of their Building project. The property consists of 12 three-story above timber piling pre-fabricated wood structures. Five of the buildings are located on the east side of Ocean Boulevard and seven are located on the west side of Ocean Boulevard.

The buildings were originally constructed in 1980 and are in need of substantial exterior repair. Over the last year, professional engineers have been through the property and have prepared reports focusing on the structural systems and exterior envelope concerns of the buildings. Additionally, a general contractor has completed a complete repair of building #3 on the Ocean side of Ocean Boulevard.

The Owners wish to take the information from the prepared reports combined with the experience of building #3 and prepare a comprehensive capital improvement plan to complete the other 11 buildings. SGA will provide professional Project Management services to assemble the contract documents, put the project out to competitive bid, and provide construction administration services through the duration of the construction.

It is anticipated that the construction will be spread out over several years. The bulk of the construction will take place between the off season months of September and March. Several buildings will be completed per year. SGA will be the professional "Point of Contact" for the Owners and the Property Manager for items related to the project for the entire duration of the Work.

245 Business Center Lane Pawleys Island, SC 29585
PHONE (843) 979-5450 | FAX (843) 979-5451 | www.SGAarchitecture.com

2.0 SCOPE OF WORK

A. Construction Documents

1. SGA Architecture will gather all pertinent site data and prepare base drawings for project use. It is anticipated that the drawings will be of a "typical" nature with detailed schedules for each of the buildings.
2. SGA will carefully evaluate the 3 previously prepared engineer reports and provide additional professional Architectural guidance as required to provide a complete scope of work.
3. SGA will prepare complete project specifications suitable for competitive bidding in 8-1/2 x 11 format.
4. SGA will meet with City of North Myrtle Beach building official and review Regulatory requirements.
5. It is anticipated that the Construction Documents will include the following typical drawings:
   a. Project Site Key Plan
   b. Lower Level Key Plan
   c. First, Second, and Third Floor Unit Key Plans
   d. Roof Key Plan
   e. Exterior Elevations
6. It is anticipated that the Project Specifications will include the following products:
   a. Roofing, Skylights, Gutters and Downspouts, Siding and Trim (cement board type), Flashings, Painting, Membrane Waterproofing, Carpeting and Flooring, Railings and Guardrails, others as needed.
7. It is anticipated that the project manual will include the following sections:
   a. Division 0 – Front End – Introductory Information, Procurement Requirements, and Contracting Requirements
   b. Division 1 – General Requirements – Administrative Requirements through Closeout Submittals
   c. Divisions 02-14 – Product Specifications

B. Bid/Negotiation

1. SGA will assist the Owner by researching and recommending suitable bidders to invite to bid the project.
2. SGA will put the project out for competitive bids, respond to bidders questions during the bid process, receive bids on behalf of the Owner, and prepare a bid tabulation sheet of all bids.
3. SGA will assist the Owner in evaluating the bids received, make a recommendation to award, and prepare a Notice of Award.
4. SGA will prepare the Owner/Contractor Agreement, including all attachments and exhibits, subject to Owner review, modification and approval.

C. Construction Administration

1. SGA will review a Project construction schedule, including phasing of construction, times for commencement and completion required of each separate Contractor, ordering and delivery of materials requiring long-lead times, and the occupancy requirements of the Owner.
2. SGA will provide administrative, management and related services to endeavor to coordinate the activities of the Contractor and subcontractors with each other, and with those of the Owner and SGA to complete the Project in accordance with the latest approved estimate of Construction Cost, the Project construction schedule, and the Construction Documents.
3. SGA will schedule and conduct pre-construction, construction, and progress meetings with the Contractors to discuss such matters as procedures, progress and scheduling. SGA will prepare and distribute minutes to the Owner and Contractor.
4. The General Contractor will provide a construction schedule and a schedule of values prior to the start of work. SGA will coordinate the schedule so that it includes the Owners occupancy requirements showing portions of the Project having occupancy priority. SGA will have the schedule updated by the Contractor and reissued as required to show current conditions. If an update indicates the previously approved Project construction schedule may not be met, SGA will recommend corrective action to the Owner.
5. SGA will monitor the approved estimate of Construction Cost. SGA will show actual costs for activities complete or in progress and estimates for uncompleted tasks.
6. SGA will review reports and forecasts for the Project and advise the Owner as to variance between actual and budgeted or estimated costs.
7. SGA will review cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.
8. SGA will record the progress of the Project, on a weekly basis, with written progress reports to the Owner including information on the Contractor's Work as well as the entire Project, showing percentages of completion. SGA will maintain a report documenting the weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.
9. SGA will maintain, on a current basis; one copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; Shop Drawings; Product Data; Samples; submittals; purchases; other related documents and revisions that arise out of the Contracts or Work.
10. In regards to unforeseen conditions which may be encountered, SGA will review newly proposed design recommendations by the Contractor related to water,

mold or termite abatement procedures, and will offer professional opinions of the same and recommendations to the Owner, when appropriate.

11. SGA will facilitate the Project closeout process, including review and assisting in preparing of punch lists, equipment commissioning, collection of as built information, warranty, operation and maintenance manuals, and final job costs accounting.

3.0 FEES

Construction Documents	$16,800 – fixed fee
Bid / Negotiation	Included in below
Construction Administration	2.6 % of the Cost of Construction
Reimbursable Expenses	$5,400 – estimated
Attendance at Special Meetings and preparation of Special project related Presentations	Hourly – per attached rates

4.0 EXCLUSIONS FROM THE SCOPE OF WORK

Miscellaneous services that may be required in this project, but are not included in Basic Services, are the following:

- Property surveys, easement surveys, detailed descriptions of site
- Additional Utility/drainage/roadway/parking engineering
- Meetings with regulatory agencies other than those specified above.
- Hazardous waste determinations, environmental analysis, or impact statements
- Financial feasibility or other special financial studies
- Interaction with or management of consultants other than those identified above.
- Plans, review fees, and any other review fees required for project review
- Forensic studies or testing.

5.0 ADDITIONAL SERVICES

In the event services beyond the scope of this contract are required, SGA Architecture shall submit a proposal to the client for approval before proceeding.

6.0 TERMS AND CONDITIONS

Projects will be billed monthly with payment due thirty (30) days from the date of the invoice. Payment will be considered overdue after thirty (30) days from the date of the invoice, with

interest charged at a monthly rate of 1.5% (18% annual rate). Work will automatically cease until payment is made on projects with invoices forty-five (45) days old.

245 Business Center Lane Pawleys Island, SC 29585
PHONE (843) 979-5450 | FAX (843) 979-5451 | www.SCArchitecture.com

AIA® Document B101™ – 2007 Exhibit A

Initial Information

for the following PROJECT:
(Name and location or address)

Tilghman Beach & Racquet Club Homeowners Association Property Regime
Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

THE OWNER:
(Name, legal status and address)

Tilghman Beach & Racquet Club Condominium Association, Inc.
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576

THE ARCHITECT:
(Name, legal status and address)

Steve Goggans
SGA Architecture
PO Box 1859
Pawleys Island, SC 29585

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences; Consultation with an attorney is encouraged with respect to its completion or modification.

This Agreement is based on the following information.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

ARTICLE A.1 PROJECT INFORMATION
§ A.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

Construction Program for Tilghman Beach & Racquet Club, See Section 1.1

§ A.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Tilghman Beach & Racquet Club
Second Avenue North
North Myrtle Beach, SC

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total, and if known, a line item break down.)

Init.
AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:16:49 on 01/14/2016 under Order No.8701687110_1 which expires on 04/26/2016, and is not for resale.
User Notes: (1186868261)

TBD

§ A.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

TBD

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract, or construction management.)

Negotiated Lump Sum or Cost Plus Contracts following receipt of competitive bids

§ A.1.6 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

TBD

ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address and other information.)

President of Board of Directors/Tilghman Beach & Racquet Club
Currently Will Atkinson
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576
Attn: Vickie Gallagher
Vickie.gallagher@kadiehl.com
843.357.9888 x162

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

Tilghman Beach & Racquet Club Board of Directors
c/o K.A. Diehl & Assoc., Inc., Registered Agent
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576
Attn: Vickie Gallagher
Vickie.gallagher@kadiehl.com
843.357.9888 x162

§ A.2.3 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

TBD

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

Steve Goggins
SGA Architecture
P.O. Box 1859
Pawleys Island, SC 29585

Init.
/

AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:15:49 on 01/14/2016 under Order No.5701857119_1 which expires on 04/26/2016, and is not for resale.
User Notes: (1106508281)

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

TBD, if needed

.2 Mechanical Engineer

TBD, if needed

.3 Electrical Engineer

TBD, if needed

§ A.2.5.2 Consultants retained under Additional Services:

§ A.2.6 Other Initial Information on which the Agreement is based:
(Provide other Initial Information.)

TBD

Init.
AIA Document B101™ – 2007 Exhibit A. Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:15:40 on 01/14/2016 under Order No.0781007115_1 which expires on 04/28/2016, and is not for resale.
User Notes: (1166903201)

EXHIBIT B

SGA ARCHITECTURE
PROFESSIONAL SERVICES ON A TIME & EXPENSE BASIS
STANDARD HOURLY RATE SHEET
EFFECTIVE
03/01/2015

SGA Architecture provides service on a time and expense basis as follows:

1. This basis includes allowance for direct and non-salary expenses. It also provides for services we may subcontract to others.

2. Direct salary expenses are based upon our payroll costs. The payroll costs include the costs of insurance and medical benefits.

