THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2018-001180

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 VI

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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

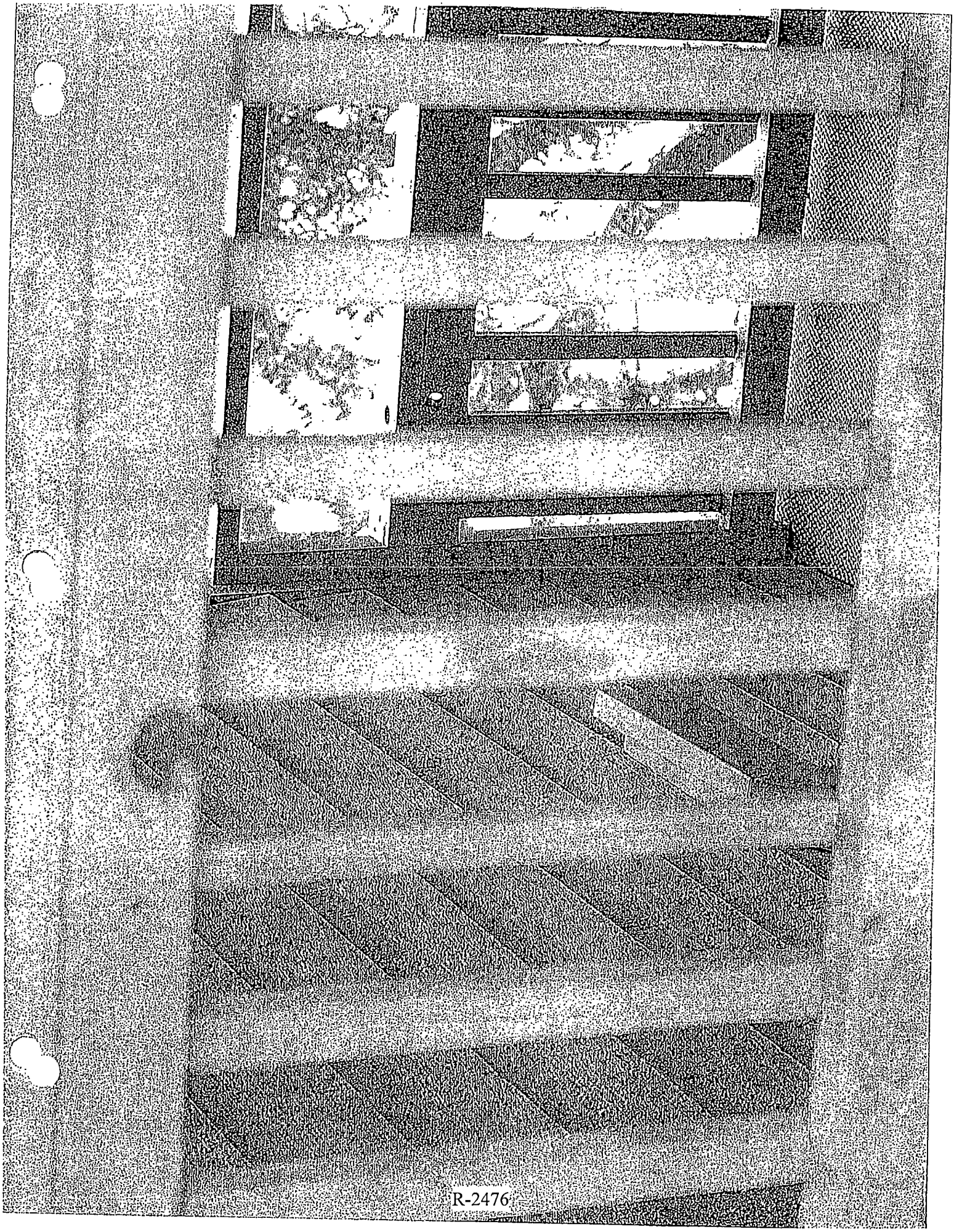
Third-Party Defendant's Memorandum in Opposition to Defendants'/Third-Party Plaintiffs' Motion for Judgment on the Pleadings filed February 14, 2018 3334

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

R-2475



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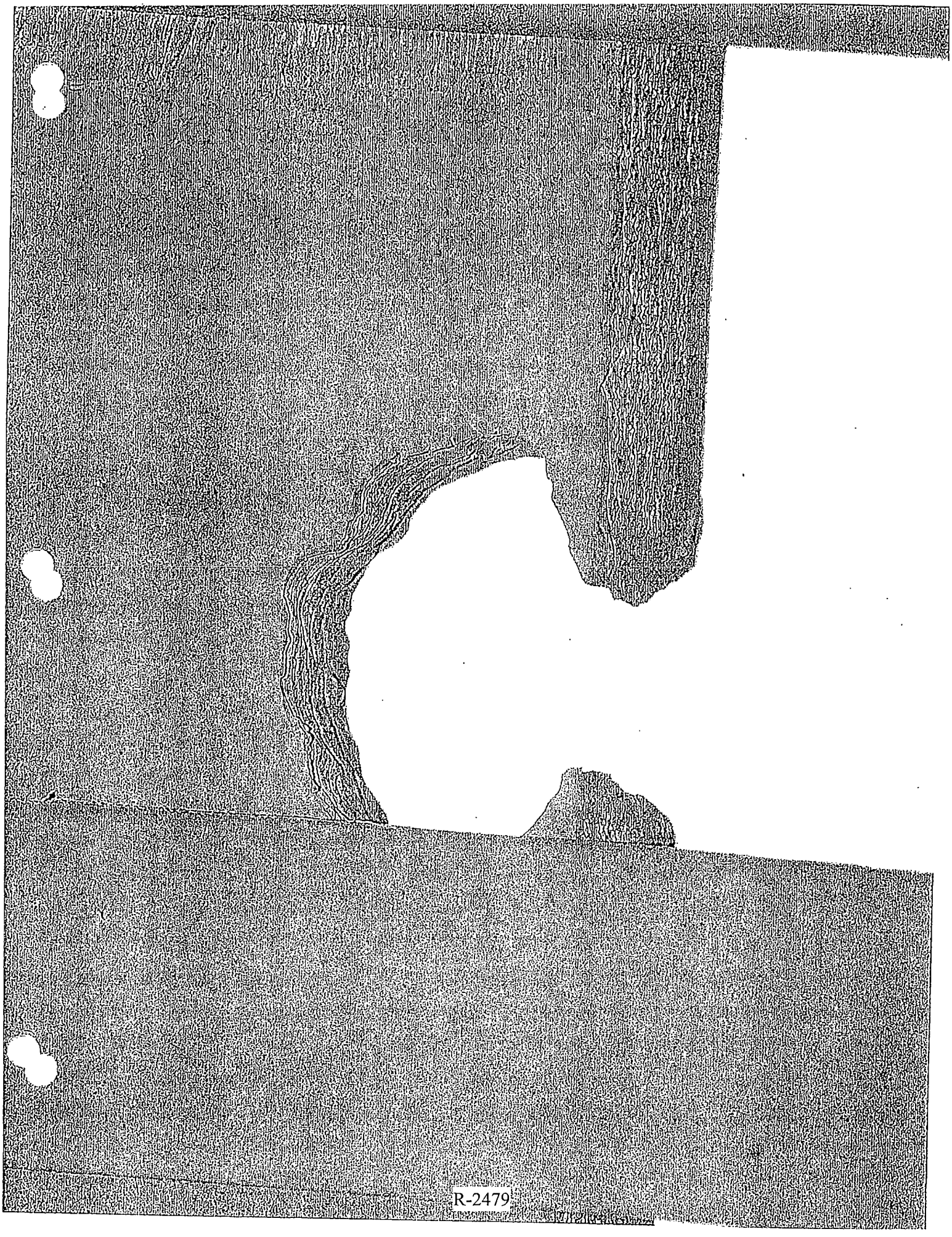

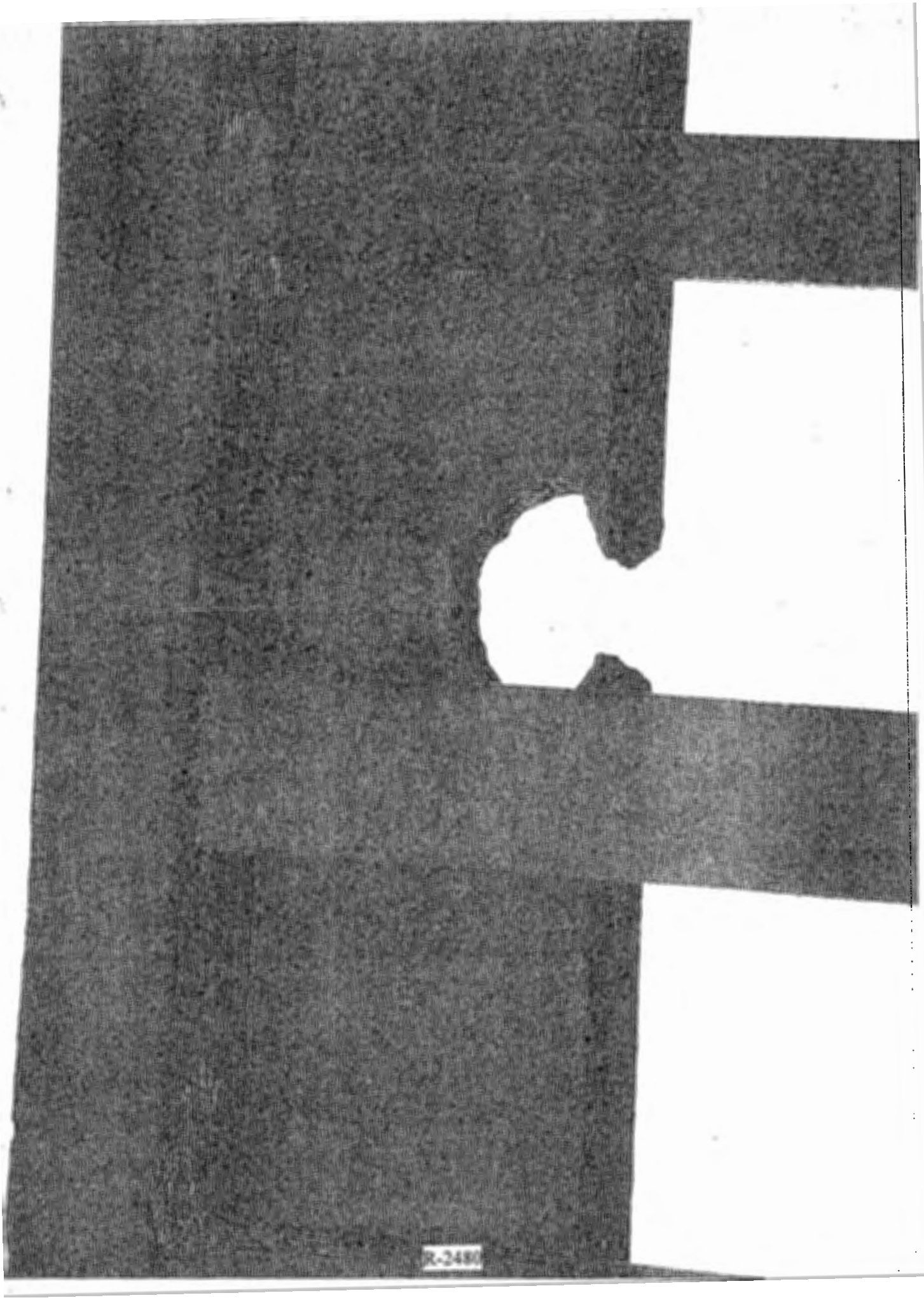

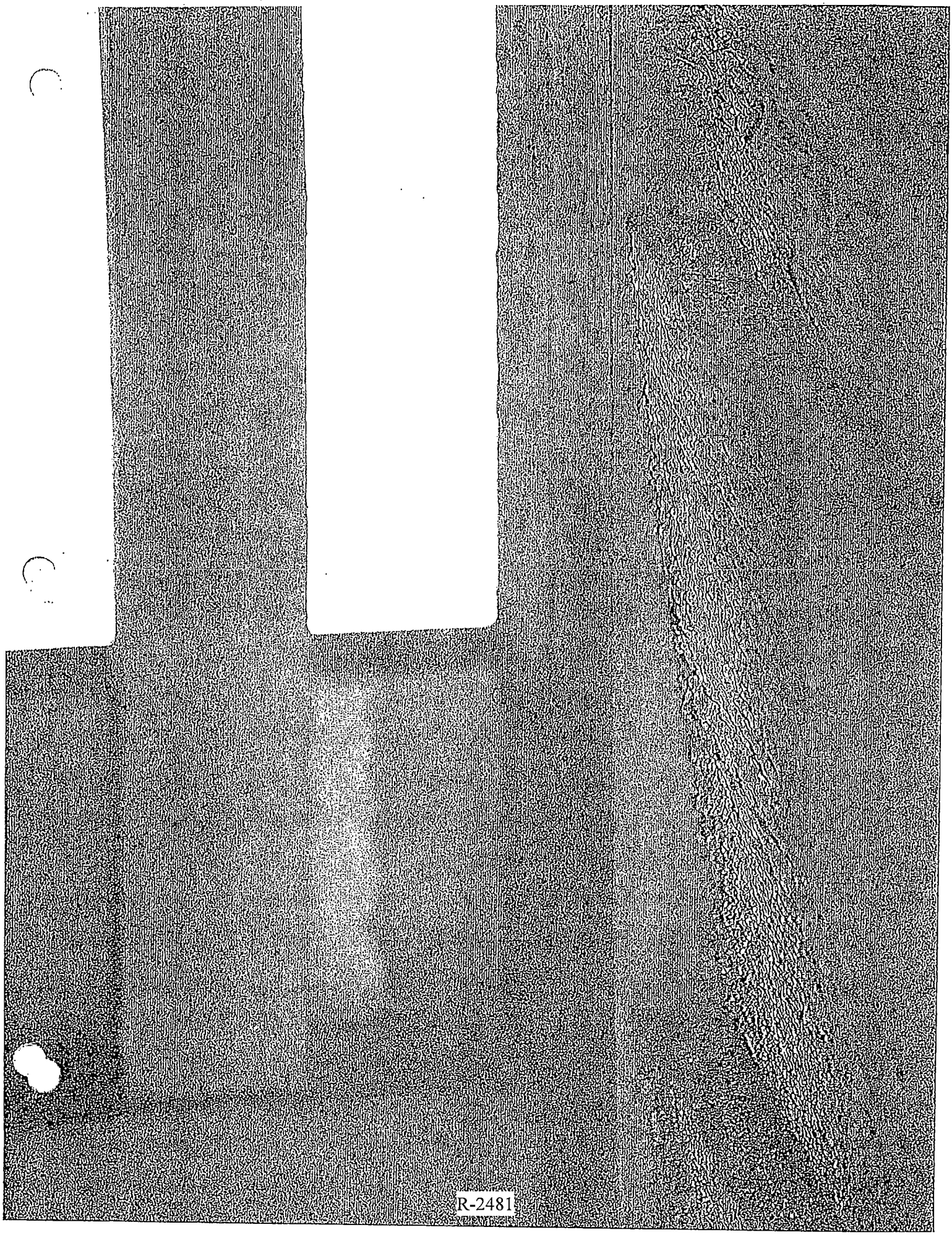

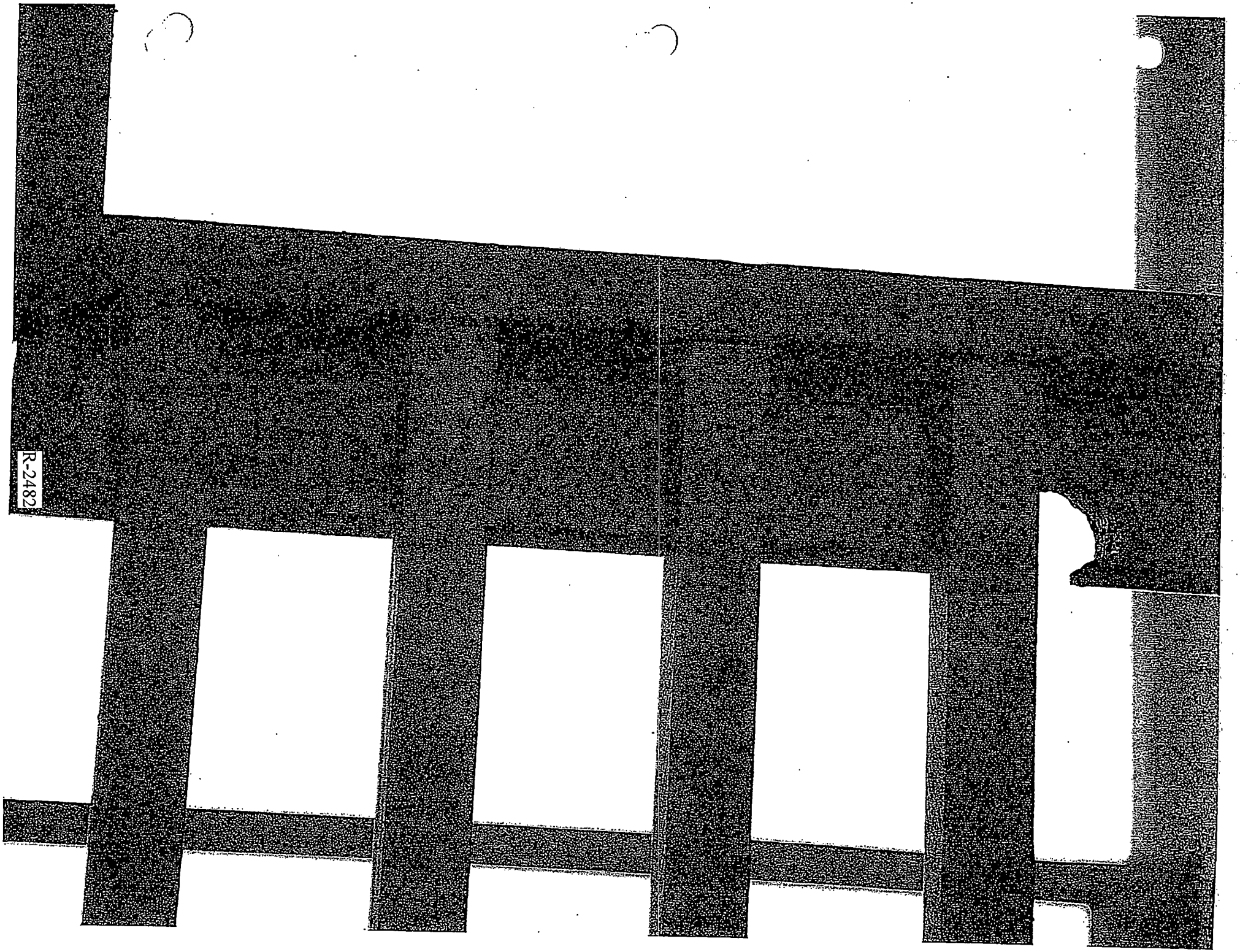
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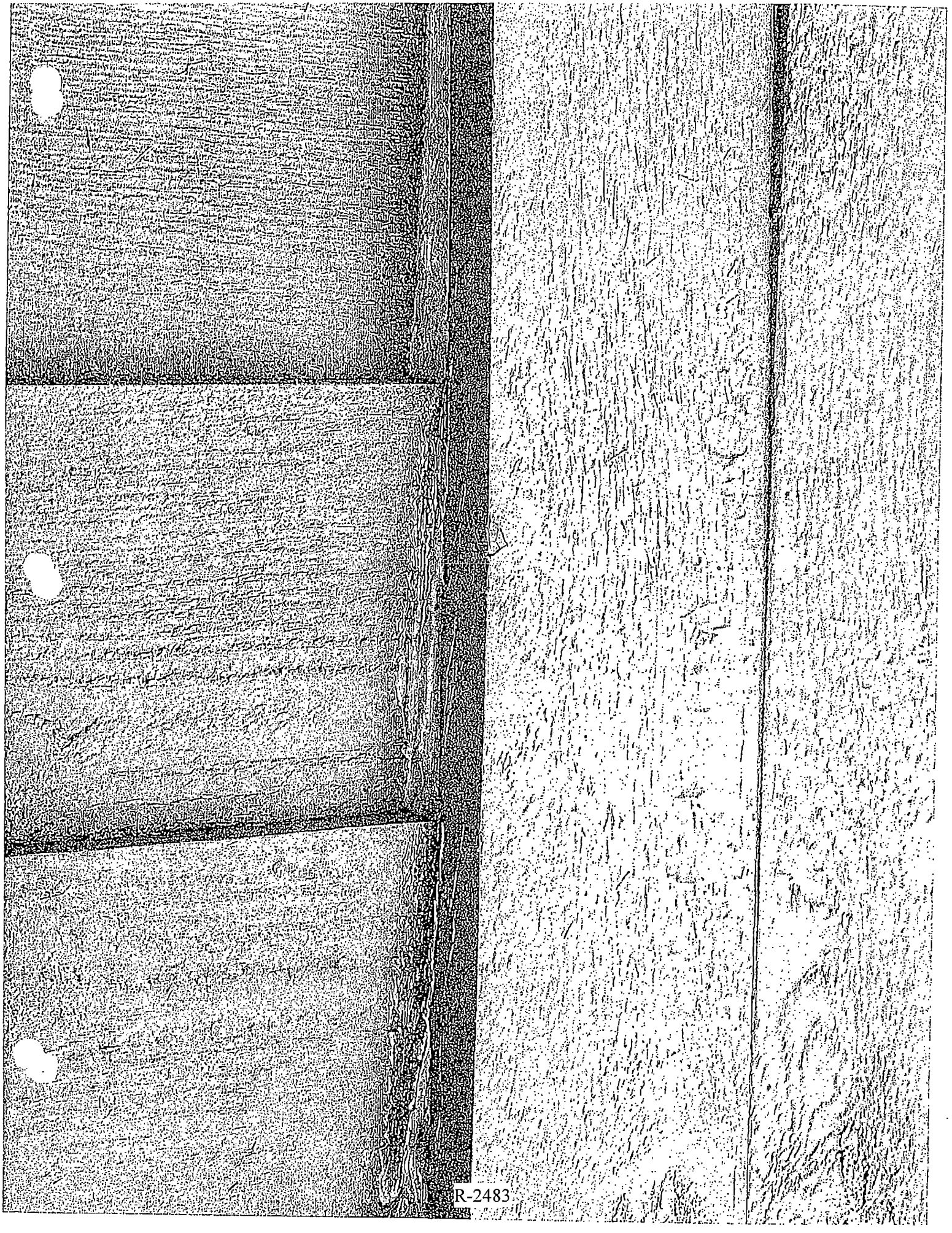

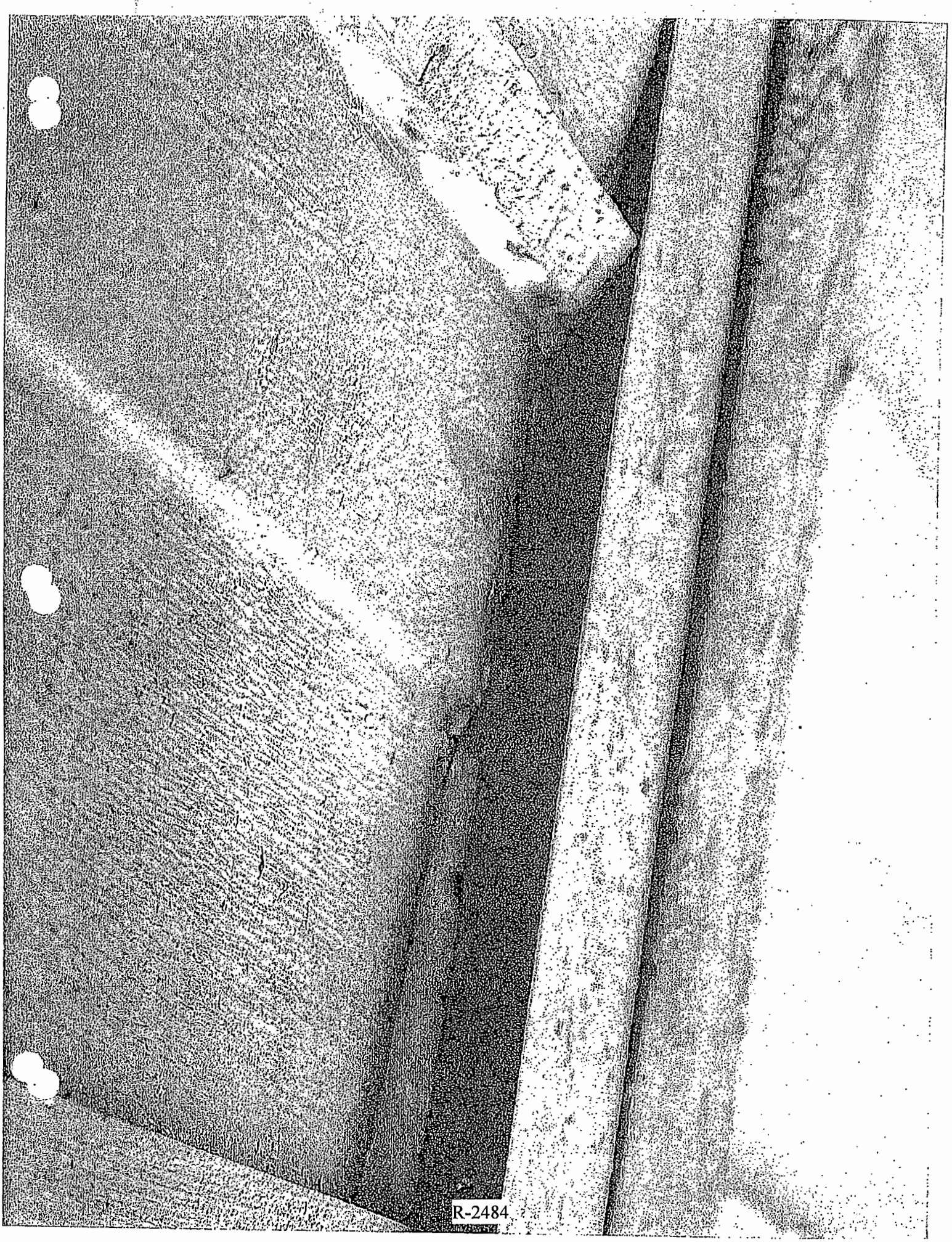

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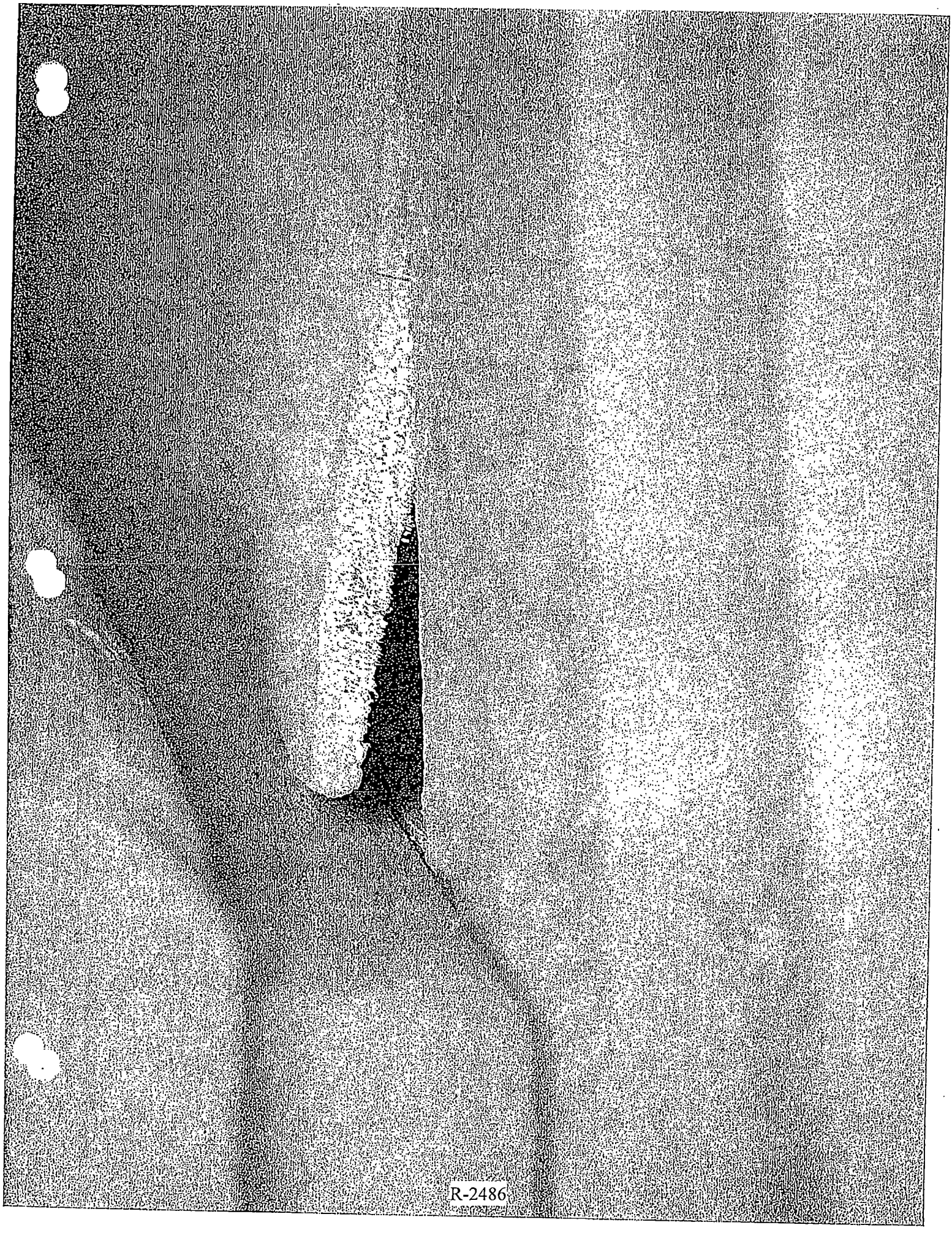

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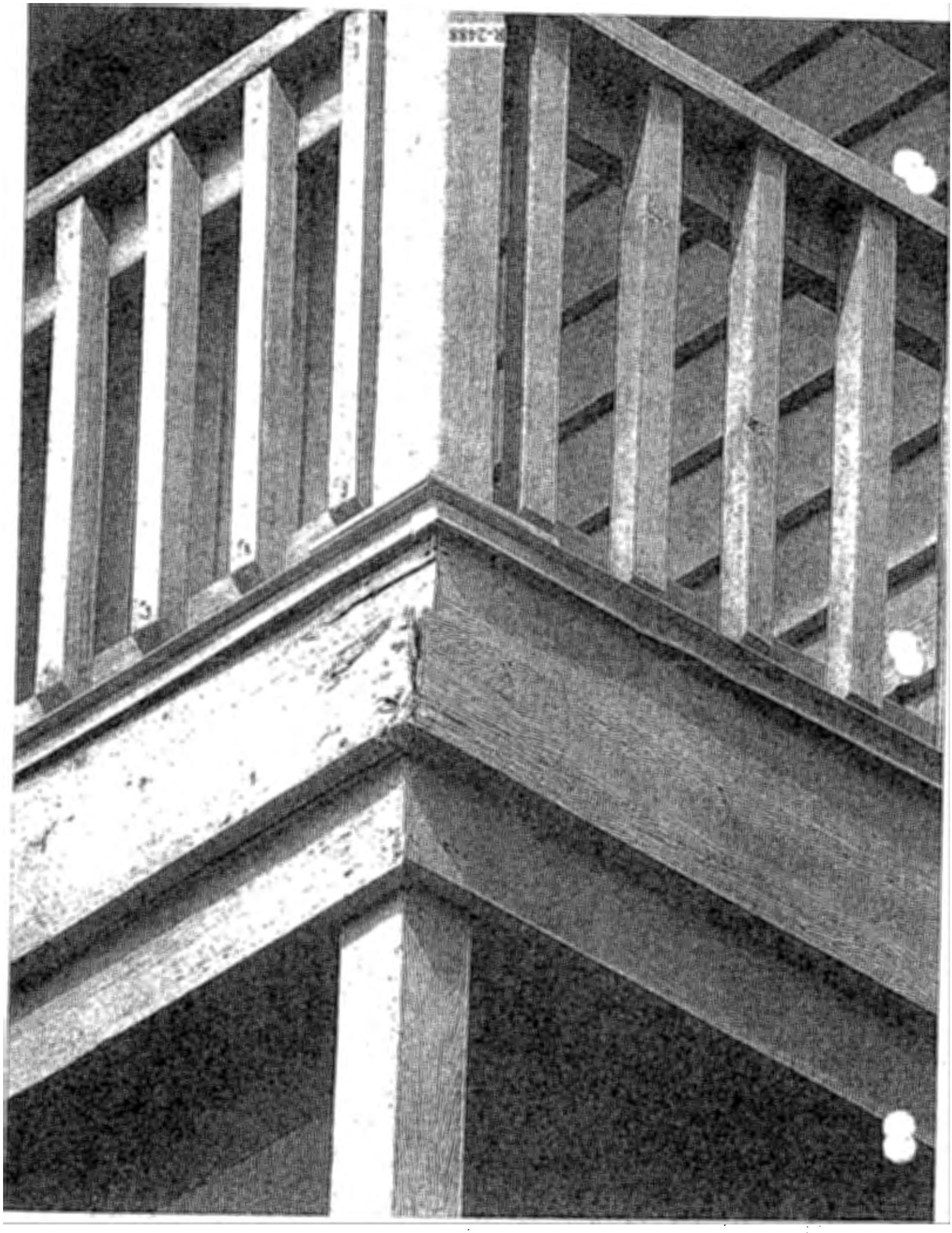

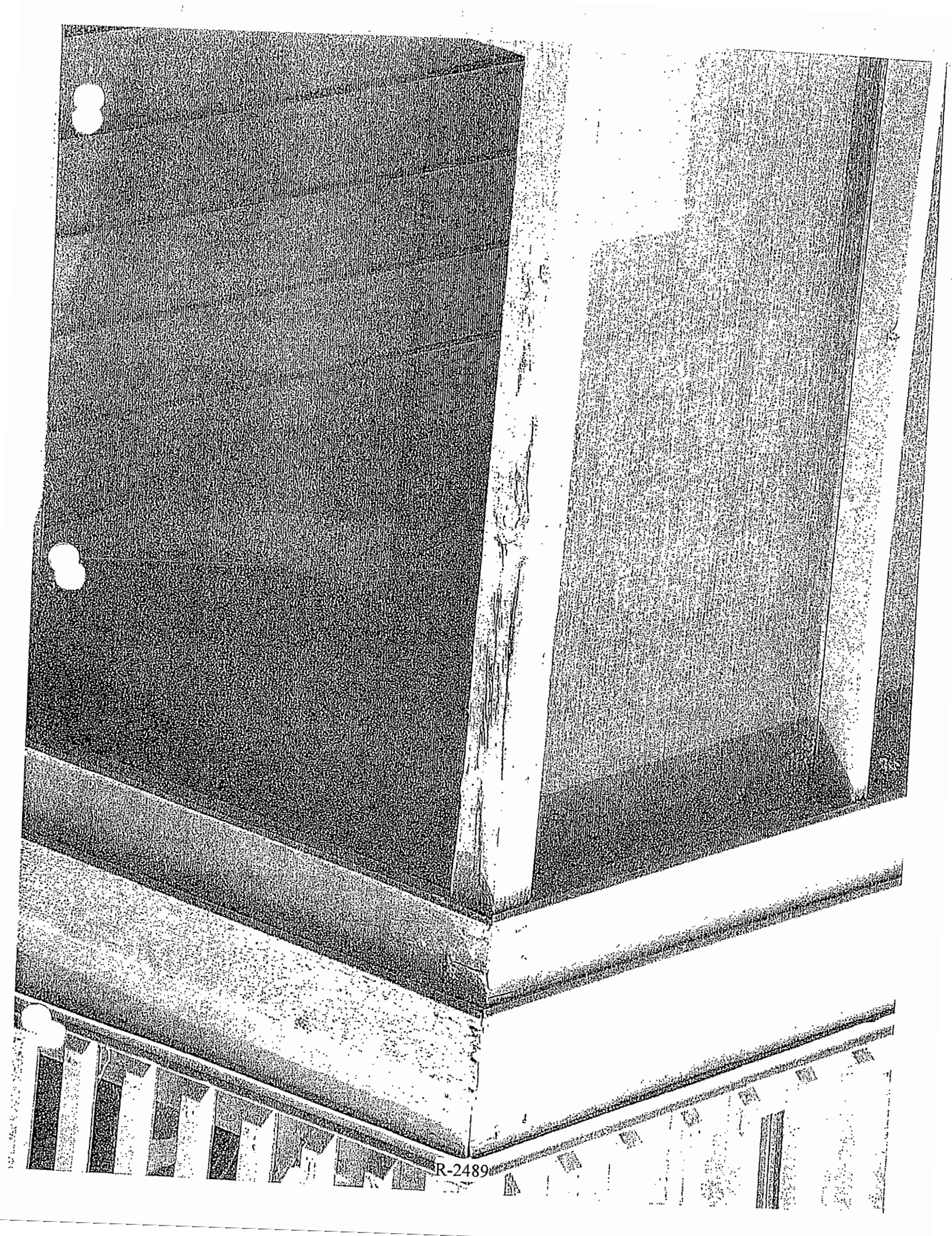

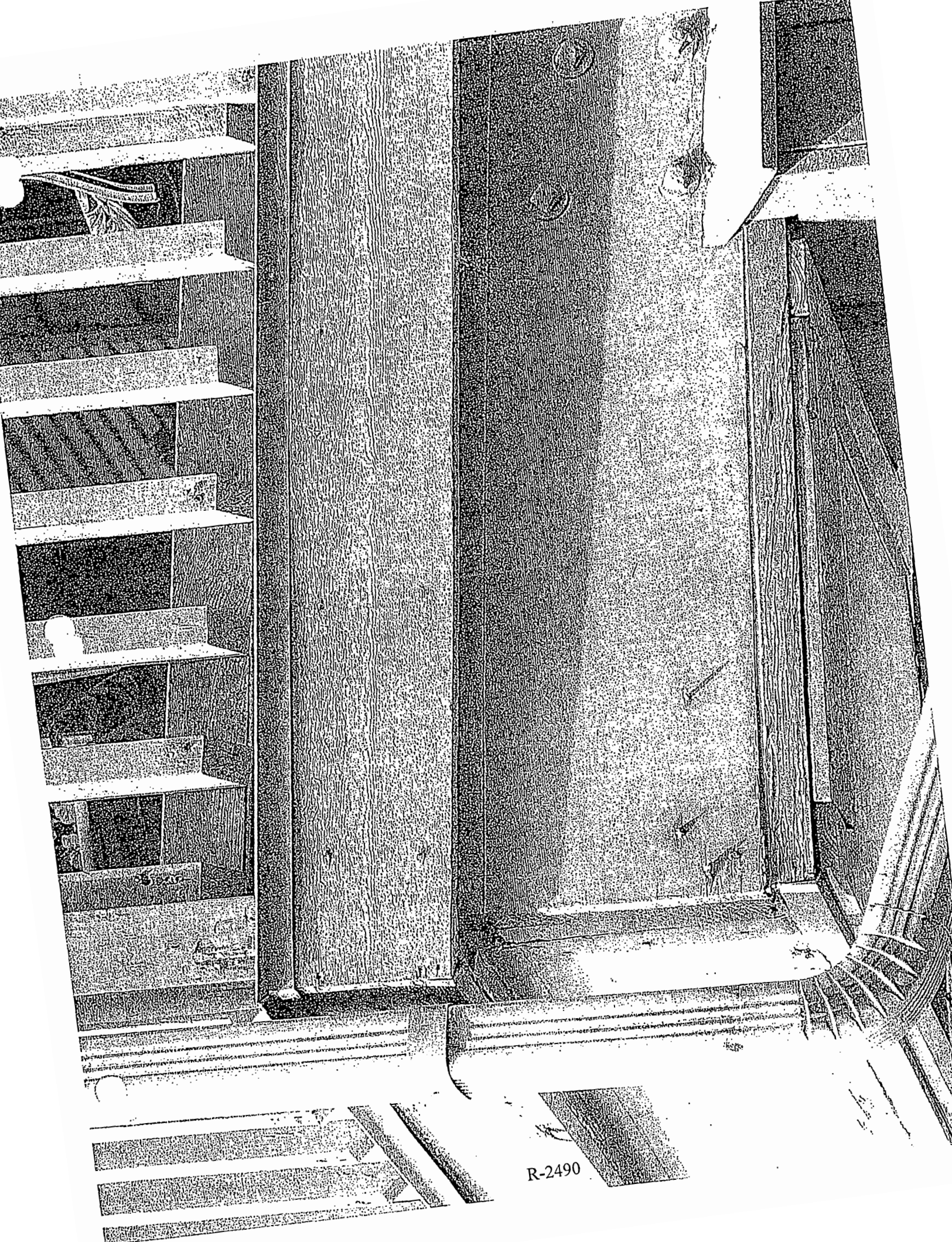

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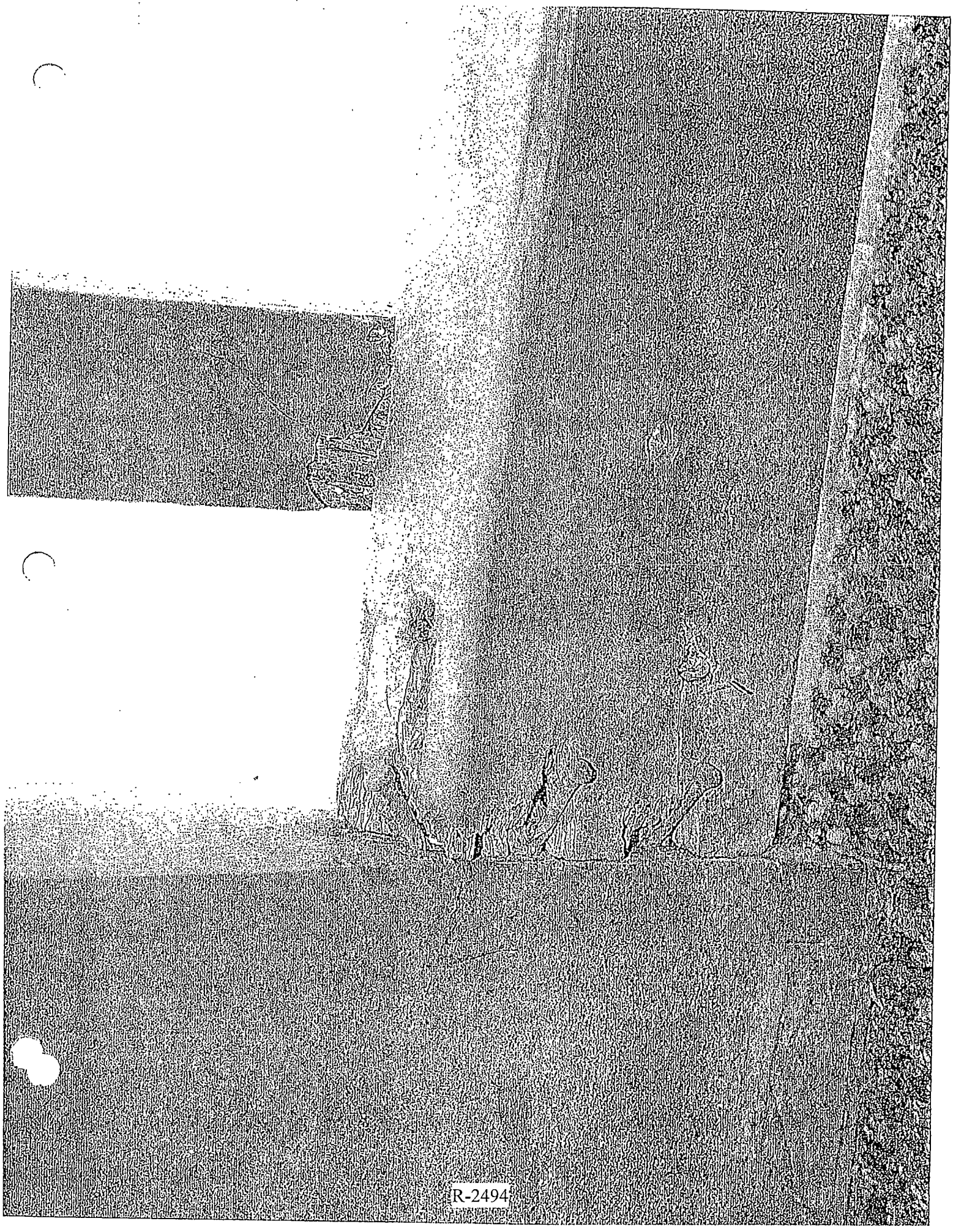

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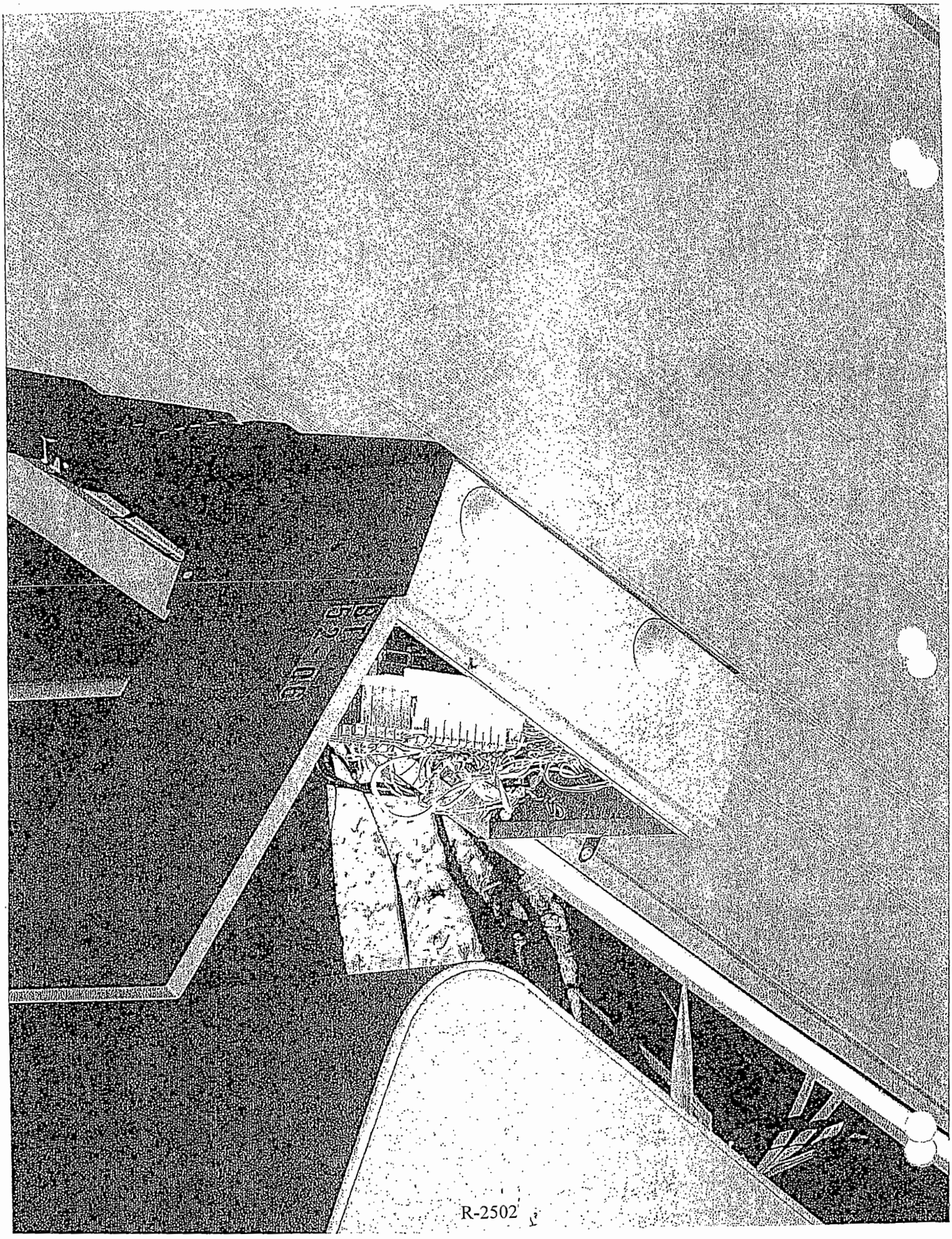