The current charge-out rates for each skill and position are as follows:

POSITION	MAXIMUM HOURLY CHARGE OUT RATE
SENIOR PRINCIPAL	$200.00
MANAGING PRINCIPAL	$180.00
DESIGN PRINCIPAL	$175.00
ASSOCIATE PRINCIPAL/STUDIO MANAGER	$160.00
ASSOCIATE PROJECT MANAGER / PLANNER LA	$150.00
LANDSCAPE ARCHITECT / PLANNER III	$130.00
LANDSCAPE ARCHITECT / PLANNER II	$120.00
LANDSCAPE ARCHITECT / PLANNER I	$110.00
INTERN LANDSCAPE ARCHITECT III	$105.00
INTERN LANDSCAPE ARCHITECT II	$ 95.00
INTERN LANDSCAPE ARCHITECT I	$ 85.00
ASSOCIATE/PROJECT MANAGER/ARCHITECT	$150.00
PROJECT ARCHITECT III	$130.00
PROJECT ARCHITECT II	$120.00
ARCHITECT I	$110.00
INTERN ARCHITECT III	$105.00
INTERN ARCHITECT II	$ 95.00
INTERN ARCHITECT I	$ 80.00
ASSOCIATE/PROJECT MANAGER / INTERIOR DESIGNER	$150.00
INTERIOR DESIGNER III	$130.00
INTERIOR DESIGNER II	$120.00
INTERIOR DESIGNER I	$110.00
INTERN INTERIOR DESIGNER	$ 95.00
ADMINISTRATIVE/CLERICAL	$ 80.00

REIMBURSABLES

1. All project related reimbursable expenses (e.g. reproduction, postage, delivery, telephone, renderings, accommodations, travel, etc.) in connection with this project will be billed to the client at 1.25 times their cost. Auto mileage will be billed at the current IRS rate. Travel time will be billed at individual's charge out rate.
2. Upon execution of this agreement Client shall identify persons who are responsible for approval and processing of SGA's invoices and identify timing of such approvals and processing.
3. Invoices are due upon receipt. Payment shall be considered overdue after thirty (30) days from date of invoice and 8.00% per annum is automatically added to the principal balance then remaining.
4. If client for any reason fails to pay invoices within 30 days of date of invoice, SGA has the right to cease work on the project and Client shall waive any claim against SGA for cessation of services.
5. Additional consultant costs including but not limited to Architectural, Structural, Civil, Mechanical and Electrical Engineering, Survey, Soils and Environmental Services will be billed at a rate of 1.25 times the amount billed to SGA.
6. Work products (such as sketches, plans, diagrams, documents, reports, etc.) produced under this agreement are instruments of service and shall remain the property of SGA. Nothing may be copied nor reproduced in any manner without written permission from SGA.

Z:\15-17_Tilghman Beach and Raquet Club\SGA 2015 Rate Sheet.docx

EXHIBIT
"C"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464

SGA ARCHITECTURE

ARCHITECTURE | LAND PLANNING
LANDSCAPE ARCHITECTURE

EXHIBIT
C

January 22, 2016

Tilghman Beach and Racquet Club Condominium Association, Inc.
c/o Ms. Vickie Gallagher, Executive VP, K.A. Diehl & Associates
2nd Avenue North & N Ocean Blvd
North Myrtle Beach, SC 29582

Dear Ladies and Gentlemen,

As most of you are aware, repairs were initiated this week by Shoreline Remodel (Shoreline) on Building 6. Unfortunately, while re-cladding the end wall of the Building 6, the Contractor ran into unexpected and serious structural damage resulting from moisture intrusion and termites. The termite colony was no longer active, but had done significant damage to the unit.

On January 20, the next day, I visited the site to survey the damage. Unfortunately, a cantilevered, girder and numerous studs will require replacement. Additionally, two windows will require replacement. This work will be invasive, and will affect the interior finishes of this unit. The following day, January 21st, Saul Martinez, the Structural Consultant visited the site and determined that the damage was similar to that discovered in an earlier repair made on Building 2. Saul stated that he can develop the documents for the structural repair for $1,800.00 and SGA will develop documents and specifications for the window replacement and flashings. SGA's fee will be approximately $500.00 for the same, not including bid and negotiations or construction administration. This additional engineering and architectural design work is urgent and unavoidable.

The above also presents a number of issues for our contractor, Shoreline. As Shoreline is only a cladding and trim company, they don't feel qualified to make the structural repairs. Consequently, two companies were contacted, ProCon and Donnie Stewart, to survey the work and offer pricing for the same. Both of these companies are qualified and ProCon performed the prior work on Building 2. These companies won't be able to offer final prices until Design Documents for the repair are provided. This, of course means that siding replacement can't be continued, and Shoreline has to stop its work.

Shoreline is concerned about its liability relating to keeping the building open for several days or weeks, during the period the design professionals finish their documents and Procon or Stewart mobilize. It should be noted that replacement windows often require several weeks to obtain. I don't know the cost implications for demobilizing Shoreline and their remobilization costs at this point. In consideration of the above, I offer the following recommendations:

Post Office Box 1859, Pawleys Island, SC 29585 (843) 237-3421 (843) 237-1992 www.SGAarchitecture.com
456 King Street, William Aiken House, Charleston, SC 29403 (843) 853-1506 (843) 853-1507

1. Shoreline has been asked to supply a hold harmless letter to protect it during the time the Building 6 is open. They will be required to temporarily cover and protect the damaged area of the building during the period work is stopped. The Architect will inspect the temporary covering, but can in no way warrant or guarantee the viability of the temporary protection.
2. The Board needs to immediately authorize SGA and Martinez to complete documents relating to the repair. We will proceed on a good faith basis while we are awaiting this approval.
3. Given the damage to building 6, which is similar to Building 2, my concern at this point is that the structural problems are systemic throughout the whole property. The damage observed in Building 6 is severe. Further delay in curing these problems will lead to further damage, increasingly costly repairs, and ultimately, structural failure. Therefore, I respectfully recommend that the Board convene a meeting to discuss a more comprehensive and expeditious approach to affecting a long term repair and stabilization solution for the entire property. I will make myself as available as possible for such a meeting. Given the issues and damage observed thus far, this matter should be treated with urgency.

Respectfully submitted,

Steve Goggans, AIA

EXHIBIT
"D"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464

EXHIBIT D

PROPOSAL FOR TBRC FUTURE

FROM DOUG MADISON & DANNY COE

A. All Repairs in All Buildings Should Have Been Completed Before Undertaking Any Renovation or "Freshening Up" of Building 3

It is unfair to all homeowners in all buildings throughout TBRC the Board should have (1) identified all required repairs in all 12 buildings at TBRC and (2) completed all required repairs in all 12 buildings before undertaking any desired "renovation or freshening up" in Building 3.

It is simply unfair to the homeowners at TBRC to deplete our financial resources on any "renovation or freshening up" in any single building before all required repairs were completed in all buildings.

B. What Needs to be Done

1. Step One

The first step before we the homeowners at TBRC need to command that all "renovation" or "freshening up" at TBRC stop until ALL required repairs in all buildings are identified, and all required repairs calculated and a plan prepared to perform and complete all required repairs.

2. Step Two

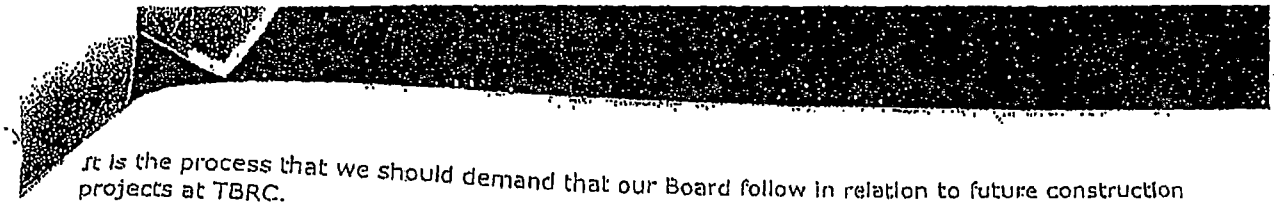
Step two involves specifying what "renovation" or "freshening up" the homeowners would like to see done at TBRC. That work should be specifically identified as well as the cost of that work.

3. Step Three

Then the homeowners should vote on what "renovation/freshening up" work they actually want performed at TBRC and approve the amount they are willing to pay for renovation/freshening up work. Only then any "renovation/freshening up" work performed according to the vote of at least 51% of the homeowners at TBRC. If this happens, we, as homeowners, cannot complain even if we are not what we may want immediately, it is what we all agreed to abide by. Instead of the Master Deed which governs our property at TBRC.

C. Proposed Process for the Board to Follow

Set forth below is a proposed process for identifying and implementing all repair/renovation/freshening up" work at TBRC. It is a process commonly utilized in the construction industry with a high degree of success.



It is the process that we should demand that our Board follow in relation to future construction projects at TBRC.

1. The Board will have a detailed forensic analysis performed on Buildings 1, 2, 4-12 by an architectural/engineering firm (not just a structural engineer) to determine all necessary repairs;

2. The Board will have the architectural/engineering firm prepare design drawings and specifications in relation to all necessary repairs;

3. The Board will submit the design drawings and specifications for the repairs to at least three commercial general contractors (not an emergency restoration contractor) and obtain proposals from the contractors for performance of the required repairs;

4. The Board will also have the architectural/engineering firm prepare design drawings and specifications for any desired "renovation" work;

5. The Board will submit the design drawings and specifications for the "renovation" work to at least three commercial contracting firms and obtain proposals for the desired renovation work;

6. The Board will then prepare alternative proposals for payment of the cost of the repairs and renovation work;

7. The Board will have a color rendering prepared showing what the TBRC buildings will look like upon completion of different options for (1) no renovations, (2) some renovations, and (3) all desired renovations to show all homeowners at a Special Meeting;

8. The Board will then conduct a Special Meeting to display the renderings and explain/discuss/talk about all the above with all homeowners;

9. The Board will conduct a vote of all homeowners at the Special Meeting to determine which proposal the majority of the TBRC homeowner's support: (1) only repairs; or (2) repairs and some renovation work;

10. The Board will then, with the assistance of a construction lawyer, enter into legal contracts with (1) the architectural/engineering firm, (2) the general contractor and (3) a Project Manager to act on behalf of TBRC in relation to whatever proposal is approved by a majority of the homeowners at TBRC. (This is lacking in the current board majority's existing plan of action).

EXHIBIT
"E"

Jill Keck Humphries, Dennis L. Johnson, Jr., Delona Penny Rice, Whitmel L. Brown, Jr., Gary Steven Robinson, Elizabeth Erin Humphries, and Nancy H. Johnson, Plaintiffs

vs

Tilghman Beach and Racquet Club Condominium Association, Inc. James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, individually and as Members of the Board of Directors of the Tilghman Beach and Racquet Club Condominium Association, Inc., Defendants

Civil Action No: 2016-26-4464

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)) Jill Keck Humphries, Dennis L. Johnson,) Jr., Delona Penny Rice, and Whitmel L.) Brown, Jr. Gary Steven Robinson,) Elizabeth Erin Humphries, and Nancy H.) Johnson,)) Plaintiffs,)) v.)) Tilghman Beach and Racquet Club) Condominium Association, Inc., James H.) Austin, III, Daniel G. Coe, C. Doug) Madison, George P. White and Steele) Brice Windle, III, individually and as) Members of the Board of Directors of the) Tilghman Beach and Racquet Club) Condominium Association, Inc.)) Defendants.)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26- **AMENDED AFFIDAVIT OF SAUL JOSEPH MARTINEZ, P.E**

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

1. My name is Saul Joseph Martinez. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in the field of structural engineering. I attended The Citadel in Charleston, SC, from which I received a B.S. Civil Engineering degree in 1993. I am registered in the States of South Carolina, North Carolina, Florida, New York, Virginia, Louisiana, Tennessee and Georgia. A copy of my Curriculum Vitae, marked **Exhibit "A"**, is attached hereto and incorporated by reference as part of this Affidavit.

2. I am not a party to the above entitled action, and I am unrelated to any of the

above- captioned members.

3. I am currently the owner of Martinez & Associates Structural Engineers, PA located in Myrtle Beach, SC as a Principal Structural Engineer. My experience includes approximately twenty-three (23) years of design work, diagnostic evaluations, building repair design, and construction project management. (See **Exhibit A.**)

4. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Complaint.

5. Tilghman Beach and Racquet Club Condominium Regime ("TBRC") is a phased horizontal property regime containing two hundred thirteen (213) Units in twelve (12) buildings. The Developer, Summey Building Systems, Inc., ("Summey") submitted Phase I to the Regime on or before February 2, 1982, and later submitted Phase II to the Regime on May 6, 1982. The twelve (12) buildings were certified for occupancy ("CO") between 1982 and 1983 are located in Horry County, South Carolina.

6. The construction of Tilghman Beach & Racquet Club Condominum Regime was completed in accordance with the building code requirements of the 1981 Edition of the Standard Building Code ("SBCCI").

7. The twelve (12) buildings are elevated three (3) story wood framed structures with corridor walkways on one side and cantilevered balconies on the other. The pre-fabricated structures are located above timber pilings with ground-floor parking areas. Several buildings are jointed with cross walk corridors. Buildings I, II, III, IV, and V are located on the east side of Ocean Boulevard, while Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

8. Article XXI of the Master Deed states that the Association is responsible for the *maintenance, repair and replacement* of all of TB&RC's Common Elements. This Article provides in pertinent part:

> The Association, ***at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Elements***, including those portions thereof which contribute to the support of any building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility service to the Apartments and the Common Elements, and should any incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by Association in the maintenance, repair, or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

9. Article I, Paragraph 11 of the By-Laws addresses the Association's responsibility to make, levy, and collect assessments to pay the costs and expenses for the operation, management, and maintenance of the Regime. Specifically, Paragraphs 11(d) and (e) address the Board's affinnative duties to collect and maintain a reserve fund for the future replacement of structural Common Elements:

> (d) The Board of Directors of the Association, in establishing said annual budget for operation, management and maintenance of the project ***shall include therein a sum to be collected and maintained as reserve fund for replacement of Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements*** as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of all of the co-owners of all Apartments. ***The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors*** ***so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said Common Elements***.
>
> (e) The Board of Directors of the Association, in establishing said annual budget for operation management and maintenance of the Project, ***shall include therein a sum to be collected and maintained as a general***

operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Co-owners of Apartments, as a result of emergencies or *for other reason placing financial stress upon the Association*.

10. In December of 2014, I was charged with developing structural remediation documents guidelining the methods of repair of the structural frame and water-protective building envelope for Buildings #1 and #3 at TB&RC. Because work on Building #3 has been halted by the Board of Directors being performed by a previously hired General Contractor, the BOD instructed this engineer to prioritize the remediation of Building #3. Deficient items of primary concern during the design phase were:

10.1 **Structural Remediation Items**

a. Balcony Railings that were unstable with missing pickets and deficient connections.
b. Balcony subflooring exhibiting loss of strength and deflecting floor joists.
c. Ground level and upper level connection hardware that was corroded and delaminating.
d. Balcony beams that were deflected as much as 2 inches and showed water damage.
e. Stair areas with damaged wood studs at base of walls.
f. Corridor subflooring exhibiting loss of strength and deflecting floor joists.
g. Corridor areas retaining excessive amount of water after storm events.
h Ground level and upper level connection hardware that was corroded and delaminating.
i. Rusted connections at balcony and corridor post connections.

10.2 **Building Envelope Remediation Items**

a. Corridor areas retaining excessive amount of water after storm events.
b. Ground level and upper level connection hardware that was corroded and delaminating.
c. Water penetration at roof including skylights, wall to roof interfaces, ridges and gable vents.
d. Water penetration at building corner units.
e. Water penetration at sliding glass doors due to corroded door pans and

deficient hardware.

f. Lack of membrane protection at balcony and corridor perimeters.
g. Lack of flashing protection at post to floor interface.
h. Lack of flashing or membrane protection at deck to wall interface.
i Rusted connections at balcony and corridor post connections.
j Deficient corridor guard railing for horizontal thrust.
k. Absence of drip edge flashing at corridors and balconies.
l. Absence of trip edge flashing at roof perimeter.

11. My review of the remaining nine (9) buildings as requested by the TB&RC Board of Directors in the spring of 2015 is depicted in detail on the Martinez & Associates Structural Engineers, PA report dated June 26, 2015 and marked as **Exhibit B**.

12. Based upon my knowledge of the studied buildings, Martinez & Associates Structural Engineers, PA offers the following professional opinions, which are based upon a reasonable degree of engineering certainty:

a. All balconies at Buildings I and II should be completely demolished and replaced with new inclusive of supporting cradle beam components.

b. All the balconies of the project are to be immediately removed and replaced, or totally repaired, with the exception of Building III.

c. All sliding glass doors or non-code compliant sliding glass doors should be removed, reflashed, new door pans installed and replaced with impact resistant code compliant units. Execution of this plan will significantly improve water infiltration within bedroom units.

d. All corridor structural elements (plywood, joists and beams) are to be immediately repaired or replaced.

e. All the corridor guard railing systems (railings, posts and pickets) are to be immediately replaced, with the exception of Building III.

f. All the connections with the loss of metal in excess of twenty-five (25) percent are to be immediately replaced with stainless steel hardware as was recommended but not executed at Building III.

g. A three (3) year preventive maintenance program shall be implemented which includes inspection and treatment of all exposed connections,

replacement of damaged siding components, and replacement of all defective windows.

h. The existing balcony support components do not meet the Code and represent a high level of overstress, except for Building III.

i. Missing spindles, damaged wood and deficient connections at corridor guardrails are unsafe and violate Section 23-129.3(6) of the Zoning Code for the City of North Myrtle Beach.

j. The exterior wood siding and trim is decayed and rotten at many locations at all twelve (12) buildings. This current condition for all buildings violates Section 23–129.3(1) of the Zoning Code for the City of North Myrtle Beach.

k. The roofing systems on Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII are not properly maintained and do not provide the buildings with a weather resistant exterior wall envelope. Additionally, several tarps are attached to roofs/skylights. As such, the delaminated roofing and water intrusion problems associated this defective condition violate Section 23-129.3(1) of the Zoning Code for the City of North Myrtle Beach.

l. The complete replacement of the roofing systems on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII. Partial replacement of the roofing components on Buildings I and II.

m. All visible termite damage has not been repaired in the buildings. Further, the Board has failed to adequately investigate and uncover all potential termite damage within Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII.

n. Significant remediation construction is immediately needed on Buildings I and II due to my opinion that the two (2) buildings have less than a three (3) year life expectancy and will become unrepairable past October of 2018.

o. Significant remediation construction is immediately needed on Buildings IV, V, VI, VII, VIII, IX, X, XI and XII due to my opinion that the nine (9) buildings have less than a four (4) year life expectancy and will become unrepairable past October of 2019.

p. Significant remediation construction is still required at Building III at the ground level and specifically at the driven piling system where

recommended work as a part of the engineering documents permitted was not executed by the Board of Directors for TB&RC.

Martinez & Associates Structural Engineers, PA reserves the right to amend its above stated opinions as additional information is made available to it.