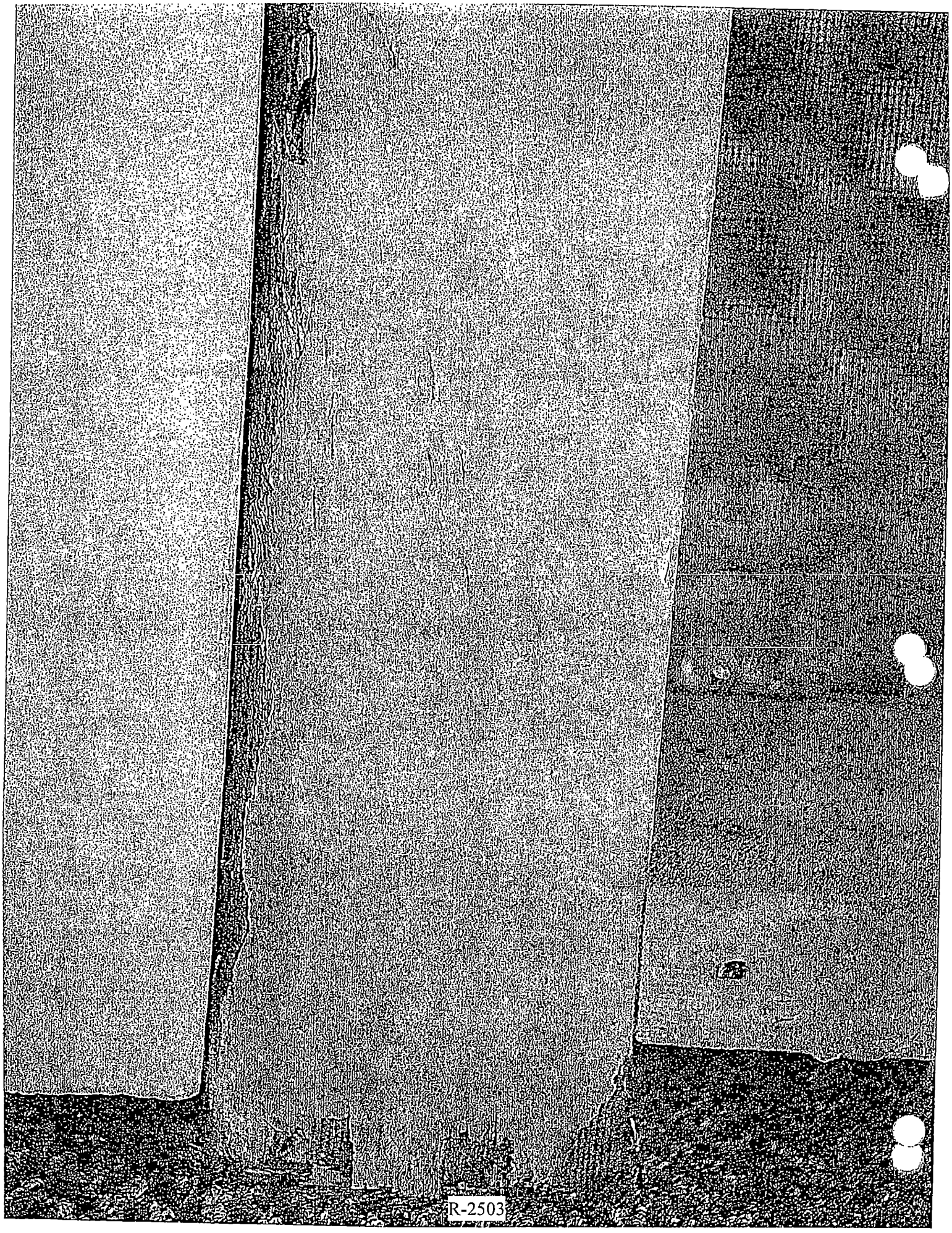

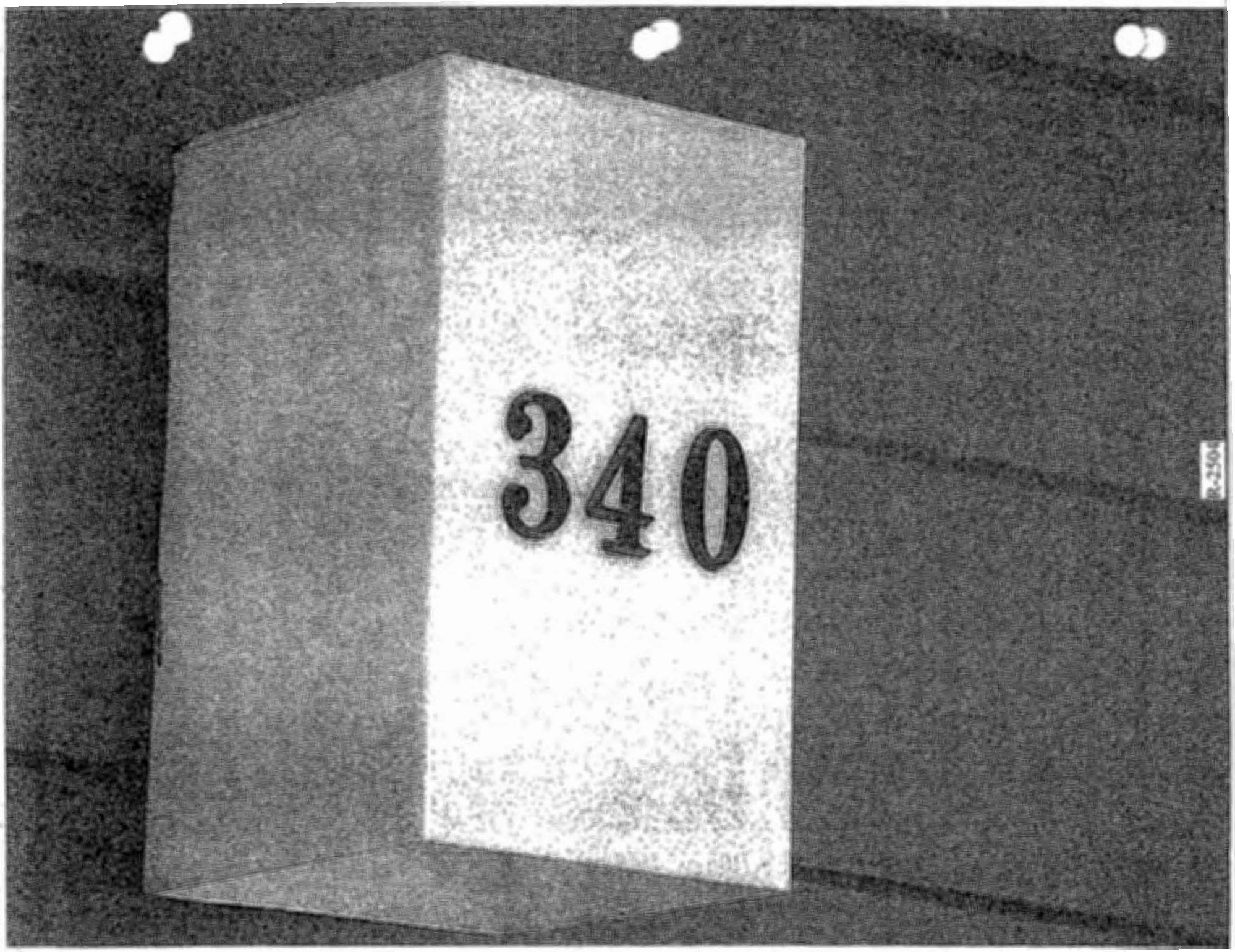
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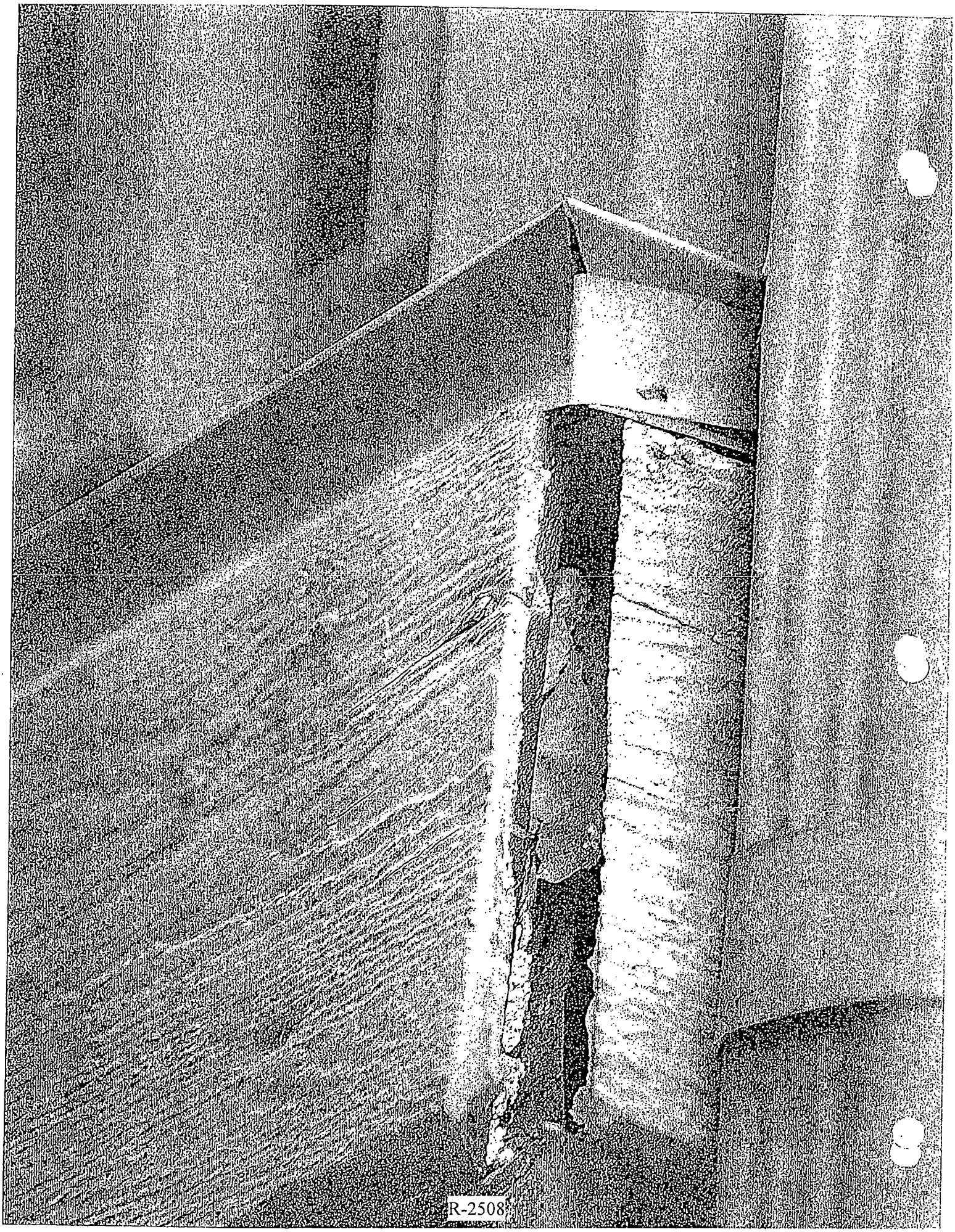

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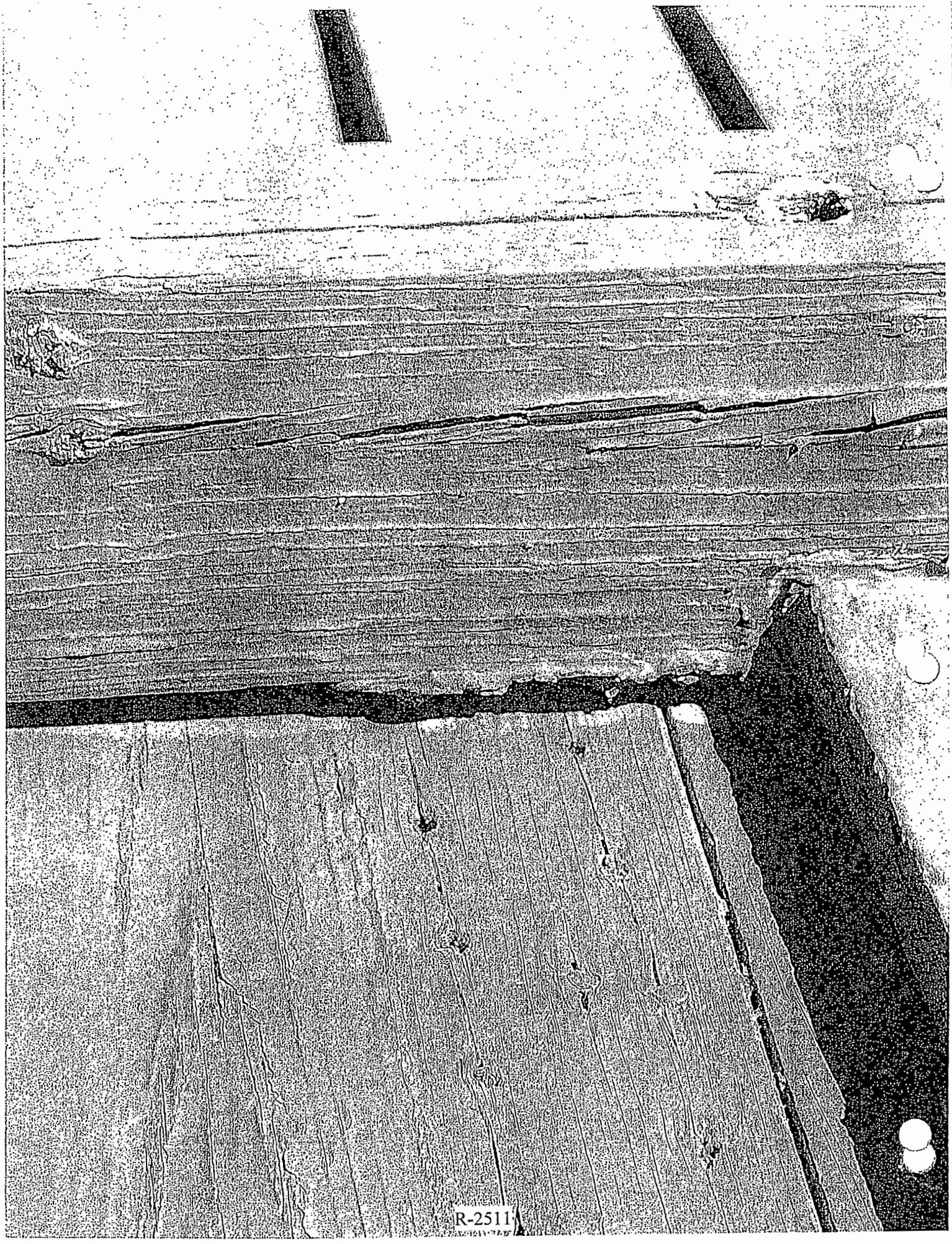

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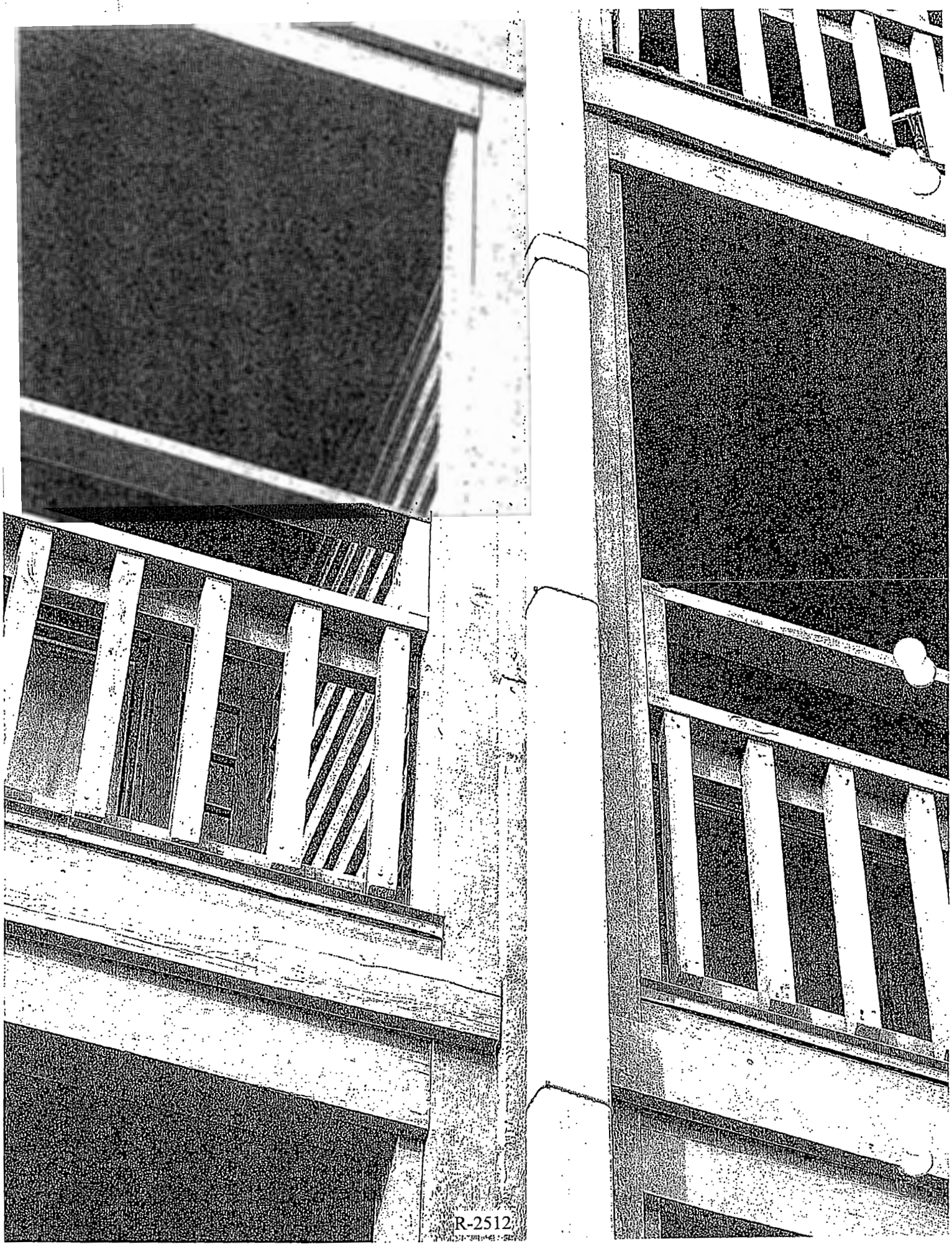
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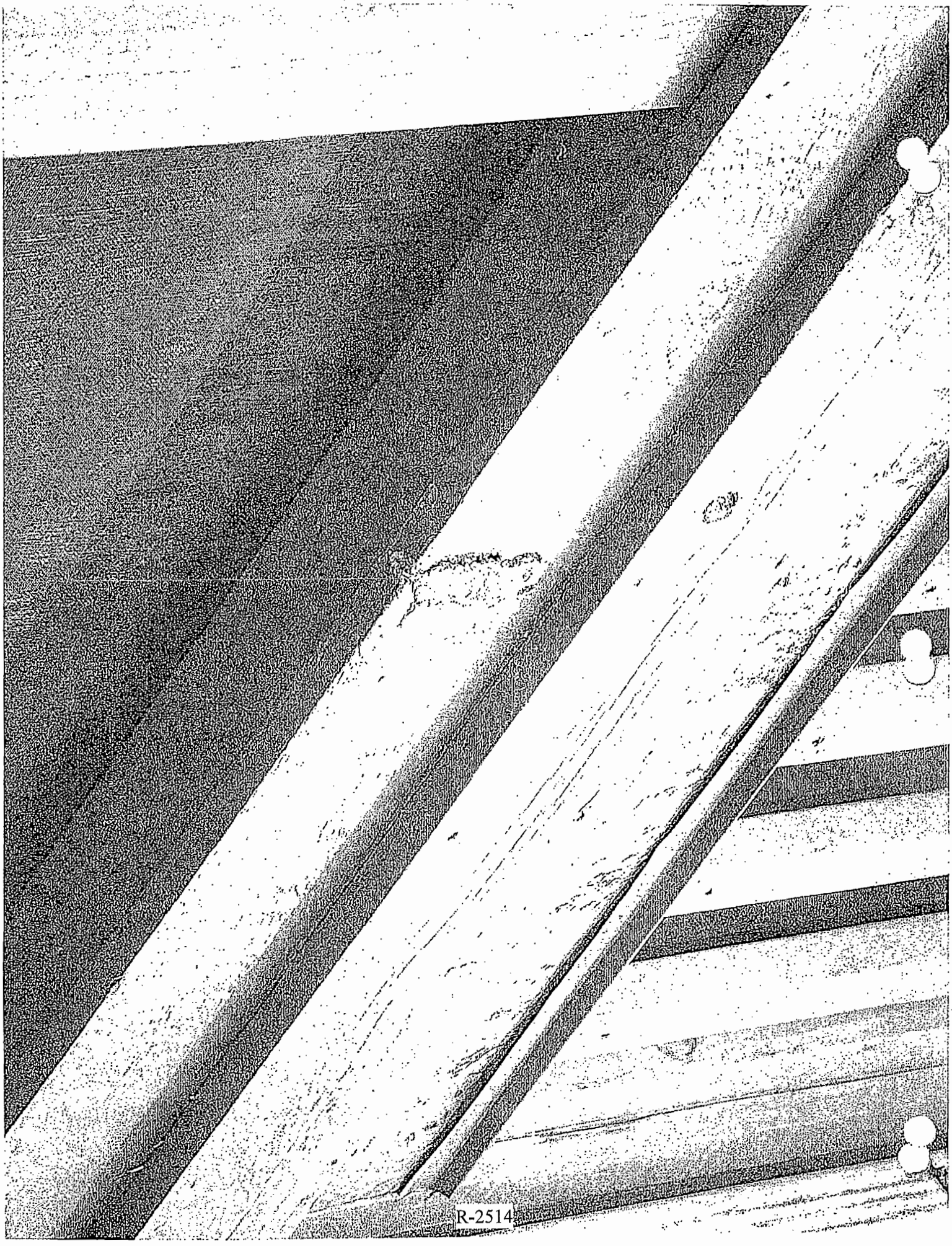

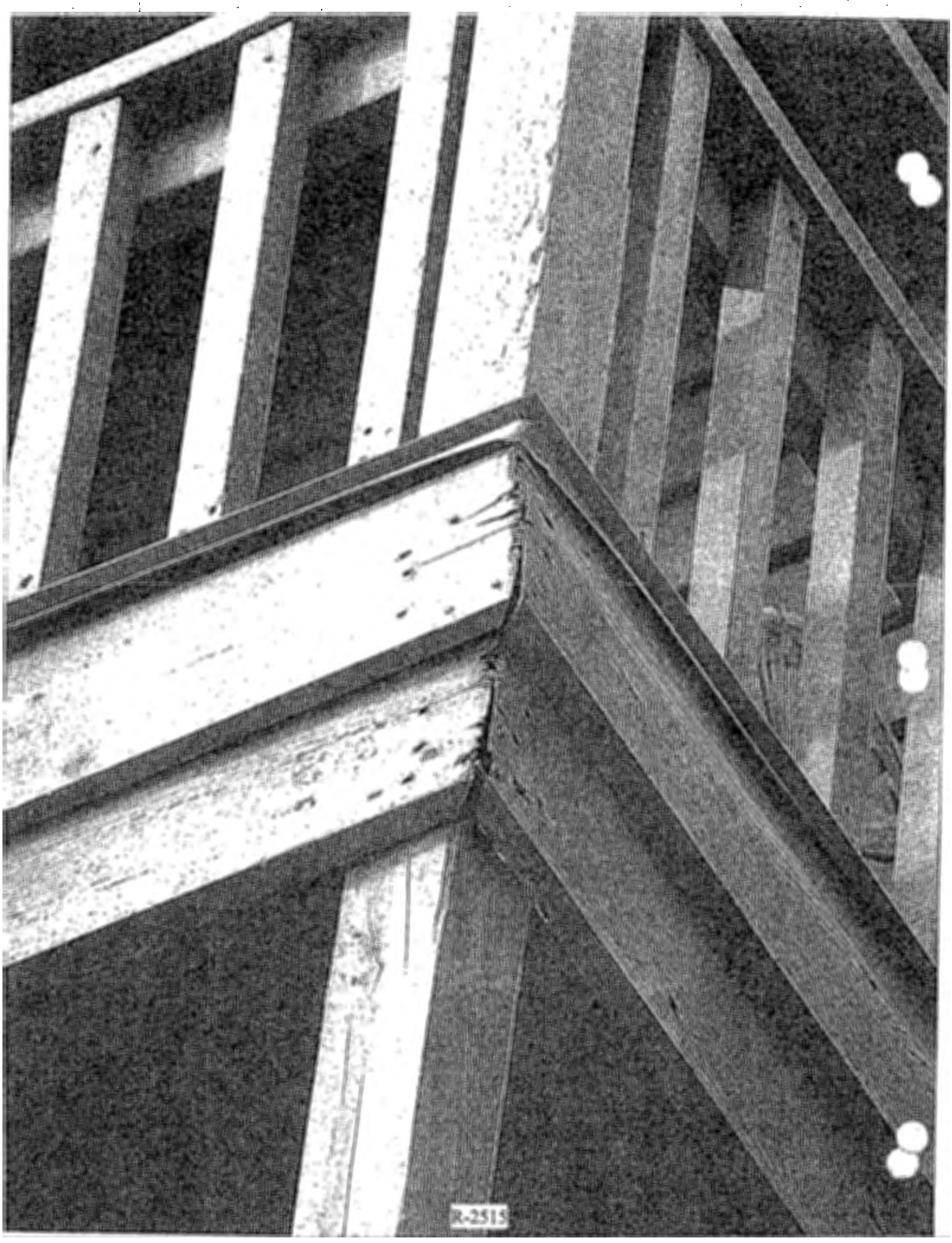
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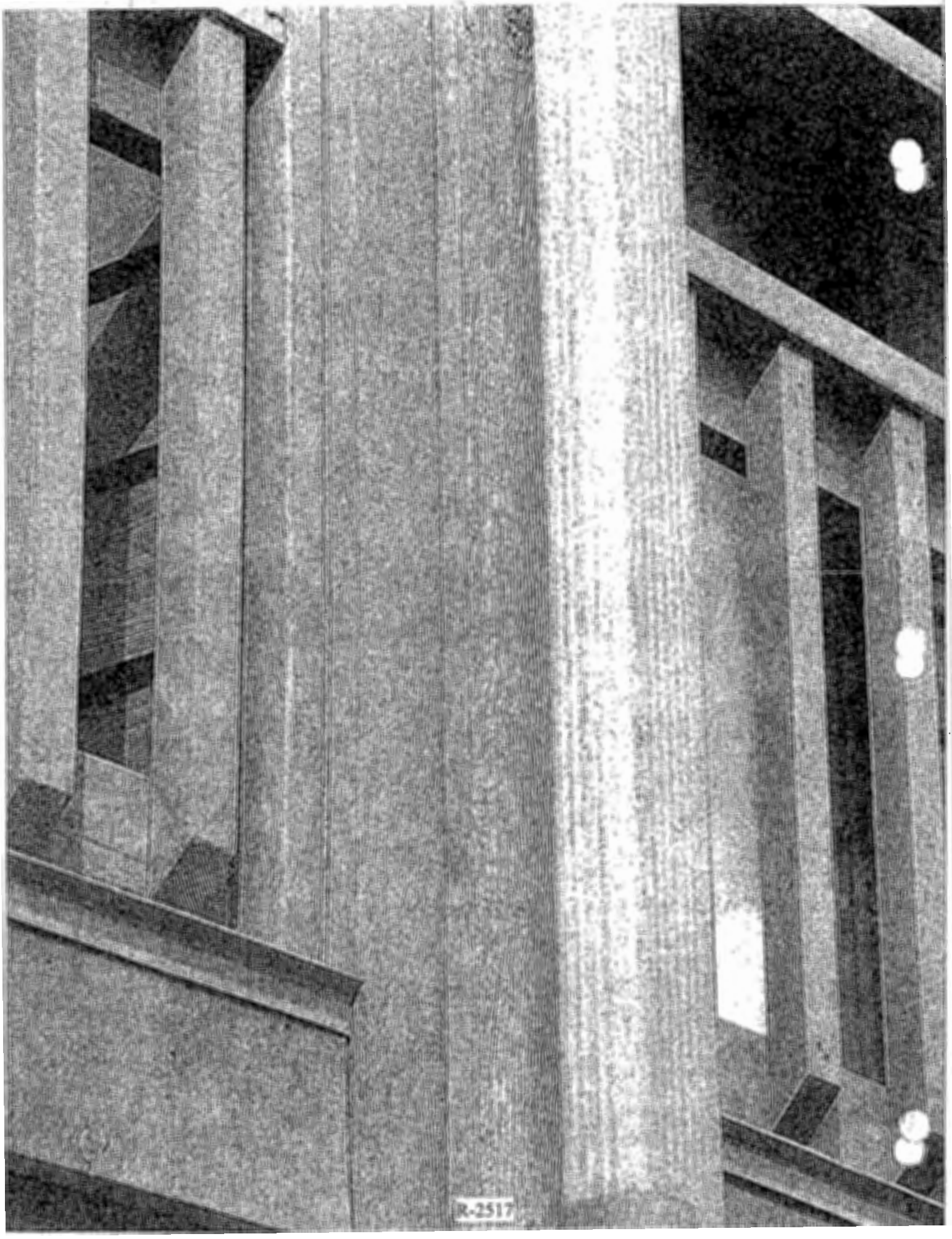
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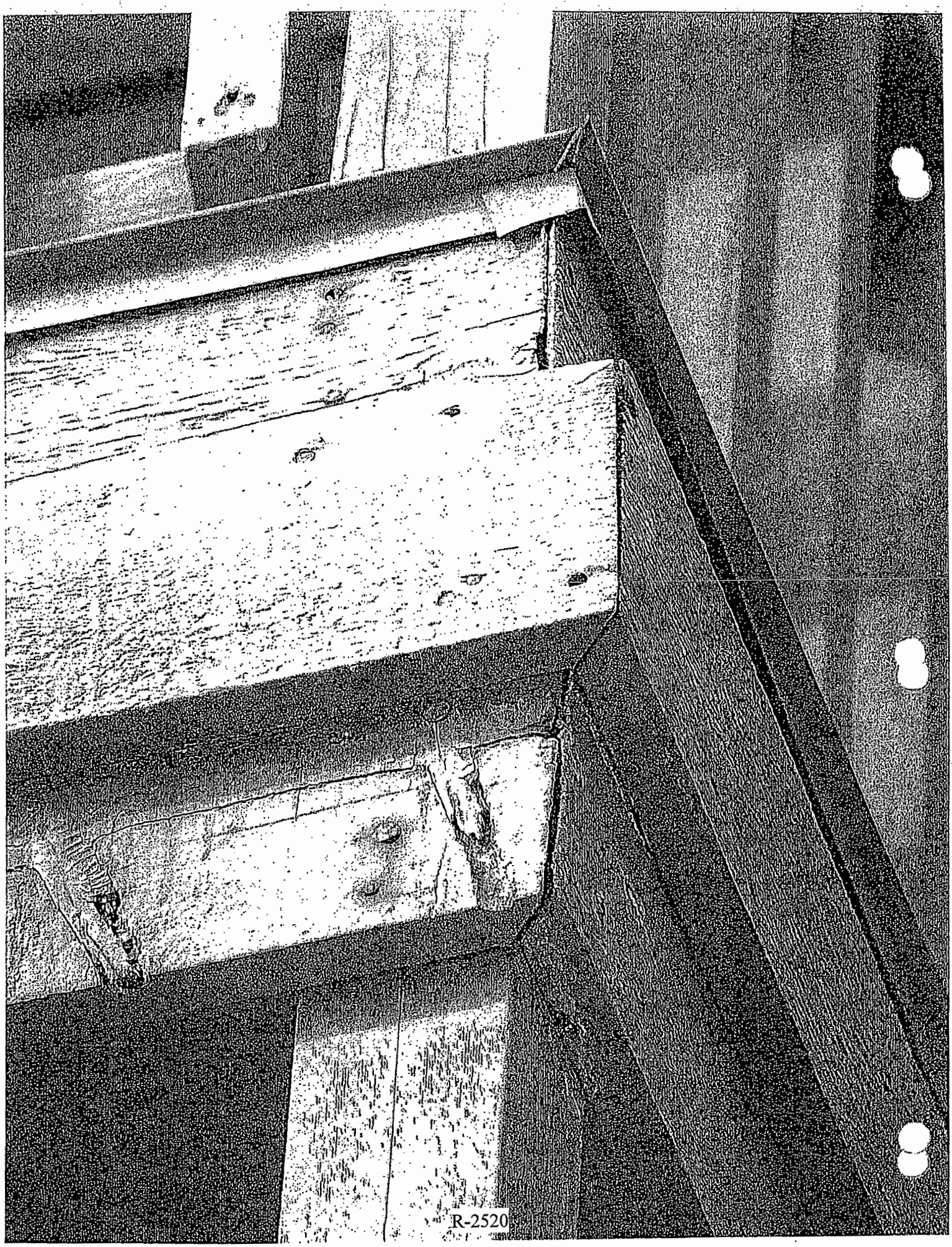

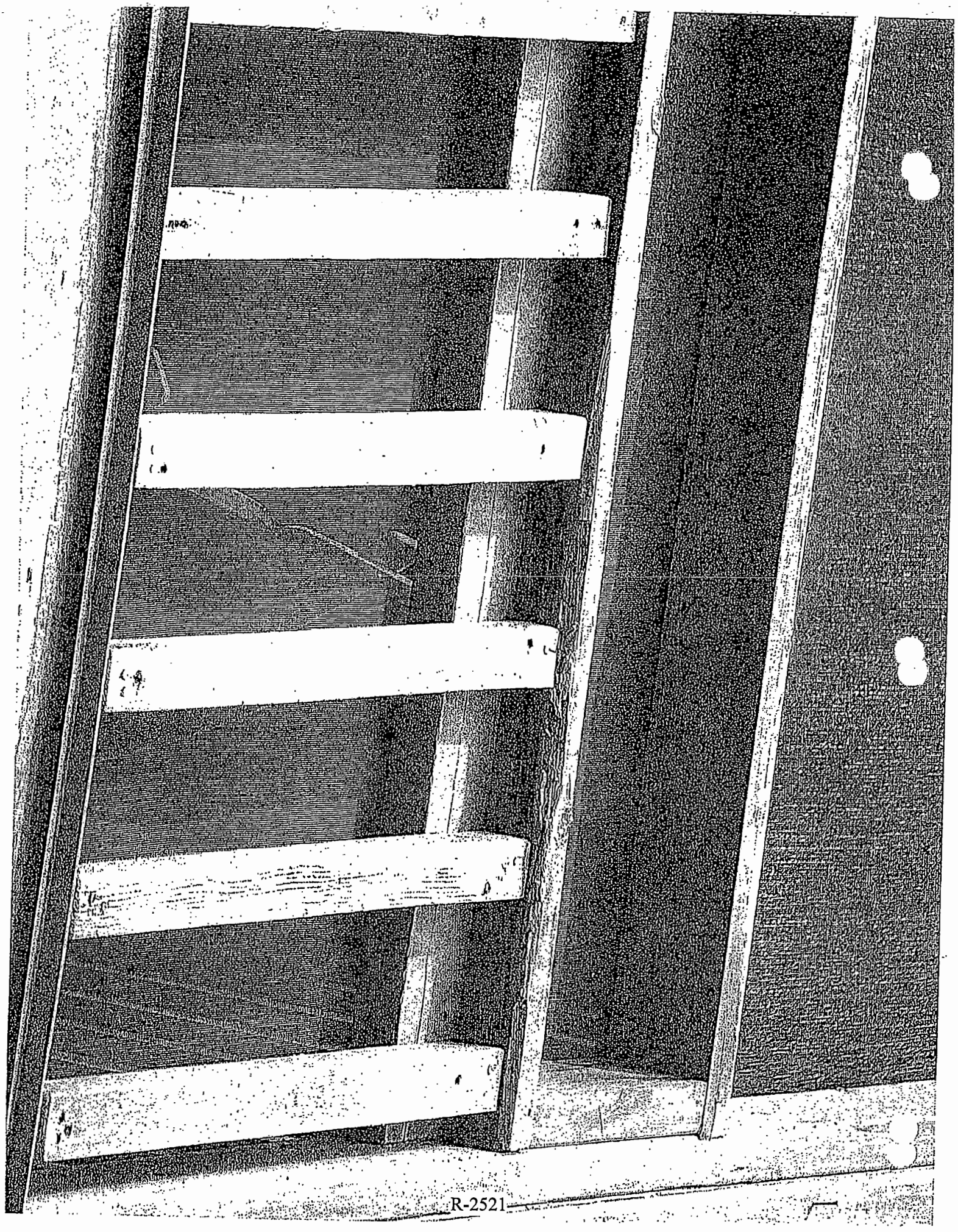

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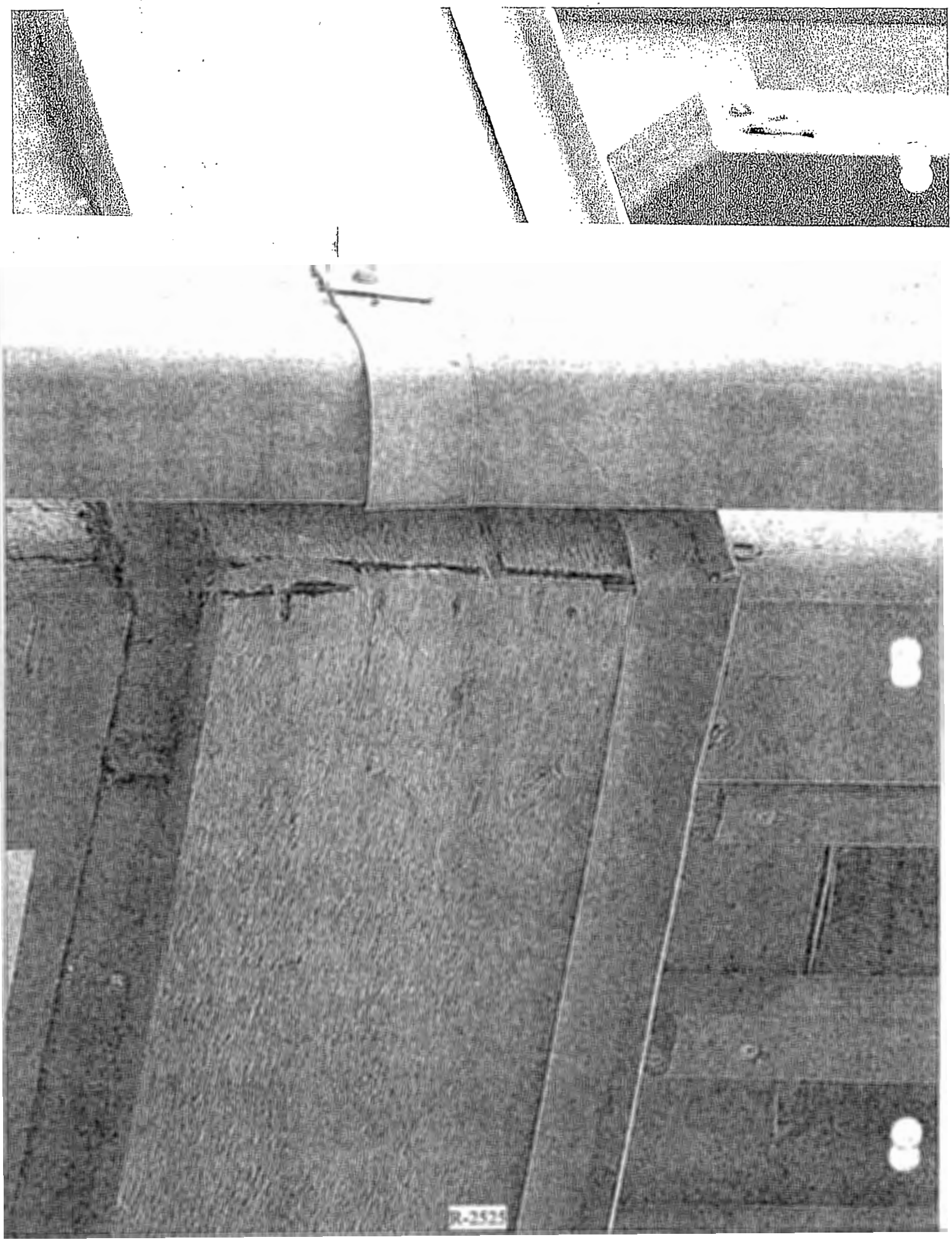
R-2523

R-2524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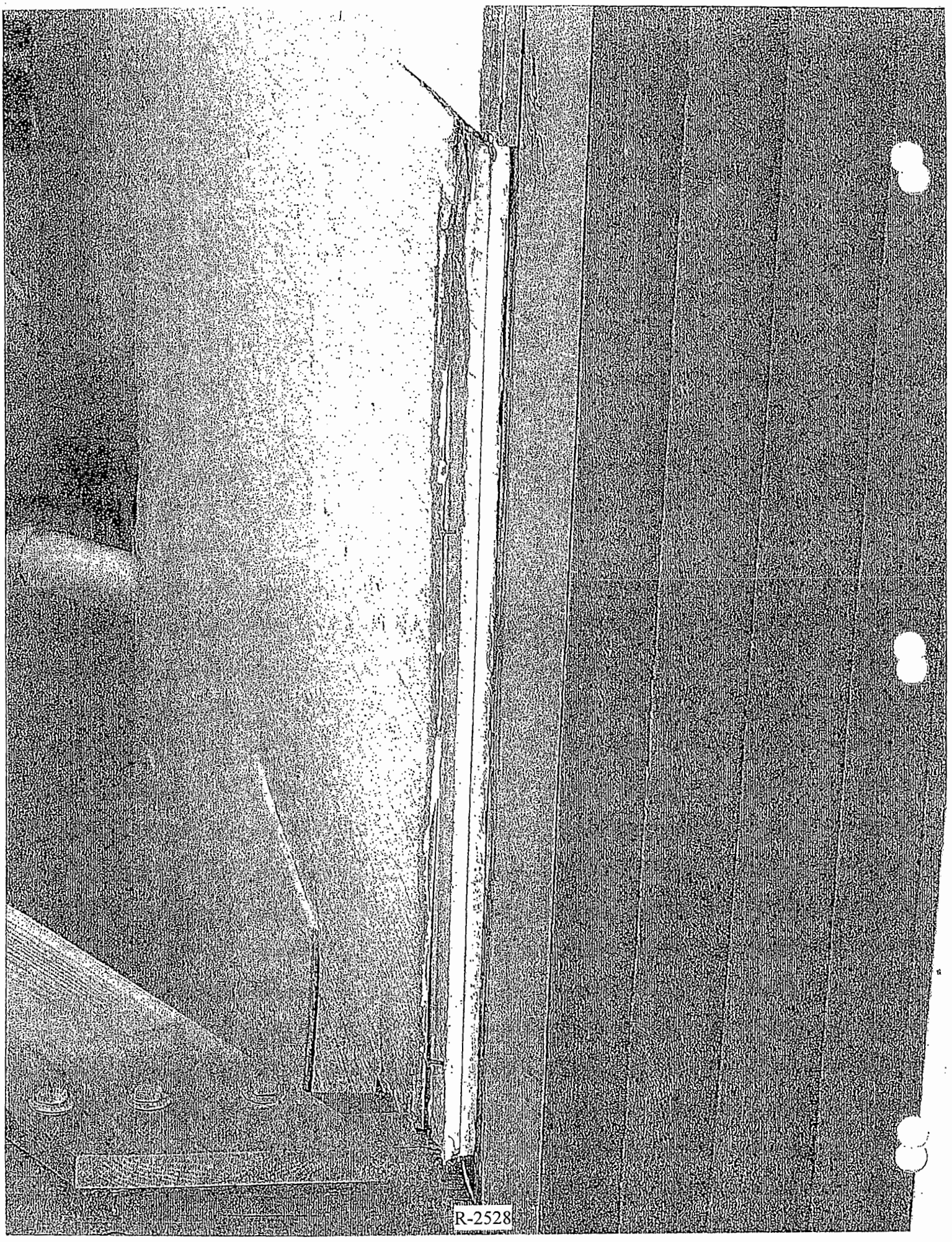
161-165
261-265
361-365
R-2527