13. Further, Martinez & Associates Structural Engineers, PA offers additional opinions concerning the Boards' lack of proper maintenance, replacement and repair of General Common Elements and Limited Common Elements for Buildings I, II, III (ongoing), IV, V, VI, VII, VIII, IX, X, XI and XII which are based upon a reasonable degree of engineering certainty:

a. Deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII have been known by the Board for at least nineteen (19) years. The Board has long ignored the state of disrepair to these buildings. The Board's failure to properly maintain, repair and replace General Common Elements and Limited Common Elements is a clear breach of its fiduciary duty and duty of reasonable care under the common law.

b. The seriousness of the defects and deficiencies of General Common Elements and Limited Common Elements of the buildings have been historically ignored by Board.

c. The Board and the current individual directors, Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, have not acted with due care and in good faith in their affirmative duties, pursuant to the governing documents of the Tilghman Beach & Racquet Club Property Regime, to maintain and repair and thereby prevent progressive damages to the General Common Elements and Limited Common Elements of the buildings.

d. The Board did not engage qualified professionals to assess/evaluate the long known suspected deficient conditions before 2013. The Board's failure to do so permitted the distress to Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII to reach a severe and nearly unserviceable condition.

e. The failure of the Board to engage qualified professionals prior to 2013 prohibited the design and implementation of a maintenance and repair program which would have greatly lessened the severity of the distress whereby only typical maintenance, repair and replacements would have

been necessary.

f. Our report clearly identified deficient and defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII that are the direct result of the Board not properly maintaining or failing to maintain, repair or replace the Common Elements and Limited Common Elements.

g. The governing documents of the Tilghman Beach & Racquet Club Property Regime impose an affirmative duty on the Board to adequately fund reserves for the maintenance, repair and replacement of Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. The Board failed to adequately fund reserves for the maintenance, repair and replacement of General Common Elements and Limited Common Elements, and thereby is responsible for the extraordinarily high cost of the repairs to the buildings, which have and will increase substantially over time.

h. The Board and the current individual directors Daniel G. Coe, C. Doug Madison, George P. White and Steele Brice Windle, III, conduct and also inaction, in failing to discharge its affirmative duties under the governing documents for the reasons described above, are not protected by the business judgment rule.

I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

[SIGNATURE PAGE TO FOLLOW]

FURTHER AFFIANT SAYETH NOT.

Saul Joseph Martinez, PE

SWORN to and subscribed before me this
27th day of January, 2017.

Notary Public for
My Commission Expires: 10-12-21

EXHIBIT
"A"

Contact Us

To contact us, just call +1 866 451-6230 or complete the Contact Form.

Current Projects

Click here to find out what projects we are currently working on.

Our Team

Saul J. Martinez, PE - Principal & CEO

Graduated in 1993 from The Citadel with a Bachelor of Science Degree in Civil Engineering. Founded Martinez & Associates in 2003 after years with Fluor Daniel International and K&T. Member of National Council of Examiners for Engineers and Surveyors along with the National Society of Professional Engineers.

Thomas G. Ketchum - Senior Associate Engineer

28 years, structural/civil/mechanical engineering of mining, petro/chem, power (nuclear and fossil) facilities and architectural projects. Incorporated are the designs of pertinent product handling systems, stress analysis of framing, piping and HVAC systems including design of supports. The above is supported by integration of 15 yrs, of collective educational efforts at technical institutes such as Washington University and Florisant Valley College (St. Louis, Mo.), University of Missouri. (Warrensburg and St. Louis Mo.) US Navy (Bainbridge Md., Washington D.C. and Little Creek, Va.) and Polk Community College (Winter Haven, FL).

Specializing in various design engineering aides as GT STRUDL, ENERCALC and STADD III (frame analysis), CAESAR II, AUTOPIPE , EZ HANG (pipe and HVAC stress analysis) BASEPLATE II (finite element) and AUTOCAD.

Derek J. Moore - Director of Regional Sales and Project Coordination

Graduated in 1993 from The Citadel with a Bachelor of Science Degree in Civil Engineering. After years of experience with Milleken & Company, Cytec, and Sherwin Williams, specilizes in the performance evaluation of customer needs and utilization of customized solutions.

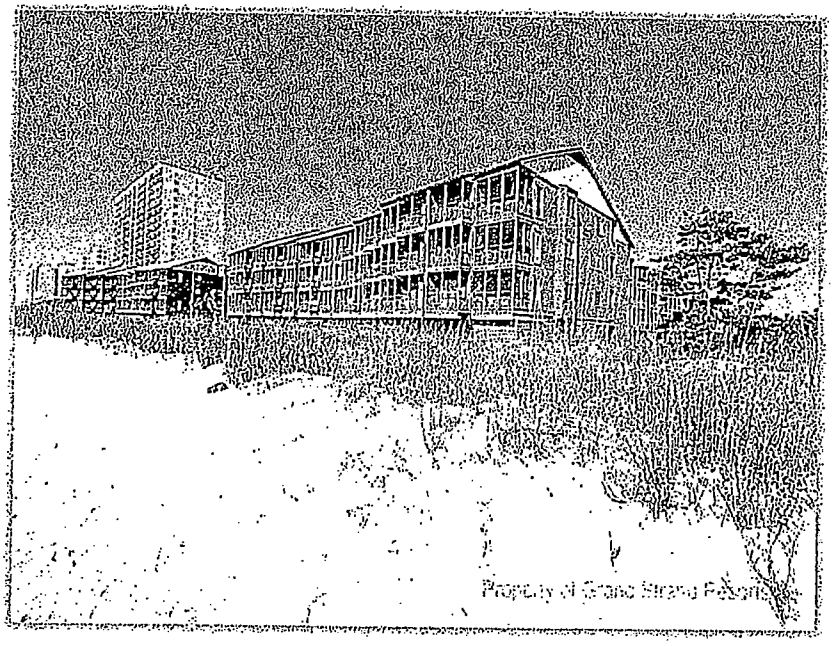
Helio Martinez - Project Controls

Graduated in 1961 from Georgia Southern and possesses 45 plus years of Industrial Management and Property Management experience. International travel with Coca-Cola Corporation, Continental Can, and Century 21, specilizes in project execution with attention to quality control and client relations.

Phase I Assessment for

For

Tilghman Beach & Racquet Club
Ocean Front & Second Row Buildings
North Myrtle Beach, South Carolina



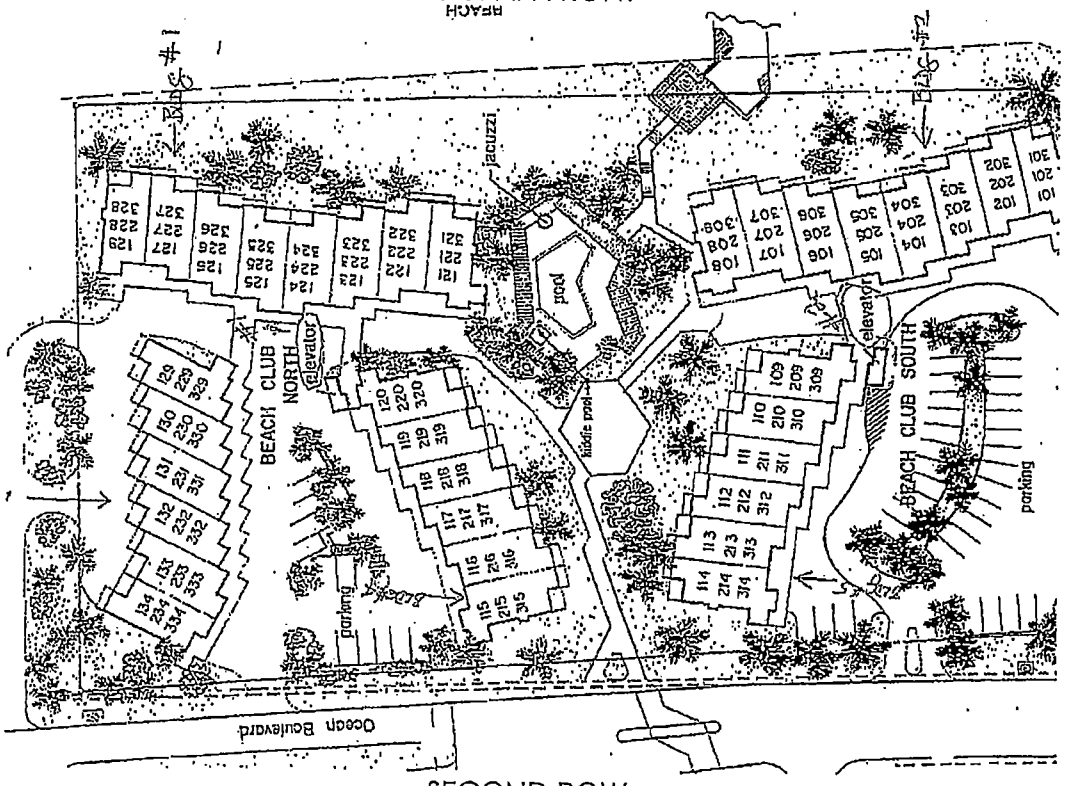
Submitted By

MARTINEZ & ASSOCIATES
STRUCTURAL ENGINEERS, PA

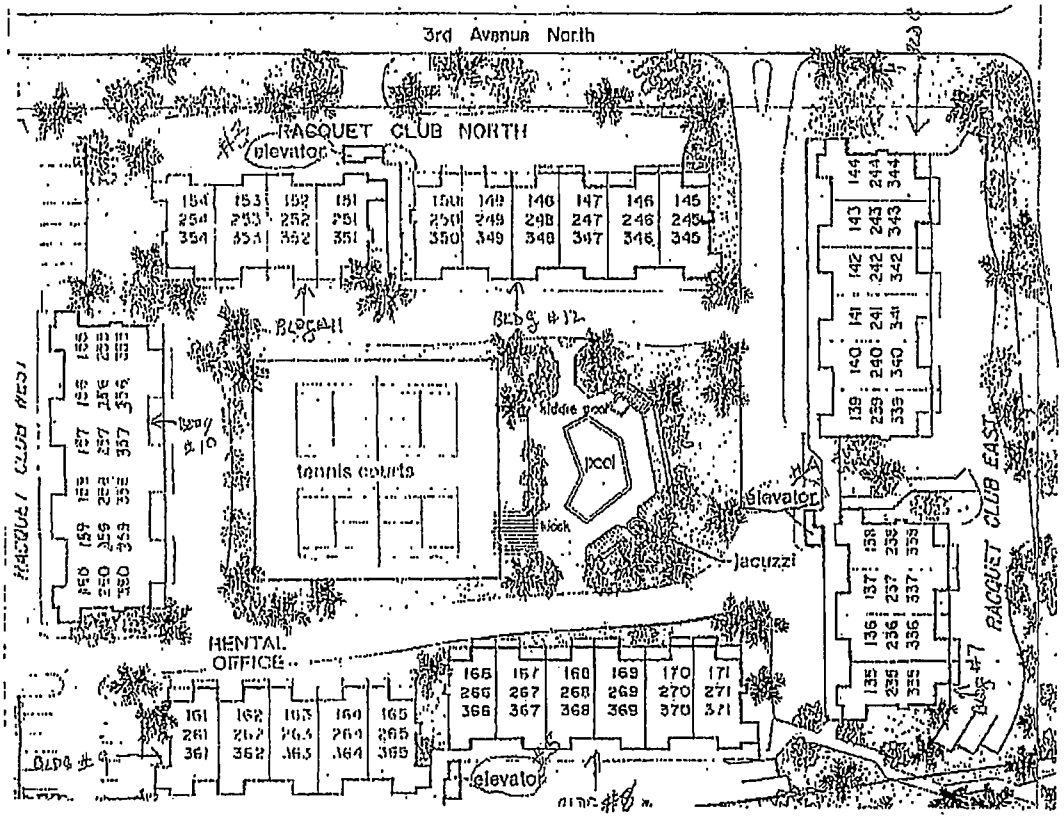
Saul J. Martinez, PE
Martinez & Associates Structural Engineers
843-839-1620
saulm@sccoast.net

SITE MAP

OCEAN FRONT



SECOND ROW



MARTINEZ & ASSOCIATES
STRUCTURAL ENGINEERS, PA
1107 48TH AVE NORTH 310C • MYRTLE BEACH, SC 29577
O: 843.839.1620 • F: 843.839.1623

Phase I: Existing Condition Evaluation

Inspection Dates: June 2015

Project: Tilghman Beach & Racquet Club

Location: 2nd Avenue North
North Myrtle Beach, SC

Current Owner: Tilghman Beach & Racquet Club Horizontal Property Regime
2nd Avenue North
North Myrtle Beach, SC

Property Manager: K.A. Diehl
c/o Earl Collins, CMCA, AMS
11822 Highway 17 Bypass
Murrells Inlet, SC 29576

Consultant: Martinez & Associates Structural Engineers, PA
1107 48th Ave North 310C
Myrtle Beach, SC 29577
Phone: (843)839.1620, Fax: (843)839-1623
marteng1@sccoast.net

Project Number: 14-701

Present: Saul J. Martinez, PE

General

Constructed in the early 1980s, Tilghman Beach & Racquet Club consists of 12 three-story above timber piling pre-fabricated buildings. 5 buildings are located on the east side of Ocean Boulevard while 7 buildings are located west of Ocean Boulevard. Several building "types" comprise the 12 buidlings which consist of two stairwells, common area corridors, and two balconies per unit. Several buildings are jointed with cross walk corridors.

This study focuses predominantly on the structural system and building exterior envelope (siding, windows, doors, flashing, etc). Issues related to storm water

drainage, plumbing, mechanical or electrical components have not be included in this assessment.

This report is a general summary report and is not exhaustive in detail, and does not change the contractual responsibilities between parties for correction of deficiencies or non-complying items, whether or not all were discovered and noted in this report. Where items regarding one "trade" or "system" are mentioned on only specific areas of the building, check all other similar areas and correct all such similar occurrences.

Field Observations

I. **General Property Walk-Through**
Conducted By: Saul J. Martinez, PE, Jon Black, PE, Helio Martinez, and Toriano Watts

The following is an itemization of observations along with maintenance/repair items depicted by this firm. Items will be categorized by building components corresponding with the attached existing building drawings. It should be stated that a thorough inspection of each story balcony was completed with specific attention to the condition of each component listed on the Field Itemization Table for each building. Photos of specific items have been listed in walk-through sequence and described individually.

Levels of criticality will also be designated with a 1 – 5 with **-1-** being **Less Critical** or No Issues (no maintenance), **-2-** being **Consideration** (consider repair for property appearance), **-3-** being **Monitor** (on-going observation), **-4-** being **More Critical** (issue likely to become severe in the near future) and **-5-** being **Severe** (in need of immediate attention due to compromise of property integrity or occupant safety).

II. **Corridors**

Corridor components consist of guard railing, floor framing, ceiling soffit, post connections, entry doors, cedar trim/siding, and cradle beam/girder system at the first level only. While not each component of each unit was available for visual inspection, those areas that were were graded based on the following:

- Guard Railing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 3-4 years*.
  - 4 – Indicates existing presents a life safety hazard and should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately***.

- Floor Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing possesses few "soft spots" within the subflooring, floor depressions, or delaminated subflooring and should be monitored for repair or replacement *within 1-2 years.*
  - 4 – Indicates existing possesses numerous "soft spots" within the subflooring, floor depressions, or delaminated subflooring and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing presents a Severe version of Level 4 and life safety hazard. Should be considered for replacement ***immediately.***

- Ceiling Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of sag or displacement and should be monitored for repair or replacement *within 2-3 years.*
  - 4 – Indicates existing shows signs of water damage and should be considered for examination and possible replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Post Connections
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing shows signs of oxidation and may require aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of moderate oxidation and should be monitored for repair or replacement *within 2-4 years.*
  - 4 – Indicates existing shows More Critical signs of oxidation and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing shows Severe signs of oxidation and presents a life safety hazard. Should be considered for replacement ***immediately.***

- Entry Louvre Doors
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years.*
  - 4 – Not utilized.
  - 5 – Not utlized.

- Cedar Trim/Siding/Flashing
  - 1 – Indicates existing needs no modification.

- 2 – Indicates existing requires aesthetic rehabilitation.
- 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years.*
- Indicates existing requires dynamic water test due to More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cradle Framing (at first level only)
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing end fibers are delaminated due to exposure should be monitored for repair *within 6-12 months.*
  - 4 – Indicates existing end fibers are delaminated due to exposure and deflection of the girder is greater than L/240 (0.4" for 8 foot span). Presents a life safety hazard and should be considered for replacement ***within 24 months.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

III. Balconies

Balcony components consist of guard railing, floor framing, ceiling soffit, post connections, entry doors, cedar trim/siding/flashing, and cradle beam/girder system at the first level only. While not each component of each unit was available for visual inspection, those areas that were were graded based on the following:

- Guard Railing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 3-4 years.*
  - 4 – Indicates existing presents a life safety hazard and should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Floor Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing possesses few "soft spots" within the subflooring, floor depressions, or delaminated subflooring and should be monitored for repair or replacement *within 1-2 years.*

- 4 – Indicates existing possesses numerous "soft spots" within the subflooring, floor depressions, or delaminated subflooring and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
- 5 – Indicates existing presents a Severe version of Level 4 and life safety hazard. Should be considered for replacement ***immediately.***

- Ceiling Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of sag or displacement and should be monitored for repair or replacement *within 2-3 years.*
  - 4 – Indicates existing shows signs of water damage and should be considered for examination and possible replacement ***within 1 year.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

- Post Connections
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing shows signs of oxidation and may require aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of moderate oxidation and should be monitored for repair or replacement *within 2-4 years.*
  - 4 – Indicates existing shows More Critical signs of oxidation and presents a life safety hazard. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing shows Severe signs of oxidation and presents a life safety hazard. Should be considered for replacement ***immediately.***

- Post Boots
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing should be monitored for repair or replacement *within 1-2 years.* Caulking or sealant required.
  - 4 – Indicates existing requires dynamic water test. Should be monitored for potential to allow moisture penetration and cause framing damage due to in situ plastic membrane and particle-board sheathing below. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage due to in situ plastic membrane and particle-board sheathing below. Should be considered for replacement ***immediately.***

- Balcony Sliding Doors/End Bay Windows

- 1 – Indicates existing has been replaced within past 5 years and needs no modification.
- 2 – Indicates existing requires dynamic water test for sill or pan deterioration.
- 3 – Indicates existing requires dynamic water test for sill or pan deterioration and should be monitored for repair or replacement *within 1-2 years.*
- 4 – Indicates existing should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cedar Trim/Siding/Flashing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for repair or replacement *within 3-4 years..*
  - 4 – Indicates existing requires dynamic water test due to More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

- Cradle Framing (at first level only)
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing end fibers are delaminated due to exposure should be monitored for repair *within 6-12 months.*
  - 4 – Indicates existing end fibers are delaminated due to exposure and deflection of the girder is greater than L/240 (0.4" for 8 foot span). Presents a life safety hazard and should be considered for replacement ***within 24 months.***
  - 5 – Indicates existing presents a life safety hazard and should be considered fore replacement ***immediately.***

IV. Stair Towers

- Stringer Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation (painting).
  - 3 – Indicates existing, due to member splitting or cracking. should be monitored for repair or replacement *within 3-4 years.*

- 4 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered for replacement ***within 1 year.***
- 5 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered fore replacement ***immediately.***

- Landing Framing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation (painting).
  - 3 – Indicates existing, due to member splitting or cracking. should be monitored for repair or replacement *within 3-4 years.*
  - 4 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing, due to member splitting or cracking, presents a life safety hazard and should be considered fore replacement ***immediately.***

V. Exterior Walls

- Gable End Walls and Stair Tower Walls (Field Engineer to indicate N / S / E / W wall examined for each side of building).
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for siding repair or replacement *within 3-4 years.*
  - 4 – Indicates existing shows More Critical signs of material distress, loss of caulking beads, fogged windows or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately.***

VI. Roof System

- Shingles, Fascia, Gable Vent, Skylights (Field Engineer to indicate N / S / E / W roof areas examined).
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for shingle repair or replacement *within 4-5 years.*
  - 4 – Indicates existing shows More Critical signs of shingle loss, material distress, loss of caulking beads, fogged skylights or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year.***

- 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately***.