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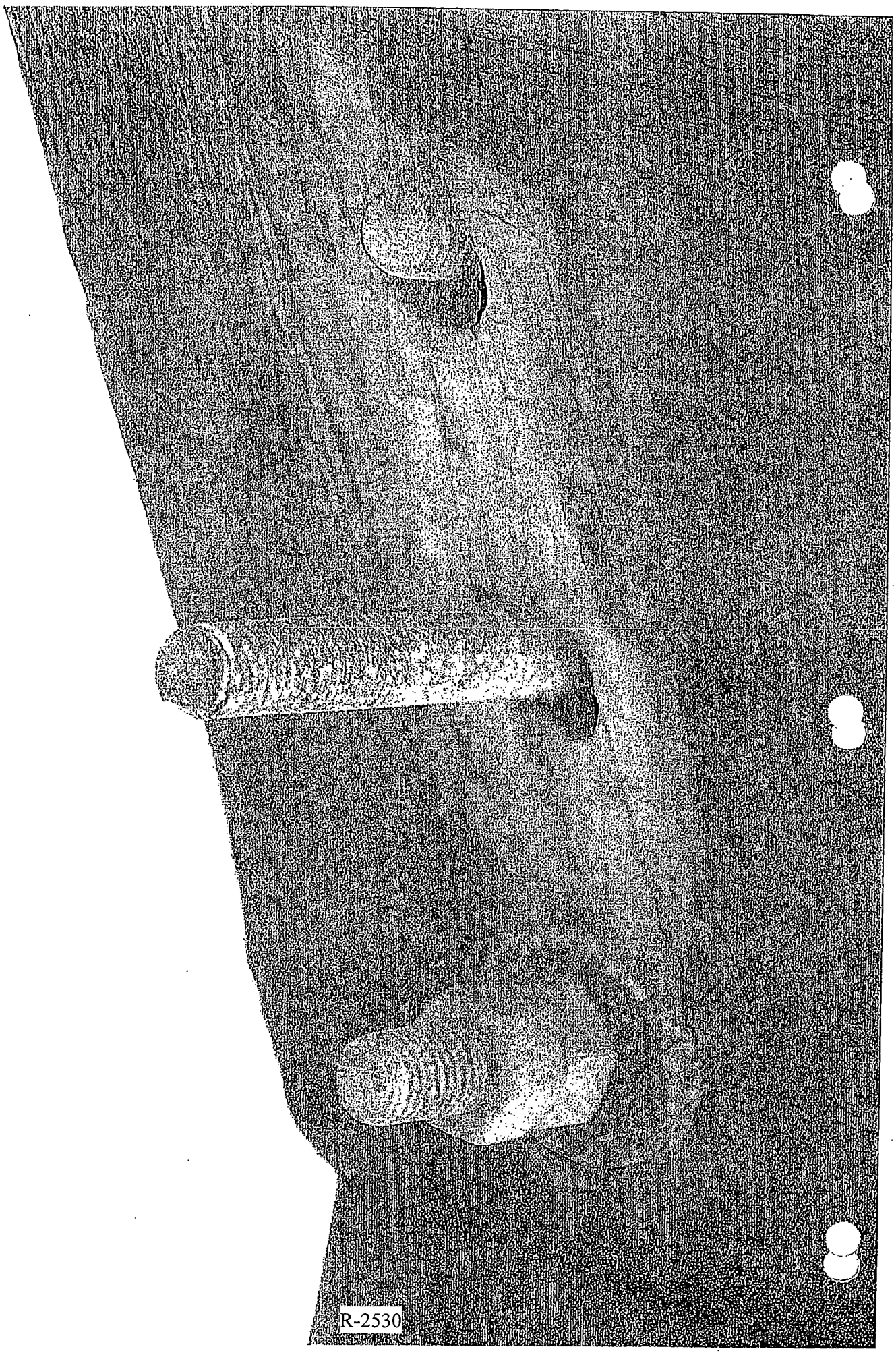

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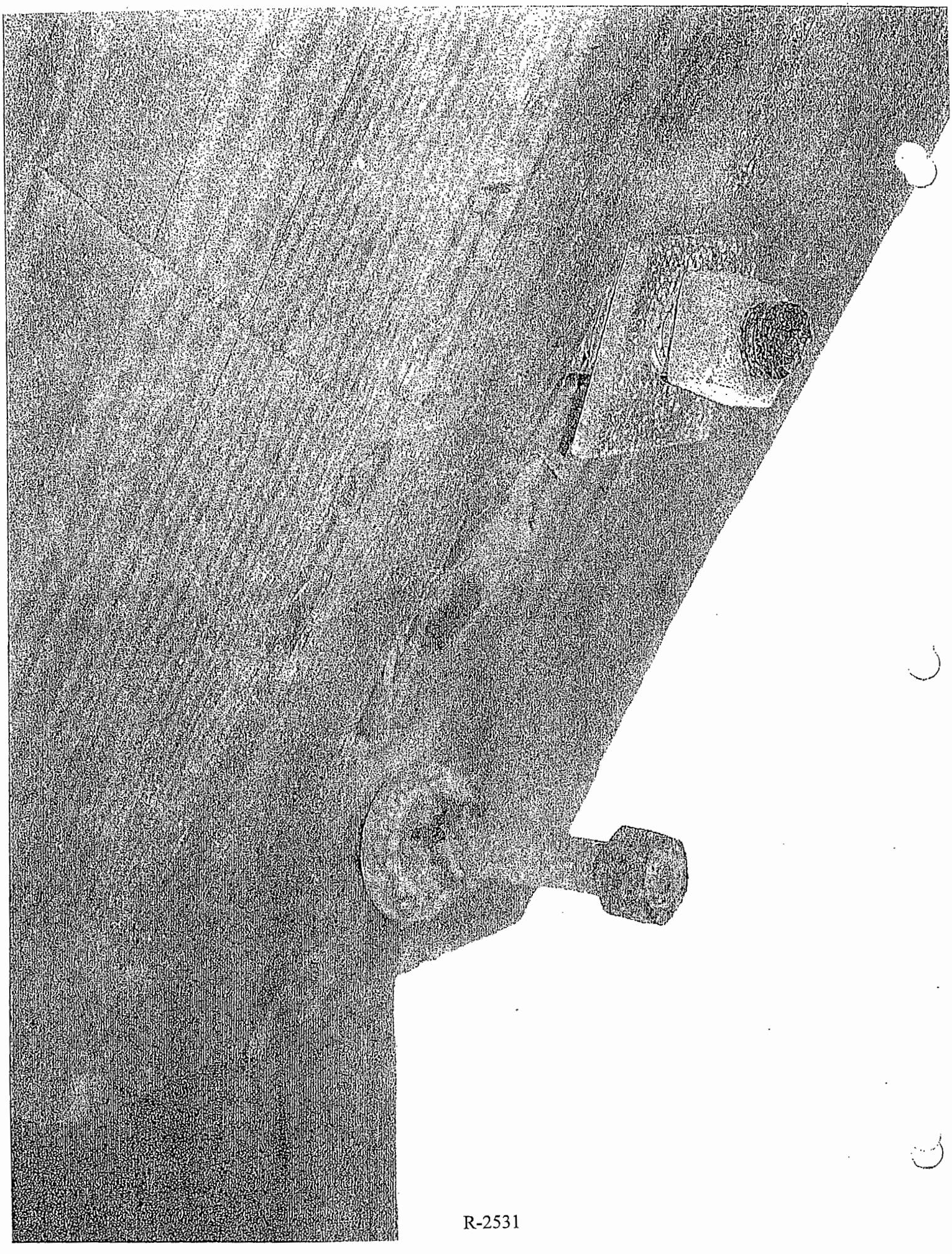
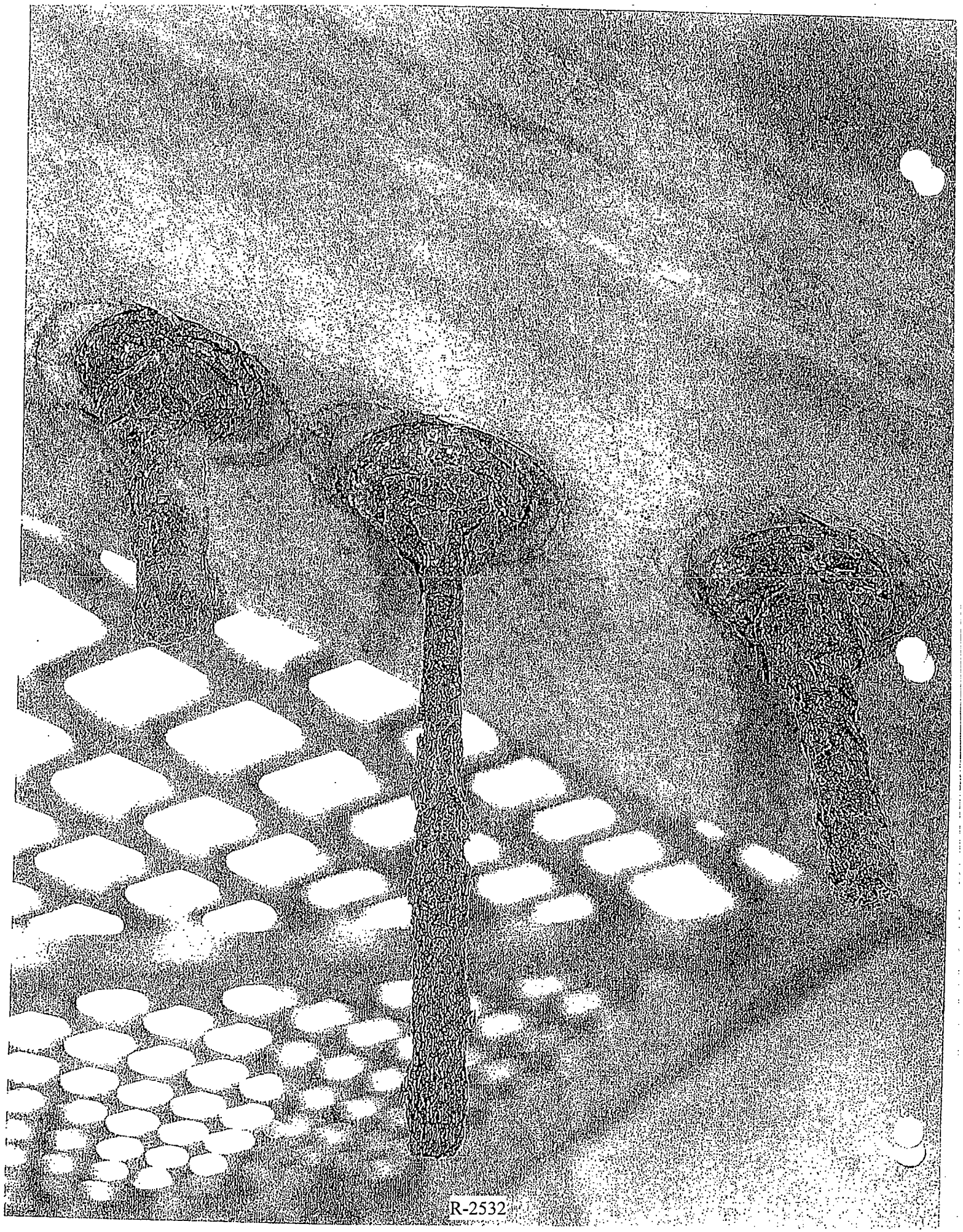




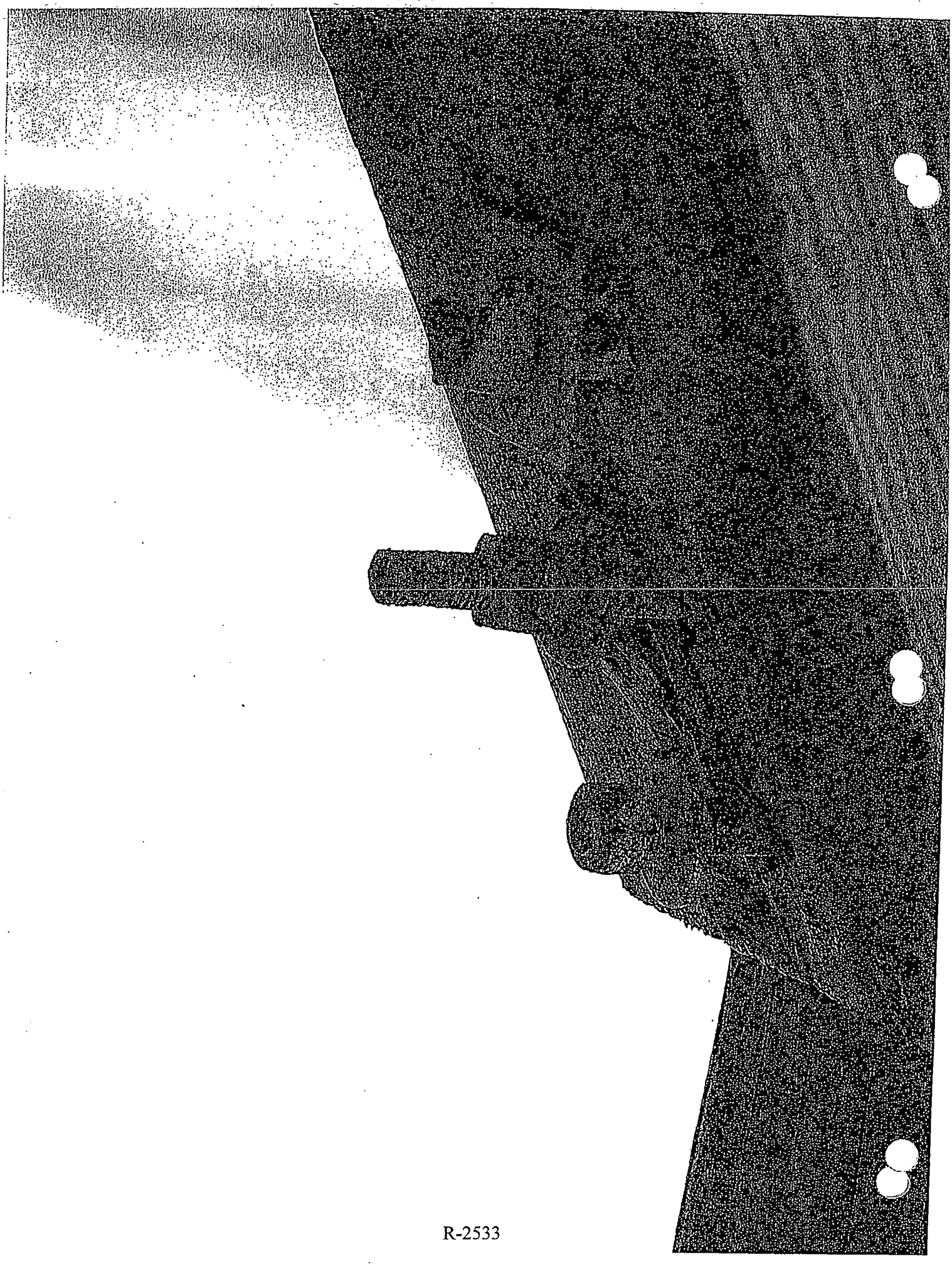


EXHIBIT
"H"

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

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

EXHIBIT

"I"

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

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. 2206

ADDRESS/LOCATION: Re 208 N. Ocean Blvd Building 1

OWNER: Tilghman Beach & Racquet

CONTRACTOR: K.A. Diehl

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐

☐ OTHER _____

VIOLATION: ☒ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: Replacing whole section of guard rail without required permit. A General Contractor is required for this. Must obtain required permit within 5 business days. All work is to stop from this date until permit is obtained. 30

REMARKS: _____

DATE: 3/8/16

SIGNED: _____

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. 2244

NORTH MYRTLE BEACH SOUTH CAROLINA

ADDRESS/LOCATION: Building 4 Unit 217 - Last doing older units
210 N. Ocean Blvd

OWNER: Tilghman Rackley Beach Club

CONTRACTOR: Glass Tec. 293-3569

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐
☐ OTHER _____

VIOLATION: ☒ PERMIT REQUIRED ☐ LICENSE REQUIRED
☐ ORDINANCE VIOLATION

OTHER: SGD repair To Threshold

REMARKS: Without required permit.
Must obtain required permit
Within 5 business days.

DATE: 6/14/16

SIGNED: [signature]

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

Permit # 16-0858

ADDRESS/LOCATION: 206 2nd Ave N Bldg 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 r.r.

REMARKS: rails being removed. If guard rails are removed they must be brought up to 2012 IBC Codes. Also many pickets & railings that have been [illegible] are not stable enough & not spaced correctly.

DATE: 6/14/16

SIGNED: Angel Ball

Please inform NMB Building Department as to your plans and or call for inspections.

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. 2031

Ref. Permit Application #: 16-02134

ADDRESS/LOCATION: 208 N. Ocean Blvd Blvd St

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: Brad Bell

STOP WORK ORDER

COPY

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

NO. 2915

ADDRESS/LOCATION: Ref Permit #16-2799
208 N. Ocean Blvd Unit #121

OWNER: TSRC

CONTRACTOR: Glass Tec.

BUSINESS: BUILDING ☒ DWELLING ☐ MOTEL ☐
☐ OTHER _____

VIOLATION: ☐ PERMIT REQUIRED ☐ LICENSE REQUIRED
☒ ORDINANCE VIOLATION

OTHER: If SGD frames are removed

REMARKS: From opening they have To be
brought up To code Need To see
Delane Stivers at Building Department

DATE: 8/25/16

SIGNED: Chuck Bell

Case Activity Listing

Case #: BLD2016-02105

COPY

Issued Date 6/29/2016
Expiration 12/29/201(

Project Addres 206 N Ocean Blvd

Recieved Date : 6/20/2016

Owner : TILGHMAN BEACH & RACQUET CLUB
206 N OCEAN BLVD
N MYRTLE BEACH SC 29582

Description: Repair attic/draft stop walls, repair any GWB joint failures w/ level 1 tape, seal all through wall penetrations with latex fire stop sealant, stencil wall. (fire & smoke barrier) Per all applicable codes & ordinances.

Activity	Description	Date 1	Date 2	Date 3	Hold	Disp	Assigned To	Done By	Updated By	Notes
BLDD020	Reprint Permit				None	DONE		BFV	8/1/2016 BFV	*Copy Per Delane.
BLDC230	Other Inspection	9/15/2016	9/16/2016	9/16/2016	None	FAIL		AKB	9/16/2016 AKB	DRAFT STOP WALLS 1) Several openings in wall around and under framing and drywall. 2) Rafters of box units run under and prependicular to gable wall(fire/smoke walls), concerned about that configuration leaving an opening in the middle of 2 gable fire/smoke walls. 3) Contractor stated that the engineer had aready inspected and approved. 4) Contractor to have engineer to contact myself and/or John Hill.

R-2543

THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA

Case Activity Listing

Case #: BLD2016-02106

9/21/2016
7:55:28AM

COPY

Issued Date 6/29/2016
Expiration 12/29/2016

Project Addres 202 N Ocean Blvd

Recieved Date : 6/20/2016

Owner : TILGHMAN BEACH & RACQUET CLUB
206 N OCEAN BLVD
N MYRTLE BEACH SC 29582

Description: Repair attic/draft stop walls, repair any GWB joint failures w/ level 1 tape, seal all through wall penetrations with latex fire stop sealant, stencil wall. (fire & smoke barrier) Per all applicable codes & ordinances.

Activity	Description	Date 1	Date 2	Date 3	Hold	Disp	Assigned To	Done By	Updated By	Notes
BLDD020	Reprint Permit				None	DONE		BFV	8/1/2016 BFV	*Copy Per Delane.
BLDC230	Other Inspection	9/15/2016	9/16/2016	9/16/2016	None	FAIL		AKB	9/16/2016 AKB	DRAFT STOP WALLS 1) Several openings in wall around and under framing and drywall. 2) Rafters of box units run under and prependicular to gable wall(fire/smoke walls), concerned about that configuration leaving an opening in the middle of 2 gable fire/smoke walls. 3) Contractor stated that the engineer had aready inspected and approved. 4) Contractor to have engineer to contact myself and/or John Hill.

R-2544

EXHIBIT
"J"

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

Tilghman Beach Racquet Club
2017
Operating Budget Summary

		2016 BUDGET	2017 BUDGET	2016 to 2017 BUDGET COMPARISON	All units Mo.
INCOME					
4001	Regular Assessments	$1,021,862	$1,469,162	$447,300	$ 575
4002	Reserve Funding	($268,248)	($422,219)	($153,971)	($ 165)
4025	Discounts	($2,200)	$0	$2,200	($ 3)
4027	Late Fees	$3,500	$3,500	$0	$ 4
4059	Bar Codes/Decals	$0	$1,000	$1,000	($ 0)
	Total Income	$754,914	$1,051,443	$296,529	
EXPENSES					
General & Administrative					
5001	Office Supplies & Expenses	$540	$500	($40)	$ 0.20
5002	Printing Expense	$5,700	$5,700	$0	$ 2.23
5003	Postage	$1,500	$1,525	$25	$ 0.60
5006	Web Site Expense	$1,320	$1,320	$0	$ 0.52
5008	Annual Meeting Expense	$1,750	$1,080	($670)	$ 0.42
5015	Legal Services	$25,000	$25,000	$0	$ 9.78
5017	Management Services	$39,480	$39,480	$0	$ 15.45
5021	Audit/Tax Preparation Ser	$2,400	$2,500	$100	$ 0.98
5023	Insurance Expense	$0	$319,500	$319,500	$ 125.00
5037	Federal Income Tax	$75	$75	$0	$ 0.03
5038	State Income Tax	$100	$100	$0	$ 0.04
5040	Uncollectible Association	$12,500	$19,200	$6,700	$ 7.51
	Total General & Administrative	$90,365	$415,980	$325,615	$ 162.75
Repairs & Maintenance					
6000	General Maintenance	$57,000	$35,550	($21,450)	$ 13.91
6001	Maintenance Staff	$173,699	$173,603	($96)	$ 67.92
6016	Elevator Maintenance	$23,000	$23,900	$900	$ 9.35
6036	Interior Pest Control	$7,400	$6,636	($764)	$ 2.60
6038	Termite Treatment	$3,685	$3,685	$0	$ 1.44
6041	Janitorial Supplies	$0	$2,450	$2,450	$ 0.96
6051	Emergency Equipment Maint	$3,500	$2,000	($1,500)	$ 0.78
6052	Fire System Monitoring	$3,800	$3,800	$0	$ 1.49
6017	Lights/Signs/Fencing	$0	$2,800	$2,800	$ 1.10
6153	Landscape Supplies	$7,315	$20,000	$12,685	$ 7.82
6163	Landscape Equipment/Maint	$600	$600	$0	$ 0.23
6183	Pool License & Fees	$600	$600	$0	$ 0.23
6185	Pool/Spa Supplies	$10,350	$10,350	$0	$ 4.05
6186	Pool/Spa Maintenance	$12,000	$9,000	($3,000)	$ 3.52
6241	Watchman Services	$22,000	$22,800	$800	$ 8.92
	Total Repairs & Maintenance	$324,949	$317,774	($7,175)	$ 124.32
Utilities					
7951	Electric	$38,325	$40,100	$1,775	$ 15.69
7953	Water & Sewer	$89,245	$96,000	$6,755	$ 37.56
7957	Trash Removal	$12,600	$17,500	$4,900	$ 6.85
7963	Cable TV	$71,490	$53,497	($17,993)	$ 20.93
7971	Wireless Internet Service	$25,440	$47,260	$21,820	$ 18.49
7972	Telephone	$7,500	$10,332	$2,832	$ 4.04
	Total Utilities	$244,600	$264,690	$20,090	$ 103.56
8013	Prior Year Deficit	$95,000	$53,000	($42,000)	$ 20.74
	Total Expenses	$754,914	$1,051,443	$296,529	
	NET INCOME (LOSS)	$0	$0	$0	

EXHIBIT
"K"

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

BECKHAM APPRAISAL SERVICE, LLC
Real Estate Appraisers & Consultants
7700 N. Kings Hwy - Suite 101
Myrtle Beach, SC 29572

TELEPHONE (843) 449-7418
FAX (843) 449-1309

HENRY H. BECKHAM, GAA
STATE CERTIFIED
GEN. R.E. APPRAISER
S.C. LIC.#CG102

REAL ESTATE APPRAISAL SECTION
National Association of Realtors®

January 6, 2017

Mr. Howell V. Bellamy, III
Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577

RE: My File No: 16-A-162, Tilghman Beach and Racquet Club Condominiums

Dear Mr. Bellamy:

At your request, we have made an investigation as to possible trends regarding the value of condominium units within the Tilghman Beach and Racquet Club over the past several years. This consulting assignment is not to be considered an appraisal of the Tilghman Beach and Racquet Club Association, or of any particular unit within that project. We have merely compiled and analyzed a series of sales from the subject project as well as similar, competing projects in the North Myrtle Beach market area from 2009 through 2016.

We have reviewed Multiple Listing Service records for four, 2-year intervals including 2009-2010, 2011-2012, 2013-2014, and 2015-2016. We have considered the average sales price and median price as reported by the Multiple Listing Service in each of those 2-year increments in order to determine any potential trends regarding value in comparison to other, similar projects in the North Myrtle Beach market. Comparable properties that we considered include the Sea Cabins in Cherry Grove, Ocean Gardens in Ocean Drive, Windy Shores in Windy Hill, and A Place at the Beach, also in Windy Hill. These are oceanfront properties which have similar characteristics as the subject including modular, wood frame construction, and are of similar age and design. A review of property sales reveals that oceanfront condominium units lost approximately one-half of their value between 2006 and 2010 according to MLS records. Our analysis includes a somewhat more detailed breakdown, but it does appear that property values began to bottom out in the 2010-2012 and 2013-2014 periods. The subject and each of the different comparable properties analyzed have minor fluctuations between those two time periods.

However, an analysis of sales activity for the periods 2013-2014 and 2015-2016 indicate some definite trends in terms of value within different projects. Since 2012, most real estate experts think that the resort condominium market bottomed out and since 2014, most prices have recovered slightly. Of the five competing projects which were analyzed, four of those properties exhibited an average of a 12% increase between the time frame 2013-2014 and the period of 2015-2016. The Sea Cabins at the Cherry Grove property exhibited no real change, and that is attributed to the severe erosion problem along the east end of Cherry Grove, although it appears that the units themselves have been well maintained with new paint, trim, balconies, and other common area upgrades.

The oceanfront portion of the Tilghman Beach and Racquet Club however indicates a significant and continuous decline in values since 2009-2010, through the next 2-year increments, all the way through 2015-2016. While other competing projects began to recover after the 2013-2014 time frame, the oceanfront portions of Tilghman Beach and Racquet Club actually declined in terms of average and median sales price nearly 15% between 2013-2014 and 2015-2016. The average sales price of a unit located in the oceanfront portion of the Tilghman Beach and Racquet Club had declined from an average sales price of 2009-2010 in the amount of $237,250 to a 2015-2016 average price of $201,000. While the oceanfront units at Tilghman Beach and Racquet Club exhibited an increase in value between 2011-2012 and 2013-2014, the overall trend, especially during the past 2 years has been in direct contrast to the experience of the competing condominium projects described earlier. Sales prices of the other projects match or exceed their 2011/2012 levels.

An exterior inspection of the grounds, and buildings of the Tilghman Beach and Racquet Club reveal numerous items of deferred maintenance. One of the oceanfront buildings has been recently renovated, with new siding, painting, railings, balconies, and walkways. The dramatic improvement in the appearance of that particular building compared to the balance of the Tilghman Beach buildings is readily apparent. I have spoken with real estate agents active in the North Myrtle Beach resort market who are of the opinion that the appearance and condition of the overall project is responsible for the decline in values at a time when competing projects are stable or are experiencing increased values. In our analysis of the subject building and competing properties and their valuation trends, we have tried to isolate and use only the most comparable properties to narrow down any differences. As stated earlier, the properties selected for comparison are most similar to the subject in terms of their physical condition, age, layout, design, and construction materials. We have only considered sales of the oceanfront section of Tilghman Beach and Raquet Club.

It appears that would-be buyers are uncertain of the future condition and costs to repair. Those people who have bought recently have done so at lower prices, contrary to the market at large. Based on 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.

Sincerely,

BECKHAM APPRAISAL SERVICE, LLC

Henry H. Beckham, GAA
Real Estate Appraisal Section - National Association of Realtors
State Certified General Real Estate Appraiser, SC License #CG-102, NC License #A-5997

STATE OF SOUTH CAROLINA **COUNTY OF HORRY** 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., Defendants.	**IN THE COURT OF COMMON PLEAS** **FIFTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2016-CP-26-4464** **AFFIDAVIT OF MIKE PARADES, PCAM**

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

1. My name is Mike Parades. 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 community association governance, management, and affirmative duties of a Board of Directors with regard to the maintenance, repair, and replacement of common components of the General and

Limited Common Elements. A copy of my Curriculum Vitae, marked **Exhibit A**, is attached hereto and incorporated by reference as part of this Affidavit.

2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S. in Business Administration, Summa Cum Laude, 1979.

3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of Community Association Boards of Directors. I have been qualified by the South Carolina State courts as an expert witness in the field of community association management, community association governance and affirmative duties of Community Association Boards of Directors.

4. I am not a party to the above entitled action, nor am I related to any of the above-captioned parties.

5. This Affidavit is submitted in support of the allegations contained in Plaintiffs' Second (2nd) Amended Complaint.

PROJECT DESCRIPTION

6. 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 and are located in Horry County, South Carolina.

7. The twelve (12) buildings are elevated three (3) story wood frame 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 west side of Ocean Boulevard and Buildings VI, VII, VIII, IX, X, XI and XII are located on the west side of Ocean Boulevard.

MASTER DEED AND BYLAWS

8. Master Deed and By-Laws of Tilghman Beach and Racquet Club Horizontal Property Regime (TBRC) were created pursuant to the South Carolina Horizontal Property ("Act"), Title 27, Chapter 31, S.C. Code Ann. § 27-31-10 et seq., 1976, and were recorded on February 2, 1982, in Deed Book 736, at Page 360, in the Office of Register of Deeds for Horry County, South Carolina.

9. Specifically, the Master Deed and Bylaws, subsequent Amendments to them, are governing documents of the TBRC and define aspects and affirmative duties of the Developer, the Association, the Board of Directors, the Unit Owners and Manager. Article XXXIV of the Master Deed provide the terms used in the Master Deed and the Exhibits attached thereto shall have the meanings contained in S.C. Code Ann. 27-31-20.

10. Section 4.j of the Bylaws of TBRC provide as follows:

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 Bylaws, may exercise all of the powers of the Association subject only to approval by the co-owners when such is specifically required by these Bylaws. The Board of Directors **SHALL** exercise such duties and responsibilities as **SHALL** be incumbent upon it by law, the Master Deed or these Bylaws, 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' 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;

NOTE: Where provisions of the Master Deed and Bylaws use the words SHALL or MUST or similar terms, the Board of Directors has an affirmative obligation to act. There is NO choice.

11. Article XXI of the Master Deed states that the Association is responsible for the maintenance, repair and replacement of all TBRC's Common Elements. This Article reads in part:

The Association, at its expense, SHALL be responsible for the maintenance, repair and replacement of all of the Common Elements...

12. Article 7 of the Bylaws sets forth supplemental provisions and reads in part as follows:

7.(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);

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

13. Article 11 of the Bylaws sets forth the affirmative duties of the Board of Directors to make, levy and collect assessments to pay the costs and expense for the operation, management and maintenance of the Regime. Specifically, 11 (d) and 11 (e) set forth the affirmative duty of the Board to collect and maintain a reserve fund for future replacement of structural Common Elements.

14. In short, the Master Deed and Bylaws create the affirmative duties that each Board member individually and the Board collectively must comply with as follows:

a. To maintain, repair and replace the Common elements AND

b. The authority to levy assessments as needed for the operation, maintenance, repair, and replacement of the Common elements without the express approval of the members because as noted in the first sentence of the first paragraph in Article 11, ***"The Association is given the authority to administer the operation and management of the Regime, it being recognized that delegation of such duties to one entity is in the best interest of the co-owners of all Apartments."***

15. In this situation, it is also important to consider the actions or inactions of the Directors both individually and collectively in the context of fulfilling their affirmative duties set for in the Master Deed and Bylaws. Here, the S.C. Non-Profit Corporation Act (SC Code of Laws Title 33 Chapter 31) provides some guidance.

Specifically, Section 33-31-830 General Standards for Directors provides the following:

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the director reasonably believes to be in the best interest of the corporation.

(b) In discharging his or her duties, a director is entitled to relay on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (a list of examples of various experts that can be relied on follows.)

It is important to note that a Director must come to his own opinion based on information made available to him. It is also important that if the Director disagrees he must express that disagreement to his/her fellow Directors for the record.

16. Additional guidance is found in Section 33-31-202 (b) of the SC Non-Profit Corporation Act provides additional guidance as to individual Director liability as follows:

Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision SHALL not eliminate or limit the liability of a director:

(1) For any breach of the director's duty of loyalty to the corporation or its members;

(2) For acts or omissions not in good faith or which involve intentional misconduct of a knowing violation of law:

(3) For any transaction from which a director derived an improper personal benefit

17. I visited TBRC on December 20, 2016 to see the buildings and conditions I had read about in the complaint and other reports provided to me by counsel. Having been in the Community Association management business for 30 years, having been through 15 construction defect lawsuits and numerous other HOA lawsuits over condition of buildings, I have never seen a property in as bad a condition as what I saw at TBRC.

FACTUAL AND PROFESSIONAL OPINIONS

18. The current Board has not acted with reasonable care and in good faith in their affirmative duties, pursuant to the governing documents of the Tilghman Beach and Racquet Club Horizontal Property Regime, to maintain, repair and replace the General Common Elements and Limited Common Elements of the buildings; there by continuing to allow the deterioration of the buildings to continue.

16. The reports of Saul Martinez and John Simko clearly document the dire condition of the buildings and the need to immediately begin the repair process, which is an affirmative obligations of the Board of Directors in accordance with Article XXI of the Master Deed, Section 4.j.(ii) of the Bylaws and Section 27-30-160(c) of the South Carolina Horizontal Property Act.

The decision of the individual Board members to not comply with the provisions of the Master Deed, Bylaws and the SC Horizontal Property Act constitute a willful, wanton,

reckless violation of the law as well as Gross Negligence individually and as a whole. The Board's failure to discharge its affirmative obligations with respect to maintenance, repair and replacement of Common Elements is not protected by the Business Judgment Rule.

17. As is apparent in the pictures of Exhibit B, the condition of the buildings continues to worsen and there are no apparent steps being taken to address the condition nor respond to zoning code violations issued by the Town of North Myrtle Beach in February 2016 (**see Exhibit C**) requiring corrective action within 90 days from date of the letter other than to say "we have engaged a new firm at a lower cost to once again study what needs to be done. Nine months later, the buildings just continue to deteriorate.

The failure to act on this *per se violation of zoning laws* again constitutes a willful, wanton, reckless violation of the law as well as being Gross negligence by the Board individually and as a whole. The Board's failure to act is a clear violation of law and is not protected by the Business Judgment Rule.

18. A review of documents provided indicate there is a significant difference of opinion between the current Board and the Board as constituted prior to the current Board. That prior Board was acting on advice of experts hired. The primary problem was the condition of the buildings which had gotten so bad due to lack of routine maintenance over the years since original construction. The cost to repair and replace the common elements as recommended by the hired experts was based on the actual cost incurred in making the prototype repairs to Building 3 of $600,000. The cost to complete was estimated to be $6.6 million dollars for the remaining eleven (11) buildings. A funding plan had been developed by the prior Board to do the necessary work over a multi-year period through a bank loan and estimated special assessment of approximately $25,000. Because they did not want to pay any assessments, certain members of the current Board organized a recall election, based on deliberate misinformation, to vote out those they disagreed with and elect themselves to the Board.

The current Board, led by the new members, refuse to fulfill their affirmative duties to levy assessments to fund the needed repairs and replacements of the buildings. While there is speculation as to the reason for the current Board's refusal to fulfill the affirmative obligations, there is no question the current board, both individual directors and the board as a whole, are ***per se grossly negligent. Such gross negligence in fulfilling their affirmative duties is NOT protected by the Business Judgment Rule.***

19. A final example of the Board's (both members individually and as a whole) willful, wanton and reckless action is their failure to adequately fund reserves for the year 2017, see Exhibit D. With the knowledge that an immediate repair program is needed to repair the buildings at an estimated cost of $6.6 million, the current year reserve funding is woefully inadequate.

20. Article 11 of the Bylaws grants the authority to the Board, without vote of the membership, to

administer the operation and management of the Regime and reads in part as follows:

> 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 referred to as "common expense". 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 co-owners of all Apartments.

Once again, the decision of individual Board members to not levy assessments to fund the necessary repairs constitute a knowing violation of the law and Gross Negligence on the part of each individual Board member and the Board as a whole since it is the Board's affirmative duty to levy assessments as needed to properly fund the operation and management of the Association. The Board's failure to discharge its affirmative duty is not protected by the Business Judgment Rule.

I affirm that the foregoing is true to the best of my personal knowledge, 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

Mike Parades, PCAM

SWORN to and subscribed before me this
21st day of January, 2017

Notary Public for
My Commission Expires: February 6, 2023

ALI J BERNARD
NOTARY PUBLIC
SOUTH CAROLINA
COM. EXP. FEBRUARY 6, 2023

Exhibit A

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

EXPERIENCE

11/13 to Present: General Manager, I'On Assembly, Inc.

Provide management services including financial management, operations management and assist Board of Trustees in governance of 762 home community.

7/12-Present Community Association Consulting:

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

7/09-6/12 **Realtor-Dunes Properties and Community Association Consulting:** Real estate sales and Provide consulting services to community associations in primary areas of governance, management and fiduciary duty. Services as expert witness in litigation involving community associations.

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

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

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

1985-4/87 CONTROLLER - Seabrook Island Ocean Club Incorporated, Charleston, S.C. Managed all financial matters for the resort corporation, the real estate limited partnership and for the wholly owned utility company; prepared and coordinated all work required by external auditors for tax returns, SEC filings and annual audits; originated corporate policies and procedures; formulated 20 million dollar operating and capital budget forecasts; supervised preparation and analysis of financial statements cash management; scheduled work flow prioritization of 26 people in three departments and preparation of biweekly payroll for over 400 people;

organized and participated in 15 million dollar asset purchase by new owners; and prepared for initial stock offering. Supervised and scheduled all data processing systems including complete hardware replacement and software upgrades, resulting in an improved information processing system which increased operations efficiency and reduced costs.

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

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

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

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

EDUCATION

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

PROFESSIONAL DESIGNATIONS

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

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

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

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

2009-2011 Licensed as Real Estate Salesman by SC Real Estate Commission

2010-2012 Qualified by SC Real Estate Commission as Instructor for classes related to Homeowner Associations.

MICHAEL R. PARADES, PCAM

MEMBERSHIPS

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

MICHAEL R. PARADES, PCAM
Addendum-Lawsuits

Lawsuits Involved as Fact Witness

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

Note: I represented all of the above Owners Associations.

Other Lawsuits Involved as Fact Witness

3 Chisolm Street HOA, Inc (09-CP-10-267)	As former Management Company/Manager
Montclair POA, Inc.(08-CP-10-6897)	As former Management Company/Manager

Lawsuits Involved as Expert Witness

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

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

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

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

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

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

MRP Addendum-Lawsuits

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

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

Montecito Enclave, LLLP, et al vs Guggenheim Enclave, LLC et al (06-CP-10-1316) (Deposed)

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

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

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

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

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

Jay Kalan and Kalan Enterprises, Plaintiffs
Vs Peckerhead Pub, Lynne Wilkin and Michael Godfrey, Defendants and Third Party Plaintiffs
Vs Dry Creek, LLC, Nathaniel Rackett, Heritage Plaza HPR, Hilton Head Kitchen and Bath and Kenneth Schultz, Third Party Defendants. (07-CP-07-2504)

This lawsuit has been dismissed.

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

Ellington Woods I, II, III, IV, V, Alan Arthur and John Doe (Testified)
Vs
Dunes West Property Owners Association, Inc. (10-CP-008911)

This is an action related to alleged breach of Covenants by the Defendant. This case was tried in front of Judge Mikel Scarborough May 2014. I was qualified as an expert witness in community governance, community management and Board fiduciary responsibilities. Judge has issued orders denying plaintiff motion to decertify class and denying plaintiff motions related to various defense claims. The orders are very clear as to the Judge's probable final ruling. Settlement in favor of Plaintiff.

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

MRP Addendum-Lawsuits

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

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

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

Distant Island Community Association vs Mark Christmus

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

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

Misty Lake Association, Inc. vs Bridlebridge Homeowners' Association, Inc. (07-CP-32-3492) (Deposed)

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

I was engaged as an expert witness on behalf of the Plaintiff by Rogers, Townsend & Thomas. Defendant counsel stipulated my qualifications as an expert witness and the Master qualified me accordingly as an expert witness in matters of community governance, community management and Board fiduciary obligations.

Various Kensington Place owners individually vs M.U.I. Corporation and Kensington Place Owners Association. (08-CP-46-2158) (Deposed) (Testified)

This is primarily a Breach of Fiduciary Duties action against the Developer and the Developer controlled Board of Directors. I was engaged as an expert witness on behalf of the Plaintiffs by Leach Bouch & Crawford.

The case was tried the week of October 20, 2014. Defendenat M.U.I. reached settlement with Plaintiffs during the trial. Trial continued against remaining defendant. I was qualified as an expert witness by Judge John Hayes. Trial resulted in verdict in favor of plaintiff.

MRP Addendum-Lawsuits

Rivers Point Row POA vs John B. Hagerty, John W. Derbyshire, Linda L. Derbyshire and Rivers Point Row, LLC. (08-CP-10-6740) (Deposed)

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

John Schuler & Jeff Merrell vs Hyperion Towers Homeowners Assn Board of Directors (08-CP-26-3365) (Deposed)

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

Bruce Langson, Representing a class of similarly situated people vs Lyons Cove Homeowners Assn Board of Directors. (09-CP-26-5507)

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

Bluffton Village Lot 11 Horizontal Property Regime and Bluffton Village Lot 11 Owners' Association, Inc. Plaintiffs (08-CP-07-1724)

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

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

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

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

MRP Addendum-Lawsuits

Bluffton Village Lot 13 Horizontal Property Regime and Bluffton Village Lot 13 Owners' Association, Inc. Plaintiffs (08-CP-07-4638)

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

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

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

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

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

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

Simmons Pointe HOA, Inc., Plaintiff (10-CP-10-4926) (Deposed)
Vs
Patricia Tyner, Defendant and 3rd Party Plaintiff
Vs
Ravenel Associates, Inc. and John Collins, 3rd Party Defendants

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

MRP Addendum-Lawsuits

I was engaged as an expert witness on behalf of Ravenel Associates, Inc. by Clawson & Staubes. The case has been settled.

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

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

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

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

Lawsuit relates to personal injury due to negligence of defendants.

I was engaged as an expert witness on behalf of EMCOR by Carlock, Copeland & Stair, LLP. The case has been settled in favor of Plaintiff.

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

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

I was engaged as an expert witness on behalf of Plaintiffs by Leath Bouch & Seekings, LLP. Lawsuit has been settled in favor of Plaintiffs.

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

Lawsuit is a breach of contract lawsuit.

MRP Addendum-Lawsuits

I was engaged as an expert witness on behalf of Plaintiff by the Martin Law Firm. Settlement Agreement pending.

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

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

I was engaged as an expert witness on behalf of Plaintiffs by The Stanley Law Firm. The lawsuit has been settled in favor of Plaintiffs.

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

Lawsuit is a claim of negligence and breach of fiduciary duties by past Boards of Directors. At motions hearing on May 21, 2012, judge ruled as matter of law that defendants have violated fiduciary duties. Defendants have indicated the judge's ruling will be appealed.

I have been engaged as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Appeal has been heard and is awaiting ruling by the SC Court of Appeals. SC Court of Appeals ruling partially upheld and partially reversed lower court ruling. Remanded to lower court for trial to be scheduled. Plaintiff has appealed to SC Supreme Court who accepted appeal and case will be heard November 2015. Case heard, ruling issued and remanded back to lower court. Settlement in favor of Plaintiffs reached at mediation.

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

Lawsuit is a claim of negligence and breach of fiduciary duties by Board of Directors. I was engaged as an expert witness on behalf of Plaintiffs by Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. Lawsuit has been settled in favor of the Plaintiffs.

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

IN RE: South Capital Group Inc., Debtor

MRP Addendum-Lawsuits

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

Ann Staten, Plaintiff (2011-CP-10-498) (Deposed)
Vs
Dovefield HOA, W. Dean Murphy, III, Kelsey Murphy, Party X and Party Y

Case was a claim by owner of Board breach of fiduciary duties resulting in property damage and personal injury. I was engaged as an expert witness on behalf of the Defendant Dovefield HOA by Clawson & Staubes. The case was dismissed.

Marlene Lee, as Guardian ad Litem for Alfonzo Lee, Jr.
Vs
Singleton Rental Property, Inc. and The Agent Owned Realty Company/Premier Group, Inc.
Case No. 13-CP-18=213 (Deposed)

Case is claim for bodily injury in fire due to negligence. I was engaged as an expert witness on behalf of the Defendant Agent Owned by Hampton Green Law. The case has been settled.

Magnolia Point Property Owners Association, Inc.
Vs
Springwood Estates LLC, Richard E. Lester, Mike Harrington and Caroline Bahr
Case No. 2012-CP-26-7448 (Deposed)

Case is claim of breach of fiduciary duties for failure to properly fund reserves. I have been engaged as an expert witness on behalf of the Defendants by the Bellamy Law Firm. The case is in discovery phase.

Riverland Place Owners Association Inc.
Vs
Weichman Realty

Case will be a claim of breach of fiduciary duties. I have been engaged as an expert witness on behalf of the Plaintiff by the Martin Law Firm. Complaint will be filed when initial investigation completed. Case dismissed.

John Henderson
Vs
Coral Sands Owners Association, Inc., Coral Resorts LLC, Trew Holdings LLC, Coral Holdings LLC, Reba Management, Inc and Van Der Meer Tennis University, Inc.
Federal Court Action No. 9:13-cv-962-SB

MRP Addendum-Lawsuits

Case is an action for negligence resulting in personal injury. I was engaged as an expert witness on behalf of Plaintiff by The Richter Law Firm. Lawsuit has been settled in favor of Plaintiff.

Cameron Hutson Rowe, a minor child by Deirdre Eileen Rowe as Guardian Ad Litem and Deirdre Eileen Rowe, Plaintiffs
Vs
The State of South Carolina, The SC Department of Transportation, The County of Dorchester, The Dorchester County Department of Public Works, The Town of Summerville, Community Management Group, LLC, Irongate Civic Associations, Inc. Meadwestvaco Corporation, Defendants
CASE NO: 2010 GP-18-1903

Case is an action for negligence resulting in personal injury. I was engaged as an expert witness on behalf of Defendant Community Management Group, LLC., by E. Glenn Elliott Esq., Aiken Bridges. The case was settled.

Bridge Tender Owners' Association, Inc., Plaintiff
Vs
Bridge Tender, LLC; A. Edward Jackson, III; Superior Construction Corp.; Chris R. Clark, AIA; The Earthworks Group, Inc., d/b/a Earthworks Group Planning & Design Consultants; Derrick Spivey, Inc. and S.C.S.S. Inc. a/k/a South Carolina Specialy Services, Defendants

Case No: 2012 CP-26-7487

Case involves numerous potential actions from design/construction defect to Board breach of Fiduciary duties. I was engaged as an expert witness on behalf of Defendant Superior Construction Group by J. Ryan Oates, Esq. Murphy & Grantland PA. The case was settled before trial.

Sallie Ann Laidlaw and Richard H. Laidlaw, plaintiffs
Vs
Invesco, LP; Childress Klein Properties, Inc. and CK Retail Brokerages, LLP, defendants.

Case No: 2013-CP-08-504 (Deposed)

Case is an action for negligence resulting in personal injury. I have been engaged as an expert witness on behalf of Plaintiffs by Geroge J. Kefalos, P.A. The case is in discover phase.