- Pop-Up Gable components including Fascia, Kick-Out Flashing, Wall-Roof interface Flashing
  - 1 – Indicates existing needs no modification.
  - 2 – Indicates existing requires aesthetic rehabilitation.
  - 3 – Indicates existing shows signs of material distress and should be monitored for shingle repair or replacement *within 4-5 years*.
  - 4 – Indicates existing shows More Critical signs of shingle loss, material distress, loss of caulking beads, delaminated subroofing, lack of kick-out flashing, lack of wall-roof flashing or fallen material. Should be monitored for potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***within 1 year***.
  - 5 – Indicates existing should be monitored for high potential to allow moisture penetration and cause framing damage. Should be considered for replacement ***immediately***.

VII. Piling Conditions

A minimum group of 5 pilings to be examined in the North, South, East, and West areas of the ground/parking area. Of the 5 pilings examined, the approximate percentage of the total piling surface area affected to the following degrees of criticality should be recorded:

- Splitting
  - 1 – Fibers showing normal lines of striation and high levels of creosote saturation for moisture protection.
  - 2 - Fibers showing normal lines of striation and low to moderate levels of creosote saturation.
  - 3 - Fibers showing gaps of approximately 1/8" over more than 25% of the group surface area.
  - 4 – Fibers showing gaps of approximately 1/4" over more than 25% of the group surface area.
  - 5 – Fibers showing gaps of approximately 1/4" to 1/2" over more than 25% of the group surface area.
- Base Deterioration
  - 1 – No signs of section loss at base of timber piling.
  - 2 – Darker region indicating moisture penetration with no section at base of timber piling.
  - 3 – Indicates existing shows Moderate levels of moisture fluctuation with less than 5% section loss.
  - 4 – Indicates existing shows More Critical levels of dry-rot with greater than 5% section loss. Piling base to require future excavation.

- 5 - Indicates existing shows Severe levels of dry-rot with greater than 10% section loss. Piling base to require future excavation.

Summary and Recommendations

With consideration to the time of original constructions, the condition of the building indicates need for maintenance and remediation.

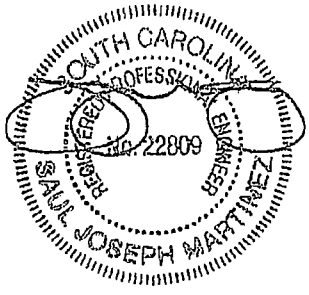
As described above, structures in an oceanfront environment possess a certain life span after which considerable and costly repairs must be accepted. While an amount of the items observed are cosmetic, data reported in this assessment is primarily structural and building envelope based. Items deemed as More Critical to severe in the field itemization tables should be addressed in a timely manner by qualified professionals in the remediation of timber structures. Furthermore, remediation must be performed by a General Contractor certified by the repair material manufacturer in the preparation and systematic repair of damaged wood along with shoring techniques.

The attached Building Summary and Field Itemization table for each building represents a summary of each item Less Critical, for Consideration, to Monitor, More Critical, and Severe. The "Phasing Method" with sensitivity to budget matters may be considered when examining the table.

This firm will be glad to provide guidance for the evaluation of this report and implementation of "Phase II Remediation". Further questions or concerns may be directed to our office without hesitation.

Sincerely,

Saul J. Martinez, PE



Building Itemization Tables

Building	Corridors							Balconies									
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing		Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cradle Beams 1st Only
Floor Level																	
1st																	
Unit # 128																	
Unit # 127		3	3		3	3											
Unit # 126										3							3
Unit # 125		3	3		3	3											
Unit # 124																	
Unit # 123		3	3		3	3											
Unit # 122																	
Unit # 121		3	3		3	3											
2nd																	
Unit # 228																	
Unit # 227		3	3		3	3											NA
Unit # 226										3							NA
Unit # 225		3	3		3	3											NA
Unit # 224																	NA
Unit # 223		3	3		3	3											NA
Unit # 222																	NA
Unit # 221		3	3		3	3											NA
3rd																	
Unit # 328																	
Unit # 327		3	3		3	3											NA
Unit # 326																	NA
Unit # 325		3	3		3	3											NA
Unit # 324																	NA
Unit # 323		3	3		3	3											NA
Unit # 322																	NA
Unit # 321		3	3		3	3				3							NA
Exterior Walls																	
Floor Level	North Gable End Walls	South Gable End Walls	Stair #1- North Stair Wall	North South Stair Wall	Stair #2- North Stair Wall	South South Stair Wall	Roof	Shingles	Fascia	North Gable Vent	South Gable Vent	Skylights	Pop-Up Gables	Fascia	Kick-Out Flashing	Wall-Roof Flashing	Gutters Down Spouts
Ground to 1st		4		4	4	4	North Area										
1st to 2nd	4	4	4	4	4	4	South Area	3	3			3		3	3	3	3
2nd to 3rd	4	4	3	3	3	3	East Area										
3rd to Roof	4	4	3	3	4	4	West Area					3		3	3	3	3

Description	Comments
1 - Less Critical	Nuts and bolts at cross bar at piling must be replaced. The same scenario at all the supporting post, the nuts and bolts need to be replaced. Cedar siding and trim in particular on the North and South Wall may require partial or complete replace
2 - Consideration	All corridors have sustained subflooring damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.
3 - Monitor	Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.
4 - More Critical	The Cradle beam with longer cantilevers have been shored to alleviate deflection.
5 - Severe	Pilings, All sections that are expose and have normal wearing on Roof System using a pair of binoculars show signs of Shingle loss in a few areas.
	#123 - The balcony structure showing deterioration at all the componets.
	#127- Soft flooring system. Balcony components are in significant need of replacement.
	Perimeter subflooring of balconies are exposed showing signs of severe delamination.

Summary and Preliminary Recommendations

Building 1

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe" in cases where water has entered the interior living areas. Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure.

Balcony doors have exceeded their typical life expectancy and show signs of leakage and water penetration as a result of driven rain. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Specific areas of wall coverings and wood studs at the base of the stair towers have been damaged from moisture penetration. Sheathing should be removed during the remediation process to examine for further damage.

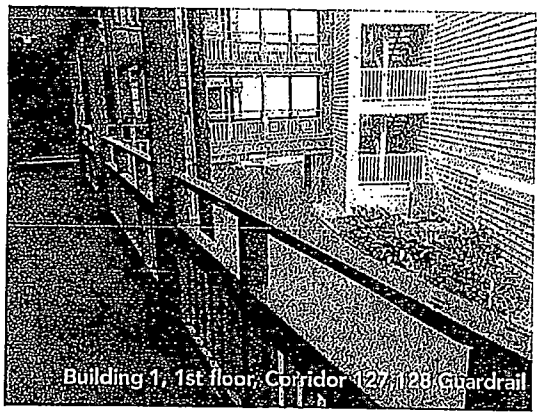
Stucco cladding at the south end gable is at a "Severe" level and has allowed moisture penetration and damage to all end units. Removal and replacement of stucco with Hardi Panel siding is recommended following evaluation for stud and sheathing damage at each end wall and end wall window units. Plank siding is present at the north end gable.

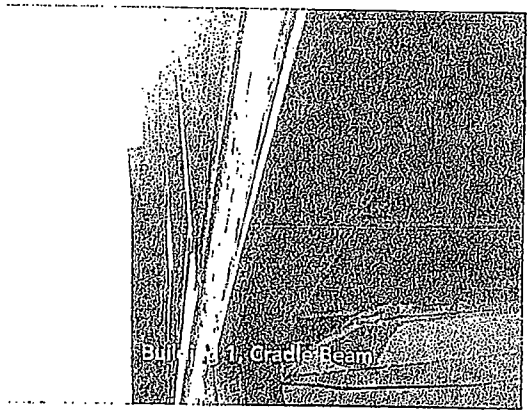
Visual inspection of the roof and flashing systems was limited due to accessibility. While the roof shingle installation is newer, several shingles were observed to be missing. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

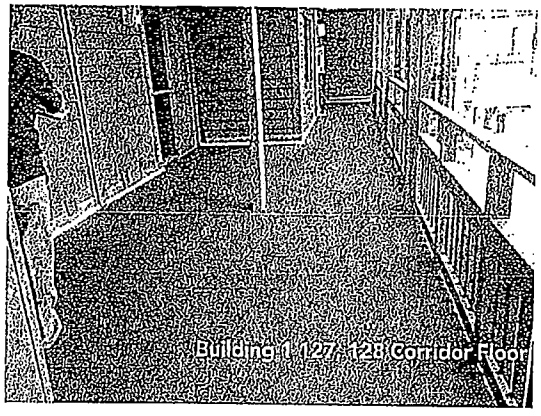
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" to "More Critical" where splits exceeded ¼" in more than 15% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

Photo Documentation

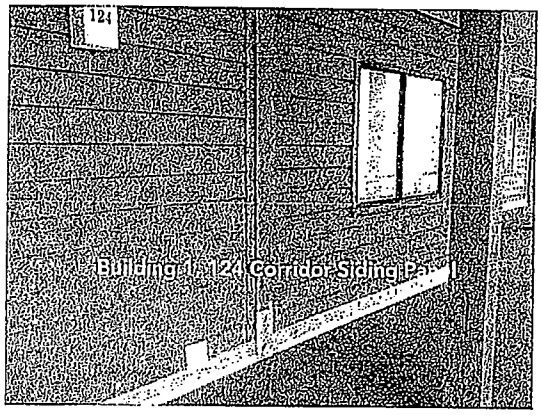
Building 1


Building 1, 1st floor, Corridor 127,128 Guardrail

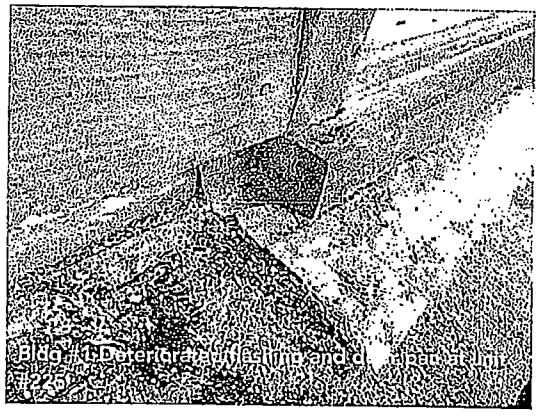

Building 1, Cradle Beam

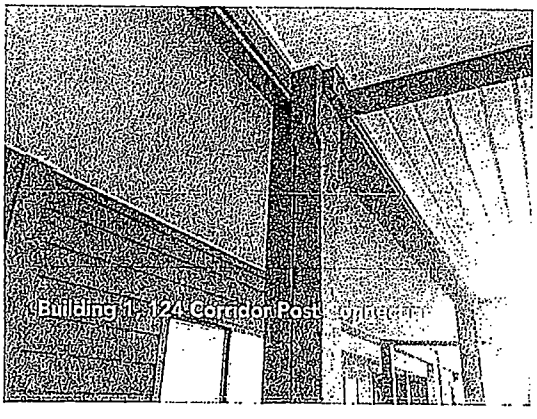

Building 1, 127, 128 Corridor Floor

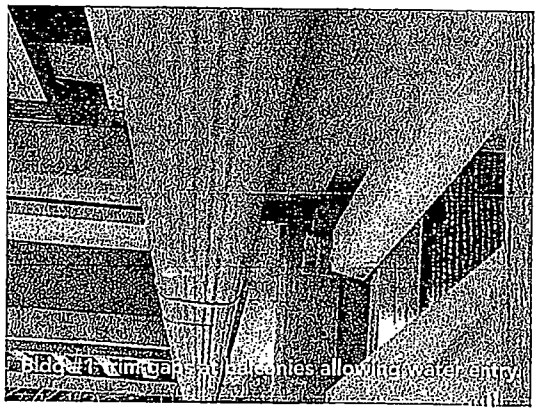
Building 1, Balconies



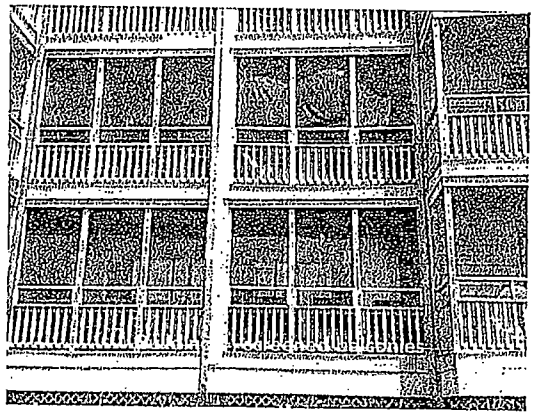
Building 1, 124 Corridor Siding Panel

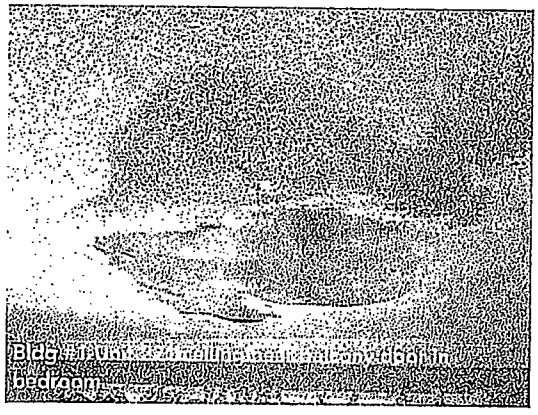

Bldg. 1, Deteriorated flashing and d... Rear Unit


Building 1, 124 Corridor Post Cutback

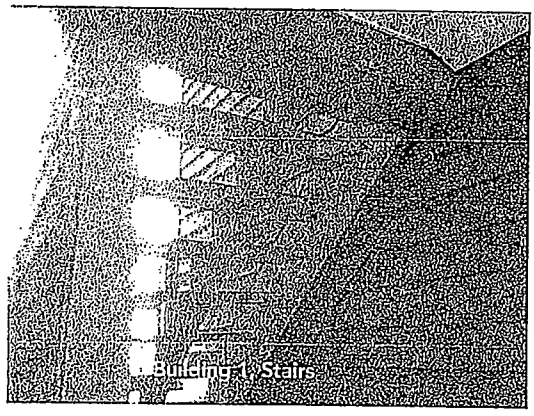

Bldg. 1, Drainage at balconies allowing water entry

Bldg #1-Unit 321 ceiling damage from water penetration. Plastic sheathing present. South end unit third level.

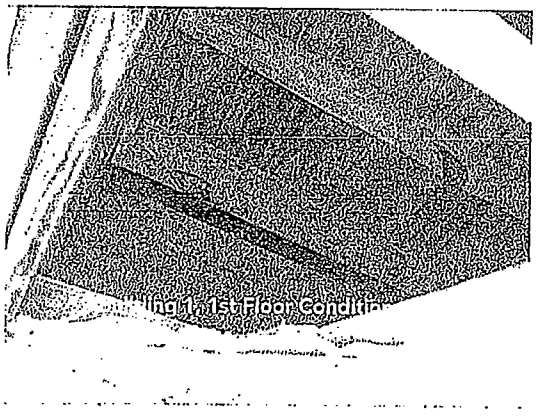




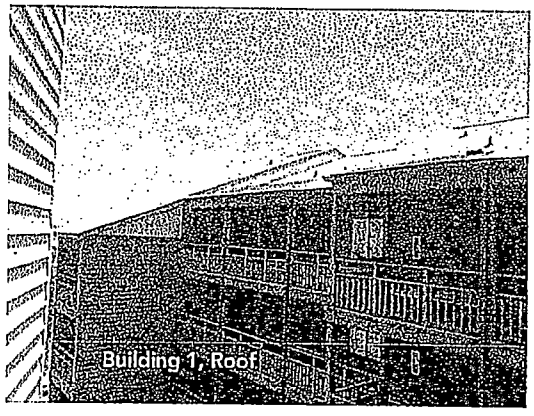
Bldg #1-Unit 321 ceiling damage from water penetration. South bedroom.



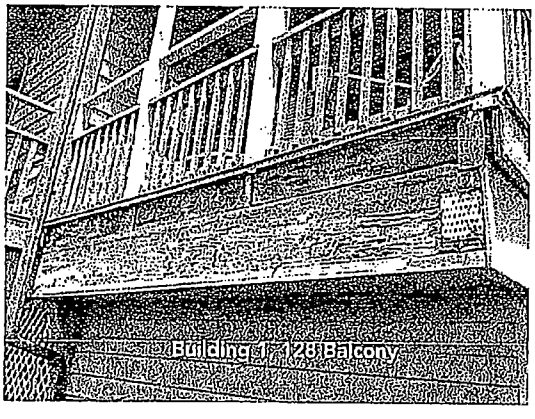
Building 1, Stairs



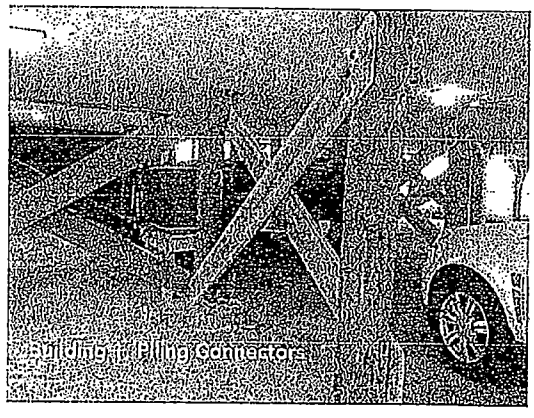
Building 1, 1st Floor Condition



Building 1, Roof



Building 1, 1st Balcony



Building 1, Piling Connectors

Building Itemization Tables

Building																				
	Corridors							Balconies												
Component	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Entry Louvre Doors	Cedar Siding Trim/Flashing	Cradle Beams 1st Only	Guardrail	Floor Framing	Ceiling Soffit	Post Connections	Post Boots		Slider #1 Sill/Trim	Slider #2 Sill/Trim	Cedar Siding Trim/Flashing	Cradle Bea 1st Only
Floor Level																	
1st																	
Unit # 108																	
Unit # 107		3	3		3	3	3										
Unit # 106																	
Unit # 105		3	3		3	3	3										
Unit # 104																	
Unit # 103		3	3		3	3	3										
Unit # 102																	
Unit # 101		3	3		3	3	3			3							
2nd																	
Unit # 208																	
Unit # 207		3	3		3	3	NA										NA
Unit # 206																	NA
Unit # 205		3	3		3	3	NA										NA
Unit # 204																	NA
Unit # 203		3	3		3	3	NA										NA
Unit # 202										3				3	3		NA
Unit # 201		3	3		3	3	NA										NA
3rd																	
Unit # 308																	
Unit # 307		3	3		3	3	NA										NA
Unit # 306																	NA
Unit # 305		3	3		3	3	NA										NA
Unit # 304																	NA
Unit # 303		3	3		3	3	NA										NA
Unit # 302																	NA
Unit # 301		3	3		3	3	NA										NA