MRP Addendum-Lawsuits

Broadway Station Owners Association, Inc., et al vs Easlan Capital Inc., et al

Case No: 2012-CP-26-0510

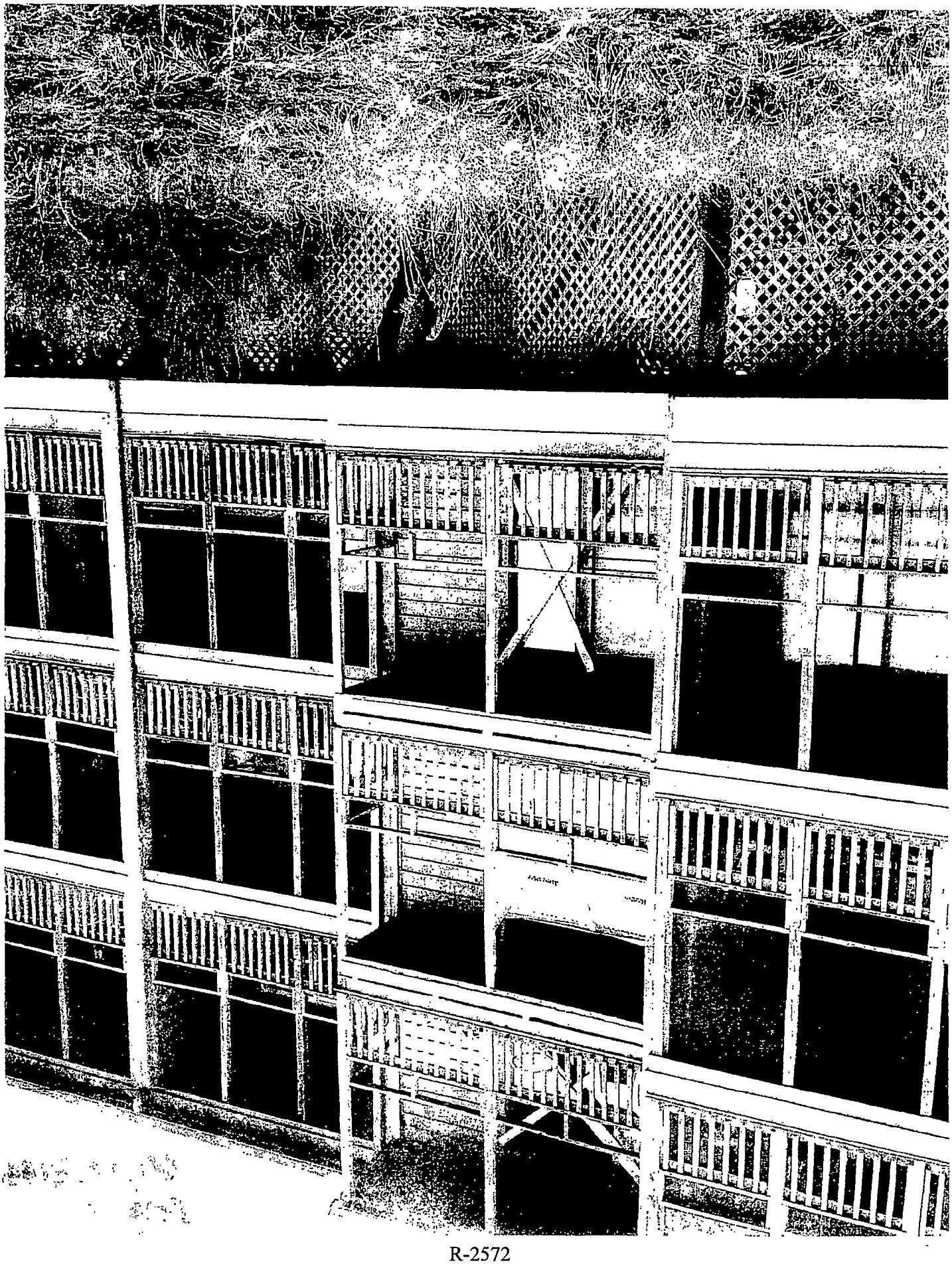
Case is an action involves several actions by HOA against original apartment owner who sold property to a subsequent grantor who then converted apartments to condominiums and sold those condominiums to the general public. Allegations include original design/construction defects, failure to disclose and breach of fiduciary duties.

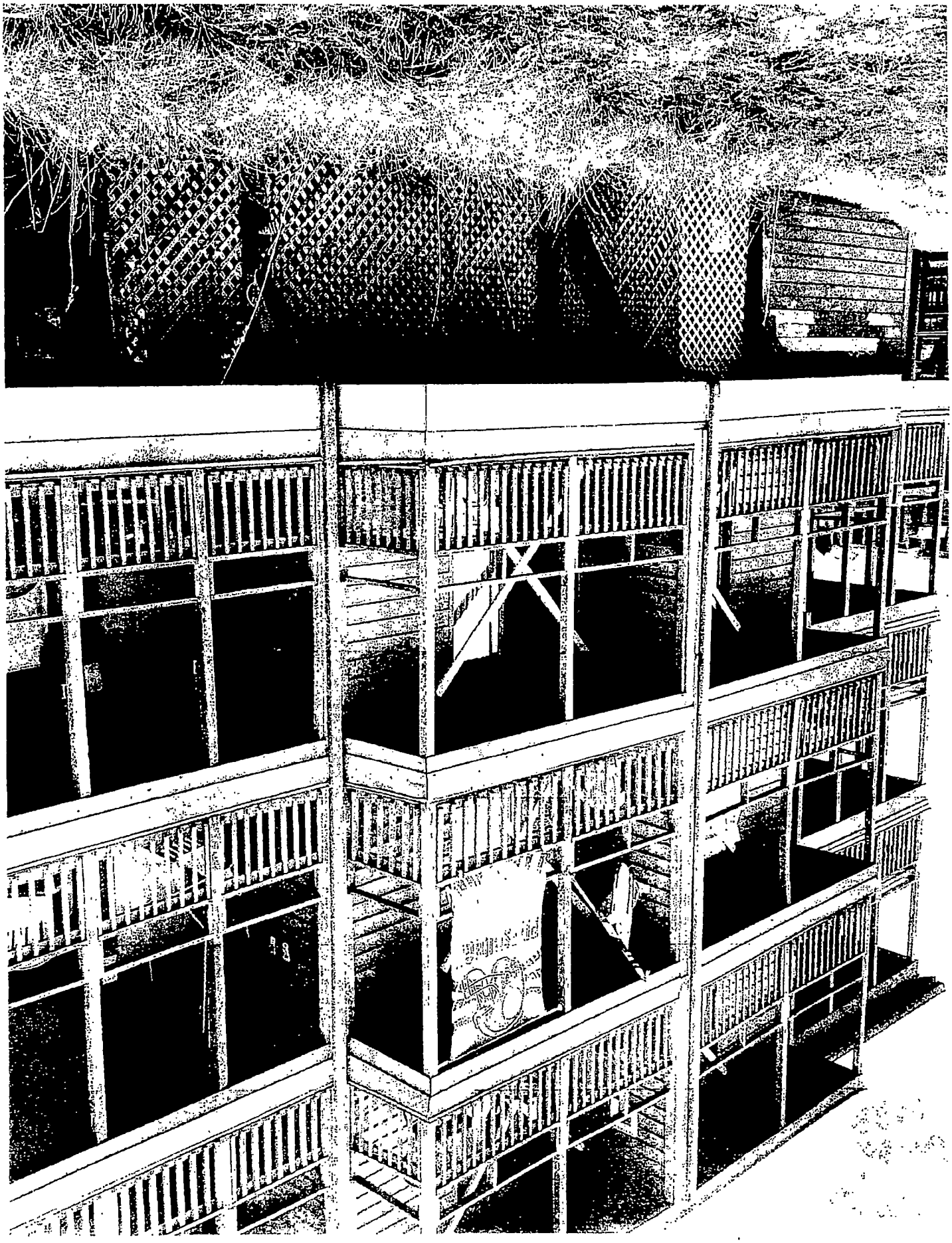
I was originally engaged by Ryan Oates at Murphy & Grantland, P.A. on behalf of defendant, Easlan Capital. Murphy & Grantland were replaced by as counsel by William Watkins and Katie Stanton of Wall Templeton. The case has been settled on terms favorable to defendants.

Bldg 1
Ocean Side

Exhibit B

R-2571





Bldg 4 From
side of road

R-2574

R-2575

R-2576

R-2577

R-2578

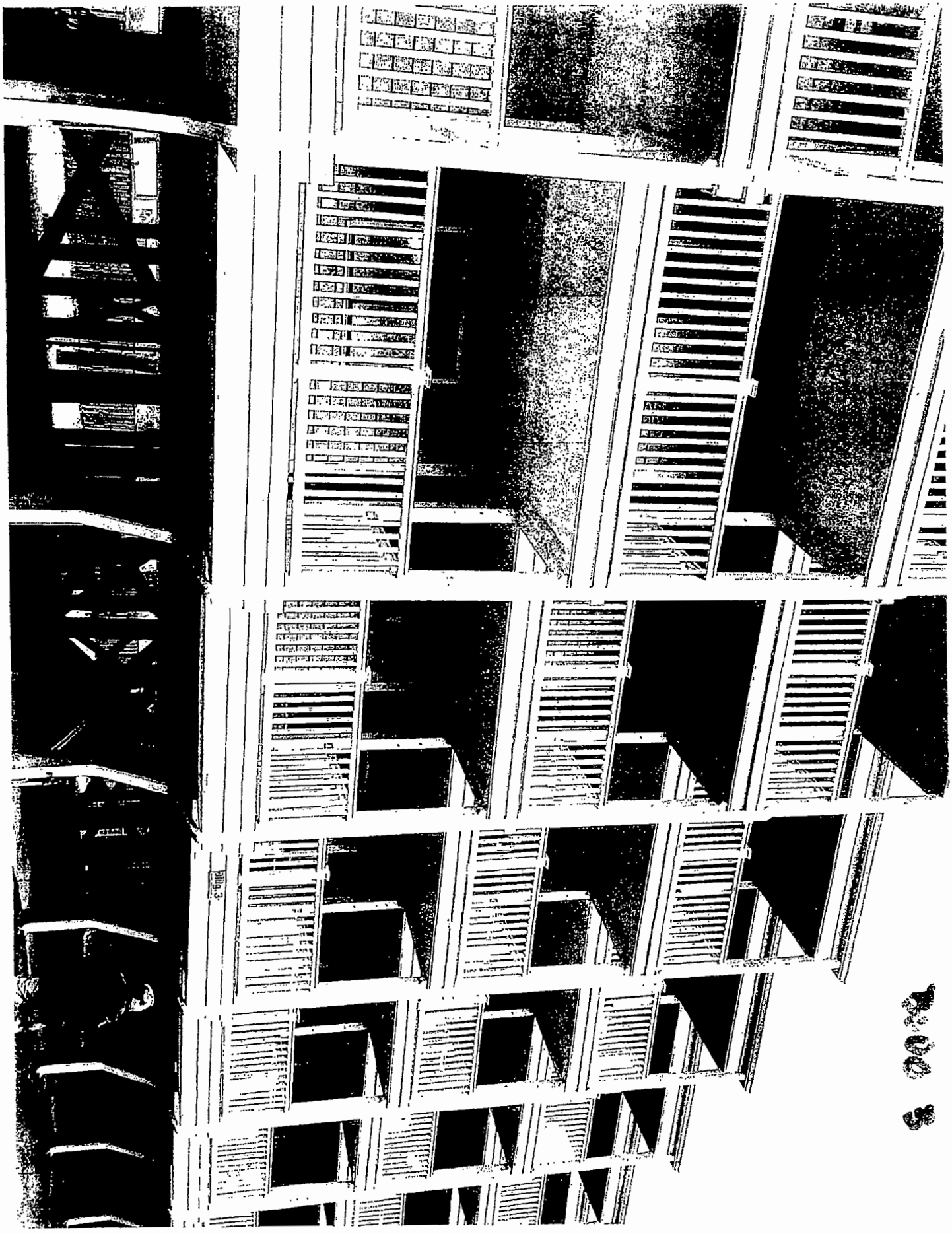


EXHIBIT C

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

EXHIBIT D

Tilghman Beach Racquet Club
2017
Operating Budget Summary

		2016 BUDGET	2017 BUDGET	2016 to 2017 BUDGET COMPARISON	All units Mo.
INCOME					
4001	Regular Assessments	$1,021,862	$1,469,162	$447,300	$ 575
4002	Reserve Funding	($268,248)	($422,219)	($153,971)	$ (165)
4025	Discounts	($2,200)	$0	$2,200	$ -
4027	Late Fees	$3,500	$3,500	$0	$ 1.37
4059	Bar Codes/Decals	$0	$1,000	$1,000	$ 0.39
	Total Income	$754,914	$1,051,443	$296,529	
EXPENSES					
General & Administrative					
5001	Office Supplies & Expenses	$540	$500	($40)	$ 0.20
5002	Printing Expense	$5,700	$5,700	$0	$ 2.23
5003	Postage	$1,500	$1,525	$25	$ 0.60
5006	Web Site Expense	$1,320	$1,320	$0	$ 0.52
5008	Annual Meeting Expense	$1,750	$1,080	($670)	$ 0.42
5015	Legal Services	$25,000	$25,000	$0	$ 9.78
5017	Management Services	$39,480	$39,480	$0	$ 15.45
5021	Audit/Tax Preparation Ser	$2,400	$2,500	$100	$ 0.98
5023	Insurance Expense	$0	$319,500	$319,500	$ 125.00
5037	Federal Income Tax	$75	$75	$0	$ 0.03
5038	State Income Tax	$100	$100	$0	$ 0.04
5040	Uncollectible Association	$12,500	$19,200	$6,700	$ 7.51
	Total General & Administrative	$90,365	$415,980	$325,615	$ 162.75
Repairs & Maintenance					
6000	General Maintenance	$57,000	$35,550	($21,450)	$ 13.91
6001	Maintenance Staff	$173,699	$173,603	($96)	$ 67.92
6016	Elevator Maintenance	$23,000	$23,900	$900	$ 9.35
6036	Interior Pest Control	$7,400	$6,636	($764)	$ 2.60
6038	Termite Treatment	$3,685	$3,685	$0	$ 1.44
6041	Janitorial Supplies	$0	$2,450	$2,450	$ 0.96
6051	Emergency Equipment Maint	$3,500	$2,000	($1,500)	$ 0.78
6052	Fire System Monitoring	$3,800	$3,800	$0	$ 1.49
6017	Lights/Signs/Fencing	$0	$2,800	$2,800	$ 1.10
6153	Landscape Supplies	$7,315	$20,000	$12,685	$ 7.82
6163	Landscape Equipment/Maint	$600	$600	$0	$ 0.23
6183	Pool License & Fees	$600	$600	$0	$ 0.23
6185	Pool/Spa Supplies	$10,350	$10,350	$0	$ 4.05
6186	Pool/Spa Maintenance	$12,000	$9,000	($3,000)	$ 3.52
6241	Watchman Services	$22,000	$22,800	$800	$ 8.92
	Total Repairs & Maintenance	$324,949	$317,774	($7,175)	$ 124.32
Utilities					
7951	Electric	$38,325	$40,100	$1,775	$ 15.69
7953	Water & Sewer	$89,245	$96,000	$6,755	$ 37.56
7957	Trash Removal	$12,600	$17,500	$4,900	$ 6.85
7963	Cable TV	$71,490	$53,497	($17,993)	$ 20.93
7971	Wireless Internet Service	$25,440	$47,260	$21,820	$ 18.40
7972	Telephone	$7,500	$10,332	$2,832	$ 4.04
	Total Utilities	$244,600	$264,690	$20,090	$ 103.56
8013	Prior Year Deficit	$95,000	$53,000	($42,000)	$ 20.74
	Total Expenses	$754,914	$1,051,443	$296,529	
	NET INCOME (LOSS)	$0	$0	$0	

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL DISTRICT
	)	
	)	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.	)	**DEFENDANT TILGHMAN BEACH AND RACQUET CLUB CONDOMINIUM ASSOCIATION, INC.'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT AND COUNTERCLAIMS**
	)	
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.	)	

Defendant Tilghman Beach and Racquet Club Condominium Association, Inc. ("Defendant" or "Association") responds to Plaintiffs' Third Amended Complaint ("Third Amended Complaint") and asserts Counterclaims against Plaintiffs as follows:

FOR A FIRST DEFENSE TO PLAINTIFFS' ALLEGATIONS

1. In response to the allegations contained in Paragraph 1 of the Third Amended Complaint, Defendant admits that Jill Keck Humphries ("Jill Humphries") appears to have taken an interest in Condominium Unit No. 219 in Building IV by virtue of a deed filed on May 8, 2012, and recorded in Deed Book 3583, Page 734 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second

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Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient so as to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Third Amended Complaint and, therefore, denies the same.

2. In response to the allegations contained in Paragraph 2 of the Third Amended Complaint, Defendant admits that Dennis L. Johnson, Jr. ("Johnson") appears to have taken an interest in Condominium Unit No. 367 in Building VIII by virtue of a deed filed on July 2, 2012, and recorded in Deed Book 3593, Page 2067 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient so as to form a belief as to the truth of the remaining allegations of Paragraph 2 of the Third Amended Complaint and, therefore, denies the same.

3. In response to the allegations contained in Paragraph 3 of the Third Amended Complaint, Defendant admits that Delona P. Rice ("Rice") appears to have taken an interest in Condominium Unit No. 227 in Building I by virtue of a deed filed on October 26, 2009, and recorded in Deed Book 3427, Page 1734 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient as to form a belief as to the truth of the remaining allegations of Paragraph 3 of the Third Amended Complaint and, therefore, denies the same.

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4. In response to the allegations contained in Paragraph 4 of the Third Amended Complaint, Defendant admits that Whitmel L. Brown, Jr. ("Brown") appears to have taken an interest in Condominium Unit No. 353 in Building XI by virtue of a deed filed on April 19, 2013, and recorded in Deed Book 3651, Page 1334 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient as to form a belief as to the truth of the remaining allegations of Paragraph 4 of the Third Amended Complaint and, therefore, denies the same.

5. In response to the allegations contained in Paragraph 5 of the Third Amended Complaint, Defendant admits that Gary Steven Robinson ("Robinson") appears to have taken an interest in Condominium Unit No. 219 in Building IV by virtue of a deed filed on January 15, 2016, and recorded in Deed Book 3886, Page 351 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient as to form a belief as to the truth of the remaining allegations of Paragraph 5 of the Third Amended Complaint and, therefore, denies the same.

6. In response to the allegations contained in Paragraph 6 of the Third Amended Complaint, Defendant admits that Elizabeth Erin Humphries ("Elizabeth Humphries") appears to have taken an interest in Condominium Unit No. 219 in Building IV by virtue of a deed filed on January 15, 2016, and recorded in Deed Book 3886, Page 351 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient as to form a belief as to the truth of the remaining allegations of Paragraph 6 of the Third Amended Complaint and, therefore, denies the same.

7. In response to the allegations contained in Paragraph 7 of the Third Amended Complaint, Defendant admits that Nancy H. Johnson ("Nancy Johnson") appears to have taken an interest in Condominium Unit No. 367 in Building VIII by virtue of a deed filed on July 2, 2012, and recorded in Deed Book 3593, Page 2067 in the Horry County Register of Deeds Office. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant lacks sufficient knowledge or information sufficient as to form a belief as to the truth of the remaining allegations of Paragraph 7 of the Third Amended Complaint and, therefore, denies the same.

8. Defendant denies the allegations contained in Paragraph 8 of the Third Amended Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Third Amended Complaint, except that Defendant admits only that Plaintiffs may have an ownership interest in certain condominium units that are part of the Association, as set forth more fully in the deeds referenced in Paragraphs 1 through 7 above.

10. In response to the allegations contained in Paragraph 10 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed and the By-Laws of the Association. Defendant denies any allegations contained in Paragraph 10 of the Third Amended Complaint that are inconsistent with those documents.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

11. In response to the allegations contained in Paragraph 11 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed and the By-Laws of the Association. Defendant denies any allegations contained in Paragraph 11 of the Third Amended Complaint that are inconsistent with those documents.

12. In response to the allegations contained in Paragraph 12 of the Third Amended Complaint, Defendant admits that Steele Brice Windle, III ("Windle") is the holder of the fee simple title to Condominium Unit No. 127 in Building I of the Association. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant admits that Windle is a member of the Board of Directors and was first elected in March 2016. Defendant admits that, with respect to matters concerning the Association, Windle has acted in a representative capacity as a part of the Board of Directors of the Association since March 2016, but Defendant denies that Windle took any actions on behalf of the Association at any time prior to being elected to the Board of Directors in March 2016. Defendant admits that, in April 2015, Windle was briefly retained by the Board of Directors as a consultant to assist on construction-related matters, but was relieved of his duties by Jill Humphries approximately two (2) weeks later. At that time, Jill Humphries told him that the Board of Directors had retained a construction lawyer, Amanda Bailey, to assist in these efforts. During the approximate two (2) week period as a consultant, Windle spoke with Saul Martinez and Danny Issac of A&I on the telephone about the project, and he also advised the need for a construction schedule and lien waivers. However, he took no actions or issued any directives on behalf of the Association or its Board of Directors and had no authority to do either. Defendant denies that Windle engaged in any "independent acts," as alleged in the Third Amended Complaint. All remaining allegations of Paragraph 12 of

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

the Third Amended Complaint are denied, including all allegations that Windle acted in his individual capacity with respect to matters concerning the Association and/or any allegations contained in the Third Amended Complaint. The remaining allegations of Paragraph 12 of the Third Amended Complaint, if any, are denied.

13. In response to the allegations contained in Paragraph 13 of the Third Amended Complaint, Defendant admits that Daniel G. Coe ("Coe") (improperly identified by Plaintiffs as "Daniel P. Coe") is the holder of the fee simple title to Condominium Unit No. 361 in Building IX of the Association. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant admits that Coe is a member of the Board of Directors and was first elected in March 2015. Defendant admits that, with respect to matters concerning the Association, Coe has acted in a representative capacity as a part of the Board of Directors of the Association since March 2015, but Defendant denies that Coe took any actions on behalf of the Association at any time prior to being elected to the Board of Directors in March 2015. Defendant denies that Coe engaged in any "independent acts," as alleged in the Third Amended Complaint. All remaining allegations of Paragraph 13 of the Third Amended Complaint are denied, including all allegations that Coe acted in his individual capacity with respect to matters concerning the Association and/or any allegations contained in the Third Amended Complaint. The remaining allegations of Paragraph 13 of the Third Amended Complaint, if any, are denied.

14. In response to the allegations contained in Paragraph 14 of the Third Amended Complaint, Defendant admits that C. Doug Madison ("Madison") is the holder of the fee simple title to Condominium Unit No. 106 in Building II of the Association. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

North Myrtle Beach, County of Horry, State of South Carolina. Defendant admits that Madison is a member of the Board of Directors and was first elected in March 2014. Defendant admits that, with respect to matters concerning the Association, Madison has acted in a representative capacity as a part of the Board of Directors of the Association since March 2014, but Defendant denies that Madison took any actions on behalf of the Association at any time prior to being elected to the Board of Directors in March 2014. Defendant denies that Madison engaged in any "independent acts," as alleged in the Third Amended Complaint. All remaining allegations of Paragraph 14 of the Third Amended Complaint are denied, including all allegations that Madison acted in his individual capacity with respect to matters concerning the Association and/or any allegations contained in the Third Amended Complaint. The remaining allegations of Paragraph 14 of the Third Amended Complaint, if any, are denied.

15. In response to the allegations contained in Paragraph 15 of the Third Amended Complaint, Defendant admits that George P. White ("White") is the holder of the fee simple title to Condominium Unit No. 133 in Building III of the Association. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant admits that White is a member of the Board of Directors and was first elected in March 2016. Defendant admits that, with respect to matters concerning the Association, White has acted in a representative capacity as a part of the Board of Directors of the Association since March 2016, but Defendant denies that White took any actions on behalf of the Association at any time prior to being elected to the Board of Directors in March 2016. Defendant denies that White engaged in any "independent acts," as alleged in the Third Amended Complaint. All remaining allegations of Paragraph 15 of the Third Amended Complaint are denied, including all allegations that White acted in his

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

individual capacity with respect to matters concerning the Association and/or any allegations contained in the Third Amended Complaint. The remaining allegations of Paragraph 15 of the Third Amended Complaint, if any, are denied.

16. In response to the allegations contained in Paragraph 16 of the Third Amended Complaint, Defendant admits that James H. Austin, III ("Austin") is the holder of the fee simple title to Condominium Unit No. 357 in Building X of the Association. Defendant further admits that the Tilghman Beach and Racquet Club is located at Second Avenue North in the City of North Myrtle Beach, County of Horry, State of South Carolina. Defendant admits that Austin is a member of the Board of Directors and was first elected in March 2016. Defendant admits that, with respect to matters concerning the Association, Austin has acted in a representative capacity as a part of the Board of Directors of the Association since March 2016, but Defendant denies that Austin took any actions on behalf of the Association at any time prior to being elected to the Board of Directors in March 2016. Defendant denies that Austin engaged in any "independent acts," as alleged in the Third Amended Complaint. All allegations that Austin acted in his individual capacity with respect to matters concerning the Association and/or any allegations contained in the Third Amended Complaint are denied. The remaining allegations of Paragraph 16 of the Third Amended Complaint, if any, are denied.

17. In response to the allegations contained in Paragraph 17 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 17 of the Third Amended Complaint that are inconsistent with that document.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

18. Paragraph 18 of the Third Amended Complaint contains legal conclusions that do not require a response from Defendant. To the extent a response is required, Defendant denies the same.

19. Paragraph 19 of the Third Amended Complaint contains legal conclusions that do not require a response from Defendant. To the extent a response is required, Defendant denies the same.

20. In response to Paragraph 20 of the Third Amended Complaint, Defendant admits that the Association was established in 1982 and was incorporated that same year as a South Carolina non-profit corporation. The allegations of Paragraph 20 of the Third Amended Complaint that relate to the South Carolina Horizontal Property Act contain legal conclusions that do not require a response from Defendant. In response to the allegations contained in Paragraph 20 of the Third Amended Complaint that relate to the Master Deed and Bylaws, Defendant incorporates by reference the Master Deed and Bylaws; Defendant denies any allegations contained in Paragraph 20 of the Third Amended Complaint that are inconsistent with those documents. The remaining allegations of Paragraph 20 of the Third Amended Complaint, if any, are denied.

21. In response to the allegations contained in Paragraph 21 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 21 of the Third Amended Complaint that are inconsistent with that document.

22. In response to the allegations contained in Paragraph 22 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any

allegations contained in Paragraph 22 of the Third Amended Complaint that are inconsistent with that document.

23. In response to the allegations contained in Paragraph 23 of the Third Amended Complaint, including its footnote, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 23 of the Third Amended Complaint, including its footnote, that are inconsistent with that document.

24. In response to the allegations contained in Paragraph 24 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 24 of the Third Amended Complaint that are inconsistent with that document.

25. In response to the allegations contained in Paragraph 25 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 25 of the Third Amended Complaint that are inconsistent with that document.

26. Certain of the allegations contained in Paragraph 26 of the Third Amended Complaint, including its footnote, contain legal conclusions that require no response from Defendant. To the extent Paragraph 26 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied. As to the allegations of Paragraph 26 that quote portions of the Master Deed, Defendant denies any allegations contained in Paragraph 26 of the Third Amended Complaint that are inconsistent with that document. The remaining allegations of Paragraph 26 of the Third Amended Complaint, if any, are denied.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

27. In response to the allegations contained in Paragraph 27 of the Third Amended Complaint, Defendant incorporates by reference the Bylaws of the Association. Defendant denies any allegations contained in Paragraph 27 of the Third Amended Complaint that are inconsistent with that document.

28. In response to the allegations contained in Paragraph 28 of the Third Amended Complaint, Defendant incorporates by reference the Bylaws of the Association. Defendant denies any allegations contained in Paragraph 28 of the Third Amended Complaint that are inconsistent with that document.

29. In response to the allegations contained in Paragraph 29 of the Third Amended Complaint, Defendant incorporates by reference the Bylaws of the Association. Defendant denies any allegations contained in Paragraph 29 of the Third Amended Complaint that are inconsistent with that document.

30. Defendant admits the allegations contained in Paragraph 30 of the Third Amended Complaint.

31. In response to the allegations contained in Paragraph 31 of the Third Amended Complaint, Defendant incorporates by reference the "Plans" referenced in that Paragraph. Defendant denies any allegations contained in Paragraph 31 of the Third Amended Complaint that are inconsistent with those Plans.

32. The currently constituted Board of the Association is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 32 of the Third Amended Complaint and, therefore, denies the same, demanding strict proof thereof.

33. Defendant denies the allegations contained in Paragraph 33 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

34. In response to the allegations contained in Paragraph 34 of the Third Amended Complaint, Defendant admits that, in the past few years, the Board of Directors of the Association has investigated certain maintenance and repair issues at the Association and has retained consultants related to those efforts, including some of those listed in subparagraphs a. through m. of Paragraph 34 of the Third Amended Complaint, however, the opinions and conclusions of the consultants varied substantially. Defendant further alleges that the currently constituted Board of the Association has been dealing with these recommendations in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and directions of Applied Building Sciences, Inc. ("ABS"), see Paragraph 37 infra, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 34 of the Third Amended Complaint.

35. In response to the allegations contained in Paragraph 35 of the Third Amended Complaint, Defendant admits that, in the past few years, the Board of Directors of the Association has investigated certain maintenance, repair, and related issues at the Association and has retained consultants related to those efforts, however, the opinions and conclusions of the consultants varied substantially. Defendant further admits that some of these consultants have identified certain issues for the Board of Directors of the Association to address. Defendant incorporates these consultants' reports by reference for a specific identification of the issues discussed. Any allegations of Paragraph 35 of the Third Amended Complaint, including all subparagraphs, inconsistent with those consultants' reports are denied. Defendant does not admit that any issues raised by the above-referenced consultants were necessarily identified correctly,

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

nor does Defendant admit that all such issues required action by the Board of Directors of the Association, then or now. The Defendant alleges that the current membership of the Board of Directors has retained experienced, well-qualified consultants that specialize in the type of work needed at TBRC who, after reviewing the consultants' reports and performing their own independent forensic analysis of the buildings at TBRC, have identified issues for both immediate and long-term repair and replacement. The Defendant also alleges that the Board of Directors is working diligently to address these issues consistent with life safety, structural, water intrusion, and code compliance issues that must be repaired or replaced immediately, and with the input of the Association's membership with regard to longer term issues, including aesthetic ones. Defendant further alleges that the currently constituted Board of the Association has been dealing with these recommendations in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and directions of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 35 of the Third Amended Complaint.

36. In response to the allegations contained in Paragraph 36 of the Third Amended Complaint, Defendant admits that, in the past few years, the Board of Directors of the Association has investigated certain maintenance, repair, and related issues at the Association and has retained consultants related to those efforts; however, the opinions and conclusions of the consultants varied substantially. Defendant further admits that some of these consultants have identified certain issues for the Board of Directors of the Association; these issues include recommendations for certain maintenance and repairs. Defendant incorporates these consultants'

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

reports by reference for a specific identification of the issues discussed and repairs recommended. Any allegations of Paragraph 36 of the Third Amended Complaint, including all subparagraphs, inconsistent with those consultants' reports are denied. Defendant does not admit that any issues raised by the above-referenced consultants were necessarily identified correctly, and does not admit that the maintenance and repairs recommended were necessarily required; nor does Defendant admit that all such issues and recommended maintenance and repairs required action by the Board of Directors of the Association, then or now. The Defendant alleges that the current membership of the Board of Directors has retained experienced, well qualified consultants who specialize in the type of work being performed at TBRC and who have identified issues for both immediate and long-term repair and replacement, and that the Board of Directors is working diligently to address these issues consistent with life safety, structural, water intrusion, and code compliance issues that must be repaired or replaced immediately, and with the input of the Association's membership with regard to longer term issues, including aesthetic ones. Defendant further alleges that the currently constituted Board of the Association has been dealing with these recommendations in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and directions of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 36 of the Third Amended Complaint.

37. In response to the allegations contained in Paragraph 37 of the Third Amended Complaint, Defendant admits that the then-current Board of Directors of the Association hired Saul Martinez, P.E. ("Martinez"), a structural engineer, to perform certain work for the

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Association. The Board of Directors that hired Martinez included Plaintiffs Jill Humphries and Johnson. On February 6, 2016, Plaintiffs Jill Humphries and Johnson were voted off the Board of Directors at the Special Meeting of Homeowners at TBRC called for the stated purpose of voting on whether to keep Plaintiffs Jill Humphries and Johnson on the Board or remove them. Subsequently, on March 5, 2016, at the TBRC 2016 Annual Meeting, one board member, Coe, was re-elected and three (3) new directors (White, Windle and Austin) were elected to the Board of Directors. Shortly thereafter, the newly constituted Board of Directors determined that it was in the best interest of the Association to terminate its relationship with Martinez for several reasons. Specifically, to (1) retain a firm with architectural and engineering services in-house to improve coordination in regard to the provision of professional services to TBRC; (2) retain a firm that specialized in the remediation of condominium buildings in a coastal environment; and (3) retain an architectural and engineering firm that billed for professional services based upon standard hourly rates as opposed to billing for professional architectural and engineering services based upon a percentage of the cost of the work performed on the project by the general contractor in order to (a) reduce the overall cost to TBRC in obtaining architectural and engineering services; and (b) eliminate any financial incentive of the architect or engineer to require additional, unnecessary work at TBRC for his or her own financial gain. Subsequent to the termination of Martinez, the Association hired ABS, a well-qualified and experienced architectural and engineering firm that specializes in the type of work needed at TBRC, and, importantly, at a lower cost to TBRC than SGA and Martinez, to review the reports prepared by the other consultants, perform its own independent forensic analysis of all buildings at TBRC, and provide all necessary architectural and engineering services for the Association, which ABS continues to perform, related to the repair and maintenance, both short and long term, of the

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

Association's real property. Defendant denies the remainder of the allegations contained in Paragraph 37 of the Third Amended Complaint.

38. In response to the allegations contained in Paragraph 38 of the Third Amended Complaint, Defendant admits that Martinez performed certain work for the Association related to maintenance and repair work. Defendant incorporates the documents referenced by Plaintiffs in this Paragraph by reference for identification of their contents. Any allegations of Paragraph 38 of the Third Amended Complaint inconsistent with those documents are denied. Defendant does not admit that any issues raised by Martinez were necessarily identified correctly, does not admit that the maintenance and repairs recommended were necessarily required, nor does Defendant admit that all such issues and recommended repairs required action by the Board of Directors of the Association, then or now. Defendant denies the remainder of the allegations contained in Paragraph 38 of the Third Amended Complaint.

39. In response to the allegations contained in Paragraph 39 of the Third Amended Complaint, Defendant admits that the Board of Directors of the Association hired Steve Goggans ("Goggans") of SGA Architecture, LLC ("SGA") to perform certain work for the Association. The Board of Directors that hired Goggans and SGA included Plaintiffs Jill Humphries and Johnson. On February 6, 2016, Plaintiffs Jill Humphries and Johnson were voted off the Board of Directors at a Special Meeting of Homeowners at TBRC called for the stated purpose of voting on whether to keep Plaintiffs Jill Humphries and Johnson on the Board or remove them. Subsequently, on March 5, 2016, at the TBRC 2016 Annual Meeting, one (1) board member (Coe) was re-elected and three (3) new members (Windle, White and Austin) were elected to the Board of Directors. Shortly thereafter, the newly constituted Board of Directors determined that it was in the best interest of the Association to terminate its relationship with Goggans and SGA

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

for several reasons. Specifically, the contract with SGA was terminated in order to: (1) retain a firm that provided both architectural and engineering services in-house to improve coordination of professional service; (2) retain a firm that specializes in the remediation of condominium buildings in a coastal environment; and (3) retain an architectural firm that would provide professional services based upon standard hourly rates as opposed to a percentage of the cost of the work performed by the general contractor in order to reduce the overall cost to TBRC and, importantly, eliminate any financial incentive for SGA to recommend additional, unnecessary work at TBRC for its own financial gain. The Association did so, and subsequently hired ABS, a well-qualified and experienced architectural and engineering firm that specializes in the type of work needed at TBRC at less cost than SGA and Martinez, to perform a forensic analysis of each building at TBRC and provide architectural and engineering services for the Association, which ABS continues to perform, related to the maintenance and repair of the Association's real property. Defendant denies the remainder of the allegations contained in Paragraph 39 of the Third Amended Complaint.

40. In response to the allegations contained in Paragraph 40 of the Third Amended Complaint, including its footnote, Defendant admits that Goggans and SGA performed certain work for the Association related to maintenance and repair work. Defendant further admits that Goggans and SGA prepared a letter related to this work. Defendant incorporates this letter by reference for identification of its contents. Any allegations of Paragraph 40 of the Third Amended Complaint inconsistent with Goggans' letter are denied. Defendant does not admit that any issues raised by Goggans and SGA were necessarily identified correctly, does not admit that the maintenance and repairs recommended were necessarily required, nor does Defendant admit that all such issues and recommended repairs required action by the Board of Directors of

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

the Association, then or now. Defendant denies the remainder of the allegations contained in Paragraph 40 of the Third Amended Complaint.

41. In response to the allegations contained in Paragraph 41 of the Third Amended Complaint, Defendant admits that a Special Meeting of the Association occurred on February 6, 2016, for the stated purpose of voting on whether to remove certain individuals from the Board and that, prior to the voting, the subject of maintenance and repairs was discussed. At that time, Plaintiffs Jill Humphries and Johnson recommended what they described as a "holistic, comprehensive, systematic" plan for "restorations" at TBRC, which involved restoring one building at a time to a "like new condition," top to bottom, including aesthetic and cosmetic items, in addition to repairs. According to the plan proposed by Plaintiffs Jill Humphries and Johnson, each building would be renovated and restored to be "like new condition," one at a time, over a period of five to six years at an estimated cost of between $8M and $10M. Pursuant to the plan advocated by Plaintiffs Jill Humphries and Johnson, one building could continue to leak and deteriorate for up to six (6) years before it was "restored." Additionally, pursuant to the plan advocated by Plaintiffs Jill Humphries and Johnson, the homeowners' money would be spent performing cosmetic or aesthetic work on each building, such as carpet, before performing actual necessary repairs, including those implicating life safety, structural, water intrusion, and code compliance issues on the other buildings at TBRC. Finally, according to the plan advocated by Plaintiffs Jill Humphries and Johnson., the homeowners at TBRC would be given little or no input in regard to what was done with their money or what their property would ultimately look like. Conversely, at the February 6, 2016 meeting, Madison and Coe recommended a different approach. They recommended that all "life safety, structural issues, water intrusion, and code compliance issues" be immediately addressed in <u>all</u> buildings at TBRC

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

before any money was spent on aesthetic or cosmetic work on any building. Madison and Coe also recommended that all life safety, structural, water intrusion, and code compliance issues be addressed before any money was spent on purely cosmetic or aesthetic work and, importantly, that the homeowners at TBRC be given an opportunity to (1) obtain information, (2) provide input, (3) participate in discussions, and (4) importantly, in regard to certain matters such as the exterior paint color of the buildings and the type of corridor railings (wood, PVC, etc.), be allowed to vote on how their money was to be spent and what they wanted their property to look like. The estimated cost of the approach recommended by Madison and Coe was less than $8M. As a result of the recommendations for repair made by the Board of Directors at the time, which Board of Directors included Plaintiffs Jill Humphries and Johnson, and which recommendations included the scope of maintenance and repair allegedly recommended by Martinez and Goggans and SGA, as well as the related costs of $8M to $10M, the membership of the Association voted Plaintiffs Jill Humphries and Johnson off the Board of Directors. Thus, their vision and plan for maintenance and repair, including as outlined in the reports and recommendations of Martinez and Goggans and SGA, as well as the related costs of $8M to $10M, were specifically rejected by a majority of the voting membership of the Association. The Association subsequently elected Defendants, Austin, Windle, and White, to the Board of Directors in March 2016, as those gentlemen were in agreement with the different course of action presented by Defendants Madison and Coe at the February 2016 meeting with respect to maintenance and repairs that was more in line with the desires of the majority of the voting membership of the Association. Since coming onto the Board of Directors, these gentlemen and the other Defendant members of the Board of Directors who remained have, in accordance with the advice and recommendations of ABS, set out to execute the maintenance and repair plan they were specifically elected to pursue.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Defendant denies the remainder of the allegations contained in Paragraph 41 of the Third Amended Complaint.

42. In response to the allegations contained in Paragraph 42 of the Third Amended Complaint, Defendant admits that, in February 2016, current members of the Board of Directors, Defendants Madison and Coe, presented an alternative proposal for addressing maintenance and repair issues within the Association. Many of the specifics of this alternative proposal are reflected in the minutes of the February 6, 2016 special meeting to which reference is made. Subsequently, the membership of the Association voted Plaintiffs Jill Humphries and Johnson off the Board of Directors. Thus, their vision and plan for maintenance and repair, including as outlined in the reports and recommendations of Martinez and Goggans and SGA, and related costs of $8M to $10M, were specifically rejected by a majority of the voting membership of the Association. The Association subsequently, on March 5, 2016, elected Defendants Austin, Windle, and White to the Board of Directors, as those gentlemen were in agreement with the different course of action presented by Defendants Madison and Coe at the February 2016 meeting with respect to maintenance and repairs that was more in line with the desires of the majority of the voting membership of the Association. Since coming onto the Board of Directors, these gentlemen and the other Defendant members of the Board of Directors who remained have, in accordance with the advice and recommendations of ABS, set out to execute the maintenance and repair plan they were specifically elected to pursue. Defendant further alleges that the currently constituted Board of the Association retained ABS to conduct a forensic analysis of each building at TBRC and develop a comprehensive plan for the necessary repairs at TBRC, as well as a Long Term Maintenance Plan or Reserve Study, together with an estimate of the costs of the repairs and Long Term Maintenance Plan or Reserve Study, so that a funding

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

plan for the Long Term Maintenance Plan can be developed and implemented. The Defendant expects that the Board will receive the Long Term Maintenance Plan with an estimate of costs in the near future. The Board has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 42 of the Third Amended Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 43 of the Third Amended Complaint.

44. Defendant denies the allegations contained in Paragraph 44 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations

related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 44 of the Third Amended Complaint.

45. Defendant denies the allegations contained in Paragraph 45 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 45 of the Third Amended Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of the Third Amended Complaint. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, in

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

accordance with the recommendations and direction of ABS, and the South Carolina Non-Profit Corporation Act, all the while exercising the Board's business judgment.

47. The Defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 47 of the Third Amended Complaint and, therefore, denies the same, demanding strict proof thereof. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment.

48. Defendant denies the allegations contained in Paragraph 48 of the Third Amended Complaint. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment.

49. In response to the allegations contained in Paragraph 49 of the Third Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to inspections by insurance agent(s). Defendant admits that no Defendant ever intended any damage to the real property owned by the Association and its membership. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 49 of the Third Amended Complaint, if any.

50. Defendant denies the allegations contained in Paragraph 50 of the Third Amended Complaint.

51. With respect to Paragraph 51 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 50 of the Third Amended Complaint.

52. The allegations contained in Paragraph 52 of the Third Amended Complaint contain legal conclusions that require no response from Defendant. To the extent Paragraph 52 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

53. Defendant denies the allegations contained in Paragraph 53 of the Third Amended Complaint, including all subparagraphs.

54. Defendant denies the allegations contained in Paragraph 54 of the Third Amended Complaint.

55. With respect to Paragraph 55 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 54 of the Third Amended Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 56 of the Third Amended Complaint.

57. Defendant denies the allegations contained in Paragraph 57 including each and every allegation of subparagraphs a. through p. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 57 of the Third Amended Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 58 of the Third Amended Complaint.

59. Defendant denies the allegations contained in Paragraph 59 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 59 of the Third Amended Complaint.

60. Defendant denies the allegations contained in Paragraph 60 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 60 of the Third Amended Complaint.

61. With respect to Paragraph 61 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 60 of the Third Amended Complaint.

62. With respect to Paragraph 62 of the Third Amended Complaint, Defendant admits only that this Paragraph appears to quote from a selected portion of the Master Deed. Defendant denies any allegations in Paragraph 62 which are inconsistent with the express written terms of the Master Deed. Defendant does not respond to footnote 5 because it is a purported statement of case law.

63. With respect to Paragraph 63 of the Third Amended Complaint, Defendant admits only that this Paragraph appears to quote from a selected portion of the Master Deed. Defendant denies any allegations in Paragraph 63 which are inconsistent with the express written terms of the Master Deed.

64. Defendant denies the allegations contained in Paragraph 64 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals, including ABS, in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of ABS, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 64 of the Third Amended Complaint.

65. Defendant denies the allegations contained in Paragraph 65 of the Third Amended Complaint.

66. With respect to Paragraph 66 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 65 of the Third Amended Complaint.

67. The allegations contained in Paragraph 67 of the Third Amended Complaint contain legal conclusions that require no response from Defendant. To the extent Paragraph 67 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

68. The allegations contained in Paragraph 68 of the Third Amended Complaint contain legal conclusions that require no response from Defendant. To the extent Paragraph 68 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

69. Defendant denies the allegations contained in Paragraph 69 of the Third Amended Complaint as to Plaintiffs' claims.

70. Defendant denies the allegations contained in Paragraph 70 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

71. Defendant denies the allegations contained in Paragraph 71 of the Third Amended Complaint, including subparagraphs a. through j., including all sub-subparagraphs.

72. Defendant denies the allegations contained in Paragraph 72 of the Third Amended Complaint.

73. With respect to Paragraph 73 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 72 of the Third Amended Complaint.

74. Defendant denies the allegations contained in Paragraph 74 of the Third Amended Complaint.

75. Defendant denies the allegations contained in Paragraph 75 of the Third Amended Complaint.

76. With respect to Paragraph 76 of the Third Amended Complaint, Defendant admits only that this Paragraph appears to quote from a selected portion of the Master Deed. Defendant denies any allegations in Paragraph 76 which are inconsistent with the express written terms of the Master Deed.

77. Defendant denies the allegations contained in Paragraph 77 of the Third Amended Complaint.

78. Defendant denies the allegations contained in Paragraph 78 of the Third Amended Complaint, including each and every allegation of subparagraphs a. through e., including all sub-subparagraphs.

79. With respect to Paragraph 79 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 78 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

80. Defendant denies the allegations contained in Paragraph 80 of the Third Amended Complaint.

81. Defendant denies the allegations contained in Paragraph 81 of the Third Amended Complaint.

82. Defendant denies the allegations contained in Paragraph 82 of the Third Amended Complaint.

83. With respect to Paragraph 83 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 82 of the Third Amended Complaint.

84. Defendant denies the allegations contained in Paragraph 84 of the Third Amended Complaint.

85. Defendant admits that Paragraph 85 correctly quotes from certain selected portions of a counterclaim asserted against Plaintiffs Jill Humphries and Johnson in Defendant's Answer and Counterclaims to Plaintiffs' Second Amended Complaint in this matter.

86. In response to the allegations contained in Paragraph 86 of the Third Amended Complaint, Defendant incorporates by reference the Master Deed. Defendant denies any allegations contained in Paragraph 86 of the Third Amended Complaint that are inconsistent with that document.

87. Defendant admits that portions of Paragraph 87 correctly quotes from certain selected portions of a counterclaim asserted against Plaintiffs Jill Humphries and Johnson in Defendant's Answer and Counterclaims to Plaintiffs' Second Amended Complaint in this matter.

88. Defendant denies the allegations contained in Paragraph 88 of the Third Amended Complaint. Defendant further alleges Plaintiffs Jill Humphries and Johnson lack standing to

assert this claim because these Plaintiffs personally voted for and/or ratified the restorations, modifications and improvements to Building 3 which violated Article XIX of the Master Deed.

89. With respect to Paragraph 89 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 88 of the Third Amended Complaint.

90. Defendant admits the allegations contained in Paragraph 90 of the Third Amended Complaint.

91. In response to the allegations contained in Paragraph 91 of the Third Amended Complaint, Defendant incorporates by reference the By-Laws. Defendant denies any allegations contained in Paragraph 91 of the Third Amended Complaint that are inconsistent with that document. Defendant denies the remainder of the allegations contained in Paragraph 91 of the Third Amended Complaint.

92. In response to the allegations contained in Paragraph 92 of the Third Amended Complaint, Defendant incorporates by reference the By-Laws. Defendant denies any allegations contained in Paragraph 92 of the Third Amended Complaint that are inconsistent with that document. Defendant denies the remainder of the allegations contained in Paragraph 92 of the Third Amended Complaint.

93. In response to the allegations contained in Paragraph 93 of the Third Amended Complaint, Defendant incorporates by reference the By-Laws. Defendant denies any allegations contained in Paragraph 93 of the Third Amended Complaint that are inconsistent with that document. Defendant denies the remainder of the allegations contained in Paragraph 93 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

94. Defendant denies the allegations contained in Paragraph 94 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 94 of the Third Amended Complaint.

95. Defendant denies the allegations contained in Paragraph 95 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 95 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

96. Defendant admits that Martinez and Grogan have issued opinions and recommendations concerning the condition at Tilghman Beach and Racquet Club. Defendant denies that Paragraph 96 accurately summarizes or states those opinions or recommendations or, if it does, that the opinions and recommendations of Martinez and/or Grogan are accurate or binding on Defendant. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 96 of the Third Amended Complaint.

97. In response to Paragraph 97 of the Third Amended Complaint, Defendant admits that KA Diehl & Assoc., Inc. received a letter from the City of North Myrtle Beach dated February 16, 2016, concerning the property in question and Defendant prays reference to that written letter for what is stated in the letter. Defendant denies any allegations in Paragraph 97 of the Third Amended Complaint which are inconsistent, in any way, with the express written terms of the February 16, 2016 letter. Defendant does not respond to footnote 6 because it is a purported statement of law or applicable building code to the City of North Myrtle Beach. Defendant further alleges that the issues raised in the City of North Myrtle Beach's February 16,

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

2016 letter are being addressed by the currently constituted Board of the Defendant to the satisfaction of the City of North Myrtle Beach.

98. In response to Paragraph 98 of the Third Amended Complaint, Defendant admits that a copy of the City of North Myrtle Beach's letter dated February 17, 2016, appears to be attached as Exhibit H to the Third Amended Complaint. Defendant prays reference to the written terms of that letter for what the letter says. All other allegations in Paragraph 98 of the Third Amended Complaint are denied. Defendant specifically alleges that the currently constituted Board of Defendant is addressing the issues raised in the City of North Myrtle Beach's February 17, 2016 letter to the satisfaction of the City of North Myrtle Beach.

99. In response to Paragraph 99 of the Third Amended Complaint, Defendants admits only that between March 8, 2016, and August 25, 2016, the City of North Myrtle Beach issued certain stop work orders for maintenance and repair work that was being done at the property in question. Defendant prays reference to those stop work orders for their written terms and conditions. Copies of the stop work orders appear to be attached as Exhibit I to the Third Amended Complaint. Defendant specifically alleges that the currently constituted Board of Defendant has addressed the issues raised in the stop work orders to the satisfaction of the City of North Myrtle Beach. All others allegations in Paragraph 99 of the Third Amended Complaint are denied.

100. Defendant denies the allegations contained in Paragraph 100, including each and every allegation of subparagraphs a. through m. of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 100 of the Third Amended Complaint.

101. Defendant denies the allegations contained in Paragraph 101 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 101 of the Third Amended Complaint.

102. Defendant denies the allegations contained in Paragraph 102 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 102 of the Third Amended Complaint.

103. In response to Paragraph 103 of the Third Amended Complaint, Defendant admits only that this Paragraph quotes from a selected portion of an unsworn January 6, 2017 letter from Henry H. Beckham but Defendant denies all allegations in Paragraph 103 and the statements in Beckham's January 6, 2017 letter. Defendant specifically denies that Plaintiffs have sustained any diminution in value of their individual units which is recoverable in this lawsuit.

104. Defendant denies the allegations contained in Paragraph 104 and the following subparagraphs a. through h. of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 104 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

105. Defendant denies the allegations contained in Paragraph 105 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 105 of the Third Amended Complaint.

106. Defendant denies the allegations contained in Paragraph 106 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 106 of the Third Amended Complaint.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

107. Defendant denies the allegations contained in Paragraph 107 of the Third Amended Complaint. The individual Defendants are exercising their business judgment and carrying out the vision and repair plan they were elected or retained to pursue while relying upon the professional judgment of retained professionals in making recommendations related to maintenance and repair. Defendant further alleges that the currently constituted Board of the Association has pursued a maintenance and repair plan in a reasonable, independent, good faith manner, within the authority granted it by the Bylaws, the regime documents, the Horizontal Property Act, and the South Carolina Non-Profit Corporation Act, in accordance with the recommendations and direction of retained professionals, all the while exercising the Board's business judgment. Defendant denies the remainder of the allegations contained in Paragraph 107 of the Third Amended Complaint.

108. Defendant denies the allegations contained in Paragraph 108 of the Third Amended Complaint.

109. With respect to Paragraph 109 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 108 of the Third Amended Complaint.

110. Defendant admits the allegations contained in Paragraph 110 of the Third Amended Complaint.

111. Defendant admits the allegations contained in Paragraph 111 of the Third Amended Complaint.

112. With respect to Paragraph 112 of the Third Amended Complaint, Plaintiffs allege prior pleadings; Defendant denies any allegations that are inconsistent with the prior pleadings.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Further, Defendant denies the remaining allegations contained in Paragraph 112 of the Third Amended Complaint.

113. Defendant denies the allegations contained in Paragraph 113 of the Third Amended Complaint.

114. Certain allegations contained in Paragraph 114 of the Third Amended Complaint, contain legal conclusions that require no response from Defendant. To the extent Paragraph 114 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

115. Certain allegations contained in Paragraph 115 of the Third Amended Complaint, contain legal conclusions that require no response from Defendant. To the extent Paragraph 115 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

116. Defendant denies the allegations contained in Paragraph 116 of the Third Amended Complaint.

117. Defendant denies the allegations contained in Paragraph 117 of the Third Amended Complaint.

118. With respect to Paragraph 118 of the Third Amended Complaint, Defendant responds to the allegations incorporated therein consistent with its admissions and denials to Paragraphs 1 through 117 of the Third Amended Complaint.

119. In response to the allegations contained in Paragraph 119 of the Third Amended Complaint, Defendant incorporates by reference the By-Laws. Defendant denies any allegations contained in Paragraph 119 of the Third Amended Complaint that are inconsistent with that document.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

120. Defendant denies the allegations contained in Paragraph 120 of the Third Amended Complaint.

121. Defendant denies the allegation contained in Paragraph 121 of the Third Amended Complaint.

122. Defendant denies the allegations contained in Paragraph 122 of the Third Amended Complaint.

123. Certain of the allegations contained in Paragraph 123 of the Third Amended Complaint, contain legal conclusions that require no response from Defendant. To the extent Paragraph 123 may be deemed to allege facts or any entitlement of Plaintiffs to legal or equitable relief against Defendant, the same are denied.

124. Defendant denies the allegations contained in Paragraph 124 of the Third Amended Complaint.

125. Defendant denies the allegations contained in Paragraph 125 of the Third Amended Complaint.

126. Defendant denies the allegations contained in Paragraph 126 of the Third Amended Complaint.

127. Defendant denies the allegations contained in Paragraph 127 of the Third Amended Complaint.

128. Defendant denies that Plaintiffs are entitled to any of the relief requested in the WHEREFORE paragraph following Paragraph 127 of the Third Amended Complaint, including subparagraphs a. through l.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

AS TO ALL ALLEGATIONS

129. Any and all allegations, claims, contentions, demands and prayers for relief contained in the Third Amended Complaint, which have not been expressly admitted, modified or explained by Defendant in this Answer and Counterclaims, are hereby expressly denied.

FOR A SECOND DEFENSE

130. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

131. The Third Amended Complaint fails to state facts sufficient to constitute a cause of action. Therefore, their claims against Defendant, if any, must be dismissed pursuant to Rule 12, Fed. R. Civ. P.

FOR A THIRD DEFENSE

132. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

133. Plaintiffs' claims are barred in whole or in part by the business judgment rule.

FOR A FOURTH DEFENSE

134. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

135. Plaintiffs' claims are barred under the applicable statute(s) of limitations and/or statute(s) of repose.

FOR A FIFTH DEFENSE

136. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

137. Defendant would show that Plaintiffs' individual claims for negligence are precluded or limited by Plaintiffs' own comparative negligence.

FOR A SIXTH DEFENSE

138. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

139. Defendant would show that Plaintiffs' alleged injuries and damages, to the extent there are any at all, and which are strictly denied, were caused by the intervening conduct of a third party unrelated to Defendant.

FOR A SEVENTH DEFENSE

140. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

141. An award of punitive damages against Defendant in this case would violate the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and similar provisions of the South Carolina Constitution.

FOR AN EIGHTH DEFENSE

142. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

143. Defendant alleges that Plaintiffs have failed to mitigate their damages, to the extent there are any at all, and which are strictly denied.

FOR A NINTH DEFENSE

144. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

145. Plaintiffs' claims are barred or precluded by South Carolina's Economic Loss Rule.

FOR A TENTH DEFENSE

146. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as if fully set forth herein.

147. Defendant would show that Plaintiffs have failed to allege sufficient facts to demonstrate they have standing to assert the claims in the Third Amended Complaint in that they have failed to allege when they purchased their condominium units or that they had an ownership interest at the time of the acts complained of in the Third Amended Complaint. Further, each named Plaintiff lacks standing to complain about the actions or inactions of the Association or its Board, or any damages to the Common Elements, Limited Common Elements, or Plaintiffs' individual units, which occurred prior to each individual Plaintiff acquiring ownership of his or her unit.

FOR AN ELEVENTH DEFENSE

148. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

149. Plaintiffs' claims are barred by the doctrine of laches.

FOR A TWELFTH DEFENSE

150. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

151. Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FOR A THIRTEENTH DEFENSE

152. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

153. Defendant pleads the doctrine of condonation as an affirmative defense.

FOR A FOURTEENTH DEFENSE

154. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

155. Defendant would show that any actions undertaken by it, its agents, employees, officers, directors, and representatives were taken in substantial compliance with the Master Deed and Bylaws.

FOR A FIFTEENTH DEFENSE

156. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

157. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SIXTEENTH DEFENSE

158. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

159. Plaintiffs are not entitled to recover damages pursuant to the South Carolina Nonprofit Corporation Act. Alternatively, Defendant is immune from suit under said Act.

FOR A SEVENTEENTH DEFENSE

160. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

161. Defendant would show that at all times relevant to the allegations of Plaintiffs' Third Amended Complaint, Defendant acted in good faith and in a reasonable manner.

FOR AN EIGHTEENTH DEFENSE

162. Defendant incorporates by reference the relevant and consistent allegations of its previous Defenses as fully set forth herein.

163. Defendant would show that at all times relevant to the allegations of Plaintiffs' Third Amended Complaint, Defendant complied with the applicable provisions of the South Carolina Nonprofit Corporation Act, S.C. Code Ann. § 33-31-101, et. seq.

ADDITIONAL DEFENSES

164. Defendant places Plaintiffs' on notice that it will subsequently move to amend this Answer and Counterclaim to assert additional defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

FOR A NINETEENTH DEFENSE AND FIRST COUNTERCLAIM AGAINST ALL PLAINTIFFS
(Civil Conspiracy)

165. Defendant reasserts the previous, relevant portions of this Answer and Counterclaims, as if repeated verbatim.

166. Defendant is a non-profit corporation organized and existing by virtue of the laws of the State of South Carolina with its principal place of business in the City of North Myrtle Beach, Horry County, South Carolina, which is located within the Florence Division of the United States District Court for the District of South Carolina.

167. Plaintiffs Jill Humphries and Johnson, are each the owners or partial owners of certain units at the Association and are former members of the Board of Directors of the Association

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

who were voted off the Board of Directors by a majority of the voting membership in February 2016.

168. Upon information and belief, Plaintiffs Rice, Brown, Robinson, Elizabeth Humphries, and Nancy Johnson are each the owners or partial owners of certain units in the Association, or may attempt to claim some right or interest related to the Association. Plaintiffs Rice, Brown, Robinson, Elizabeth Humphries, and Nancy Johnson, are believed to either be close family members of Plaintiffs Jill Humphries and Johnson, in some sort of romantic relationship with one of them, and/or are otherwise so closely associated with Plaintiffs Jill Humphries and Johnson, that Plaintiffs Jill Humphries and Johnson can exercise control over them and/or guide their actions as it relates to this lawsuit and related matters.

169. This Court has jurisdiction of the parties and the subject matter herein set forth.

170. Having had their plans rejected by the Association through its democratic processes, as described above, upon information and belief, Plaintiffs Jill Humphries and Johnson conspired amongst themselves and with the other named Plaintiffs upon a plan to file this lawsuit to not only seek revenge upon the Association, the individual directors named as Defendants, and the membership of the Association, but also as an illegitimate means to force their will as it relates to maintenance and repairs—which was specifically rejected by the majority of the voting membership of the Association—upon Defendants and the membership of the Association. Plaintiffs have also sought to interfere in the Association's efforts to perform maintenance and repair at the Association through direct contact with officials at the City of North Myrtle Beach and through interference with the work of ABS. All of these actions have resulted in significant expense and damage to Defendant and membership of the Association.

171. Upon information and belief, Plaintiffs Jill Humphries and Johnson conspired

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

with and convinced the other Plaintiffs to join them in their plan to seek punishment and revenge against Defendants. By agreeing to participate in this action for the aims alleged above upon information and belief, these other Plaintiffs are a part of the same conspiracy as Plaintiffs Jill Humphries and Johnson, and are liable to Defendants for their illegal conspiracy and the special damages resulting to Defendant as a result.

172. The acts of Plaintiffs described above, including in this counterclaim, constitute a combination of two or more persons (Plaintiffs) for the purpose of injuring Defendant, the Association.

173. The acts of Plaintiffs described above, including in this counterclaim, have caused Defendant special damages including, but not limited to, attorneys' fees and costs associated with defense of the allegations raised by the conspirators as a result of their conspiracy; and upon information and belief, the following: diminution in value of the Association's property as a result of the allegations made against the Association and defense of the illegitimate, conspiratorial lawsuit; damage to the Association's credit rating; an inability of the Association to conduct business as usual and obtain competitive prices for services and goods in the market due to the cloud of the illegitimate, conspiratorial lawsuit; damage to the Association's business reputation; and interference with the Association's prospective contractual relations, amongst other special damages, all of which the Association will prove at trial.

FOR A TWENTIETH DEFENSE AND SECOND COUNTERCLAIM AGAINST ALL PLAINTIFFS
(Abuse of Process)

174. Defendant reasserts the previous, relevant portions of this Answer and Counterclaims as if repeated verbatim.

175. Upon information and belief, Plaintiffs instituted this lawsuit not primarily for the

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

purpose of recovering the alleged damages or declaratory relief set forth in their Third Amended Complaint. Rather, upon information and belief, Plaintiffs instituted this action primarily as a part of a misguided effort to punish the Association, the individual directors named as Defendants, and the membership of the Association due to the fact that the maintenance and repair recommendations made by Plaintiffs Jill Humphries and Johnson, and the consultants they hired on behalf of the Association (Martinez and Goggans and SGA), were specifically opposed by the individual Defendants (both before and after being elected to the Board of Directors, as the case may be), and were specifically rejected by the majority of the voting membership of the Association when Plaintiffs Jill Humphries and Johnson were removed from the Board of Directors.

176. The willful acts of Plaintiffs described above, including in Defendant's counterclaim for civil conspiracy, constitute an abuse of process under South Carolina law in that this action has been instituted for an ulterior purpose, including as a means to punish the Association, its membership, and the individual Defendants, in order to seek revenge for Plaintiffs not getting their way in the actions of the Association.

177. The willful acts of Plaintiffs described above, including in Defendant's counterclaim for civil conspiracy, constitute willful acts in the use of the process of the courts that are not proper in the regular conduct of the proceeding.

178. As a result of Plaintiffs' actions, as described above, Defendant has suffered damage, and is entitled to an award of punitive damages against Plaintiffs to deter both Plaintiffs and others from similarly abusing the processes of the courts in the future.

FOR A TWENTY-FIRST DEFENSE AND THIRD COUNTERCLAIM AGAINST PLAINTIFFS JILL HUMPHRIES AND JOHNSON,
(Indemnity)

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

179. Defendant reasserts the previous, relevant portions of this Answer and Counterclaims as if repeated verbatim.

180. Plaintiff Jill Humphries was a member of the Board of Directors of the Association from March 2, 2013, to February 6, 2016.

181. Plaintiff Johnson was a member of the Board of Directors of the Association from March 7, 2015, to February 6, 2016.

182. The Third Amended Complaint against Defendant alleges, *inter alia*, that the Board of Directors of the Association was responsible for the management of the Association from 1982 to the present. Plaintiffs allege that these responsibilities include the operation, funding, maintenance, repair, and replacement of the "Common Elements," as that term is defined by Plaintiffs in the Third Amended Complaint while referring to the Master Deed. Plaintiffs further allege that the Board of Directors was required to maintain adequate reserves to carry out these responsibilities. Reference is made to the entire Third Amended Complaint for a more particular statement of Plaintiffs' claims.

183. The Third Amended Complaint further alleges that the Board of Directors has failed to abide by the responsibilities charged to it in the Master Deed and By-Laws for a period of time that appears to go all the way back to 1982. This necessarily includes the time period in which Plaintiffs Jill Humphries and Johnson served on the Board of Directors of the Association. Thus, assuming Plaintiffs' allegations are true, which is admitted only for purposes of this Counterclaim and otherwise denied, Plaintiffs Jill Humphries and Johnson are liable for such damages which are based on acts of the Board committed while these Plaintiffs served on the Board. Namely, if the allegations of Plaintiffs are true and the Board of Directors breached its

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

duties to the members of the Association and is liable in this case, which is admitted only for purposes of this counterclaim and otherwise denied, the Defendant is only liable because of the active negligence and other actions of Plaintiffs Jill Humphries and Johnson, who personally committed the acts complained of by Plaintiffs during their service on the Board.

184. Therefore, based upon both contractual and equitable principles, Plaintiffs Jill Humphries and Johnson are liable in indemnity for any damages assessed against Defendant due to the acts of the Defendant's Board while those Plaintiffs served on the Board, and Defendant is entitled to damages in any amount awarded Plaintiffs under any theory of recovery, as well as for attorneys' fees and costs incurred as a result of defending this action.

FOR A TWENTY-SECOND DEFENSE AND FOURTH COUNTERCLAIM AGAINST PLAINTIFFS JILL HUMPHRIES AND JOHNSON
(*Ultra Vires* Acts)

185. Defendant reasserts the previous, relevant portions of this Answer and Counterclaims as if repeated verbatim.

186. Plaintiffs Jill Humphries and Johnson, as members of the Board of Directors from March 2015 through February 5, 2016, made alterations, modifications, and improvements to Building 3 of the Tilghman Beach Resort.

187. 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.

188. The work performed on Building 3 altered, modified, and improved upon that which was there and substantially changed the aesthetics, or "look" of Building 3.

189. The "alterations, modifications, and improvements" included a new roof, new skylights, new gutters, new PVC handrails, new steel beams (the cost of which exceeded the cost

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

190. All of the alterations, modifications, and improvements were approved by Plaintiffs Jill Humphries and Johnson 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. Plaintiffs Jill Humphries and Johnson directly participated in, and directed, the foregoing wrongful conduct.

191. As a result of Plaintiffs' actions, as described above, Defendant has suffered damage, and is entitled to an award of direct and consequential damages against Plaintiffs for their *ultra vires* acts outside of the Master Deed.

WHEREFORE, having fully answered, Defendant prays that the Third Amended Complaint be dismissed with prejudice with no recovery to Plaintiffs, that the Court award Defendant its costs and attorneys' fees, for an award of actual and punitive damages, as well as attorneys' fees and costs, against Plaintiffs on Defendant's Counterclaims, for an award in indemnity against Plaintiffs, and for such other and further relief in favor of Defendant as the Court may deem just and proper.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

__/s/ Joshua D. Spencer
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Attorneys for Defendant, Tilghman Beach and Racquet Club Condominium Association, Inc.

April 7, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Apr 07 4:11 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C.A. 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.	**DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT**
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., Third-Party Plaintiffs, vs. Great American Insurance Company,	

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Third-Party Defendant.)
_____)

Defendants / Third-Party Plaintiffs, Tilghman Beach and Racquet Club Condominium Association, Inc. ("Association"), and James H. Austin, III, Daniel G. Coe, C. Doug Madison, George P. White, and Steele Brice Windle, III (hereinafter collectively referred to as "the Individual Defendants") (the Association and Individual Defendants are collectively referred to herein as "Third-Party Plaintiffs") complaining of Third-Party Defendant, Great American Insurance Company ("Third-Party Defendant"), would respectfully allege as follows:

GENERAL ALLEGATIONS

1. The Association is and was, at all times relevant hereto, an incorporated legal entity organized and existing under the South Carolina Non-Profit Corporation Act ("Act"), S.C. Code Ann., §§ 33-31-10 et seq., 1976, as Amended. The real estate and condominium community related to the Association is physically located in Horry County, South Carolina.

2. The Individual Defendants are now, and have been, since the time the Litigation, as defined in Paragraph 9, was initiated, directors of the Association.

3. Third-Party Defendant is an insurance company, organized and existing under the laws of a State other than South Carolina, doing business in South Carolina as a liability insurer. The Association and the Individual Defendants are informed and believe that Third-Party Defendant regularly issues liability insurance policies either covering risks within the State of South Carolina and/or to insureds located in the State of South Carolina.

4. This Court has both general and specific personal jurisdiction over Third-Party Defendant pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803 and other applicable laws. Third-Party Defendant has maintained continuous and systematic contacts with South Carolina sufficient to grant this Court general jurisdiction over Third-Party Defendant. Moreover, Third-

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Party Defendant entered into contracts with South Carolina residents, including the insurance policy at issue here, such that Third-Party Defendant has directed activities to residents of South Carolina and has purposely availed itself of the privilege of conducting business and/or activities in South Carolina. This action arises directly out of the activities that Third-Party Defendant directed to South Carolina, and this Court, therefore, has specific jurisdiction over Third-Party Defendant. The exercise of personal jurisdiction over Third-Party Defendant in this case is consistent with due process under the United States Constitution.

5. This Court has jurisdiction over the subject matter of this action and Horry County, South Carolina, is a proper venue for this case in that the insurance policy in question insures the Association, and the condominium community, which is the subject of the Litigation, as defined in Paragraph 9, is located in Horry County, South Carolina.

6. For good and valuable consideration received from one or more of Third-Party Plaintiffs, Third-Party Defendant issued to the Association an "Exec Pro Community Association Solution Insurance Policy", # EPP3654704-01, a copy of which is attached hereto as **Exhibit A** (hereinafter "the Great American Policy").

7. The Association is an "Insured" as defined in the Great American Policy, and both the Association and the Individual Defendants are "Insured Persons" as defined in the Great American Policy. Third-Party Defendant is the "Insurer" as defined in the Great American Policy.

8. Section 1, Insuring Agreements, Subsection A of the Great American Policy provides as follows:

> If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense**

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

> which the **Organization** or any **Subsidiary** actually pays as indemnification.

Further, the Section 1, Insuring Agreements, in the Great American Policy provides:

> The **Insurer** has the right and duty to defend any **Claim** to which the insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

The Great American Policy further provides:

> **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.

9. On or about July 7, 2016, Plaintiffs filed a lawsuit in the Court of Common Pleas for Horry County, South Carolina, against Third-Party Plaintiffs. A true and accurate copy of the original Complaint, without exhibits, is attached hereto as **Exhibit B**. On or about October 28, 2016, Plaintiffs filed a Second Amended Complaint in the Court of Common Pleas for Horry County, South Carolina, against Third-Party Plaintiffs. A true and accurate copy of which, without exhibits, is attached to this Third-Party Complaint as **Exhibit C**. On or about March 8, 2017, Plaintiffs filed a Third Party Complaint in the Court of Common Pleas for Horry County, South Carolina, against Third-Party Plaintiffs. A true and accurate copy of which, without exhibits, is attached to this Third-Party Complaint as **Exhibit D**. This lawsuit will be hereinafter referred to as "the Litigation."

10. The Complaints, attached to this Third-Party Complaint as Exhibits B, C and D, constitute a "Claim" made within the Policy Period under the Great American Policy because they involve a "civil proceeding . . . made against any 'Insured' seeking monetary or non-

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

monetary (including injunctive) relief commenced by service of the Complaint or similar pleading."

11. The original Complaint (Exhibit B), Second Amended Complaint (Exhibit C), and Third Amended Complaint (Exhibit D) allege numerous Wrongful Acts by an Insured Person or Persons under the Great American Policy.

12. Despite repeated written demands by Third-Party Plaintiffs on or about July 13, 2016, August 10, 2016[1], August 25, 2016[2], and November 3, 2016[3], Third-Party Defendant has failed and refused and continues to refuse to provide coverage and/or a defense in this matter.

13. Third-Party Defendant has written letters expressly denying any duty to provide coverage or a defense in the Litigation, which constitutes an anticipatory breach of the Great American Policy. Third-Party Defendant's letters dated August 1, 2016, and October 12, 2016, are attached hereto, respectfully, as **Exhibits H and I.**

14. Third-Party Plaintiffs are informed and believe that the above mentioned Policy provides for a defense and indemnification of the losses, incidents, wrongful acts and occurrences alleged in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint in the Litigation. Accordingly, Third-Party Defendant is or may be liable to the Association and the Individual Defendants for all or part of the claim or claims made against the Association and/or the Individual Defendants contained in the original Complaint, the Second Amended Complaint, and the Third Amended Complaint in the Litigation within the meaning of Rule 14, SCRCP.

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[1] August 10, 2016 letter attached hereto as **Exhibit E**.
[2] August 25, 2016 letter attached hereto as **Exhibit F**.
[3] November 3, 2016 letter attached hereto as **Exhibit G.**

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

15. All of the allegations contained in Paragraphs 1 through 14 are hereby incorporated herein as if they had been set forth fully hereunder.

16. Third-Party Defendant's conduct, including, but not limited to, Third-Party Defendant's refusal to provide coverage and/or a defense in the Litigation, constitutes a material breach of the Great American Policy.

17. As a direct and proximate result of Third-Party Defendant's breach of the Great American Policy, Third-Party Plaintiffs have incurred actual and consequential damages, including, but not limited to, being forced to retain their own counsel to defend this matter and being required to pay that counsels' fees and expenses and being forced to retain expert witnesses and pay expert witnesses' fees, all of which should have been paid by Third-Party Defendant under the Great American Policy. All of these damages were known or readily ascertainable to Third-Party Defendant both at the time of entering into the insurance policy in question and at the time of Third-Party Defendant's material breach of the Great American Policy.

18. Third-Party Plaintiffs are entitled to recover actual damages and pre-judgment interest accruing from the breach of the insurance policy.

FOR A SECOND CAUSE OF ACTION
(Attorney's Fees Under Section 38-59-40 of the South Carolina Code)

19. All of the allegations contained in Paragraphs 1 through 18 are hereby incorporated herein as if they had been set forth fully hereunder.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

20. The allegations in the original Complaint (Exhibit B), the Second Amended Complaint (Exhibit C), and the Third Amended Complaint (Exhibit D) in the Litigation constitute a claim covered by the Great American Policy, and/or Third-Party Plaintiffs have sustained damage at this time which is covered by the Great American Policy.

21. A written demand has been made on Third-Party Defendant to step in and defend the Litigation and/or pay the claim involved in the Litigation. Third-Party Defendant has failed to defend or provide coverage in the Litigation within ninety (90) days from the date of this demand.

22. Third-Party Defendant's refusal to provide a defense and coverage is without reasonable cause and/or in bad faith. In addition to any other sum or amount otherwise recoverable, Third-Party Plaintiffs are entitled to recover from Third-Party Defendant all their reasonable attorney's fees for the prosecution of the Third-Party Complaint under S.C. Code Ann. § 38-59-40.

23. Said reasonable attorney's fees are to be determined by the trial judge and added to the amount of any judgment Third-Party Plaintiffs obtain against Third-Party Defendant on the Third-Party Complaint.

FOR A THIRD CAUSE OF ACTION
(Bad Faith)

24. All of the allegations contained in Paragraphs 1 through 23 are hereby incorporated hererin as if they had been set forth fully herein.

25. Third-Party Defendant's refusal to pay and/or provide the contracted-for benefits under the Great American Policy is without a reasonable basis and is in bad faith.

26. Third-Party Plaintiffs are entitled to recover actual, consequential, and punitive damages.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment)

27. All of the allegations contained in paragraphs 1 through 26 are hereby incorporated herein as if they had been set forth fully hereunder.

28. This cause is brought to resolve a justiciable controversy pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq.

29. Third-Party Plaintiffs herein are persons interested under a written contract within the meaning of Section 15-53-30 of the South Carolina Uniform Declaratory Judgment Act. Third-Party Plaintiffs are entitled to a construction of this written contract of insurance within the meaning of Section 15-53-40 of the South Carolina Uniform Declaratory Judgment Act.

30. Third-Party Plaintiffs are informed and believe that they are entitled to a declaration that Third-Party Defendant owes to them a duty of defense and indemnification in the aforementioned action. This declaration will terminate the uncertainty or controversy between the parties that currently exists under the Great American Policy.

31. Third-Party Plaintiffs are further informed and believe that they are entitled to the additional relief based on the Court's declaratory judgment or decree within the meaning of Section 15-53-120 of the South Carolina Uniform Declaratory Judgment Act including, but not limited to, an order directing that Third-Party Defendant pay any attorneys' fees, expenses and costs that Third-Party Plaintiffs have incurred in defending against the original Complaint or subsequent versions of the original Complaint in the Litigation, for the attorneys' fees and costs incurred by Third-Party Plaintiffs in bringing this Third-Party Complaint and for such other and further relief as the Court deems fair and equitable.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

WHEREFORE, Third-Party Plaintiffs demand judgment against Third-Party Defendant as follows:

(a) for an award of actual damages, including consequential damages, on Third-Party Plaintiffs' First Cause of Action, in an amount to be determined by a jury;

(b) for an award of reasonable attorney's fees under S.C. Code Ann. § 38-59-40, in an amount to be determined by the trial judge;

(c) for an award of actual damages, including consequential damages, and punitive damages in an amount to be determined by a jury on Third-Party Plaintiffs' Third Cause of Action;

(d) for a declaration under Third-Party Plaintiffs' Fourth Cause of Action that Third-Party Defendant has a duty to defend Third-Party Plaintiffs and to indemnify Third-Party Plaintiffs and provide coverage for the claims alleged in the Litigation;

(e) for an award of additional relief for its declaratory judgment within the meaning of Section 15-53-120; and

(f) for such other and further equitable relief as the Court deems fair and proper.

Respectfully submitted,

THE PEARCE LAW GROUP, P.C.

By: */s/ Charles B. Jordan, Jr.*

Charles B. Jordan, Jr., Esquire
S.C Bar No.: 11708
1309 Professional Drive, Suite 202
Myrtle Beach, South Carolina 29577
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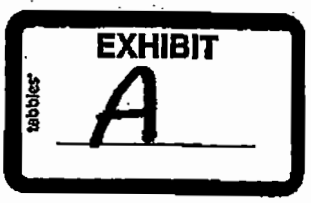
Attorneys for Defendants / Third-Party Plaintiffs

May 2, 2017
Myrtle Beach, South Carolina



ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN.
INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

ExecPro sm DECLARATIONS

for
Community Association Solution Insurance Policy

Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
Policy Number: **EPP3654704-01** Policy Form Number: D26100 (2/10)

Item 1. Name of **Organization:** **Tilghman Beach & Racquet Club HOA Inc.**
Mailing Address: **11822 HIGHWAY 17 BYP**

City, State, Zip Code: **MURRELLS INLET, SC, 29576-9337**

Item 2. **Policy Period:** From **02-10-2016** To **02-10-2017**
(Month, Day, Year) *(Month, Day, Year)*
(Both dates at 12:01 a.m. Standard Time at the address of the **Organization** as stated in Item 1.)

Item 3. (a) **Limit of Liability for each Policy Year: $1,000,000**
(b) **FLSA Defense Sublimit of Liability: $150,000 – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).**

Item 4. Retentions:

Insuring Agreement A:	**$0**	**Each Claim**
Insuring Agreement B and/or C:	**$1,000**	**Each Claim**

Item 5. Premium: **$2,559.00** Annual Taxes/Surcharges: **$0.00** Annual Fees: **$0.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Deletion of Noise Exclusion D 26714-2 (11/12)
Terrorism Coverage Policyholder Disclosure NTDN_08P (1/08)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (10/14)

Item 7. Notices: All notices required to be given to the **Insurer** under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **02-10-2015**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer.**

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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INSURANCE GROUP

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Community Association Solution

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Community Association Solution

Great American Insurance Group – Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

Table of Contents

I.	Insuring Agreements		Page 1
II.	Discovery Period		Page 1
III.	Definitions		Page 2
IV.	Exclusions		Page 5
V.	Limit of Liability and Retention		Page 7
VI.	Costs of Defense and Settlements		Page 8
VII.	Notice of Claim		Page 8
VIII.	Coverage Extensions		Page 9
	(A)	Spousal/Domestic Partner Provision	Page 9
	(B)	Worldwide Provision	Page 9
	(C)	Estates and Legal Representatives	Page 9
IX.	General Conditions		Page 9
	(A)	Cancellation or Non-Renewal	Page 9
	(B)	Proposal Form	Page 10
	(C)	Order of Payments	Page 10
	(D)	Merger or Acquisition	Page 10
	(E)	Conversion to Run-Off Coverage	Page 10
	(F)	Action Against the Insurer	Page 10
	(G)	Subrogation	Page 11
	(H)	Conformity to Law	Page 11
	(I)	Assignment	Page 11
	(J)	Representative of the Insurer	Page 11
	(K)	Organization Represents Insured	Page 11
	(L)	Entire Agreement	Page 11

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN INSURANCE GROUP®
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.

C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization**, any **Subsidiary**, or the **Property Manager** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization**, any **Subsidiary**, or the **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

A. If this Policy is not renewed or is cancelled by the **Insurer**, for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Automatic Discovery Period**. In addition, if prior to the end of the **Automatic Discovery Period**, the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period**. This extended coverage shall be referred to as the **Discovery Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

C. The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year**.

Section III. Definitions

A. **"Claim"** shall mean:

(1) a written demand for monetary relief made against any **Insured**;

(2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;

(3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or

(4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. **"Claimant"** shall mean:

(1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary**;

(2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or

(3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary**.

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager**.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:

(1) defective or incorrect architectural plans or other designs;
(2) defective or improper soil testing;
(3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
(4) construction, manufacture or assembly of any tangible property;
(5) the failure to provide or pay for any construction-related goods or services; or
(6) the supervision or management of any construction-related activities.

D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.

E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:

(1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
(2) misrepresentation;
(3) violation of employment laws;
(4) sexual or workplace harassment;
(5) discrimination;
(6) wrongful failure to employ or promote;
(7) wrongful discipline;
(8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
(9) failure to grant tenure;
(10) negligent employee evaluation;
(11) retaliation;
(12) failure to provide adequate workplace or employment policies or procedures;
(13) defamation (including libel and slander);
(14) invasion of privacy;
(15) wrongful demotion;
(16) negligent reassignment;
(17) violation of any federal, state or local civil rights laws;
(18) negligent hiring;
(19) negligent supervision;
(20) negligent training;
(21) negligent retention; or
(22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.

F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor In Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.

G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

H. **"Insured"** shall mean:

(1) the **Organization;**
(2) any **Subsidiary;**
(3) in the event of **Financial Insolvency,** the resulting Debtor in Possession (or foreign equivalent status), if any;
(4) all **Insured Persons;** and
(5) any **Property Manager,** but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary.**

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary.**

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured. Loss** shall not include:

(1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X. H.), or taxes;

(2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and

(3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period;** or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year.**

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

P. **"Subsidiary"** shall mean:

(1) any entity which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 (and amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;

(2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or

(3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary.**

Q. **"Wrongful Act"** shall mean:

(1) any of the following by the **Organization,** and/or any **Subsidiary,** and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary:**

(a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;

(b) **Employment Practices Wrongful Act;**

(2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary.**

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured:**

A. brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured;** however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

(2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization,** its **Subsidiaries** and those **Insured Persons** having such knowledge; or

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;

E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;

F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;

G. based upon, arising out of, relating to, directly or indirectly resulting from or inconsequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;

H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;

I. other than **Costs of Defense**:

(1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;

(2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;

(3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or

(4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;

K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) actual, alleged or threatened:

(a) inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or

(b) existence of or presence of any **Fungi** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to any injury or damage; or

(2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to, or assessing the effects of **Fungi** or bacteria by any **Insured** or by any other person or entity;

L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;

M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;

N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.

B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.

D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims**, the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.

E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

A. The **Insureds** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.

B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period**. Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.

B. If during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act**; (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.

D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaig.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person,** but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person.** The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries.**

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives, or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons.**

Section IX. General Conditions

A. Cancellation or Non-Renewal

(1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer.** In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.

(2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer**.

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

(1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and

(2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction**.

F. Action Against the Insurer

(1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, those filing the claim, and the **Insurer**.

(2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured.** In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person:**

(1) has been convicted of a deliberate criminal act, or

(2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person,** the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Entire Agreement

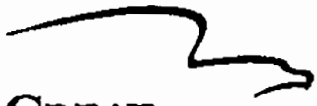
By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer.**

GREAT AMERICAN INSURANCE COMPANY®

President *Secretary*

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464



GREAT AMERICAN.
INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

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AMENDMENT TO DECLARATIONS PAGE

It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: $0.00

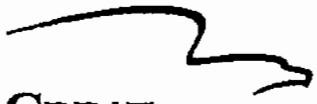
It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated in and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2016 - 02-10-2017**	Policy Number:	**EPP3654704-01**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2016**

DTDP_09P (11/09) Endorsement: Page 1 of 1

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464



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COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for **Loss** caused by an **Act of Terrorism** as defined below.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States –

(i) to be an act of terrorism;
(ii) to be a violent act or an act that is dangerous to –
  (a) human life;
  (b) property; or
  (c) infrastructure;
(iii) to have resulted in damage within the United States, or outside of the United States in the case of -
  (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
  (b) the premises of a United States mission; and
(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2016 - 02-10-2017**	Policy Number:	**EPP3654704-01**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2016**

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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POLICYHOLDER DISCLOSURE OF TERRORISM COVERAGE

The Terrorism Risk Insurance Act establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals as part of an effort to coerce the government or population of the United States.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

The Terrorism Risk Insurance Act, as amended in 2007, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds $100 billion. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

In accordance with the Terrorism Risk Insurance Act, we are required to offer you coverage for losses resulting from an act of terrorism that is certified under the federal program as an Act of Terrorism. All other provisions of this policy will still apply to such an act. That is, a loss will not be excluded or covered just because it was caused by an Act of Terrorism.

The portion of the annual premium that is attributable to coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act is $0.00.

All other terms and conditions of the policy remain unchanged.

If you would like to reject the coverage for "certified" Acts of Terrorism, please provide Great American written confirmation of such, and an exclusion will be attached to your policy.

NTDN_08P (01-08)

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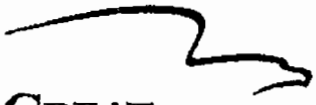

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DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period - Policy Number:

Countersigned by: _____ Endorsement Effective Date:
Authorized Representative

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization**, **Subsidiary** or **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.

C. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against the **Organization**, **Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) such **Data Breach** is first discovered during the **Policy Period;**

(2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;

(3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and

(4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses.**

AMENDMENT TO DEFINITIONS

1. Section III.A. is amended by the addition of the following:

   Claim shall also mean a **Regulatory Action.**

2. Section III.J. is amended by the addition of the following:

   Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses** and **Regulatory Restitution Funds.**

3. Section III. is amended by the addition of the following:

   "Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary.**

   "Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.

   "Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured.**

   "Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;

(4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or

(5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary**.

"Privacy Event Expenses" shall mean the reasonable and necessary:

(1) legal and forensic fees and costs to investigate the cause of the **Data Breach**, identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach**;

(2) costs of notification of the **Data Breach**, if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent; and

(3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach**.

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

(1) the theft of, or unauthorized access to, or disclosure or use of, **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary**, including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary**, if such theft, access, disclosure or use:

a) results in identity theft or other misuse of such **Protected Information**; or

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information;**

(2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary,** relating to **Protected Information** that:

a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information;** or

b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information;** or

(3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary.**

"Privacy Regulatory Fines and Penalties" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action.**

"Protected Information" shall mean:

(1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured;** and

(2) confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"Regulatory Action" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach.** However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

"Regulatory Restitution Fund" shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action.**

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act.**

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims** for **Personal Injury Wrongful Acts, Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary**.

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for a **Privacy Wrongful Act**;

3. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;

(2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;

(3) price-fixing, restraint of trade or monopolization;

(4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);

(5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;

(6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;

(7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;

(8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or

(9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or

b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information.**

4. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:

(1) any fees or costs to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Breach** or **Data Security Wrongful Act;**

(2) any fees or costs to correct or remediate software program errors or vulnerabilities or deficiencies or problems with any **Computer System** not directly resulting from a **Data Security Wrongful Act;**

(3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII. or a **Data Breach** is reported pursuant to the Reporting Obligations set below;

(4) any overhead expenses of the **Organization** or any **Subsidiary,** including but not limited to compensation or benefits; or

(5) the economic or market value of any **Data Asset.**

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

1. Item 3. of the Declarations is amended by the addition of the following:

(c) $50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches.** This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).

(d) $250,000 Limit of Liability for all **Loss** from all **Claims,** including **Regulatory Actions,** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.** This limit is part of and not in addition to the Limit of Liability provided for in 3(a).

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement A:	$ 0	Each **Claim** for **Privacy Wrongful Acts**
Insuring Agreement B and/or C:	$1,000	Each **Claim** for **Privacy Wrongful Acts**
	$1,000	Each Reimbursement for **Privacy Event Expenses** pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The "Each Reimbursement for **Privacy Event Expenses**" Retention amount stated in Item 4. of the Declarations is the **Organization's** obligation for all **Privacy Event Expenses** from each **Data Breach.**

The "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention stated in Item 4. of the Declarations is the **Organization's** obligation for each **Claim,** including any **Regulatory Action.** If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach,** any amounts paid by the **Organization** in satisfaction of the "Each Reimbursement **Privacy Event Expenses**" Retention will also erode the "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention with respect to such **Claim.**

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims,** including **Regulatory Actions,** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.**

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured,** the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

(a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(b) take reasonable measures to stop or mitigate the damage caused by such **Data Breach;**

(c) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Data Breach;**

(d) submit, upon request of the **Insurer**, to examination under oath and give the **Insurer** a signed statement of the **Insured's** answers; and

(e) cooperate with the **Insurer** in the investigation and settlement of any payments as a result of the **Data Breach.**

For the purposes of coverage extended by this endorsement, a **Data Breach** is "first discovered" when any **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Privacy Wrongful Act** has occurred even though the exact amount or details of loss may not then be known.

Notice of the **Data Breach** shall be given to the **Insurer** at the address indicated in Section VII.D. of the Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

EXHIBIT
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ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,) Delona Penny Rice, and Whitmel L. Brown,) Jr.,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,)	**COMPLAINT**
)	**(JURY TRIAL REQUESTED)**
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.)	

HORRY COUNTY
2016 JUL -7 AM 8:10
CLERK OF COURT

COME NOW 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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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:

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. Further, Plaintiff Humphries is acting in an individual and also a representative capacity for all other similarly situated co-owners located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII.

2. At all times relevant the Plaintiff, Dennis L. Johnson ("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. Further, Plaintiff Johnson is acting in an individual and also a representative capacity for all other similarly situated co-owners located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII.

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. Further, Plaintiff Rice is acting in an

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

individual and also a representative capacity for all other similarly situated co-owners located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII.

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. Further, Plaintiff Brown is acting in an individual and also a representative capacity for all other similarly situated co-owners located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII.

5. All other similarly situated co-owners, who currently own condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII, are fairly and adequately represented by the Plaintiffs, Humphries, Johnson, Rice, and Brown, and these Plaintiffs have no interest adverse to that of any individual who might be entitled to the relief sought by this Complaint.

6. That the Plaintiff Representatives, Humphries, Johnson, Rice, and Brown, 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 Complaint.

7. At all relevant times, the above Plaintiffs 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

subsequent paragraphs.

8. 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").

9. 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.

10. 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

11. 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.

12. 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.

13. 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.

14. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

15. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

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

17. 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

18. The Tilghman Beach and Racquet Club Horizontal Property Regime ("TB&RC and/or 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

copy of the Regime's Master Deed and By-Laws is attached hereto as (**Exhibit "A"**) and incorporated by reference as part of this Complaint.

19. Insofar as is relevant to the assertions in this 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.

20. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

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.

21. 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;

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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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(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;

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(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.

22. 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.*** (Emphasis Added.)

23. 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. (Emphasis Added.)

24. 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***

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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***. (Emphasis Added.)

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.

25. 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

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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).

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

facilities or the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members. (Emphasis Added.)

26. 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

27. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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***. (Emphasis Added.)

(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***. (Emphasis Added.)

B. THE GENERAL PLAN OF DEVELOPMENT OF THE PROJECT

28. 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.

29. 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 at 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. **EVALUATIONS OF BUILDINGS PRIOR TO 2010**

30. 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 of the City of North Myrtle Beach.

31. 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**

32. 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.;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

33. 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 Remediation 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;
r. Soffits are corroded and decayed;
s. Stairs areas with damaged wood studs at base of walls;
t. Balcony beams were deflected as much as two (2) inches and showed water

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

damage;

u. Corridor subflooring exhibiting loss of strength and deflecting floor joists; and

v. Corridor areas retaining excessive amounts of water after storms.

Building Envelope Remediation 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;
m. Water penetration at roof including skylights wall to roof interfaces, ridges and gable vents;
n. Water penetration at building corner units;
o. Water penetration at sliding glass doors due to corroded door pans and deficient hardware;
p. Lack of membrane protection at balcony and corridor perimeters;
q. Lack of flashing protection at post to floor interface;
r. Lack of flashing or membrane protection at deck to wall interface;
s. Rusted connections at balcony and corridor post connections;
t. Deficient corridor guard railing for horizontal thrust;
u. Absence of drip edge flashing at corridors and balconies; and
v. Absence of trip edge flashing at roof perimeter.

Interior Remediation 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Roofing Remediation 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.

34. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

m. 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

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

36. 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 and 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").

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

37. In January of 2016, the Board hired Steve Coggins ("Coggins"), AIA of SGA Architecture, LLC, ("SGA") to prepare a comprehensive capital improvement plan[3] to complete all the necessary repair and restoration work regarding the documented defective conditions in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. The scope and extent of SGA's proposed restoration plan for the Project's remaining eleven (11) building was based upon the previous reports issued by the Board's professional engineers that focused on the buildings' failing structural and exterior envelope systems as well as the combined experience and knowledge gained from diagnosing and completing all the necessary repairs to Building III. Lastly, Coggins advised the Board that a comprehensive repair plan for the defective structural and exterior envelope systems in Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII would probably exceeded six million and No/100 ($6,000,000.00) Dollars.