Exterior Walls																	
Floor Level	N/S/E/W Gable End Walls	N/S/E/W Gable End Walls	Stair #1-N N/S/E/W Stair Wall	N/S/E/W Stair Wall	Stair #2-S N/S/E/W Stair Wall	N/S/E/W Stair Wall	Roof	Shingles	Fascia	N/S/E/W Gable Vent	N/S/E/W Gable Vent	Skylights	Pop-Up Gables	Fascia	Kick-Out Flashing	Wall-Roof Flashing	Gutters Down Spouts
Ground to 1st			3	3	3	3	North Area										
1st to 2nd	3		3	3	3	3	South Area										
2nd to 3rd	3		3	3	3	3	East Area										
3rd to Roof	3	3	3		3		West Area	3		3							

Description	Comments	
1 - Less Critical		Cedar siding base boards needs fixing to prevent moisture from entering condos.(All Floors)
2 - Consideration		All corridors have sustained subflooring damage at the perimeter 1-2 feet from the edge. Unable to see exactly how much without removing carpet.
3 - Monitor		Several corridor outer beam bands shows signs of distress due to exposure and should be replaced. Fascia configuration at the balconies and corridors may be contributing to water penetration.
4 - More Critical		The Cradle beam with longer cantilevers have been shored to alleviate deflection.
5 - Severe		Nearly 90% of continuous length of southside cradle beam displays signs of severe fatigue and deformation.
		#101 Ceiling showing moisture. Balcony showing severe damage.
		Perimeter subflooring of balconies are exposed showing signs of severe delamination.

R-9

Summary and Preliminary Recommendations

Building 2

Corridor post connections are in "More Critical" condition and have exceeded their expected life span. Present oxidation levels deem a majority of these connections untreatable with brushing and primer and must be replaced. Corridor perimeter subflooring has been damaged due to exposure and lack of membrane maintenance/periodic replacement. Provisions should be made for replacement of minimum 2 feet sections of subflooring along with integrated fascia, flashing, and drip edge components. The continuous protruding intermediate trim sections between the corridor surface and the corridor beam may be contributing to water penetration if left untreated with caulking every two years. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony components including cantilevered cradle beams, shoring braces, floor framing, corner trim, door trim, and flashing range from in levels from "Monitor" to "More Critical" to "Severe". Several cradle beams are in a "More Critical" to "Severe" condition level where wood fibers are cracked due to exposure (south end wall support) or spans have deflected past the National Design Specification for Wood allowable 1/3" for L/240 spans at 6 to 8 feet. A majority of the steel gage concealed flange hangers at the cradle beams are corroded and should be replaced. Delamination of perimeter subflooring was evident at a majority of the balconies. Critical points of water entry include unflashed post bases and continuous protruding intermediate trim sections between the balcony surface and the edge beam may be contributing to water penetration. Potential for water damage at balcony floors and interior corners is great where caulking has cracked and cedar trim material is damaged due to exposure. All guard railing conditions are "Severe" and non-compliant with the 2012 IBC.

Balcony doors have exceeded their typical life expectancy. It is recommended that individual owners replace outdated (greater than 20 years since installed) sliders and door pans with local code compliant Impact Resistant doors possessing a minimum 55 DP rating. The alternative to door replacement is to test the units per **ASTM E1105** "*Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Doors, and Curtain Walls, by Uniform of Cyclic Static Air Pressure Difference*". This test method simulates wind driven rain under severe rainfall conditions. It should be stated that only testing agencies in compliance with AAMA Accreditation are recommended to perform and offer written test results.

Stair stringer and tread conditions varied from "Monitor" to potentially "More Critical" levels. While the majority of the components were in acceptable conditions, stringers displaying cracking should be replaced within the noted timetable. Trim components typically show signs of moisture damage at the stairs.

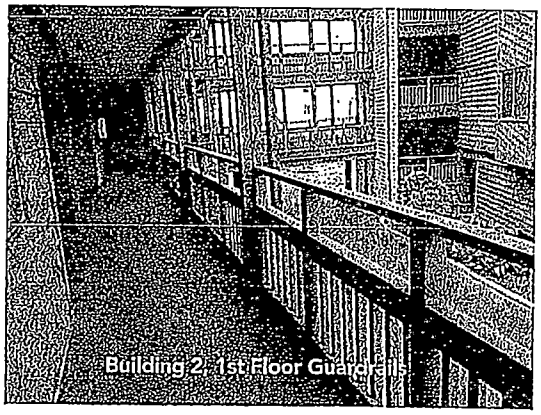
Panel siding is present at both the north and south gable ends and were graded at level "Monitor" with no current issues observed or reported. Weathering of cedar planks and siding trim at both gable ends and around the building perimeter should be assessed for replacement as needed during building remediation.

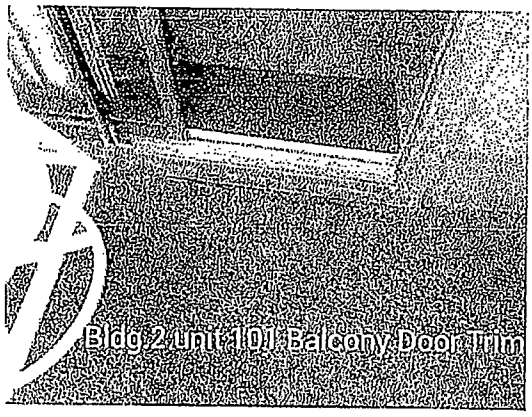
Visual inspection of the roof and flashing systems was limited due to accessibility. The roof shingles, flashing, and fascia component condition has been graded as a (4) for "More Critical" due to material age and loss of material integrity. Effectiveness of existing flashing, drip edge, and membrane protection at roof slopes less than 3:12 could not be verified without crane access.

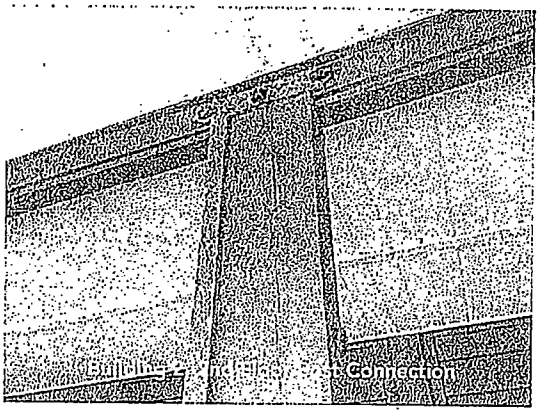
Timber pilings at the ground level were evaluated in groups of 5 at the north, south, east, and west areas of the parking level and varied in levels from "Monitor" where splits exceeded 1/8" in more than 80% of the surface area of the sample set. A majority of the piers are in need of crack sealing and sealant treatment to protect against future exposure damage. It is recommended that bolted connections ranging in condition from "More Critical" to "Severe" be replaced at the time of building remediation.

Photo Documentation

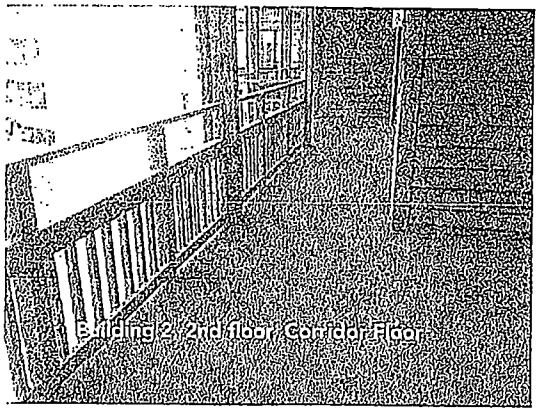
Building 2


Building 2, 1st Floor Guardrails

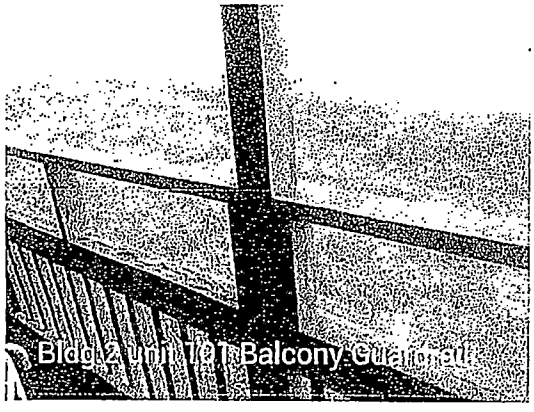

Bldg 2 unit 101 Balcony Door Trim

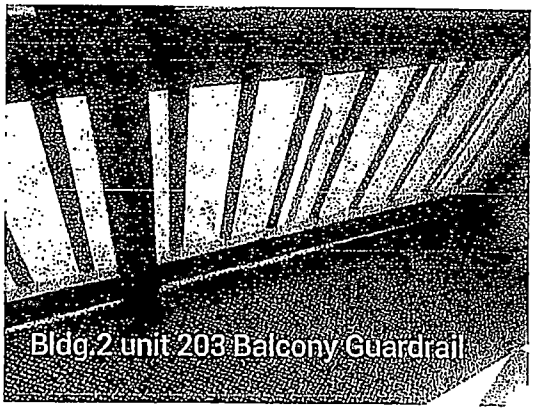

Building 2, 1st Floor Connection

Bldg 2 unit 101 Balcony Ceiling


Building 2, 2nd floor Corridor Floor

Bldg 2 unit 203 Balcony Siding Panel


Bldg 2 unit 101 Balcony Guardrail


Bldg 2 unit 203 Balcony Guardrail