38. In January of 2016, Coggins issued a letter to the Association explaining the urgency needed to deal with the TB&RC's increasing defective structural and exterior envelope systems, which he described as systemic throughout the whole property. Specifically, Coggins advocated a comprehensive repair plan for the entire Regime in order to stabilize the defective buildings and prevent future structural failure and damage to the General Common Elements and Limited Common Elements. For example, Paragraph five (5) of his letter provides in pertinent part:

> 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***

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3 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 Complaint.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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. (Emphasis Added.)

39. At the February 6, 2016 special meeting, in response to questions from Co-owners, the Board's consultants, Martinez and Goggins, concurred in advising the Board and the Co-owners regarding the urgency of making necessary repairs to TB&RC's defective and deficient buildings. A summary of their opinions and recommendations, recorded by former Board President Carl W. Atkinson, Jr.,("Atkinson") 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 accelcration 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

i. 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

40. Further, current board members Madison, Coe and 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 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 TB&RC'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 TB&RC'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.

41. Notwithstanding the opinions and/or recommendations from Martinez and Goggins, 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 TB&RC's 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.

42. Furthermore, the existing water intrusion problems and defective building conditions at TB&RC 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

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

43. 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 TB&RC 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 TB&RC 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

TB&RC 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 TB&RC;

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.

44. Actual property damage to TB&RC 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 TB&RC'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 TB&RC'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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

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

46. Upon information and belief, the defective maintenance, replacement, and repair of the TB&RC'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 TB&RC were unintended from the stand point of these Defendants.

47. As a direct and proximate result and consequence of the safety defects and structural problems at the TB&RC, the TB&RC has been severely damaged as a result of moisture intrusion and Plaintiffs and other similarly situated Co-owners 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 TB&RC. The buildings at the TB&RC have suffered actual damage caused by exposure to water seeping into the walls that resulted from the negligent maintenance, replacement, and repair of the TB&RC's General Common Elements and Limited Common Elements.

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

48. The Plaintiffs reiterate each and every allegation set forth above as if fully

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

incorporated herein.

49. Defendants, as the underlying agents and representatives of the Co-owners, owed a duty to the Plaintiffs and all other similarly situated Co-owners to exercise reasonable care in maintenance, repair, and replacement of TB&RC'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.

50. 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 TB&RC'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 TB&RC'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 TB&RC's General Common Elements and Limited Common Elements;

d. In failing to submit any design drawings and specifications for known defective conditions in the TB&RC'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 TB&RC's General Common Elements and Limited Common Elements in timely and code compliant manner as recommended by their consultants and legal advisors;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

f. In failing to assess the Co-owners for the necessary repairs needed to fix the TB&RC'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 TB&RC'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 TB&RC'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 TB&RC'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 are available to mitigate the substantial damages which have and are occurring from the aforementioned defects and deficiencies in the TB&RC's General Common Elements and Limited Common Elements due to the Board's 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;[5] and

m. In acting unreasonably in other such ways as may be revealed during the

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5 Copies of correspondence from the City of North Myrtle Beach to TB&RC regarding various Building Code Violations: (1) the issuance of February 16, 2016 Letter from City of North Myrtle Beach to TB&RC citing multiple violations on multiple buildings regarding its Zoning Ordinance; (2) the issuance of June 14, 2016 Stop Work Order for permit Nos.: 16-02134 because reconstruction work violates 2012 IBC; (3) the issuance of June 14, 2016 Stop Work Order for reconstruction work performed by the Board without a building permit; and (4) the issuance of June 22, 2016 Stop Work Order for reconstruction work performed by the Board without a building, are attached hereto as **(Exhibit "G")** and incorporated by reference as part of this Complaint.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

discovery and as shown at the trial of this action.

51. As a direct and proximate result and consequence of the negligence and/or gross negligence of the Defendants, the Plaintiffs and all other similarly situated Co-owners have suffered injuries and damages in the 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, depreciation in value, and such punitive damages as may be appropriate.

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

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

53. The condominium recorded documents, such as declaration or By-Laws, constitute a contract between the TB&RC 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.[6] 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*** . . . .

54. Article VIII of the Master Deed makes "[e]ach every apartment and the

6 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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. . . ."

55. 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 TB&RC'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.

56. As a direct and proximate result and consequence of the Defendants' failure to discharge their above referenced affirmative duties in good faith, the Plaintiffs and all other similarly situated Co-owners have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structures, including depreciation in value; and, 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)

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

58. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

59. 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.

60. 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 28 through 44 of the Complaint.

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

62. Plaintiffs and all other similarly situated Co-owners who own units in Condominium Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI, and XII, are entitled to a determination from this Court declaring one or more of the following decrees as relief:

a. The TB&RC's governing documents impose an affirmative duty on the Defendants to timely repair and replace all defective and deficient 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. 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 are thereby responsible for the extraordinarily high cost of the repairs or restoration of these deficient buildings, which have and will increase substantially over the

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

structures' remaining useful life;

b. 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 defective 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. 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

is currently being utilized by the Defendants which is not cost effective reconstruction;

d. 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. 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 Common Elements and Limited Common Elements of Buildings I, II, IV, V, VI, VII, VIII, IX, X, XI and XII. 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 are hereby 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;

f. 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 buildings under the current building code;

g. The Board's bad faith conduct, *ultra vires* acts, and failure to discharge its affirmative duties, related to the maintenance, repair, and replacement of the Regime's Common Elements, are not protected by the business judgment rule; and

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

FOR A FOURTH CAUSE OF ACTION
(Injunctive Relief)

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

64. The Plaintiffs and all other similarly situated Co-owners, who own units in Condominium Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, have suffered injuries, harm, and damages in the amount equal to 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 Complaint.

65. 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.

66. 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***

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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 . . . . (Emphasis Added.)

67. Plaintiffs and all other similarly situated Co-owners 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.

68. Plaintiffs and all other similarly situated Co-owners who own units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII seek mandatory injunctive relief from the Court in one or more of the following particulars as set forth below to compel the Defendants:

a. To comply immediately 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/or totally repair all defective building conditions in the Project's 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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(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 comply immediately 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; and

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

FOR A FIFTH CAUSE OF ACTION
(Specific Performance)

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

70. 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 and all other similarly situated Co-owners who own units in Condominium Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, as prescribed by the Project's Master Deed and By-Laws.

71. Defendants have further breached their affirmative duties and obligations owed to the Plaintiffs and all other similarly situated Co-owners by failing to effect the repairs to the damaged General Common Elements and Limited Common Elements located in Buildings I, II, III,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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 Complaint.

72. Plaintiffs request an Order of the Court entering a judgment on their behalf individually along with other similarly situated Co-owners by 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 Complaint, the Plaintiffs and all other similarly situated Co-owners 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 (c) 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 and all other similarly situated Co-owners 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**, the Plaintiffs and all other similarly situated Co-owners are entitled to an award of actual damages in an amount to be proven at trial;

d. As to the **Third Cause of Action**, the Plaintiffs and all other similarly situated Co-owners 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) and (h) of Paragraph Sixty-two (62) of the Complaint;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

e. As to the **Fourth Cause of Action**, the Plaintiffs and all other similarly situated Co-owners who own units in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, are entitled to a mandatory injunction compelling one or more of the following particulars requested under subparagraphs (a) (b) and (c) of Paragraph Sixty-eight (68) of the Complaint;

f. As to the **Fifth Cause of Action**, the Plaintiffs request an Order of the Court requiring the Defendants to immediately perform their affirmative duties and responsibilities under the Master Deed and By-Laws by repairing and replacing the defective and deficient 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' 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 Plaintiffs' Expert John Simko, P.E., attached hereto as **(Exhibits "E" and "F")** and incorporated by reference as part of this 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 just and 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)-448-3022 Facsimile
Attorneys for Plaintiffs

July 5, 2016
Myrtle Beach, SC

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,) Delona Penny Rice, and Whitmel L. Brown,) Jr.,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.)	**CERTIFICATE OF MAILING**
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.)	

HORRY COUNTY
2016 JUL -7 AM 8:19
MELANIE D. WHITE
CLERK OF COURT

I, Lynn Hearl, employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely

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& Bowers, P.A., Counsel for the Plaintiffs, in the above-captioned action, certify that I have this day sent a copy of the following documents, with sufficient postage attached thereto, to the address listed below.

The documents are as follows:

1. Civil Action Cover Sheet;
2. Summons and Complaint;
3. Certificate of Mailing;

K. A. Diehl and Associates, Inc.
Registered Agent for
Tilghman Beach and Racquet Club Horizontal Property Regime
618 Chestnut Road, Suite 210
North Myrtle Beach, SC 29572

Lynn Hearl

Myrtle Beach, South Carolina

July 6, 2016

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,) 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.)	

HORRY COUNTY
2016 JUL -7 AM 8:19
MELANIE ... FILED
CLERK OF COURT

VERIFICATION

PERSONALLY APPEARED BEFORE ME, appeared before me, Dennis L. Johnson,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Plaintiff in the foregoing action who, being duly sworn says:

1. At all times relevant the Plaintiff, Dennis L. Johnson, ("Johnson") was and is the owner of fee simple title to Unit No.367 in Condominium 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.

2. This action is brought by the Plaintiff Johnson on his own behalf and on behalf of all other similarly situated Co-owners, who currently own Condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime ("TBGRCHPR") whose properties have been damaged, and/or devalued by the Defendants' acts and omissions in failing to comply with its administrative duties and obligations under the Master Deed, By-Laws, regulations, case law, and the code of Laws of the State of South Carolina asserted in th attached complaint filed as Civil Action No.: 2016-CP-26-_____.

3. The other similarly situated Co-owners, who currently own condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime are fairly and adequately represented by this Plaintiff, and this Plaintiff has no interest adverse to that of any individual who might be entitled to the relief sought by this Complaint.

4. That this Plaintiff has read the allegations of the causes of action contained in the attached Complaint consisting of Thirty-Seven (37) pages filed as Civil Action No.:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

2010-CP-26-_____, including this statement.

5. That the attached Complaint was prepared by this Plaintiff's attorneys based upon information Plaintiff has personally furnished to said attorneys.

6. That the allegations contained in the attached Complaint are true and correct, and are based upon the personal knowledge of this Plaintiff, except for those allegations which are based upon this Plaintiff's information and belief and, as to those, this Plaintiff verily believes the same to be true.

7. That this Plaintiff has authorized said attorneys to file the attached Complaint, to present the same to the Court and secure any necessary Orders and Judgments based thereon, and to secure service upon the adverse party of the attached Complaint and necessary process based thereon.

8. That the Plaintiff, including the three (3) other Plaintiff Representatives, and all other similarly situated Co-owners, have attempted in good faith to resolve all differences with the Defendants, their agents, employees, and representatives, regarding the particular allegations asserted in attached Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration and maintenance of the regime property (based on the Master Deed, By-Laws, regulations, case law, and the Code of Laws of the State of South Carolina), no resolution could be reached on the allegations raised by Plaintiffs in this matter.

FURTHER AFFIANT SAYETH NOT.

Dennis L. Johnson

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

Lynn R Heard (LS)
Notary Public for South Carolina

My Commission Expires: 10-12-21

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY)	**CIVIL ACTION NO. 2016-CP-26-** 4404
)	
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.)	

HORRY COUNTY
2016 JUL -7 AM 8:19
CLERK OF COURT

VERIFICATION

PERSONALLY APPEARED BEFORE ME, Jill Keck Humphries, Plaintiff in the foregoing

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

action who, being duly sworn says:

1. At all times relevant the Plaintiff, Jill Keck Humphries, ("Humphries") was and is the owner of fee simple title to Unit No.219 in Condominium 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.

2. This action is brought by the Plaintiff Humphries on her own behalf and on behalf of all other similarly situated Co-owners, who currently own Condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime ("TBGRCHPR") whose properties have been damaged, and/or devalued by the Defendants' acts and omissions in failing to comply with its administrative duties and obligations under the Master Deed, By-Laws, regulations, case law, and the code of Laws of the State of South Carolina asserted in th attached complaint filed as Civil Action No.: 2016-CP-26-_____.

3. The other similarly situated Co-owners, who currently own condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime are fairly and adequately represented by this Plaintiff, and this Plaintiff has no interest adverse to that of any individual who might be entitled to the relief sought by this Complaint.

4. That this Plaintiff has read the allegations of the causes of action contained in the attached Complaint consisting of Thirty-Seven (37) pages filed as Civil Action No.:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

2010-CP-26-_____, including this statement.

5. That the attached Complaint was prepared by this Plaintiff's attorneys based upon information Plaintiff has personally furnished to said attorneys.

6. That the allegations contained in the attached Complaint are true and correct, and are based upon the personal knowledge of this Plaintiff, except for those allegations which are based upon this Plaintiff's information and belief and, as to those, this Plaintiff verily believes the same to be true.

7. That this Plaintiff has authorized said attorneys to file the attached Complaint, to present the same to the Court and secure any necessary Orders and Judgments based thereon, and to secure service upon the adverse party of the attached Complaint and necessary process based thereon.

8. That the Plaintiff, including the three (3) other Plaintiff Representatives, and all other similarly situated Co-owners, have attempted in good faith to resolve all differences with the Defendants, their agents, employees, and representatives, regarding the particular allegations asserted in attached Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration and maintenance of the regime property (based on the Master Deed, By-Laws, regulations, case law, and the Code of Laws of the State of South Carolina), no resolution could be reached on the allegations raised by Plaintiffs in this matter.

FURTHER AFFIANT SAYETH NOT.

Jill Keck Humphries

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

Lynn R. Hearl (LS)
Notary Public for South Carolina

My Commission Expires: 10-12-21

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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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,) 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.)	

HORRY COUNTY
2016 JUL -7 AM 8:19
MELANIE WILKINSON
CLERK OF COURT

VERIFICATION

PERSONALLY APPEARED BEFORE ME, Whitmel L. Brown, Plaintiff in the foregoing

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

action who, being duly sworn says:

1. At all times relevant the Plaintiff, Whitmel L. Brown, ("Brown") was and is the owner of fee simple title to Unit No.353 in Condominium 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.

2. This action is brought by the Plaintiff Brown on his own behalf and on behalf of all other similarly situated Co-owners, who currently own Condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime ("TBGRCHPR") whose properties have been damaged, and/or devalued by the Defendants' acts and omissions in failing to comply with its administrative duties and obligations under the Master Deed, By-Laws, regulations, case law, and the code of Laws of the State of South Carolina asserted in th attached complaint filed as Civil Action No.: 2016-CP-26-_____ .

3. The other similarly situated Co-owners, who currently own condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime are fairly and adequately represented by this Plaintiff, and this Plaintiff has no interest adverse to that of any individual who might be entitled to the relief sought by this Complaint.

4. That this Plaintiff has read the allegations of the causes of action contained in the attached Complaint consisting of Thirty-Seven (37) pages filed as Civil Action No.: 2010-CP-26-_____, including this statement.

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5. That the attached Complaint was prepared by this Plaintiff's attorneys based upon information Plaintiff has personally furnished to said attorneys.

6. That the allegations contained in the attached Complaint are true and correct, and are based upon the personal knowledge of this Plaintiff, except for those allegations which are based upon this Plaintiff's information and belief and, as to those, this Plaintiff verily believes the same to be true.

7. That this Plaintiff has authorized said attorneys to file the attached Complaint, to present the same to the Court and secure any necessary Orders and Judgments based thereon, and to secure service upon the adverse party of the attached Complaint and necessary process based thereon.

8. That the Plaintiff, including the three (3) other Plaintiff Representatives, and all other similarly situated Co-owners, have attempted in good faith to resolve all differences with the Defendants, their agents, servants, and representatives, regarding the particular allegations asserted in attached Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration and maintenance of the regime property (based on the Master Deed, By-Laws, regulations, case law, and the Code of Laws of the State of South Carolina), no resolution could be reached on the allegations raised by Plaintiffs in this matter.

FURTHER AFFIANT SAYETH NOT.

Whitmel L. Brown

Whitmel L. Brown

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

Lynn R. Hearl (LS)
Notary Public for South Carolina

My Commission Expires: 10-12-21

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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- 4404

HORRY COUNTY
2016 JUL -7 AM 8:19
MELANIE ... CLERK OF COURT

VERIFICATION

PERSONALLY APPEARED BEFORE ME, Delona Penny Rice, Plaintiff in the foregoing

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

action who, being duly sworn says:

1. At all times relevant the Plaintiff, Delona Penny Rice, ("Rice") was and is the owner of fee simple title to Unit No. 227 in Condominium 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.

2. This action is brought by the Plaintiff Rice on her own behalf and on behalf of all other similarly situated Co-owners, who currently own Condominium units located in Buildings I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime ("TBGRCHPR") whose properties have been damaged, and/or devalued by the Defendants' acts and omissions in failing to comply with its administrative duties and obligations under the Master Deed, By-Laws, regulations, case law, and the code of Laws of the State of South Carolina asserted in the attached complaint filed as Civil Action No.: 2016-CP-26-_____.

3. The other similarly situated Co-owners, who currently own condominium units in Buildings, I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, of Tilghman Beach Golf and Racquet Club Horizontal Property Regime are fairly and adequately represented by this Plaintiff, and this Plaintiff has no interest adverse to that of any individual who might be entitled to the relief sought by this Complaint.

4. That this Plaintiff has read the allegations of the causes of action contained in the attached Complaint consisting of Thirty-Seven (37) pages filed as Civil Action No.: 2016-CP-26_____, including this statement.

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5. That the attached Complaint was prepared by this Plaintiff's attorneys based upon information the Plaintiff has personally furnished to said attorneys.

6. That the allegations contained in the attached Complaint are true and correct, and are based upon the personal knowledge of this Plaintiff, except for those allegations which are based upon this Plaintiff's information and belief and, as to those, this Plaintiff verily believes the same to be true.

7. That this Plaintiff has authorized said attorneys to file the attached Complaint, to present the same to the Court and secure any necessary Orders and Judgments based thereon, and to secure service upon the adverse party of the attached Complaint and necessary process based thereon.

8. That the Plaintiff, including the three (3) other Plaintiff Representatives have attempted in good faith to resolve all differences with the Defendants, their agents, servants, and representatives, regarding the particular allegations asserted in the attached Complaint; however, because of the varied, different, and inconsistent interpretations argued by the parties concerning the proper administration and maintenance of the regime property (based on the Master Deed, By-Laws, regulations, case law, and the Code of Laws of the State of South Carolina), no resolution could be reached on the allegations raised by Plaintiffs in this matter.

FURTHER AFFIANT SAYETH NOT.

Delona Penny Rice

Delona Penny Rice

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

Lynn R Heard (LS)
Notary Public for South Carolina

My Commission Expires: 10/12/21

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

STATE OF SOUTH CAROLINA COUNTY OF HORRY 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., Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26[illegible] 2016 OCT 26 AM 9:03 CLERK OF COURT 2nd 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 (JURY TRIAL REQUESTED)

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:

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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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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 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 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

> **"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:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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).

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.***

(c) 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

k. A & J 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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,***

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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 accelcration 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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

recommended a construction process[1] 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

[1] 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.[3] 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

[3] 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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

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.

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October 27, 2016

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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 28 AM 9:05
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 Heard

Myrtle Beach, South Carolina

October 28, 2016

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COPY

EXHIBIT D

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STATE OF SOUTH CAROLINA COUNTY OF HORRY 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.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2016-CP-26-4464 **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)**

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HORRY COUNTY

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:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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:

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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).

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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'

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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,

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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.

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Myrtle Beach, South Carolina

March 8, 2017

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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, 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., Defendants.	CERTIFICATE OF MAILING

FILED
HORRY COUNTY
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CLERK OF COURT
HORRY COUNTY, SC

I, Nicole M. Richardson, 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 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, and Appointment of a Receiver by the Circuit Court) , with sufficient postage attached thereto, to the address listed below.

H. Sam Mabry, III, Esquire
Haynsworth Sinkler Boyd, PA
P. O. Box 2048
Greenville, South Carolina 29602

Nicole M. Richardson

Myrtle Beach, South Carolina

March 8, 2017

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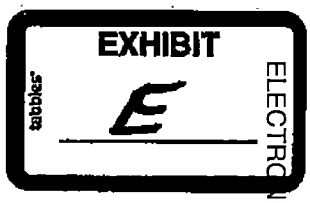

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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August 10, 2016

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL (skvisser@gaig.com)

Sandra K. Visser, Esq.
Senior Claims Attorney
Executive Liability Division
Great American Insurance Company
1515 Woodfield Road, Suite 500
Schaumburg, IL 60173

Re: Insurer: Great American Insurance Company
Insured: Tilghman Beach & Racquet Club HOA, Inc.
Policy No.: EPP3654704
Claim No.: A00069549
Policy Period: 2/10/2016 – 2/10/2017
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 Building I. II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach & Racquet Club Horizontal Property Regime, Gary Steven Robinson and Elizabeth Erin Humphries, Dennis L. Johnson, Jr. and Nancy H. Johnson v. Tilghman Beach & 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 & Racquet Club Condominium Association, Inc.

Dear Ms. Visser:

Please be advised that this firm has been retained to represent your Insureds regarding Great American Insurance Company's refusal to defend and indemnify your Insureds in the above reference litigation. This letter is in response to your letter dated August 1, 2016 setting forth the basis of Great American Insurance Company's refusal to defend and indemnify your Insureds.

As you are aware, "under South Carolina law, '[q]uestions of coverage and the duty of a liability insurance company to defend a claim brought against its insured are determined by the allegations of the [underlying] complaint.'" *Auto Owners Ins. Co. v. Pers. Touch Med Spa, LLC*, 763 F. Supp. 2d 769, 776 (D.S.C. 2011) (*quoting City of Hartsville v. S.C. Mun. Ins. & Risk Fin.*

Fund, 677 S.E.2d 574, 578 (S.C. 2009)). The duty to defend is broader than the duty to indemnify. *Ross Dev. Corp. v. Fireman's Fund Ins. Co.*, 809 F. Supp. 2d 449, 457 (D.S.C. 2011). If the subject complaint creates "a *possibility* of coverage under an insurance policy, the insurer is obligated to defend." *City of Hartsville*, 677 S.E.2d at 578 (citing *Gordon-Gallup Realtors, Inc. v. Cincinnati Ins.* Co, 265 S.E.2d 38 (S.C. 1980)) (emphasis added). Therefore, "the duty to defend is triggered where the underlying complaint includes *any allegation* that raises the possibility of coverage." *Auto-Owners Ins. Co. v. Newsome*, No. 4:12-cv-00447-RBH, 2013 WL 3148334, at *4 (D.S.C. June 19, 2013).

An insurer whose duty to defend has been triggered by a lawsuit against the insured "is not justified in refusing to defend the entire case." *Town of Duncan v. State Budget & Control Bd.*, 482 S.E.2d 768, 773–74 (S.C. 1997); *see also Employers Mut. Liab. Ins. Co. v. Hendrix*, 199 F.2d 53, 59 (4th Cir. 1952); *Cincinnati Ins. Co. v. Crossmann Cmtys. of N.C, Inc.*, No. 4:09-CV-1379-RBH, 2013 WL 1282017, at *11 (D.S.C. Mar. 27, 2013) ("South Carolina law requires that a triggered insurer with a duty to defend the policyholder in a suit must defend the policyholder against all claims in that suit, even those claims that are not covered under the policy.") Therefore, if there is any allegation in the Complaint filed against your Insureds your decision to deny them a defense in this case is, at a minimum, a breach of your obligations under the Policy.

The following provisions of the Policy are relevant to your duty to defend your Insureds in the litigation:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim** is the first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons, Loss** and **Costs of Defense** resulting from such **Claim,** except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary, Loss** and **Costs of Defense** resulting from such **Claim,** but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons.**

C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization,** any **Subsidiary,** or the **Property Manager** for a **Wrongful Act,** the **Insurer** shall pay on behalf of the **Organization,** any **Subsidiary,** or the **Property Manager, Loss** and **Costs of Defense** resulting from such **Claim.**

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Section III. Definitions

A. **"Claim"** shall mean:

(1) a written demand for monetary relief made against any **Insured;**

(2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or *non-monetary (including injunctive) relief* commenced by service of a complaint or similar pleading; (emphasis supplied)

H. **"Insured"** shall mean:

(1) the **Organization;**
(2) any **Subsidiary;**
(3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
(4) all **Insured Persons**; and
(5) any **Property Manager**, but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary.**

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary.**

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

Q. **"Wrongful Act"** shall mean:

(1) any of the following by the **Organization**, and/or any **Subsidiary**, and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary**:

(a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;

(b) **Employment Practice Wrongful Act;**

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

(2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary**.

Section VII. Notice of Claim

A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period**. Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim,** and in no event later than ninety (90) days after the end of the Policy Period.

In your August 1, 2016 letter, you acknowledge that "[a]ll of the Defendants are **Insureds** under the Policy." Therefore, both coverage and the duty to defend under the Policy turn on whether the Complaint asserts a Claim against your Insureds. As stated above, the Policy defines a Claim as follows:

> a civil proceeding, including any appeals therefrom made against any Insured seeking monetary or *non-monetary (including injunctive) relief* commenced by service of a complaint or similar pleading; (emphasis supplied)

In their Complaint, Plaintiffs assert the following causes of action against your **Insureds**: Negligence/Gross Negligence; Breach of the Master Deeds Covenants and Restrictions; *Declaratory Judgment; Injunctive Relief*; and *Specific Performance*.

In your August 1, 2016 letter, you make the cursory conclusion that even though the Complaint "seeks declaratory judgment relief, injunctive relief and specific performance, these theories of liability do not change the underlying basis of the lawsuit and/or damages sought." Based solely on this self-serving interpretation of the allegations in these three causes of action, Great American concludes that coverage as to all five causes of action of action is excluded under the Property Damage Exclusion.

In determining whether these Claims are covered and/or your obligation to defend your Insureds in this action, our courts require that the Policy must be broadly construed in favor of your Insureds, and thus, in favor coverage and the defense of your Insureds. *See, e.g., Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services*, 326 S.C. 6, 482 S.E.2d 768 (1997); *Torrington Co. v. Aetna Cas. and Sur. Co.*, 264 S.C. 636, 216 S.E.2d 547 (1975). Further, exclusions of coverage are always to be construed strongly against the insurer. *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611 (2005); Boggs v. Aetna Casualty and Surety Company, 272 S.C. 460, 252 S.E.2d 565 (1979).

Here, Great American clearly reached its decision by narrowly construing the Policy coverage in its favor. Despite the unambiguous claims by Plaintiff for "non-monetary (including injunctive) relief," Great American chose to ignore the allegations and prayer for non-monetary relief declaring the intent of the Plaintiffs' claims to be something wholly different. Great American

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

can point to nothing within the claims for Declaratory Judgment; Injunctive Relief; and Specific Performance to support its decision. As stated above, our courts have held that "[t]he duty to defend is triggered where the underlying complaint includes *any allegation* that raises the *possibility* of coverage." At a very minimum, these claims give rise to Great American's duty to defend its Insureds and nothing within these non-monetary claims or the Prayer for Relief as to the non-monetary claims could possibly be construed as falling within the Property Damage Exclusion.

Similarly, your conclusion that coverage is excluded under the Party Exclusion provision is misplaced. In support of this position you state on page 5 of your letter that "TB&RC's Master Deed gives authority to the Plaintiffs to bring a lawsuit seeking relief for (seq) against the Board for its failure to discharge its duties under the governing documents." Again, Great American chose to ignore the plain language of the Complaint to reach a conclusion in Great American's favor as to coverage. According to the Complaint at paragraph 24(A) such claims may be brought "by an aggrieved Co-owner of an Apartment." Nowhere in the Complaint do Plaintiffs assert that they are bringing an action on behalf of the Organization. Nowhere in the Complaint do Plaintiffs pray for relief on behalf on the Organization. Indeed, Plaintiffs have sued the very Organization you claim Plaintiffs have brought the claims on behalf of. Plaintiffs have prayed that damages be awarded against the Organization in favor of the individual owner Plaintiffs:

b. As to the **First Cause of Action**, the Plaintiffs and all other similarly situated Co-owners *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**, the Plaintiffs and all other similarly situated Co-owners *are entitled to an award of actual damages in an amount to be proven at trial.*

In short, despite the unambiguous allegations and prayer, Great American ignores controlling law, narrowly construes the Policy in its own favor, and incorrectly denied your Insureds indemnification and a defense. At a very minimum, Great American is bound by its Policy to provide a defense to our client, your Insureds, in this matter.

On behalf of our clients, we respectfully request that you reconsider your Claim decision, defend your Insureds in this litigation, and provide the indemnification afforded under the clear terms of the Policy.

This letter is not intended to constitute a complete list of all the reasons we think your denial of coverage and/or a defense in this matter are wrong. We reserve the right to raise any and all arguments in favor of coverage and/or a defense in future proceedings.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Sincerely yours,

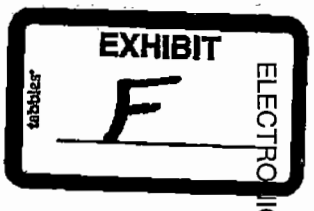
THOMAS & BRITTAIN, P.A.

Charles B. Jordan, Jr.

CBJjr/tmm

cc: Board of Directors of Tilghman Beach and Racquet Club

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464



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August 25, 2016

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL (skvisser@gaig.com)

Sandra K. Visser, Esq.
Senior Claims Attorney
Executive Liability Division
Great American Insurance Company
1515 Woodfield Road, Suite 500
Schaumburg, IL 60173

Re: Insurer: Great American Insurance Company
Insured: Tilghman Beach & Racquet Club HOA, Inc.
Policy No.: EPP3654704
Claim No.: A00069549
Policy Period: 2/10/2016 – 2/10/2017
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 Building I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Tilghman Beach & Racquet Club Horizontal Property Regime, Gary Steven Robinson and Elizabeth Erin Humphries, Dennis L. Johnson, Jr. and Nancy H. Johnson v. Tilghman Beach & 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 & Racquet Club Condominium Association, Inc.

Dear Ms. Visser:

On August 10, 2016, I wrote you a letter on behalf of your Insureds, the Defendants in the above referenced lawsuit, responding to your August 1, 2016, letter denying coverage and a defense to your Insureds under the applicable Great American Directors and Officers policy. As of today's date, I have not received any response from you or anyone else on behalf of Great American.

As set forth in greater detail in my August 10 letter, Great American clearly has a duty to defend your Insureds in the above referenced matter because the Complaint alleges at least one claim which raises the possibility of coverage under the Great American Directors and Officers

policy in question. Great American's failure to perform its contractual duty to defend has forced your Insureds to hire legal counsel and proceed to defend this case. Your Insureds are presently incurring attorney's fees, expenses, and costs which should be paid for by Great American pursuant to your duty to defend. Among other things, the Defendants have recently removed the case from South Carolina state court to federal court, answered the Complaint on behalf of the Homeowners Association, and filed motions to dismiss certain plaintiffs from the suit.

The Defendants in the above matter will continue to defend the case as they see fit and, by doing so, the Defendants do not discharge Great American from its duty to defend or waive their rights to a defense under the policy in question. The Defendants reserve all rights they have under the policy in question and the law in South Carolina and will seek to recover from Great American all of the damages they have incurred, including but not limited to, all attorney's fees, costs, and expenses incurred by the Defendants in defending the above lawsuit. The Defendants also reserve all rights they have to bring an action against Great American for its bad faith refusal to defend and seek punitive damages against Great American before a jury.

Your Insureds continue to hope that Great American will reconsider its clearly erroneous and bad faith position concerning coverage and the duty to defend in the above lawsuit and that Great American will fulfill its responsibilities under the policy.

Sincerely yours,

THOMAS & BRITTAIN, P.A.

Charles B. Jordan, Jr.

CBJjr/tmm

cc: Board of Directors of Tilghman Beach and Racquet Club

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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November 3, 2016

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL (skvisser@gaig.com)

Sandra K. Visser, Esq.
Senior Claims Attorney
Executive Liability Division
Great American Insurance Company
1515 Woodfield Road, Suite 500
Schaumburg, IL 60173

Re: Insurer: Great American Insurance Company
Insured: Tilghman Beach & Racquet Club HOA, Inc.
Policy No.: EPP3654704
Claim No.: A00069549
Policy Period: 2/10/2016 – 2/10/2017
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 v. Tilghman Beach & 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 & Racquet Club Condominium Association, Inc.

Dear Ms. Visser:

As you know, this Firm has been retained to represent your Insureds regarding Great American Insurance Company's refusal to defend and indemnify your Insureds in the above-referenced litigation. I am writing this letter to make one more attempt to get Great American to reconsider the position in your August 1, 2016, and October 12, 2016, letters that Great American has no duty to defend or indemnify your Insureds in the above-referenced case, and to bring to your attention some developments in the litigation.

As set forth in my August 10, 2016 letter, South Carolina law is clear that the question of a liability insurance company's duty to defend a lawsuit brought against its insured is generally determined by the allegations of the underlying complaint. The duty to defend is broader than the duty to indemnity. If some allegations in the complaint create "a possibility of coverage" under the insurance policy, the insurer is obligated to defend its insured. Under South Carolina law, the duty to defend is triggered where the underlying complaint includes any allegation that raises the possibility of coverage. *City of Harleysville v. South Carolina Municipal Ins. Risk*

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Financing Fund, 382 S.C. 535, 543, 677 S.E.2d 574, 578 (2009) (citing references omitted) ("[i]f the underlying complaint creates a possibility of coverage under an insurance policy, the insurer is obligated to defend"). Where an allegation in the complaint raises the possibility of coverage, the insurer has a duty to defend its insured even if there are claims in the complaint which are not covered by the policy. All our clients (your Insureds) need to show is one covered claim alleged in the Complaint, or in any amended complaints subsequently filed. *See, e.g., Liberty Mutual Fire Ins. Co. v. JM Smith Corp.*, 602 Fed.Appx. 115, 119 (4th Cir. 2015) (citing references omitted) ("South Carolina law, like most states, imposes a broad duty to defend on insurers . . . . An insurer must defend its insured if there is a 'possibility of coverage' under the policy . . . for even just one claim in the complaint."); *Town of Duncan v. State Budget and Control Board*, 326 S.C. 6, 16, 482 S.E.2d 768, 774 (1997) (citing references omitted) ("where a lawsuit contains several causes of action, some of which are covered under the policy and some of which are not, an insurer is not justified in refusing to defend the entire suit."). Your October 12, 2016 letter pays lip service to these rules but fails to apply them in analyzing the Complaint, coverage and your duty to defend here.

The Policy in question provides that Great American "has the right and the duty to defend a Claim to which this insurance applies, even if the allegations of such Claim are groundless, false or fraudulent." Insuring Agreements Section 1.A. provides that, "[i]f during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, [Great American] shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification." As detailed in my August 10, 2016 letter, the original Complaint in this matter contains at least some allegations that raise the possibility of coverage because the original Complaint asserts causes of action for (1) declaratory judgment, (2) injunctive relief and (3) specific performance, each of which constitutes a "Claim" defined by the Great American Policy as "a civil proceeding . . . made against any Insured seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar proceeding." (emphasis supplied). Your October 12, 2016 letter acknowledges that the original Complaint constitutes a Claim under the Great American Policy. Great American asserts that it has no duty to defend or provide coverage in this case because of Exclusions D, E and H in its Policy. However, the causes of action for (1) declaratory judgment, (2) injunctive relief and (3) specific performance in the original Complaint allege a number of actual or alleged errors, acts or omissions, neglect or breaches of duty by Insured Persons which fall outside the narrow scope of these Exclusions.

Before discussing the specific Exclusions cited in your August 1, 2016, and October 12, 2016, letters, I want to point out four legal principles which we believe are being ignored in your analysis of Great American's coverage and defense obligations for the original Complaint. First, under South Carolina law, the underlying complaint is construed liberally in favor of the duty of the insurance company to defend its insured with all doubts resolved in the insured's favor. *Darwin Nat. Assur. Co. v. Matthews & Megna LLC*, 36 F.Supp.3d 636, 655 (D.S.C. 2014).

Second, because the Insurer drafted the Insurance Policy, any ambiguity in the Policy (particularly any ambiguity in an exclusion) is resolved against the Insurer and in the Insured's favor. *South Carolina Budget and Control Bd. v. Prince*, 304 S.C. 241, 403 S.E.2d 643 (1991); *Millstead v. Life Ins. Co. Virginia*, 256 S.C. 449, 182 S.E.2d 867 (1971). Third, policy exclusions are construed very narrowly and "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Auto Owners Ins. Co. v. Personal Touch Med. Spa, LLC*, 763 F.Supp.2d 769, 780 (D.S.C. 2011) (citing references omitted). Fourth, an insurer can refuse to defend based on a policy exclusion only if the *only* possible construction of the complaint is that *all* allegations and claims fall *totally* within the express language of the cited exclusion. *Haygood v. Dies*, 174 So. 3d 1211, 1214 (La. App. 2 Cir. 2015) (quoting *Vaughn v. Franklin*, 785 So. 2d 79, 88 (La. App. 1st Cir. 2001)) (stating an "insurer has a duty to defend if there exists a 'single allegation in the plaintiff's [complaint] . . . under which coverage is not unambiguously excluded.'"); *Episcopal Church in South Carolina v. Church Ins. Co. of Vermont*, 993 F.Supp.2d 581, 589 (D.S.C. 2015) ("[a]n insurer has no duty to defend . . . where the damage alleged was caused by a reason unambiguously excluded by the policy").

To avoid Great America's duty to defend, your letters initially rely on Exclusion D.(2), which excludes from coverage Claims involving "damage to or destruction of any tangible property or the loss of use of any tangible property." However, you ignore the fact that the original Complaint, and, specifically, the causes of action for non-monetary relief, allege that the HOA Insured Organization and the Board members committed actual or alleged errors, acts and omissions, negligence and/or breach of duty by failing to maintain adequate repair reserves. South Carolina courts have held that a claim that a homeowners association failed to maintain adequate repair reserves does not implicate a property damage exclusion contained in a liability insurance policy. *Pulliam v. Travelers Indemnity Co.*, 403 S.C. 332, 342, 743 S.E.2d 117, 122 (Ct. App. 2013) ("[t]he failure to establish a reserve fund resulted in [plaintiffs] . . . having to expend more [money] from their own pockets to make the repairs than they might have otherwise had to expend–economic damage"); *Builders Mut. Ins. Co. v. Lacey Constr. Co.* No. CIV.A. 3:11-cv-400-CMC, 2012 WL 1032539, at *9 (D.S.C. Mar. 7, 2012) ("To the extent damages sought in the [underlying action] are for inadequate reserves . . . they do not involve physical injury and, consequently, cannot satisfy the definition of property damage"). Again, an insurer in South Carolina has the duty to defend if there is just one single claim alleged in the complaint that falls within the coverage of the policy and outside the policy exclusions. *Berenyi, Inc. v. Landmark Am. Ins. Co.*, No. C.A. 2:09-CV01556PMD, 2010 WL 233861, at *4 - *8 (D.S.C. Jan. 14, 2010) ("[t]he inclusion of claims which would not be covered by the policy does not abrogate an insurer's duty to defend when the complaint raises at least one claim covered by the policy . . . . Therefore, this exclusion, which would only affect coverage as to part of the underlying claim, does not affect whether or not there is a duty to defend . . . ."). The allegations in the original Complaint that Insured Persons committed Wrongful Acts with respect to the failure to maintain adequate repair reserves implicates matters outside Exclusion D.(2) and activates Great American's duty to defend. Further, there are numerous other allegations in the

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

original Complaint of Wrongful Acts by Insured Persons that do not implicate "damage to or destruction of any tangible property or the loss of use of any tangible property" in Exclusion D.(2), which must be strongly construed against Great American.

Your August 1, 2016, and October 12, 2016, letters next contend that Exclusion G. excludes Plaintiffs' claims and precludes coverage and a duty to defend. However, there are a number of claims in the original Complaint which allege a Wrongful Act by an Insured Person which does not involve "seepage, pollution, radiation, emission, contamination or irritant" including, but not limited to, the claim in the original Complaint against the HOA and its individual Board members for failing to maintain adequate reserves. Moreover, Exclusion G expressly provides that "however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A." This "however" phrase in Exclusion G clearly is activated here because the original Complaint involves a Claim first made during the Policy Period against an Insured Person for a Wrongful Act. At the very least, the "however" phrase in Exclusion G creates an ambiguity as to whether Exclusion G applies to the claims in the original Complaint and that ambiguity will be resolved by the courts against Great American and in favor of coverage and the duty to defend Great American's Insureds. *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995) (citing references omitted) ("[a]mbiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer").

Further, the claims in the original Complaint do not fall within Exclusion H because the claims were brought by the Plaintiffs, individually, and on behalf of the co-owners of units of Tilghman Beach and Racquet Club, not for, on behalf of, or for the benefit of Tilghman Beach and Racquet Club (the "Organization") itself. Your October 12, 2016, letter claims that it is "Great American's position . . . that Plaintiffs brought this lawsuit against [TBRC] and the individual defendants by, or for the benefit, of the **Insured Organization**." However, Great American's subjective interpretation of Plaintiffs' motivation does not control its duty to defend. The duty to defend is determined by the allegations in the four corners of the Complaint. The original Complaint contains absolutely no allegation that it was brought on behalf of the Insured Organization, or for the benefit of the Insured Organization. Your contention that a lawsuit, which names the Insured Organization as a defendant, which seeks an award of actual and punitive damages from the Insured Organization to be paid to the Plaintiffs, which seeks to order the Insured Organization to perform certain acts, and which seeks damages solely for the benefit of the Plaintiffs (and the punitive class), is brought "for the benefit of" the Organization is absurd. Your October 12, 2016, letter also suggests that the original Complaint was brought "for the benefit of" the Insured Organization because the Insured Organization will benefit from any repairs to the common or limited common elements. This position is wrong as a matter of law because the Insured Organization (the Homeowners Association) is incorporated and, thus, a separate and distinct legal entity from the unit owners. S.C. Code Ann. § 27-31-90. Under South Carolina law, and the HOA documents attached to the original Complaint, the common

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

elements and limited common elements are owned by the unit owners, and not the Insured Organization. *See, e.g.*, S.C. Code Ann. §§ 27-31-60; 27-31-190.

With this letter, we also wanted to bring to your attention additional developments in the litigation which further demonstrate that Great American's refusal to defend your Insureds is completely misplaced and in bad faith. As mentioned in my August 25, 2016, letter, defense counsel, independently retained and paid by your Insureds, removed the case from South Carolina state court to federal court. As a result of a Motion to Remand filed by Plaintiffs, Plaintiffs and Defendants engaged in negotiations and entered into a Stipulation whereby Defendants agreed to consent to a remand of the case to South Carolina state court in exchange for Plaintiffs agreeing that they are not pursuing this case as a class action or derivative action, and Plaintiffs agreeing to delete any such allegations from future pleadings. A copy of this Stipulation is enclosed. Plaintiffs have since filed an amended Complaint in South Carolina state court, a copy of which is enclosed for your file, in which Plaintiffs deleted any class allegations or any allegation that they are bringing this lawsuit in any type of derivative or representative capacity. Great American's contention that the original Complaint alleged derivative claims which implicated Exclusion H of the Great American Policy was patently wrong. The provisions of the enclosed Stipulation and amended Complaint further demonstrate that Great American's continuing insistence on Exclusion H has absolutely no validity with respect to the allegations in this litigation. *South Carolina Medical Malpractice Liability Insurance Joint Underwriting Assoc. v. Ferry*, 291 S.C. 460, 354 S.E.2d 378 (1997) (although liability carrier had no duty to defend based on allegations in original complaint, the duty to defend held to rise from allegations in amended complaint).

Like the original Complaint, the amended Complaint contains causes of action for declaratory judgment, injunction relief, and specific performance (i.e. "non-monetary (including injunctive) relief"). It also alleges Wrongful Acts by Insured Persons that implicate matters outside Exclusions D.(2) and E of the Great American Policy, all of which must be construed narrowly against Great American and in favor of coverage and the duty to defend your Insureds. In particular, the amended Complaint alleges that through an actual or alleged error, an act or omission, neglect or breach of duty, the Insured Persons failed to maintain adequate reserves. As discussed at length above, under clear South Carolina law, this allegation falls outside the scope of Exclusions D.(2) and E.

Finally, we would note that Great American's interpretation and application of Exclusions D.(2), E and H to conclude it has no coverage for, or duty to defend, the claims in this case renders the Director's and Officer's Policy purchased by the Insured Organization "virtually meaningless" and creates illusory coverage. Since 1986, South Carolina law has provided that a condominium owner may bring an action against the condominium association and its board for failure of the HOA to discharge its duties related to maintenance and repair of the common or limited common elements of the condominium complex. *Murphy v. Yacht Cove Homeowner's Ass'n*, 289 S.C. 367, 369, 345 S.E.2d 709, 710 (1986). This lawsuit involves

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

exactly that type claim. Indeed, the original Complaint and the amended Complaint rely on *Murphy* as a primary basis for this lawsuit. *See* original Complaint at p. 12, fn 2; amended Complaint at p. 12, fn 2. Under your interpretation of Great American's Policy, particularly your interpretation of Exclusions D.(2) and H, the Insured Organization and Insured Persons here have absolutely no coverage of any kind for Claims related to repair and maintenance of the common elements, including acts which fall within the definition of Wrongful Acts under the Policy that relate to failing to maintain adequate reserves, having a maintenance plan, or whether the Board acted ultra vires with respect to certain acts related to maintenance and repair. Your interpretation of these Exclusions would make the Great American Policy "virtually meaningless" because the Policy would not provide any coverage at all for Claims related to the Board's repair and maintenance of the common or limited common elements, the primary risk of suit a homeowners association faces in South Carolina and, we believe, the very risk contemplated by the Insured Organization when the Great American Policy was purchased. *See, e.g., S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 615, 730 S.E.2d 862, 867 (2002) (citing references omitted) ("the literal interpretation of policy language will be rejected where its application would lead to unreasonable results and the definitions as written would be so narrow as to make coverage merely 'illusory'"); *Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 19, 459 S.E.2d 318, 321 (1984) (Ct. App. 1994) (rejecting insurer's interpretation of policy exclusion because "[t]o give effect to the professional liability exclusion would render the policy virtually meaningless, because it would exclude from coverage for all claims arising from [plaintiff's] . . . exterminating services, the very risk contemplated by the parties. . . . The internal inconsistency created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured renders the policy ambiguous, and we must resolve that ambiguity in favor of coverage").

Great American's bad faith failure to perform its contractual duty to defend has forced your Insureds to hire legal counsel and proceed to defend this case. Your Insureds are presently incurring attorney's fees, expenses, and costs which should be paid for by Great American pursuant to your duty to defend. Your Insureds continue to hope that Great American will reconsider its clearly erroneous and bad faith position concerning coverage and the duty to defend in the above lawsuit and that Great American will fulfill its responsibilities under the policy. Your Insured's demand that Great American respond, and accept its clear duty to defend this case, within ten (10) calendar days from the date of this letter.

This letter is not intended to constitute a complete list of all the reasons we think Great American's denial of coverage and/or a defense in this matter is wrong. We reserve the right to raise any and all arguments in favor of coverage and/or a defense in future proceedings.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Sincerely yours,

THOMAS & BRITTAIN, P.A.

Charles B. Jordan, Jr.

CBJjr/tmm

Enclosures

cc: Board of Directors of Tilghman Beach and Racquet Club

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN INSURANCE GROUP

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Claim Department
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513.864.3750 Fax
GreatAmericanInsurance.com

August 1, 2016

VIA EMAIL
vicki.gallagher@kadiehl.com
Tilgham Beach & Racquet Club HOA, Inc.
c/o KA Diehl
Attn: Vicki Gallagher
11822 Highway 17 Bypass, South
Murrells Inlet, SC 29576-9337

RE: Insurer: Great American Insurance Company
Insured: Tilgham Beach & Racquet Club HOA, Inc.
Policy No.: EPP3654704
Claim No.: A00069549
Policy Period: 2/10/2016 - 2/10/2017
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 Tilgham Beach & Racquet Club Horizontal Property Regime, Gary Steven Robinson and Elizabeth Erin Humphries, Dennis L. Johnson, Jr. and Nancy H. Johnson v. Tilgham Beach & 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 Tilgham Beach & Racquet Club Condominium Association, Inc.

Dear Ms. Gallagher:

On behalf of Great American Insurance Company ("Great American"), I acknowledge receipt of the July 13, 2016 email from Brenda Riska of Risk Partners Insurance Group, giving us notice of the above-referenced matter. We have reviewed the materials provided, as well as the above-referenced Policy, and are writing to advise that, after careful review, Great American respectfully denies coverage for this matter.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Background

As you are aware, on July 7, 2016, 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 Tilgham Beach & Racquet Club Horizontal Property Regime, Gary Steven Robinson and Elizabeth Erin Humphries, Dennis L. Johnson, Jr. and Nancy H. Johnson (collectively referred to as "Plaintiffs") filed a Complaint against Tilgham Beach & Racquet Club Condominium Association, Inc. ("TB&RC"), 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 TB&RC (collectively referred to as "Defendants") in the Court of Common Pleas, Fifteenth Judicial Circuit, State of South Carolina, County of Horry. All of the named Defendants are **Insureds**[1] under the Policy. Each of the Plaintiffs is an owner of a unit located within the TB&RC and, pursuant to the Complaint, TB&RC's Master Deed grants individual unit owners authority to bring a lawsuit seeking relief for the Defendants' failure to discharge their duties under the governing documents.

Plaintiffs assert that, since the completion of the TB&RC project in 1982, TB&RC's various Boards of Directors have failed to implement or require its Manager to implement a program for the inspection, maintenance and repair of TB&RC's common and limited common elements, which allegedly would have identified and thereby minimized the cost of remediating the significant current damage to the thirteen buildings that comprise TB&RC. Further, the various Boards of Directors, including the individual named Defendants, allegedly failed to establish a reasonable reserve for the payment of future common expenses arising out of damage to the buildings. It is asserted that, since 2010, thirteen different consultants were retained for the purpose of evaluating and/or developing various repair and reconstruction plans for the deficient and defective conditions of the buildings, which included the need for structural, building envelope, building interior, and roofing remediation. Despite these reports, no action was taken.

It is further asserted that, in June, 2015, TB&RC hired Saul Martinez, P.E., of Martinez & Associates Structural Engineers, PA, to assess the current condition of the TB&RC's buildings and, in January 2016, it hired Steve Coggins, AIA, of SGA Architecture, LLC, to prepare a comprehensive capital improvement plan to complete the necessary repair and restoration work. Based upon his inspection, Mr. Coggins described the damage/defective condition of the buildings as systemic throughout the property and recommended a comprehensive approach to repair each building be taken, at a cost that will likely exceed $6,000,000.

Despite these reports, It is asserted that the individual Defendants, as current members of the Board of Directors, have failed to undertake the necessary repairs to eliminate the major

[1] All words in bold print represent terms defined in the Policy.

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

structural damage, water intrusion damage, and leaks. It is further asserted that these Defendants, failed to protect TB&RC from future damage and failed to assess the owners for the cost of the repairs. It is specifically asserted that the actual property damage to the buildings has been caused by continuous and repeated exposure to moisture and water seeping into and around the buildings' walls, windows, doors, and intersections, resulting from the neglect and failure to maintain, replace and repair TB&RC's general and limited common elements over the course of its 35 plus years of existence.

The Complaint contains the following five Causes of Action: Negligent/Gross Negligence; Breach of Master Deed's Covenants and Restrictions; Declaratory Judgment; Injunctive Relief; and Specific Performance. Each of these Causes of Action assert that the TB&RC, though its Board, was responsible for preventing further damage to the property and its negligence contributed to the significant property damage to the individual buildings and resulting mold growth. We reference Plaintiffs' allegations solely for the purpose of our coverage analysis, and in doing so, we do not intend to imply any merit to them.

Coverage

Great American issued a Community Association Solution Insurance Policy (the "Policy"), Policy No. EPP3654704, insuring the Association, subject to the terms and conditions of and endorsements to the Policy. The **Policy Period** is February 10, 2016 to February 10, 2017.

A. Property Damage Exclusions Preclude Coverage

While this matter constitutes a **Claim** under the Policy, coverage is precluded by the following relevant exclusions under the Policy:

> **Section IV. Exclusions**
>
> This Policy does not apply to any **Claim** made against any **Insured:**
>
> **D.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; or (2) *damage to or destruction of any tangible property or the loss of use of any tangible property;* or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practice Wrongful Act**;

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A;

Although the Complaint alleges negligence and breach of duties under the Master Deed's Covenants and Restrictions against the Defendants, as well as seeks declaratory judgment relief, injunctive relief and specific performance, these theories of liability do not change the underlying basis of the lawsuit and/or damages sought. Plaintiffs seek to find the Defendants negligent and/or in breach of its Master Deed's Covenants for failing to undertake the necessary repairs to eliminate the major structural and water intrusion damage to the TB&RC buildings, as well as not assessing the owners for the costs of the repairs. As such, this **Claim** is based upon, arises out of, is related to and involves damage to property allegedly caused by repeated exposure to moisture and water seeping into the buildings and resulting in significant property damage and mold growth. Pursuant to Exclusions IV.D. and IV.G. coverage for **Claims** brought for property damage and mold growth are specifically excluded from coverage under the Policy and Great American will neither defend nor indemnify the **Insureds** in this matter.

B. Party Exclusion Preclude Coverage

Although the property damage and water damage exclusions, in and of themselves, preclude coverage under the Policy for this **Claim**, we must inform you that coverage is also precluded by the following exclusion in the Policy:

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

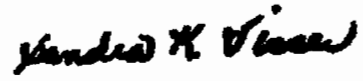
H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interest of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**.

TB&RC's Master Deed gives authority to the Plaintiffs to bring a lawsuit seeking relief for against the Board for its failure to discharge its duties under the governing documents. As such, Plaintiffs have brought this lawsuit against TB&RC and the individual Defendants by, or for the benefit, of the **Insured Organization.** Pursuant to Exclusion IV.H., noted above, coverage for **Claims** brought by or for the benefit of the **Organization** is specifically excluded under the Policy. For this additional reason, coverage does not exist for this **Claim**, and Great American will neither defend nor indemnify the **Insureds** in this matter. If the **Insureds** have not already done so, we suggest it place all general liability, umbrella, and other potentially responsible insurers on notice of the **Claim**.

Great American's declination of coverage is based upon the materials received to date. As such, Great American is not waiving its rights under the Policy.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,
GREAT AMERICAN INSURANCE COMPANY



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October 12, 2016

VIA EMAIL: cjordan@myrlaw.com
Tilgham Beach & Racquet Club HOA, Inc.
c/o Thomas & Brittain, P. A.
Attn: Charles B. Jordan, Jr.
1314 Professional Drive
Myrtle Beach, SC 29577

RE: Insurer: Great American Insurance Company
Insured: Tilgham Beach & Racquet Club HOA, Inc.
Policy No.: EPP3654704
Claim No.: A00069549
Policy Period: 2/10/2016-2/10/2017
Jill Keck Humphries, et. al. v. Tilgham Beach & 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 Tilgham Beach & Racquet Club Condominium Association, Inc.

Dear Mr. Jordan:

On behalf of Great American Insurance Company ("Great American"), I acknowledge receipt of your August 10, 2016 and August 25, 2016 letters requesting Great American to reconsider the position we have taken with regard to coverage for this matter. We have reviewed your letters, as well as the above referenced Policy, and are writing to advise that, after careful review, Great American maintains its position with regard to our declination of coverage for this matter.

We do not quarrel with your summary of the basic principles of insurance law applicable to duty to defend polices, especially the principle that the duty to defend is triggered where the underlying complaint includes any allegation that raises a possibility of coverage. You have, however, taken the unsupported position that, because Great American acknowledged that all of the Defendants are **Insureds** under the Policy, "both coverage and the duty to defend turns on whether the Complaint asserts a **Claim** against the **Insureds.**" This statement is incorrect. In our August 1, 2016 letter, Great American acknowledged that this matter constitutes a **Claim** under this Policy. However, before determining whether a **Claim** triggers the duty to defend and/or indemnify, both the allegations in the complaint and the entire Policy, including all

ELECTRONICALLY FILED - 2017 May 02 12:13 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

conditions, provisions, and exclusions must be examined. That analysis was undertaken in our August 1, 2016 letter.

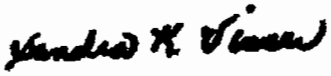
Further, you have accused Great American of taking a position based solely on a self-serving interpretation of the allegations in three causes of action (Declaratory Judgment; Injunctive Relief; and Specific Performance), to conclude that coverage for all five causes of action is excluded under the Property Damage Exclusion. A careful review of all the Causes of Action in the Complaint reveals the entirety of the Complaint is based upon and arises out of, in some manner, the failure to timely repair, replace, and fund reserves for defective and deficient Common Elements and Limited Common Elements identified and currently existing in the various buildings that comprise Tilgham. As such, all of the Causes of Action are based upon, arise out of, relate to, directly or indirectly result from or are in consequence of, or in any way involve property damage or loss of use of tangible property. Therefore, Exclusion IV.D., which states "This Policy does not apply to any **Claim** made against any **Insured**: based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving" property damage or the loss of use of tangible property, and/or Exclusion IV.G., which excludes coverage for a **Claim** which is "based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage", including mold, are applicable, as these allegations fall within the exclusions, removing this **Claim** from coverage. An **Insurer** has no duty to defend an **Insured** where the damages are excluded under the Policy.

While we assert that the property damage and water damage exclusions, in and of themselves, preclude coverage under the Policy for this **Claim**, we further noted in our August 1, 2016 letter the application of Exclusion IV.H. as an additional coverage issues that arose in our review of this **Claim.** With regard this issue, Great American's position is that Plaintiffs brought this lawsuit against the Tilgham and the individual Defendants by, or for the benefit, of the **Insured Organization.** The damage to the Tilgham property is systemic throughout the property, including the general and limited common elements. The relief sought is to repair and replace the damaged general and limited common areas is for the benefit of Tilgham as a whole, not the individual unit owners. The Plaintiffs have brought the lawsuit on behalf of all similarly situated unit owners of the buildings comprising Tilgham. All units, and the Association as a whole, will benefit from the repairs to the structure and common elements. As such, this **Claim** is being brought by or for the benefit of the **Organization,** and, pursuant to Exclusion IV.H., coverage for **Claims** brought by or for the benefit of the **Organization** is specifically excluded under the Policy.

Great American's declination of coverage in this matter is based upon the information received to date. As such, Great American expressly reserves its rights under the Policy. We understand there may have been an Amended Complaint filed in this action. Great American has not yet been provided a copy of the Amended Complaint. If you have a copy of the Amended Complaint, we ask that you forward a copy to us for further consideration. We also ask that you contact Great American immediately with any additional information if you continue to disagree with our coverage analysis of this matter. We will further evaluate our coverage position in light of any new information.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,
GREAT AMERICAN INSURANCE COMPANY



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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
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., Defendants.	)	Civil Action No. 2016-CP-26-04464 **THIRD-PARTY DEFENDANT'S ANSWER AND COUNTERCLAIM TO DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT**
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., Third-Party Plaintiffs, v. Great American Insurance Company, Third-Party Defendant.	)	

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Third-Party Defendant Great American Insurance Company ("Great American"), by and through its undersigned attorneys, hereby answers the Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed by 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. (collectively, "Third-Party Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Great American denies the allegations contained in each and every paragraph of Third-Party Plaintiffs' Third-Party Complaint that are not specifically admitted, qualified, or explained herein.

2. Great American admits the allegations contained in Paragraphs One (1) and Two (2) of Third-Party Plaintiffs' Third-Party Complaint upon information and belief.

3. Answering the allegations contained in Paragraph Three (3) of Third-Party Plaintiffs' Complaint, Great American admits that it is a corporation organized and existing under the laws of the State of Ohio which is authorized to offer insurance in the State of South Carolina. Great American denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in this Paragraph Three (3) of Third-Party Plaintiffs' Third-Party Complaint.

4. Great American is informed and believes that the allegations contained in Paragraphs Four (4) and Five (5) of Third-Party Plaintiffs' Third-Party Complaint merely state legal conclusions that do not require a response from Great American; however, Great American does not contest personal jurisdiction or venue in this matter.

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

5. Great American admits the allegations contained in Paragraphs Six (6) and Seven (7) of Third-Party Plaintiffs' Complaint upon information and belief.

6. Answering the allegations contained in Paragraph Eight (8) of the Third-Party Plaintiffs' Third-Party Complaint, Great American craves reference to policy number EPP3654704-01 for its terms and conditions and denies any allegation that is inconsistent with such policy.

7. Answering the allegations contained in Paragraph Nine (9) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits, upon information and belief, that Plaintiffs commenced a lawsuit against Third-Party Plaintiffs on or about July 7, 2016 and admits, upon information and belief, that Exhibit B to the Third-Party Complaint appears to be a true and accurate copy of the original Complaint, without its accompanying exhibits. Great American would likewise admit, upon information and belief, that Plaintiffs filed a second Amended Complaint (after filing an amended complaint on August 24, 2016) on or about October 28, 2016 and admits, upon information and belief, that Exhibit C to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits. Great American denies that Plaintiffs filed a Third-Party Complaint at any time, but it would admit, upon information and belief, that Plaintiffs filed a Third Amended Complaint on or about March 8, 2017 and would admit upon information and belief that Exhibit D to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits.

8. Great American denies the allegations contained in Paragraph Ten (10) of Third-Party Plaintiffs' Third-Party Complaint as stated. Great American would admit that Exhibits B, C and D to the Third-Party Complaint meet policy number EPP3654704-01's definition of a "Claim"; however, by way of further answer to said allegations, Great American would

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

affirmatively allege that its policy number EPP3654704-01 requires an insured to promptly forward to Great American copies of any suit papers that have been served upon an insured as a condition precedent to its rights under the policy. Great American would further allege that prior to being served with Third-Party Plaintiffs' Third-Party Complaint, it had not been provided with a copy of the Third Amended Complaint.

9. Great American denies the allegations contained in Paragraph Eleven (11) of the Third-Party Plaintiffs' Third-Party Complaint as stated, but it admits that the allegations set forth in the pleadings that are attached to the Third-Party Complaint as Exhibits B, C and D allege acts or omissions by the Third-Party Plaintiffs that meet policy number EPP3654704-01's definition of "Wrongful Act," as that term is defined in the policy.

10. Answering the allegations contained in Paragraph Twelve (12) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it received the letters that are attached to the Third-Party Complaint as Exhibits E, F and G and that it has denied coverage to Third-Party Plaintiffs for the matters alleged in the original and second amended complaint in this action. Great American denies the remaining allegations of said paragraph.

11. Answering the allegations contained in Paragraph Thirteen (13) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it dispatched the letters that are attached to the Third-Party Complaint as Exhibits H and I and craves references to them for their contents. Great American denies the remaining allegations contained in said paragraph.

12. Great American denies the allegations contained in Paragraph Fourteen (14) of Third-Party Plaintiffs' Third-Party Complaint.

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

13. Answering the allegations contained in Paragraph Fifteen (15) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

14. Great American denies the allegations contained in Paragraphs Sixteen (16), Seventeen (17) and Eighteen (18) of Third-Party Plaintiffs' Third-Party Complaint.

15. Answering the allegations contained in Paragraph Nineteen (19) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

16. Great American denies the allegations contained in Paragraph Twenty (20) of Third-Party Plaintiffs' Third-Party Complaint.

17. Answering the allegations contained in Paragraph Twenty-One (21) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that Third-Party Plaintiffs caused a written demand for coverage to be sent to Great American with respect to the allegations contained in the original complaint and the second amended complaint (Exhibits B and C to Third-Party Plaintiffs' Third-Party Complaint). Great American further admits that it has denied coverage for the allegations contained in Exhibits B and C to the Third-Party Complaint. Great American denies the remaining allegations contained in said paragraph.

18. Great American denies the allegations contained in Paragraphs Twenty-Two (22) and Twenty-Three (23) of Third-Party Plaintiffs' Third-Party Complaint.

19. Answering the allegations contained in Paragraph Twenty-Four (24) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

20. Great American denies the allegations contained in Paragraphs Twenty-Five (25) and Twenty-Six (26) of Third-Party Plaintiffs' Third-Party Complaint.

21. Answering the allegations contained in Paragraph Twenty-Seven (27) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

22. Great American denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-Eight (28) and Twenty-Nine (29) of Third-Party Plaintiffs' Third-Party Complaint.

23. Great American denies the allegations contained in Paragraphs Thirty (30) and Thirty-One (31) of Third-Party Plaintiffs' Third-Party Complaint.

24. Great American denies that Third-Party Plaintiffs are entitled to any and all of the relief requested in Third-Party Plaintiffs' Complaint.

FOR A SECOND DEFENSE

25. Third-Party Plaintiffs' Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Great American and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

26. Third-Party Plaintiffs' claims are barred or limited by the equitable doctrine of laches.

FOR A FOURTH DEFENSE

27. Great American would show that one or more exclusionary clauses in its policy of insurance number EPP3654704-01, the terms and conditions of which are incorporated herein by reference, apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs. Specifically,

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Great American would show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs.

Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided, however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FOR A FIFTH DEFENSE

28. The Third-Party Complaint does not comply with Rule 14, SCRCP and should be dismissed or severed from the Plaintiffs' action.

FOR A SIXTH DEFENSE

29. Great American would allege that the Third-Party Plaintiffs' claims for punitive damages violate both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

a. That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.
b. That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.
c. That the amount of punitive damages awarded is based upon the wealth of the Defendants in violation of his right to equal protection of the laws.

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FOR A SEVENTH DEFENSE

30. Great American reserves the right to raise additional affirmative defenses based upon additional evidence that may be discovered while this case is pending.

FOR AN EIGHTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Declaratory Judgment)

31. Great American hereby realleges and incorporates by reference the preceding allegations of its Answer.

32. This is an action to construe an insurance contract pursuant to section 15-53-30 of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Rev. ed. 2005, as amended).

33. Great American issued policy its policy number EFF3654704-01 ("Policy") to Third-Party Defendant Tilghman Beach & Racquet Club Condominium Association, Inc., a/k/a Tilghman Beach & Racquet Club HOA, Inc. for policy period beginning February 10, 2016 and ending February 10, 2017. A true and correct copy of the Policy is attached hereto and incorporated herein as **Exhibit 1**.

34. The Policy contains certain insuring agreements that insure those persons or entities who meet the Policy's definition of an "Insured" against liability exposures that meet the Policy's definition of a "Claim" for acts or omissions that meet the Policy's definition of a "Wrongful Act," unless the Claim is expressly excluded from coverage by the Policy.

35. Third-Party Plaintiffs are all considered Insureds under the Policy.

36. Third-Party Plaintiffs have tendered Plaintiffs' original complaint as well as their second amended complaint to Great American seeking to have it defend and indemnify them from the allegations contained in those pleadings. Third-Party Plaintiffs' Third Party Complaint also references a Third Amended Complaint, which was not presented to Great American prior

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

to service of the Third Party Complaint, and Great American is informed and believes that Third Party Plaintiffs seek to have Great American defend and indemnify them from the allegations contained in this pleading as well.

37. Great American is informed and believes that that one or more exclusionary clauses in the Policy apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs. Specifically, Great American would show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:

ELECTRONICALLY FILED - 2017 Jul 10 5:22 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided, however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

38. Great American asks that the Court inquire into this matter and issue an order declaring the rights and responsibilities of the parties, and specifically declaring that there is no coverage available to Third Party Plaintiffs under the Policy for the allegations set forth in Plaintiffs' Complaint, Second Amended Complaint and Third Amended Complaint.

WHEREFORE, having fully and completely answered the allegations of Third-Party Plaintiffs' Third Party Complaint, and having properly pled its claim for a declaratory judgment, Great American prays that it be dismissed from this lawsuit, for the taxable costs of this action, for a declaration that there is no coverage available to Third Party Plaintiffs under policy number EFF3654704-01, and for such other and further relief that the Court may deem just and proper.

Respectfully submitted,

s/Kirby D. Shealy III
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Attorneys for Great American Insurance Company

July 10, 2017.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
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.,)
)
Defendants.)
)
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.,)
)
Third-Party Plaintiffs,)
v.)
)
Great American Insurance Company,)
)
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-26-04464

THIRD-PARTY DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM TO DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Third-Party Defendant Great American Insurance Company ("Great American"), by and through its undersigned attorneys, hereby answers the Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed by 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. (collectively, "Third-Party Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Great American denies the allegations contained in each and every paragraph of Third-Party Plaintiffs' Third-Party Complaint that are not specifically admitted, qualified, or explained herein.

2. Great American admits the allegations contained in Paragraphs One (1) and Two (2) of Third-Party Plaintiffs' Third-Party Complaint upon information and belief.

3. Answering the allegations contained in Paragraph Three (3) of Third-Party Plaintiffs' Complaint, Great American admits that it is a corporation organized and existing under the laws of the State of Ohio which is authorized to offer insurance in the State of South Carolina. Great American denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in this Paragraph Three (3) of Third-Party Plaintiffs' Third-Party Complaint.

4. Great American is informed and believes that the allegations contained in Paragraphs Four (4) and Five (5) of Third-Party Plaintiffs' Third-Party Complaint merely state legal conclusions that do not require a response from Great American; however, Great American does not contest personal jurisdiction or venue in this matter.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

5. Great American admits the allegations contained in Paragraphs Six (6) and Seven (7) of Third-Party Plaintiffs' Complaint upon information and belief.

6. Answering the allegations contained in Paragraph Eight (8) of the Third-Party Plaintiffs' Third-Party Complaint, Great American craves reference to policy number EPP3654704-01 for its terms and conditions and denies any allegation that is inconsistent with such policy.

7. Answering the allegations contained in Paragraph Nine (9) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits, upon information and belief, that Plaintiffs commenced a lawsuit against Third-Party Plaintiffs on or about July 7, 2016 and admits, upon information and belief, that Exhibit B to the Third-Party Complaint appears to be a true and accurate copy of the original Complaint, without its accompanying exhibits. Great American would likewise admit, upon information and belief, that Plaintiffs filed a second Amended Complaint (after filing an amended complaint on August 24, 2016) on or about October 28, 2016 and admits, upon information and belief, that Exhibit C to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits. Great American denies that Plaintiffs filed a Third-Party Complaint at any time, but it would admit, upon information and belief, that Plaintiffs filed a Third Amended Complaint on or about March 8, 2017 and would admit upon information and belief that Exhibit D to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits.

8. Great American denies the allegations contained in Paragraph Ten (10) of Third-Party Plaintiffs' Third-Party Complaint as stated. Great American would admit that Exhibits B, C and D to the Third-Party Complaint meet policy number EPP3654704-01's definition of a "Claim"; however, by way of further answer to said allegations, Great American would

affirmatively allege that its policy number EPP3654704-01 requires an insured to promptly forward to Great American copies of any suit papers that have been served upon an insured as a condition precedent to its rights under the policy. Great American would further allege that prior to being served with Third-Party Plaintiffs' Third-Party Complaint, it had not been provided with a copy of the Third Amended Complaint.

9. Great American denies the allegations contained in Paragraph Eleven (11) of the Third-Party Plaintiffs' Third-Party Complaint as stated, but it admits that the allegations set forth in the pleadings that are attached to the Third-Party Complaint as Exhibits B, C and D allege acts or omissions by the Third-Party Plaintiffs that meet policy number EPP3654704-01's definition of "Wrongful Act," as that term is defined in the policy.

10. Answering the allegations contained in Paragraph Twelve (12) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it received the letters that are attached to the Third-Party Complaint as Exhibits E, F and G and that it has denied coverage to Third-Party Plaintiffs for the matters alleged in the original and second amended complaint in this action. Great American denies the remaining allegations of said paragraph.

11. Answering the allegations contained in Paragraph Thirteen (13) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it dispatched the letters that are attached to the Third-Party Complaint as Exhibits H and I and craves references to them for their contents. Great American denies the remaining allegations contained in said paragraph.

12. Great American denies the allegations contained in Paragraph Fourteen (14) of Third-Party Plaintiffs' Third-Party Complaint.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

13. Answering the allegations contained in Paragraph Fifteen (15) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

14. Great American denies the allegations contained in Paragraphs Sixteen (16), Seventeen (17) and Eighteen (18) of Third-Party Plaintiffs' Third-Party Complaint.

15. Answering the allegations contained in Paragraph Nineteen (19) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

16. Great American denies the allegations contained in Paragraph Twenty (20) of Third-Party Plaintiffs' Third-Party Complaint.

17. Answering the allegations contained in Paragraph Twenty-One (21) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that Third-Party Plaintiffs caused a written demand for coverage to be sent to Great American with respect to the allegations contained in the original complaint and the second amended complaint (Exhibits B and C to Third-Party Plaintiffs' Third-Party Complaint). Great American further admits that it has denied coverage for the allegations contained in Exhibits B and C to the Third-Party Complaint. Great American denies the remaining allegations contained in said paragraph.

18. Great American denies the allegations contained in Paragraphs Twenty-Two (22) and Twenty-Three (23) of Third-Party Plaintiffs' Third-Party Complaint.

19. Answering the allegations contained in Paragraph Twenty-Four (24) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

20. Great American denies the allegations contained in Paragraphs Twenty-Five (25) and Twenty-Six (26) of Third-Party Plaintiffs' Third-Party Complaint.

21. Answering the allegations contained in Paragraph Twenty-Seven (27) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Answer.

22. Great American denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-Eight (28) and Twenty-Nine (29) of Third-Party Plaintiffs' Third-Party Complaint.

23. Great American denies the allegations contained in Paragraphs Thirty (30) and Thirty-One (31) of Third-Party Plaintiffs' Third-Party Complaint.

24. Great American denies that Third-Party Plaintiffs are entitled to any and all of the relief requested in Third-Party Plaintiffs' Complaint.

FOR A SECOND DEFENSE

25. Third-Party Plaintiffs' Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Great American and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

26. Third-Party Plaintiffs' claims are barred or limited by the equitable doctrine of laches.

FOR A FOURTH DEFENSE

27. Great American would show that one or more exclusionary clauses in its policy of insurance number EPP3654704-01, the terms and conditions of which are incorporated herein by reference, apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs. Specifically,

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Great American would show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs.

Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided, however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

Great American would likewise show that, with respect to the February 10, 2016 to February 10, 2017 policy period, Exclusion C(1) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement . . .

FOR A FIFTH DEFENSE

28. The Third-Party Complaint does not comply with Rule 14, SCRCP and should be dismissed or severed from the Plaintiffs' action.

FOR A SIXTH DEFENSE

29. Great American would allege that the Third-Party Plaintiffs' claims for punitive damages violate both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

a. That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.
b. That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.
c. That the amount of punitive damages awarded is based upon the wealth of the Defendants in violation of his right to equal protection of the laws.

FOR A SEVENTH DEFENSE

30. Great American reserves the right to raise additional affirmative defenses based upon additional evidence that may be discovered while this case is pending.

FOR AN EIGHTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Declaratory Judgment)

31. Great American hereby realleges and incorporates by reference the preceding allegations of its Answer.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

32. This is an action to construe an insurance contract pursuant to section 15-53-30 of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Rev. ed. 2005, as amended).

33. Great American issued its policy number EPP3654704-01 ("Policy") to Third-Party Defendant Tilghman Beach & Racquet Club Condominium Association, Inc., a/k/a Tilghman Beach & Racquet Club HOA, Inc. for policy period beginning February 10, 2015 and ending February 10, 2016. A true and correct copy of the Policy is attached hereto and incorporated herein as **Exhibit 1**.

34. The Policy was renewed for policy period beginning February 10, 2016 and ending February 10, 2017. A true and correct copy of the Policy as it pertains to this policy period is attached hereto and incorporated herein as **Exhibit 2**. The Policy contains certain insuring agreements that insure those persons or entities who meet the Policy's definition of an "Insured" against liability exposures that meet the Policy's definition of a "Claim" for acts or omissions that meet the Policy's definition of a "Wrongful Act," unless the Claim is expressly excluded from coverage by the Policy.

36. In April 2015, Third-Party Plaintiff Tilghman Beach and Racquet Club Condominium Association, Inc. ("HOA") notified Great American of a potential claim against the Policy because of threats of litigation against HOA by Third-Party Plaintiff Steele Brice Windle, III. Great American investigated the matter and determined that Third-Party Plaintiff Windle's threats of litigation did not, as of that time, meet the Policy's definition of a "Claim."

37. Third-Party Plaintiffs are all considered Insureds under the Policy.

38. Third-Party Plaintiffs have tendered Plaintiffs' original complaint as well as their second amended complaint to Great American seeking to have it defend and indemnify them

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

from the allegations contained in those pleadings. Third-Party Plaintiffs' Third Party Complaint also references a Third Amended Complaint, which was not presented to Great American prior to service of the Third Party Complaint, and Great American is informed and believes that Third Party Plaintiffs seek to have Great American defend and indemnify them from the allegations contained in this pleading as well.

37. Great American is informed and believes that that one or more exclusionary clauses in the Policy apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs. Specifically, Great American would show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

38. Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

39. Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided, however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

40. Great American would likewise show that, with respect to the February 10, 2016 to February 10, 2017 policy period, Exclusion C(1) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement . . .

41. Great American asks that the Court inquire into this matter and issue an order declaring the rights and responsibilities of the parties, and specifically declaring that there is no coverage available to Third Party Plaintiffs under the Policy for the allegations set forth in Plaintiffs' Complaint, Second Amended Complaint and Third Amended Complaint.

FOR A NINTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Rescission as to Policy Period 2/10/15 – 2/10/16)

42. Great American hereby realleges and incorporates by reference the preceding allegations of its Answer.

43. In or around February 2015, Third-Party Plaintiff HOA applied for a policy of directors and officers liability coverage from Great American.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

44. In its application for coverage, Third-Party Plaintiff HOA was asked, among other things, the following question: "Does the Association anticipate any major building/renovations in the next year?" HOA, by and through its authorized agent, responded "No" to this question in its application for coverage.

45. The application for coverage described in Paragraph Forty-Four (44) contained the following Notice:

> **FRAUD WARNING**: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES THIS QUESTIONNAIRE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND WHICH MAY RESULT IN CIVIL OR CRIMINAL FINES OR PENALTIES.

46. Upon information and belief, Third-Party Plaintiff HOA, by and through its authorized agent, acknowledged receipt of the Notice set forth in Paragraph Forty-Five (45) as part of the application process.

47. Third-Party Plaintiff HOA's negative response to the question set forth in Paragraph Forty-Four (44) above was material to the risk insured under the Policy.

48. Third-Party Plaintiff HOA's representation, as set forth in Paragraph Forty-Four (44) above, was made for the purpose of inducing Great American to issue the Policy.

49. The application, including all representations, affirmations and acknowledgments, was, by the terms of the Policy, made a part of the contract of insurance between Great American and HOA.

50. Upon information and belief, Third-Party Plaintiff HOA's Board of Directors anticipated entering into a contract to repair and/or improve Building #3 within the regime managed by HOA at the time it applied for coverage from Great American.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

51. Great American relied on Third-Party Plaintiff HOA's representations in the application in deciding whether to issue the Policy.

52. Had Great American known of the HOA's planned renovations to one of its buildings, it would not have issued the Policy.

53. Great American submits that the Association made this statement on the application for the policy with the intent to deceive and defraud Great American.

54. Based on the HOA's material representation on its application for the Policy, Great American is entitled to the equitable remedy of rescission of the Policy *ab initio*.

55. Great American stands ready, willing and able to refund all premiums paid by HOA, with interest, and offers to pay same or to bring the same into court or to do any other act which the Court may deem just and proper.

FOR A TENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Rescission as to Policy Period 2/10/16 – 2/10/17)

56. Great American hereby realleges and incorporates by reference the preceding allegations of its Answer.

57. In or around February 2015, Third-Party Plaintiff HOA applied for a policy of directors and officers liability coverage from Great American.

58. In its application for coverage, Third-Party Plaintiff HOA was asked, among other things, the following question: "Does the Association anticipate any major building/renovations in the next year?" HOA, by and through its authorized agent, responded "No" to this question in its application for coverage.

59. The application for coverage described in Paragraph Fifty-Eight (58) contained the following Notice:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

FRAUD WARNING: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES THIS QUESTIONNAIRE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND WHICH MAY RESULT IN CIVIL OR CRIMINAL FINES OR PENALTIES.

60. Upon information and belief, Third-Party Plaintiff HOA, by and through its authorized agent, acknowledged receipt of the Notices set forth in Paragraph Fifty-Nine (59) as part of the application process.

61. Third-Party Plaintiff HOA's negative response to the question set forth in Paragraph Fifty-Eight (58) above was material to the risk insured under the Policy.

62. Third-Party Plaintiff HOA's representation, as set forth in Paragraph Fifty-Eight (58) above, was made for the purpose of inducing Great American to issue the Policy.

63. The application, including all representations, affirmations and acknowledgments, was, by the terms of the Policy, made a part of the contract of insurance between Great American and HOA.

64. Upon information and belief, Third-Party Plaintiff HOA's Board of Directors anticipated entering into a contract to repair and/or improve multiple buildings within the regime managed by HOA at the time it applied for coverage from Great American.

65. Great American relied on Third-Party Plaintiff HOA's representations in the application in deciding whether to issue the Policy.

66. Had Great American known of the HOA's planned renovations to one of its buildings, it would not have issued the Policy.

67. Great American submits that the Association made this statement on the application for the policy with the intent to deceive and defraud Great American.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

68. Based on the HOA's material representation on its application for the Policy, Great American is entitled to the equitable remedy of rescission of the Policy *ab initio*.

69. Great American stands ready, willing and able to refund all premiums paid by HOA, with interest, and offers to pay same or to bring the same into court or to do any other act which the Court may deem just and proper.

WHEREFORE, having fully and completely answered the allegations of Third-Party Plaintiffs' Third Party Complaint, and having properly pled its claim for a declaratory judgment, Great American prays that it be dismissed from this lawsuit, for the taxable costs of this action, for a declaration that there is no coverage available to Third Party Plaintiffs under policy number EPP3654704-01, and for such other and further relief that the Court may deem just and proper.

Respectfully submitted,

s/Kirby D. Shealy III
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GREAT AMERICAN®
INSURANCE GROUP

ExecPro®

Community Association Solution

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Exhibit 1

ExecPro®

Community Association Solution

Great American Insurance Group – Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

Table of Contents

I.	Insuring Agreements		Page 1
II.	Discovery Period		Page 1
III.	Definitions		Page 2
IV.	Exclusions		Page 5
V.	Limit of Liability and Retention		Page 7
VI.	Costs of Defense and Settlements		Page 8
VII.	Notice of Claim		Page 8
VIII.	Coverage Extensions		Page 9
	(A)	Spousal/Domestic Partner Provision	Page 9
	(B)	Worldwide Provision	Page 9
	(C)	Estates and Legal Representatives	Page 9
IX.	General Conditions		Page 9
	(A)	Cancellation or Non-Renewal	Page 9
	(B)	Proposal Form	Page 10
	(C)	Order of Payments	Page 10
	(D)	Merger or Acquisition	Page 10
	(E)	Conversion to Run-Off Coverage	Page 10
	(F)	Action Against the Insurer	Page 10
	(G)	Subrogation	Page 11
	(H)	Conformity to Law	Page 11
	(I)	Assignment	Page 11
	(J)	Representative of the Insurer	Page 11
	(K)	Organization Represents Insured	Page 11
	(L)	Entire Agreement	Page 11

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN INSURANCE GROUP®
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons, Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary, Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.

C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization**, any **Subsidiary**, or the **Property Manager** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization**, any **Subsidiary**, or the **Property Manager, Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

A. If this Policy is not renewed or is cancelled by the **Insurer**, for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Automatic Discovery Period.** In addition, if prior to the end of the **Automatic Discovery Period**, the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Discovery Period.** The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period.**

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

C. The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year.**

Section III. Definitions

A. **"Claim"** shall mean:

(1) a written demand for monetary relief made against any **Insured**;

(2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;

(3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or

(4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. **"Claimant"** shall mean:

(1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary;**

(2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or

(3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary.**

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager.**

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:

(1) defective or incorrect architectural plans or other designs;
(2) defective or improper soil testing;
(3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
(4) construction, manufacture or assembly of any tangible property;
(5) the failure to provide or pay for any construction-related goods or services; or
(6) the supervision or management of any construction-related activities.

D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.

E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:

(1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
(2) misrepresentation;
(3) violation of employment laws;
(4) sexual or workplace harassment;
(5) discrimination;
(6) wrongful failure to employ or promote;
(7) wrongful discipline;
(8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
(9) failure to grant tenure;
(10) negligent employee evaluation;
(11) retaliation;
(12) failure to provide adequate workplace or employment policies or procedures;
(13) defamation (including libel and slander);
(14) invasion of privacy;
(15) wrongful demotion;
(16) negligent reassignment;
(17) violation of any federal, state or local civil rights laws;
(18) negligent hiring;
(19) negligent supervision;
(20) negligent training;
(21) negligent retention; or
(22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.

F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor in Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.

G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

H. **"Insured"** shall mean:

(1) the **Organization;**
(2) any **Subsidiary;**
(3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
(4) all **Insured Persons**; and
(5) any **Property Manager**, but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary.**

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary.**

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured. Loss** shall not include:

(1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X. H.), or taxes;

(2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and

(3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period**; or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year.**

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

P. **"Subsidiary"** shall mean:

(1) any entity which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 (and amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;

(2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or

(3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary.**

Q. **"Wrongful Act"** shall mean:

(1) any of the following by the **Organization,** and/or any **Subsidiary,** and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary:**

(a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;

(b) **Employment Practices Wrongful Act;**

(2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary.**

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

A. brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured**; however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

(2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization**, its **Subsidiaries** and those **Insured Persons** having such knowledge; or

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(3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;

E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;

F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;

G. based upon, arising out of, relating to, directly or indirectly resulting from or inconsequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;

H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;

I. other than **Costs of Defense**:

(1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;

(2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;

(3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or

(4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;

K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) actual, alleged or threatened:

(a) inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or

(b) existence of or presence of any **Fungi** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to any injury or damage; or

(2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to, or assessing the effects of **Fungi** or bacteria by any **Insured** or by any other person or entity;

L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;

M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;

N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.

B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.

D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims,** the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.

E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

A. The **Insureds** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.

B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period.** Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.

B. If during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act**; (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured.**

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.

D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaic.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**. The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives, or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons**.

Section IX. General Conditions

A. Cancellation or Non-Renewal

(1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer**. In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.

(2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer**.

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

(1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and

(2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction**.

F. Action Against the Insurer

(1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, those filing the claim, and the **Insurer**.

(2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

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G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person:**

(1) has been convicted of a deliberate criminal act, or

(2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person,** the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Entire Agreement

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer.**

GREAT AMERICAN INSURANCE COMPANY®

Secretary

President

GREAT AMERICAN.
INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

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DECLARATIONS
for
Community Association Solution Insurance Policy

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Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
Policy Number: **EPP3654704-00** Policy Form Number: D26100 (2/10)

Item 1. Name of **Organization:** **Tilghman Beach & Racquet Club HOA Inc.**
Mailing Address: **11822 HIGHWAY 17 BYP**

City, State, Zip Code: **MURRELLS INLET, SC, 29576-9337**

Item 2. **Policy Period:** From **02-10-2015** *(Month, Day, Year)* To **02-10-2016** *(Month, Day, Year)*
(Both dates at 12:01 a.m. Standard Time at the address of the **Organization** as stated in Item 1.)

Item 3. (a) Limit of Liability for each **Policy Year:** **$1,000,000**
(b) **FLSA Defense Sublimit of Liability: $150,000 – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).**

Item 4. Retentions:

Insuring Agreement A:	**$0**	Each **Claim**
Insuring Agreement B and/or C:	**$1,000**	Each **Claim**

Item 5. Premium: **$2,559.00** Annual Taxes/Surcharges: **$0.00** Annual Fees: **$0.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Deletion of Noise Exclusion D 26714-2 (11/12)
Terrorism Coverage Policyholder Disclosure NTDN_08P (1/08)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (10/14)

Item 7. Notices: All notices required to be given to the **Insurer** under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **02-10-2015**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer.**

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

GREAT AMERICAN INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

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COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for **Loss** caused by an **Act of Terrorism** as defined below.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States –

(i) to be an act of terrorism;
(ii) to be a violent act or an act that is dangerous to –
  (a) human life;
  (b) property; or
  (c) infrastructure;
(iii) to have resulted in damage within the United States, or outside of the United States in the case of -
  (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
  (b) the premises of a United States mission; and
(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2015 - 02-10-2016**	Policy Number:	**EPP3654704-00**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2015**

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AMENDMENT TO DECLARATIONS PAGE

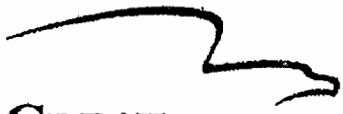
It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: $0.00

It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated in and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2015 - 02-10-2016**	Policy Number:	**EPP3654704-00**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2015**



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DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period - Policy Number:

Countersigned by: _____ Endorsement Effective Date:
Authorized Representative

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POLICYHOLDER DISCLOSURE OF TERRORISM COVERAGE

The Terrorism Risk Insurance Act establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals as part of an effort to coerce the government or population of the United States.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

The Terrorism Risk Insurance Act, as amended in 2007, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds $100 billion. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

In accordance with the Terrorism Risk Insurance Act, we are required to offer you coverage for losses resulting from an act of terrorism **that is certified under the federal program** as an Act of Terrorism. All other provisions of this policy will still apply to such an act. That is, a loss will not be excluded or covered just because it was caused by an Act of Terrorism.

The portion of the annual premium that is attributable to coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act is $0.00.

All other terms and conditions of the policy remain unchanged.

If you would like to reject the coverage for "certified" Acts of Terrorism, please provide Great American written confirmation of such, and an exclusion will be attached to your policy.

ELECTRONICALLY FILED - 2017 Apr 3 2:17 PM - HORRY - COMMON PLEAS - CASE#2017CP2604464

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Community Association Solution
Insurance Policy

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization**, **Subsidiary** or **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.

C. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against the **Organization**, **Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) such **Data Breach** is first discovered during the **Policy Period**;

(2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;

(3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and

(4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses.**

AMENDMENT TO DEFINITIONS

1. Section III.A. is amended by the addition of the following:

   Claim shall also mean a **Regulatory Action.**

2. Section III.J. is amended by the addition of the following:

   Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses** and **Regulatory Restitution Funds.**

3. Section III. is amended by the addition of the following:

   "Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary.**

   "Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.

   "Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured.**

   "Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;

(4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or

(5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary**.

"Privacy Event Expenses" shall mean the reasonable and necessary:

(1) legal and forensic fees and costs to investigate the cause of the **Data Breach**, identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach**;

(2) costs of notification of the **Data Breach**, if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent; and

(3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach**.

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

(1) the theft of, or unauthorized access to, or disclosure or use of, **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary**, including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary**, if such theft, access, disclosure or use:

a) results in identity theft or other misuse of such **Protected Information**; or

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information;**

(2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary,** relating to **Protected Information** that:

a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information;** or

b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information;** or

(3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary.**

"Privacy Regulatory Fines and Penalties" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action.**

"Protected Information" shall mean:

(1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured;** and

(2) confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"Regulatory Action" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach.** However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

"Regulatory Restitution Fund" shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action**.

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act**.

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims** for **Personal Injury Wrongful Acts, Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary**.

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for a **Privacy Wrongful Act**;

3. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;

(2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;

(3) price-fixing, restraint of trade or monopolization;

(4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);

(5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;

(6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;

(7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;

(8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or

(9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or

b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information.**

4. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:

(1) any fees or costs to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Breach** or **Data Security Wrongful Act;**

(2) any fees or costs to correct or remediate software program errors or vulnerabilities or deficiencies or problems with any **Computer System** not directly resulting from a **Data Security Wrongful Act;**

(3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII. or a **Data Breach** is reported pursuant to the Reporting Obligations set below;

(4) any overhead expenses of the **Organization** or any **Subsidiary**, including but not limited to compensation or benefits; or

(5) the economic or market value of any **Data Asset.**

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

1. Item 3. of the Declarations is amended by the addition of the following:

(c) $50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches**. This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).

(d) $250,000 Limit of Liability for all **Loss** from all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**. This limit is part of and not in addition to the Limit of Liability provided for in 3(a).

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement A:	$ 0	Each **Claim** for **Privacy Wrongful Acts**
Insuring Agreement B and/or C:	$1,000	Each **Claim** for **Privacy Wrongful Acts**
	$1,000	Each Reimbursement for **Privacy Event Expenses** pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The "Each Reimbursement for **Privacy Event Expenses**" Retention amount stated in Item 4. of the Declarations is the **Organization's** obligation for all **Privacy Event Expenses** from each **Data Breach.**

The "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention stated in Item 4. of the Declarations is the **Organization's** obligation for each **Claim,** including any **Regulatory Action.** If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach,** any amounts paid by the **Organization** in satisfaction of the "Each Reimbursement **Privacy Event Expenses**" Retention will also erode the "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention with respect to such **Claim.**

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims,** including **Regulatory Actions,** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.**

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured,** the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

(a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;

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DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(b) take reasonable measures to stop or mitigate the damage caused by such **Data Breach;**

(c) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Data Breach;**

(d) submit, upon request of the **Insurer**, to examination under oath and give the **Insurer** a signed statement of the **Insured's** answers; and

(e) cooperate with the **Insurer** in the investigation and settlement of any payments as a result of the **Data Breach.**

For the purposes of coverage extended by this endorsement, a **Data Breach** is "first discovered" when any **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Privacy Wrongful Act** has occurred even though the exact amount or details of loss may not then be known.

Notice of the **Data Breach** shall be given to the **Insurer** at the address indicated in Section VII.D. of the Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

DISTINGUISHED PROGRAMS

GREAT AMERICAN INSURANCE GROUP

Community Association Program Quote Form
D&O Liability Coverage ("Claims Made" Basis)

	Yes	No	N/A
Have there been any D&O claims made against the Association in the last 5 years?		X	
Is this the first time the Association has purchased D&O Insurance?		X	
Has the Association's current D&O policy been cancelled or non-renewed by the carrier?		X	
Does the Association anticipate any major building/renovations in the next year?		X	
Is the Developer on the Board?		X	

Association Name:	Tilghman Beach & Racquet Club HOA Inc.		
Street Address:	208 North Ocean Blvd	City/State/Zip:	North Myrtle Beach, SC 29582
How is association managed?	Third Party Management Co		
Property Manager Name:	KA Diehl		
Mailing Address:	11822 HIGHWAY 17 BYP	City/State/Zip:	MURRELLS INLET, SC 29576-9337

Association Type:	Residential Condominium Association (COA)	Number of Employees:	0
Total Unit Count:	213	Commercial Units:	
Residential Units	213	Units at Completion:	
Average Unit Value:	$220,000	Owners in Arrears:	0
Limit:	$1,000,000	Retention:	$1,000
Developer Controlled Board?:	No	Retail Units:	0
Management Type:	Third Party Management Co	Units Sold:	213
PPL Date:	02/10/2015		

Total Assets:		Total Salaries:	

Agent or Broker Name:	Global Risk Partners, LLC	Phone:	(609) 641-6677
Broker Address:	1622 Tilton Rd	City/State/Zip:	Northfield, NJ 08225

KNOWN PRIOR CLAIMS: IT IS UNDERSTOOD AND AGREED THAT THIS POLICY DOES NOT APPLY TO ANY CLAIM MADE AGAINST ANY INSURED BASED UPON, ARISING OUT OF, RELATING TO, DIRECTLY OR INDIRECTLY RESULTING FROM OR IN CONSEQUENCE OF, OR IN ANY WAY INVOLVING ANY WRONGFUL ACT OR ANY FACT, MATTER, CIRCUMSTANCE, SITUATION, TRANSACTION, CASUALTY, EVENT OR DECISION, KNOWN BY ANY INSURED PRIOR TO THE INITIAL COVERAGE DATE WHICH WOULD INDICATE THE PROBABILITY OF SUCH CLAIM BEING MADE. IT IS UNDERSTOOD AND AGREEED THAT COVERAGE SHALL NOT BE EXCLUDED AS A RESULT OF ANY UNTRUE STATEMENT ON THIS APPLICATION, EXCEPT AS TO THE ORGANIZATION, ITS SUBSIDIARIES AND THOSE INSURED PERSONS HAVING SUCH KNOWLEDGE. PLEASE OBTAIN A COPY OF THE POLICY THROUGH YOUR BROKER AND READ IT CAREFULLY.

"By selecting 'Yes', I agree with the above notice.": Yes

FRAUD WARNING: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES THIS QUESTIONNAIRE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND WHICH MAY RESULT IN CIVIL OR CRIMINAL FINES OR PENALTIES.

"By selecting 'Yes', I agree with the above notice.": Yes

Distinguished Programs Group
1180 Ave. of the Americas
New York, NY 10036
Fax: 917-438-6610
Ed. 12/2011
E-mail: info@distinguished.com
Phone: 888-355-4626

ELECTRONICALLY FILED - 2017-Aug-30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

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GREAT AMERICAN®
INSURANCE GROUP

ExecPro®

Community Association Solution

CERTIFIED COPY

Exhibit 2

ExecPro®

Community Association Solution

Great American Insurance Group – Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

Table of Contents

I.	Insuring Agreements		Page 1
II.	Discovery Period		Page 1
III.	Definitions		Page 2
IV.	Exclusions		Page 5
V.	Limit of Liability and Retention		Page 7
VI.	Costs of Defense and Settlements		Page 8
VII.	Notice of Claim		Page 8
VIII.	Coverage Extensions		Page 9
	(A)	Spousal/Domestic Partner Provision	Page 9
	(B)	Worldwide Provision	Page 9
	(C)	Estates and Legal Representatives	Page 9
IX.	General Conditions		Page 9
	(A)	Cancellation or Non-Renewal	Page 9
	(B)	Proposal Form	Page 10
	(C)	Order of Payments	Page 10
	(D)	Merger or Acquisition	Page 10
	(E)	Conversion to Run-Off Coverage	Page 10
	(F)	Action Against the Insurer	Page 10
	(G)	Subrogation	Page 11
	(H)	Conformity to Law	Page 11
	(I)	Assignment	Page 11
	(J)	Representative of the Insurer	Page 11
	(K)	Organization Represents Insured	Page 11
	(L)	Entire Agreement	Page 11

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN INSURANCE GROUP®
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons, Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary, Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons.**

C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization**, any **Subsidiary**, or the **Property Manager** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization**, any **Subsidiary**, or the **Property Manager, Loss** and **Costs of Defense** resulting from such **Claim.**

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

A. If this Policy is not renewed or is cancelled by the **Insurer**, for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Automatic Discovery Period.** In addition, if prior to the end of the **Automatic Discovery Period,** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Discovery Period.** The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period.**

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period**. The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period**.

C. The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year**.

Section III. Definitions

A. **"Claim"** shall mean:

(1) a written demand for monetary relief made against any **Insured**;

(2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;

(3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or

(4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. **"Claimant"** shall mean:

(1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary**;

(2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or

(3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary**.

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager**.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:

(1) defective or incorrect architectural plans or other designs;
(2) defective or improper soil testing;
(3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
(4) construction, manufacture or assembly of any tangible property;
(5) the failure to provide or pay for any construction-related goods or services; or
(6) the supervision or management of any construction-related activities.

D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.

E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:

(1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
(2) misrepresentation;
(3) violation of employment laws;
(4) sexual or workplace harassment;
(5) discrimination;
(6) wrongful failure to employ or promote;
(7) wrongful discipline;
(8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
(9) failure to grant tenure;
(10) negligent employee evaluation;
(11) retaliation;
(12) failure to provide adequate workplace or employment policies or procedures;
(13) defamation (including libel and slander);
(14) invasion of privacy;
(15) wrongful demotion;
(16) negligent reassignment;
(17) violation of any federal, state or local civil rights laws;
(18) negligent hiring;
(19) negligent supervision;
(20) negligent training;
(21) negligent retention; or
(22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.

F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor in Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization.**

G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

H. **"Insured"** shall mean:

(1) the **Organization;**
(2) any **Subsidiary;**
(3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
(4) all **Insured Persons**; and
(5) any **Property Manager,** but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary.**

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary,** including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager,** but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary.**

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured. Loss** shall not include:

(1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X. H.), or taxes;

(2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and

(3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period**; or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year.**

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

P. **"Subsidiary"** shall mean:

(1) any entity which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 (and amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;

(2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or

(3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary.**

Q. **"Wrongful Act"** shall mean:

(1) any of the following by the **Organization,** and/or any **Subsidiary**, and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary**:

(a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;

(b) **Employment Practices Wrongful Act;**

(2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary.**

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

A. brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured**; however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

(2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization,** its **Subsidiaries** and those **Insured Persons** having such knowledge; or

(3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;

E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconcillation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;

F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;

G. based upon, arising out of, relating to, directly or indirectly resulting from or inconsequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;

H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;

I. other than **Costs of Defense**:

(1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;

(2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;

(3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or

(4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;

K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) actual, alleged or threatened:

(a) inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or

(b) existence of or presence of any **Fungi** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to any injury or damage; or

(2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to, or assessing the effects of **Fungi** or bacteria by any **Insured** or by any other person or entity;

L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;

M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;

N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.

B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.

D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims**, the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.

E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

A. The **Insureds** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.

B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period**. Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.

B. If during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act**; (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured.**

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C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.

D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaic.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**. The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives, or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons**.

Section IX. General Conditions

A. Cancellation or Non-Renewal

(1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer**. In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.

(2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer.**

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer.**

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

(1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and

(2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction.**

F. Action Against the Insurer

(1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, those filing the claim, and the **Insurer.**

(2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim.**

G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured.** In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person:**

(1) has been convicted of a deliberate criminal act, or

(2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person,** the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Entire Agreement

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer.**

GREAT AMERICAN INSURANCE COMPANY®

Secretary

President

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GREAT AMERICAN INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

ExecPro sm DECLARATIONS

for
Community Association Solution Insurance Policy

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
Policy Number: **EPP3654704-01** Policy Form Number: D26100 (2/10)

Item 1. Name of **Organization:** **Tilghman Beach & Racquet Club HOA Inc.**
Mailing Address: **11822 HIGHWAY 17 BYP**

City, State, Zip Code: **MURRELLS INLET, SC, 29576-9337**

Item 2. **Policy Period:** from 02-10-2016 to 02-10-2017
(Month, Day, Year) *(Month, Day, Year)*
(Both dates at 12:01 a.m. Standard Time at the address of the **Organization** as stated in Item 1.)

Item 3. (a) Limit of Liability for each **Policy Year:** $1,000,000
(b) **FLSA Defense Sublimit of Liability: $150,000 – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).**

Item 4. Retentions:
Insuring Agreement A: **$0** Each **Claim**
Insuring Agreement B and/or C: $1,000 Each **Claim**

Item 5. Premium: **$2,559.00** Annual Taxes/Surcharges: **$0.00** Annual Fees: **$0.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Deletion of Noise Exclusion D 26714-2 (11/12)
Terrorism Coverage Policyholder Disclosure NTDN_08P (1/08)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (10/14)

Item 7. Notices: All notices required to be given to the **Insurer** under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **02-10-2015**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer.**

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

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ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for **Loss** caused by an **Act of Terrorism** as defined below.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States –

(i) to be an act of terrorism;
(ii) to be a violent act or an act that is dangerous to –
  (a) human life;
  (b) property; or
  (c) infrastructure;
(iii) to have resulted in damage within the United States, or outside of the United States in the case of -
  (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
  (b) the premises of a United States mission; and
(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2016 - 02-10-2017**	Policy Number:	**EPP3654704-01**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2016**

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AMENDMENT TO DECLARATIONS PAGE

It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: $0.00

It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated in and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2016 - 02-10-2017**	Policy Number:	**EPP3654704-01**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2016**

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DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period - Policy Number:

Countersigned by: _____ Endorsement Effective Date:
Authorized Representative

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POLICYHOLDER DISCLOSURE OF TERRORISM COVERAGE

The Terrorism Risk Insurance Act establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals as part of an effort to coerce the government or population of the United States.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

The Terrorism Risk Insurance Act, as amended in 2007, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds $100 billion. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

In accordance with the Terrorism Risk Insurance Act, we are required to offer you coverage for losses resulting from an act of terrorism **that is certified under the federal program** as an Act of Terrorism. All other provisions of this policy will still apply to such an act. That is, a loss will not be excluded or covered just because it was caused by an Act of Terrorism.

The portion of the annual premium that is attributable to coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act is $0.00.

All other terms and conditions of the policy remain unchanged.

If you would like to reject the coverage for "certified" Acts of Terrorism, please provide Great American written confirmation of such, and an exclusion will be attached to your policy.

ELECTRONICALLY FILED - 2017 Aug 25 5:17 PM - HORRY - COMMON PLEAS - CASE#2017CP2604464

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim,** including a **Regulatory Action,** is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act,** the **Insurer** shall pay on behalf of the **Insured Persons, Loss** and **Costs of Defense** resulting from such **Claim,** except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim,** including a **Regulatory Action,** is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization, Subsidiary** or **Property Manager, Loss** and **Costs of Defense** resulting from such **Claim,** but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons.**

C. If during the **Policy Period** or the **Discovery Period** any **Claim,** including a **Regulatory Action,** is first made against the **Organization, Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act,** the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary, Loss** and **Costs of Defense** resulting from such **Claim.**

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) such **Data Breach** is first discovered during the **Policy Period**;

(2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;

(3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and

(4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses.**

AMENDMENT TO DEFINITIONS

1. Section III.A. is amended by the addition of the following:

   Claim shall also mean a **Regulatory Action.**

2. Section III.J. is amended by the addition of the following:

   Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses** and **Regulatory Restitution Funds.**

3. Section III. is amended by the addition of the following:

   "Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary.**

   "Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.

   "Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured.**

   "Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;

(4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or

(5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary**.

"Privacy Event Expenses" shall mean the reasonable and necessary:

(1) legal and forensic fees and costs to investigate the cause of the **Data Breach**, identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach**;

(2) costs of notification of the **Data Breach**, if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent; and

(3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach**.

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

(1) the theft of, or unauthorized access to, or disclosure or use of, **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary**, including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary**, if such theft, access, disclosure or use:

a) results in identity theft or other misuse of such **Protected Information**; or

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information**;

(2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary,** relating to **Protected Information** that:

a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information**; or

b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information**; or

(3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary.**

"Privacy Regulatory Fines and Penalties" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action.**

"Protected Information" shall mean:

(1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured**; and

(2) confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"Regulatory Action" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach.** However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

"Regulatory Restitution Fund" shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action.**

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act.**

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims** for **Personal Injury Wrongful Acts, Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary.**

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for a **Privacy Wrongful Act;**

3. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;

(2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;

(3) price-fixing, restraint of trade or monopolization;

(4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);

(5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;

(6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;

(7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;

(8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or

(9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or

b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information.**

4. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:

(1) any fees or costs to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Breach** or **Data Security Wrongful Act;**

(2) any fees or costs to correct or remediate software program errors or vulnerabilities or deficiencies or problems with any **Computer System** not directly resulting from a **Data Security Wrongful Act;**

(3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII. or a **Data Breach** is reported pursuant to the Reporting Obligations set below;

(4) any overhead expenses of the **Organization** or any **Subsidiary**, including but not limited to compensation or benefits; or

(5) the economic or market value of any **Data Asset.**

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

1. Item 3. of the Declarations is amended by the addition of the following:

(c) $50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches.** This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).

(d) $250,000 Limit of Liability for all **Loss** from all **Claims**, including **Regulatory Actions,** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.** This limit is part of and not in addition to the Limit of Liability provided for in 3(a).

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement A:	$ 0	Each **Claim** for **Privacy Wrongful Acts**
Insuring Agreement B and/or C:	$1,000	Each **Claim** for **Privacy Wrongful Acts**
	$1,000	Each Reimbursement for **Privacy Event Expenses** pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The "Each Reimbursement for **Privacy Event Expenses**" Retention amount stated in Item 4. of the Declarations is the **Organization's** obligation for all **Privacy Event Expenses** from each **Data Breach**.

The "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention stated in Item 4. of the Declarations is the **Organization's** obligation for each **Claim**, including any **Regulatory Action**. If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach**, any amounts paid by the **Organization** in satisfaction of the "Each Reimbursement **Privacy Event Expenses**" Retention will also erode the "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention with respect to such **Claim**.

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**.

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured**, the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

(a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;

ELECTRONICALLY FILED - 2017 Aug 30 2:17 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(b) take reasonable measures to stop or mitigate the damage caused by such **Data Breach**;

(c) give the **Insurer**, upon request, a detailed proof of the damage caused by such **Data Breach**;

(d) submit, upon request of the **Insurer**, to examination under oath and give the **Insurer** a signed statement of the **Insured's** answers; and

(e) cooperate with the **Insurer** in the investigation and settlement of any payments as a result of the **Data Breach**.

For the purposes of coverage extended by this endorsement, a **Data Breach** is "first discovered" when any **Insured** first becomes aware of facts that would cause a reasonable person to assume a **Privacy Wrongful Act** has occurred even though the exact amount or details of loss may not then be known.

Notice of the **Data Breach** shall be given to the **Insurer** at the address indicated in Section VII.D. of the Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
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.,)
)
Defendants.)
)
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.,)
)
Third-Party Plaintiffs,)
v.)
)
Great American Insurance Company,)
)
Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-26-04464

THIRD-PARTY DEFENDANT'S SECOND AMENDED ANSWER AND COUNTERCLAIM TO DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Third-Party Defendant Great American Insurance Company ("Great American"), by and through its undersigned attorneys, hereby answers the Defendants'/Third-Party Plaintiffs' Third-Party Complaint filed by 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. (collectively, "Third-Party Plaintiffs") as follows:

FOR A FIRST DEFENSE

1. Great American denies the allegations contained in each and every paragraph of Third-Party Plaintiffs' Third-Party Complaint that are not specifically admitted, qualified, or explained herein.

2. Great American admits the allegations contained in Paragraphs One (1) and Two (2) of Third-Party Plaintiffs' Third-Party Complaint upon information and belief.

3. Answering the allegations contained in Paragraph Three (3) of Third-Party Plaintiffs' Complaint, Great American admits that it is a corporation organized and existing under the laws of the State of Ohio which is authorized to offer insurance in the State of South Carolina. Great American denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in this Paragraph Three (3) of Third-Party Plaintiffs' Third-Party Complaint.

4. Great American is informed and believes that the allegations contained in Paragraphs Four (4) and Five (5) of Third-Party Plaintiffs' Third-Party Complaint merely state legal conclusions that do not require a response from Great American; however, Great American does not contest personal jurisdiction or venue in this matter.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

5. Great American admits the allegations contained in Paragraphs Six (6) and Seven (7) of Third-Party Plaintiffs' Complaint upon information and belief.

6. Answering the allegations contained in Paragraph Eight (8) of the Third-Party Plaintiffs' Third-Party Complaint, Great American craves reference to policy number EPP3654704-01 for its terms and conditions and denies any allegation that is inconsistent with such policy.

7. Answering the allegations contained in Paragraph Nine (9) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits, upon information and belief, that Plaintiffs commenced a lawsuit against Third-Party Plaintiffs on or about July 7, 2016 and admits, upon information and belief, that Exhibit B to the Third-Party Complaint appears to be a true and accurate copy of the original Complaint, without its accompanying exhibits. Great American would likewise admit, upon information and belief, that Plaintiffs filed a second Amended Complaint (after filing an amended complaint on August 24, 2016) on or about October 28, 2016 and admits, upon information and belief, that Exhibit C to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits. Great American denies that Plaintiffs filed a Third-Party Complaint at any time, but it would admit, upon information and belief, that Plaintiffs filed a Third Amended Complaint on or about March 8, 2017 and would admit upon information and belief that Exhibit D to the Third-Party Complaint appears to be a true and accurate copy of that pleading, minus its exhibits.

8. Great American denies the allegations contained in Paragraph Ten (10) of Third-Party Plaintiffs' Third-Party Complaint as stated. Great American would admit that Exhibits B, C and D to the Third-Party Complaint meet policy number EPP3654704-01's definition of a "Claim"; however, by way of further answer to said allegations, Great American would

affirmatively allege that its policy number EPP3654704-01 requires an insured to promptly forward to Great American copies of any suit papers that have been served upon an insured as a condition precedent to its rights under the policy. Great American would further allege that prior to being served with Third-Party Plaintiffs' Third-Party Complaint, it had not been provided with a copy of the Third Amended Complaint.

9. Great American denies the allegations contained in Paragraph Eleven (11) of the Third-Party Plaintiffs' Third-Party Complaint as stated, but it admits that the allegations set forth in the pleadings that are attached to the Third-Party Complaint as Exhibits B, C and D allege acts or omissions by the Third-Party Plaintiffs that meet policy number EPP3654704-01's definition of "Wrongful Act," as that term is defined in the policy.

10. Answering the allegations contained in Paragraph Twelve (12) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it received the letters that are attached to the Third-Party Complaint as Exhibits E, F and G and that it has denied coverage to Third-Party Plaintiffs for the matters alleged in the original and second amended complaint in this action. Great American denies the remaining allegations of said paragraph.

11. Answering the allegations contained in Paragraph Thirteen (13) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that it dispatched the letters that are attached to the Third-Party Complaint as Exhibits H and I and craves references to them for their contents. Great American denies the remaining allegations contained in said paragraph.

12. Great American denies the allegations contained in Paragraph Fourteen (14) of Third-Party Plaintiffs' Third-Party Complaint.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

13. Answering the allegations contained in Paragraph Fifteen (15) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Second Amended Answer and Counterclaim.

14. Great American denies the allegations contained in Paragraphs Sixteen (16), Seventeen (17) and Eighteen (18) of Third-Party Plaintiffs' Third-Party Complaint.

15. Answering the allegations contained in Paragraph Nineteen (19) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Second Amended Answer and Counterclaim.

16. Great American denies the allegations contained in Paragraph Twenty (20) of Third-Party Plaintiffs' Third-Party Complaint.

17. Answering the allegations contained in Paragraph Twenty-One (21) of Third-Party Plaintiffs' Third-Party Complaint, Great American admits that Third-Party Plaintiffs caused a written demand for coverage to be sent to Great American with respect to the allegations contained in the original complaint and the second amended complaint (Exhibits B and C to Third-Party Plaintiffs' Third-Party Complaint). Great American further admits that it has denied coverage for the allegations contained in Exhibits B and C to the Third-Party Complaint. Great American denies the remaining allegations contained in said paragraph.

18. Great American denies the allegations contained in Paragraphs Twenty-Two (22) and Twenty-Three (23) of Third-Party Plaintiffs' Third-Party Complaint.

19. Answering the allegations contained in Paragraph Twenty-Four (24) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Second Amended Answer and Counterclaim.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP260464

20. Great American denies the allegations contained in Paragraphs Twenty-Five (25) and Twenty-Six (26) of Third-Party Plaintiffs' Third-Party Complaint.

21. Answering the allegations contained in Paragraph Twenty-Seven (27) of Third-Party Plaintiffs' Third-Party Complaint, Great American hereby re-alleges and incorporates herein by reference the preceding allegations of its Second Amended Answer and Counterclaim.

22. Great American denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-Eight (28) and Twenty-Nine (29) of Third-Party Plaintiffs' Third-Party Complaint.

23. Great American denies the allegations contained in Paragraphs Thirty (30) and Thirty-One (31) of Third-Party Plaintiffs' Third-Party Complaint.

24. Great American denies that Third-Party Plaintiffs are entitled to any and all of the relief requested in Third-Party Plaintiffs' Complaint.

FOR A SECOND DEFENSE

25. Third-Party Plaintiffs' Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Great American and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

26. Third-Party Plaintiffs' claims are barred or limited by the equitable doctrine of laches.

FOR A FOURTH DEFENSE

27. Great American would show that one or more exclusionary clauses in its policy of insurance number EPP3654704-01, the terms and conditions of which are incorporated herein by reference, apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs. Specifically,

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

Great American would show that Exclusion B excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise . . . .

Moreover, policy number EPP3654704-01 states that "**Costs of Defense** shall not include . . . any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty."

28. Great American would likewise show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

29. Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

30. Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided, however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

31. Great American would likewise show that, with respect to the February 10, 2016 to February 10, 2017 policy period, Exclusion C(1) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement . . .

FOR A FIFTH DEFENSE

32. The Third-Party Complaint does not comply with Rule 14, SCRCP and should be dismissed or severed from the Plaintiffs' action.

FOR A SIXTH DEFENSE

33. Great American would allege that the Third-Party Plaintiffs' claims for punitive damages violate both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

a. That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.
b. That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.
c. That the amount of punitive damages awarded is based upon the wealth of the Defendant in violation of its right to equal protection of the laws.

FOR A SEVENTH DEFENSE

34. Great American reserves the right to raise additional affirmative defenses based upon additional evidence that may be discovered while this case is pending.

FOR AN EIGHTH DEFENSE AND BY WAY OF A COUNTERCLAIM (Declaratory Judgment)

35. Great American hereby realleges and incorporates by reference the preceding allegations of its Second Amended Answer and Counterclaim.

36. This is an action to construe an insurance contract pursuant to section 15-53-30 of the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Rev. ed. 2005, as amended).

37. Great American issued its policy number EPP3654704-00 ("Policy") to Third-Party Plaintiff Tilghman Beach & Racquet Club Condominium Association, Inc., a/k/a Tilghman Beach & Racquet Club HOA, Inc. for the policy period beginning February 10, 2015 and ending February 10, 2016. A true and correct copy of the Policy is attached hereto and incorporated herein as **Exhibit 1**.

38. The Policy was renewed for policy period beginning February 10, 2016 and ending February 10, 2017 bearing policy number EPP3654704-01. A true and correct copy of the Policy as it pertains to this policy period is attached hereto and incorporated herein as **Exhibit 2**. The Policy contains certain insuring agreements that insure those persons or entities who meet the Policy's definition of an "**Insured**" against liability exposures that meet

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

the Policy's definition of a "**Claim**" for acts or omissions that meet the Policy's definition of a "**Wrongful Act**," unless the **Claim** is expressly excluded from coverage by the Policy.

39. In April 2015, Third-Party Plaintiff Tilghman Beach and Racquet Club Condominium Association, Inc. ("HOA") notified Great American of a potential claim because of threats of litigation against HOA by Third-Party Plaintiff Steele Brice Windle, III. Great American investigated the matter and determined that Third-Party Plaintiff Windle's threats of litigation did not, as of that time, meet the Policy's definition of a "**Claim**."

40. Third-Party Plaintiffs are all considered **Insureds** under the Policy.

41. Third-Party Plaintiffs have tendered Plaintiffs' original complaint as well as their second amended complaint to Great American seeking to have it defend and indemnify them from the allegations contained in those pleadings. Third-Party Plaintiffs' Third-Party Complaint also references a Third Amended Complaint, which was not presented to Great American prior to service of the Third-Party Complaint, and Great American is informed and believes that Third-Party Plaintiffs seek to have Great American defend and indemnify them from the allegations contained in this pleading as well.

42. Great American is informed and believes that that one or more exclusionary clauses in the Policy apply to the facts alleged in the Plaintiffs' original complaint and all subsequent amended complaints, so as to preclude any coverage to Third-Party Plaintiffs.

43. Specifically, Great American would show that Exclusion B excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

> **Section IV. Exclusions**
> This Policy does not apply to any **Claim** made against any **Insured**:
>
> B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

policy or policies are stated to be primary, contributory, excess, contingent, or otherwise . . . .

Moreover, policy number EPP3654704-01 states that "**Costs of Defense** shall not include . . . any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty."

44. Great American would likewise show that Exclusion D(2) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (2) damage to or destruction of any tangible property or the loss of use of any tangible property . . .

45. Great American would likewise show that Exclusion G excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

G. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A . . .

46. Great American would likewise show that Exclusion H excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

H. by, or for the benefit of, or at the behest of the Organization or any Subsidiary or any entity which controls, is controlled by, or is under common control with the Organization or any Subsidiary, or any person or entity which succeeds to the interest of the Organization or any Subsidiary, provided,

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

however, this exclusion shall not apply to any Claim brought by the receiver, conservator, liquidator, rehabilitator, examiner or similar official of the Organization, if any, in the event of Financial Insolvency.

47. Great American would likewise show that, with respect to the February 10, 2016 to February 10, 2017 policy period, Exclusion C(1) excludes all coverage to Third-Party Plaintiffs. Said exclusion reads as follows:

Section IV. Exclusions
This Policy does not apply to any **Claim** made against any **Insured**:

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: . . . (1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement . . .

48. Great American asks that the Court inquire into this matter and issue an order declaring the rights and responsibilities of the parties, and specifically declaring that there is no coverage available to Third-Party Plaintiffs under the Policy for the allegations set forth in Plaintiffs' Complaint, Second Amended Complaint and Third Amended Complaint.

FOR A NINTH DEFENSE AND BY WAY OF A COUNTERCLAIM
(Rescission as to Policy Period 2/10/15 – 2/10/16)

49. Great American hereby realleges and incorporates by reference the preceding allegations of its Second Amended Answer and Counterclaim.

50. In or around February 2015, Third-Party Plaintiff HOA applied for a policy of directors and officers liability coverage from Great American.

51. In its application for coverage, Third-Party Plaintiff HOA was asked, among other things, the following question: "Does the Association anticipate any major building/renovations in the next year?" HOA, by and through its authorized agent, responded "No" to this question in its application for coverage.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

52. The application for coverage described in Paragraph Forty-Nine (49) contained the following Notice:

> **FRAUD WARNING**: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES THIS QUESTIONNAIRE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND WHICH MAY RESULT IN CIVIL OR CRIMINAL FINES OR PENALTIES.

53. Upon information and belief, Third-Party Plaintiff HOA, by and through its authorized agent, acknowledged receipt of the Notice set forth in Paragraph Fifty (50) as part of the application process.

54. Third-Party Plaintiff HOA's negative response to the question set forth in Paragraph Forty-Nine (49) above was material to the risk insured under the Policy.

55. Third-Party Plaintiff HOA's representation, as set forth in Paragraph Forty-Nine (49) above, was made for the purpose of inducing Great American to issue the Policy.

56. The application, including all representations, affirmations and acknowledgments, was, by the terms of the Policy, made a part of the contract of insurance between Great American and HOA.

57. Upon information and belief, Third-Party Plaintiff HOA's Board of Directors anticipated entering into a contract to repair and/or improve Building #3 within the regime managed by HOA at the time it applied for coverage from Great American.

58. Great American relied on Third-Party Plaintiff HOA's representations in the application in deciding whether to issue the Policy.

59. Had Great American known of the HOA's planned renovations to one of its buildings, it would not have issued the Policy.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

60. Great American submits that the Association made this statement on the application for the policy with the intent to deceive and defraud Great American.

61. Based on the HOA's material representation on its application for the Policy, Great American is entitled to the equitable remedy of rescission of the Policy *ab initio*.

62. Great American stands ready, willing and able to refund all premiums paid by HOA, with interest, and offers to pay same or to bring the same into court or to do any other act which the Court may deem just and proper.

WHEREFORE, having fully and completely answered the allegations of Third-Party Plaintiffs' Third-Party Complaint, and having properly pled its claims for declaratory judgment and rescission, Great American prays that it be dismissed from this lawsuit, for the taxable costs of this action, for a declaration that there is no coverage available to Third-Party Plaintiffs under policy number EPP3654704-01, and for such other and further relief that the Court may deem just and proper.

Respectfully submitted,

s/Kirby D. Shealy III
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Great American Insurance Group – Executive Liability Division:
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Table of Contents

I.	Insuring Agreements		Page 1
II.	Discovery Period		Page 1
III.	Definitions		Page 2
IV.	Exclusions		Page 5
V.	Limit of Liability and Retention		Page 7
VI.	Costs of Defense and Settlements		Page 8
VII.	Notice of Claim		Page 8
VIII.	Coverage Extensions		Page 9
	(A)	Spousal/Domestic Partner Provision	Page 9
	(B)	Worldwide Provision	Page 9
	(C)	Estates and Legal Representatives	Page 9
IX.	General Conditions		Page 9
	(A)	Cancellation or Non-Renewal	Page 9
	(B)	Proposal Form	Page 10
	(C)	Order of Payments	Page 10
	(D)	Merger or Acquisition	Page 10
	(E)	Conversion to Run-Off Coverage	Page 10
	(F)	Action Against the Insurer	Page 10
	(G)	Subrogation	Page 11
	(H)	Conformity to Law	Page 11
	(I)	Assignment	Page 11
	(J)	Representative of the Insurer	Page 11
	(K)	Organization Represents Insured	Page 11
	(L)	Entire Agreement	Page 11

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

GREAT AMERICAN INSURANCE GROUP®
Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations of this Policy, the **Insured** and **Insurer** agree:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons, Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against any **Insured Persons** for a **Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary, Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons.**

C. If during the **Policy Period** or the **Discovery Period** any **Claim** is first made against the **Organization,** any **Subsidiary,** or the **Property Manager** for a **Wrongful Act,** the **Insurer** shall pay on behalf of the **Organization,** any **Subsidiary,** or the **Property Manager, Loss** and **Costs of Defense** resulting from such **Claim.**

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

Section II. Discovery Period

A. If this Policy is not renewed or is cancelled by the **Insurer,** for any reason other than non-payment of premium, then without the requirement of any additional premium, the **Organization** shall receive an automatic ninety (90) day extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Automatic Discovery Period.** In addition, if prior to the end of the **Automatic Discovery Period,** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive an extension of the coverage granted by this Policy for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Automatic Discovery Period** with respect to any **Claim** first made against any **Insured** during this extended coverage, but only with respect to **Wrongful Acts** committed prior to the end of the **Policy Period.** This extended coverage shall be referred to as the **Discovery Period.** The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period.**

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B. If this Policy is not renewed or is cancelled by the **Organization**, and if no later than sixty (60) days after the end of the **Policy Period** the **Organization** pays the **Insurer** an additional amount equal to forty (40%), seventy-five (75%), or one hundred (100%) percent of the annual premium of this Policy, the **Organization** shall receive a **Discovery Period** for an additional twelve (12), twenty-four (24), or thirty-six (36) months respectively from the end of the **Policy Period.** The **Organization** shall have no right to purchase this **Discovery Period** at any later date or to elect more than one **Discovery Period.**

C. The fact that this Policy may be extended by virtue of the **Automatic Discovery Period** or **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Automatic Discovery Period** and the **Discovery Period** is considered to be part of and not in addition to the last **Policy Year.**

Section III. Definitions

A. **"Claim"** shall mean:

(1) a written demand for monetary relief made against any **Insured;**

(2) a civil proceeding, including any appeals therefrom made against any **Insured** seeking monetary or non-monetary (including injunctive) relief commenced by service of a complaint or similar pleading;

(3) a criminal proceeding, including any appeals therefrom made against any **Insured** commenced by the return of an indictment or the filing of notice of charge or similar document; or

(4) a formal administrative proceeding, including any proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, made against any **Insured** commenced by the receipt of charges, formal investigative order, service of summons or similar document.

B. **"Claimant"** shall mean:

(1) any past, present, and future **Insured Persons** or applicants for employment with the **Organization** or any **Subsidiary;**

(2) a government entity or agency, including but not limited to the Equal Employment Opportunity Commission (EEOC) or any similar governmental body, when acting on behalf of or for the benefit of any individual in (1) above; or

(3) all persons who were, now are, or shall be independent contractors, but only to the extent such individuals perform work or services for or on behalf of the **Organization** or any **Subsidiary** and only to the extent such individuals are indemnified by the **Organization** or any **Subsidiary.**

It is further understood and agreed that **Claimant** shall not include any employee of any **Property Manager.**

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C. **"Construction Defect(s)"** shall mean any actual or alleged defective, faulty or delayed construction or any other matter constituting a construction defect under applicable law regardless of whether it results from:

(1) defective or incorrect architectural plans or other designs;
(2) defective or improper soil testing;
(3) defective, inadequate or insufficient protection from subsoil or earth movement or subsidence;
(4) construction, manufacture or assembly of any tangible property;
(5) the failure to provide or pay for any construction-related goods or services; or
(6) the supervision or management of any construction-related activities.

D. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any **Claim**, including the costs of any appeal or appeal bond, attachment bond or similar bond (but without any obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include: (1) salaries, wages, overhead or benefit expenses associated with any **Insured Persons**, and (2) any amounts incurred in defense of any **Claim** which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty.

E. **"Employment Practices Wrongful Act"** shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:

(1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
(2) misrepresentation;
(3) violation of employment laws;
(4) sexual or workplace harassment;
(5) discrimination;
(6) wrongful failure to employ or promote;
(7) wrongful discipline;
(8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
(9) failure to grant tenure;
(10) negligent employee evaluation;
(11) retaliation;
(12) failure to provide adequate workplace or employment policies or procedures;
(13) defamation (including libel and slander);
(14) invasion of privacy;
(15) wrongful demotion;
(16) negligent reassignment;
(17) violation of any federal, state or local civil rights laws;
(18) negligent hiring;
(19) negligent supervision;
(20) negligent training;
(21) negligent retention; or
(22) acts described in (1) through (21) above arising from the use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization's** or **Subsidiary's** Internet, e-mail, telecommunication or similar systems.

F. **"Financial Insolvency"** shall mean the **Organization** becoming a Debtor in Possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**.

G. **"Fungi"** shall mean any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

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H. **"Insured"** shall mean:

(1) the **Organization;**
(2) any **Subsidiary;**
(3) in the event of **Financial Insolvency**, the resulting Debtor in Possession (or foreign equivalent status), if any;
(4) all **Insured Persons**; and
(5) any **Property Manager**, but only if such **Property Manager** is acting pursuant to the written authority granted by the **Organization** or on behalf of and at the direction of the **Organization** or any **Subsidiary.**

I. **"Insured Persons"** shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of the **Organization** or any **Subsidiary**, including any executive board members and committee members, whether salaried or not. It shall also mean all persons who were, now are, or shall be directors, trustees, officers, employees, leased employees, temporary or seasonal employees, volunteers or staff members of any **Property Manager**, but only if such persons are acting within the scope of their employment with the **Property Manager** and on behalf of the **Organization** or any **Subsidiary.**

J. **"Loss"** shall mean settlements, judgments, pre-judgment and post-judgment interest, front and back pay, compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, and subject to the provisions of Section V. and VI., **Costs of Defense** incurred by the **Insured**. **Loss** shall not include:

(1) criminal or civil fines or penalties imposed by law (except as provided pursuant to Section X. H.), or taxes;

(2) the value of perquisites, deferred compensation or any other type of compensation earned in the course of employment or the equivalent value thereof; and

(3) any amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

K. **"Organization"** shall mean the entity named in Item 1 of the Declarations.

L. **"Policy Year"** shall mean the period of one year following the effective date and hour of this Policy or the period of one year following any anniversary date thereof falling within the **Policy Period**; or if the time between the effective date or any anniversary date and the termination of this Policy is less than one year, such lesser period. Any **Discovery Period** or **Automatic Discovery Period** shall be considered part of and not in addition to the last **Policy Year.**

M. **"Policy Period"** shall mean the period from the inception of this Policy to the expiration date stated in Item 2 of the Declarations or its earlier termination, if applicable.

N. **"Property Manager"** shall mean any entity providing real estate property management services to the **Organization** or any **Subsidiary** pursuant to a written contract.

O. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

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P. **"Subsidiary"** shall mean:

(1) any entity which qualifies as a not-for-profit organization under the Internal Revenue Code, other than a political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971 (and amendments thereto), and for which the **Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of such entity as of the inception date of this Policy;

(2) any similar entity which was created or acquired by the **Organization** after the inception date of this Policy, if the entity's total assets do not exceed thirty-five percent (35%) of the total consolidated assets of the **Organization** as of the inception date of this Policy; or

(3) any other entity added as a **Subsidiary** by written endorsement to this Policy.

Coverage shall apply to a **Subsidiary** only for **Wrongful Acts** allegedly committed during the time such entity qualified as a **Subsidiary.**

Q. **"Wrongful Act"** shall mean:

(1) any of the following by the **Organization,** and/or any **Subsidiary,** and/or any **Insured Persons** acting in their capacity with the **Organization** or a **Subsidiary**:

(a) actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty;

(b) **Employment Practices Wrongful Act**;

(2) any matter claimed against any **Insured Persons** solely by reason of their status with the **Organization** or any **Subsidiary.**

Section IV. Exclusions

This Policy does not apply to any **Claim** made against any **Insured**:

A. brought about or contributed to by: (1) any **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; or (2) the deliberate fraudulent or criminal acts of any **Insured**; however, this exclusion shall not apply unless it is finally adjudicated such conduct in fact occurred, nor shall it apply to coverage provided under Insuring Agreement I.B.;

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise;

C. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

(2) any **Wrongful Act** or any circumstance known by any **Insured Person** prior to the date stated in Item 8 of the Declarations which would indicate the probability of such **Claim** being made, provided, however, this exclusion shall only apply to the **Organization,** its **Subsidiaries** and those **Insured Persons** having such knowledge; or

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(3) any civil, criminal, administrative or investigative proceeding involving any **Insured** pending as of or prior to the date stated in Item 8 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property or the loss of use of any tangible property; or (3) humiliation, mental anguish, emotional distress, invasion of privacy, wrongful entry, trespassing, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for an **Employment Practices Wrongful Act**;

E. for any actual or alleged violation by any **Insured** of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law, except a **Claim** alleging retaliation for the exercise of any rights under such laws;

F. for any **Wrongful Act** of any **Insured Persons** in their respective capacity as a director, officer, trustee, or equivalent position of an entity other than the **Organization** or any **Subsidiary**;

G. based upon, arising out of, relating to, directly or indirectly resulting from or inconsequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, this exclusion shall not apply to coverage provided under Insuring Agreement 1.A.;

H. by, or for the benefit of, or at the behest of the **Organization** or any **Subsidiary** or any entity which controls, is controlled by, or is under common control with the **Organization** or any **Subsidiary**, or any person or entity which succeeds to the interests of the **Organization** or any **Subsidiary**, provided, however, this exclusion shall not apply to any **Claim** brought by the receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Organization**, if any, in the event of **Financial Insolvency**;

I. other than **Costs of Defense**:

(1) for any obligation of the **Organization** or any **Subsidiary**, as a result of a **Claim**, seeking relief or redress in any form other than money damages, including but not limited to any obligations of the **Organization** or any **Subsidiary** to modify any building or property;

(2) for any obligation of the **Organization** or any **Subsidiary** to pay compensation earned by any **Insured Person** in the course of employment, but not paid by the **Organization** or any **Subsidiary**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days, provided, however, this exclusion shall not apply to front pay and back pay;

(3) for any actual or alleged violation by any **Insured** of the Fair Labor Standards Act or any similar state or local law, provided, however, this exclusion shall not apply to the Equal Pay Act. **Costs of Defense** provided pursuant to this section, I.(3), shall be subject to the FLSA Defense Sublimit of Liability stated in Item 3 of the Declarations, if any; or

(4) for any actual or alleged liability of any **Insured** under any contract or agreement, express or implied, written or oral; provided, however this exclusion shall not apply to employment related obligations which would have attached absent such contract or agreement;

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J. for any obligations under a worker's compensation, disability benefits, insurance benefits or unemployment compensation law, or any similar law; provided, however this exclusion shall not apply to a **Claim** for an **Employment Practices Wrongful Act** involving retaliation with regard to benefits paid or payable;

K. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

(1) actual, alleged or threatened:

(a) inhalation of, ingestion of, contact with, or exposure to any **Fungi** or bacteria; or

(b) existence of or presence of any **Fungi** or bacteria on or within a building or structure including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to any injury or damage; or

(2) any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of, or in any way responding to, or assessing the effects of **Fungi** or bacteria by any **Insured** or by any other person or entity;

L. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **Construction Defect(s)**;

M. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged liability of an **Insured**, in whole or in part, in the capacity as a builder or developer, or in the capacity of a sponsor of the **Organization**, or of an **Insured** affiliated with such a builder, developer or sponsor, and which is related to actual or alleged misconduct on the part of such builder, developer or sponsor, including but not limited to actual or alleged conflict of interest, self-dealing, or disputes concerning conversion, construction or development;

N. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged noise.

With respect to this section of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**; and only facts pertaining to or conduct by any past, present, or future Executive Director, President, or Chairman of the **Organization** shall be imputed to the **Organization** or any **Subsidiary** to determine if coverage is available.

Section V. Limits of Liability and Retention

A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the Retention stated in Item 4 of the Declarations. The **Insurer's** maximum Limit of Liability for the aggregate amount of **Loss** resulting from all **Claims** deemed to have been made in a **Policy Year** shall be shown in Item 3 of the Declarations.

B. One Retention shall apply to each and every **Claim**. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims**, constituting a single **Claim**, shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

C. **Costs of Defense** incurred by the **Insurer** shall be in addition to the Limit of Liability, and such **Costs of Defense** shall not be subject to the Retention amount. If **Costs of Defense** are incurred by the **Insured** with the **Insurer's** consent, such **Costs of Defense** shall be considered **Loss** and thus subject to the Limit of Liability and Retention.

D. With respect to all **Claims** deemed to have been made in a **Policy Year**, should the Limit of Liability be exhausted by payment of **Loss** resulting from one or more such **Claims,** the **Insurer's** duty to defend shall cease and any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished and the **Insurer** shall have no further obligations.

E. For the purpose of applying the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, regardless of whether actual indemnification is granted. The certificate of incorporation, charter or other organizational document of the **Organization,** including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

A. The **Insureds** shall not incur **Costs of Defense,** or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express written consent of the **Insurer,** which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with full cooperation and all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the **Insurer's** consent shall not be covered hereunder.

B. The **Insurer** has the right to investigate and settle any **Claim** as it deems expedient. If the **Insurer** recommends a settlement and the **Insured** refuses to consent thereto, the **Insurer's** liability for such **Claim** is limited to the amount in excess of the Retention, which the **Insurer** would have contributed had the **Insured** consented to the settlement, the **Costs of Defense** covered by the Policy and incurred prior to the date of such refusal to settle, and fifty percent (50%) of any additional covered **Loss**, including **Costs of Defense**, incurred subsequent to such refusal and subject to the Limit of Liability.

If the **Insured** refuses to consent to a settlement as contemplated above, **Costs of Defense** shall be subject to the Retention.

Section VII. Notice of Claim

A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** made during the **Policy Period.** Such notice shall be given as soon as practicable after the date a Board Member or an employee of the **Property Manager** has knowledge of the **Claim,** and in no event later than ninety (90) days after the end of the **Policy Period.**

B. If during the **Policy Period** or **Discovery Period,** any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of: (1) the specific **Wrongful Act;** (2) the injury or damage which has or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof; then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured.**

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C. In addition to furnishing the notice as provided in Section VII A or B, the **Insured** shall, as soon as practicable, provide the **Insurer** with copies of reports, investigations, pleadings and other documents in connection therewith, and shall provide all information, assistance and cooperation which the **Insurer** reasonably requests and do nothing to prejudice the **Insurer's** position or its potential or actual rights of recovery.

D. Notice to the **Insurer** as provided in Section VII A or B shall be emailed to **ELDClaims@gaic.com** or mailed to **GREAT AMERICAN INSURANCE GROUP, EXECUTIVE LIABILITY DIVISION, CLAIMS DEPARTMENT, P.O. BOX 66943, CHICAGO, IL 60666.**

Section VIII. Coverage Extensions

A. Spousal/Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or "Domestic Partner" of any **Insured Person,** but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person.** The term "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.

B. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries.**

C. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives, or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons.**

Section IX. General Conditions

A. Cancellation or Non-Renewal

(1) This Policy may be cancelled by the **Organization** at any time by written notice to the **Insurer.** In the event the **Organization** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate portion of the premium. However, if the **Organization** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-] by A.M. Best, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent of the effectiveness of cancellation but such payment shall be made as soon as practicable.

(2) This Policy will only be cancelled by the **Insurer** if the **Organization** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Organization** with at least sixty (60) days advance notice thereof.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

B. Proposal Form

It is agreed the particulars and statements contained in Proposal Forms submitted to the **Insurer** (and any material submitted therewith) are the representations of the **Insured** and are to be considered as incorporated in and constituting part of this Policy. It is also agreed this Policy is issued in reliance upon the truth of such representations. However, coverage shall not be excluded as a result of any untrue statement in the Proposal Form, except as to the **Organization**, its **Subsidiaries**, and any **Insured Person** making such untrue statement or having knowledge of its falsity.

In no event shall Insuring Agreement I.A. of this Policy be rescinded by the **Insurer**.

C. Order of Payments

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Policy, the **Insurer** shall first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; and thereafter with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

D. Merger or Acquisition

If, during the **Policy Period**, the **Organization** acquires the assets of another entity, by merger or otherwise, and the acquired assets of such other entity exceed thirty-five percent (35%) of the assets of the **Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer.**

E. Conversion to Run-Off Coverage

If prior to the end of the **Policy Period**, the **Organization** merges into another organization and the **Organization** is not the surviving entity, another organization or person acquires the right to elect or appoint more than fifty percent (50%) of the Board of Directors or other governing body of the **Organization**, or the **Organization** ceases to qualify as a not-for-profit organization under any federal, provincial and territorial legislation and/or the Internal Revenue Code (such events hereinafter referred to as **Transaction**), then:

(1) the **Organization** must give written notice of such **Transaction** to the **Insurer** within thirty (30) days after the effective date of such **Transaction**, and provide the **Insurer** with such information as the **Insurer** may deem necessary; and

(2) this Policy, including the **Discovery Period** if elected, shall apply, but only with respect to any **Wrongful Act** committed prior to the effective date of such **Transaction.**

F. Action Against the Insurer

(1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, those filing the claim, and the **Insurer.**

(2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim.**

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G. Subrogation

In the event of payment under this Policy, the **Insurer** shall be subrogated to all the **Insureds'** rights of recovery. The **Insureds** shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured.** In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless, such **Insured Person**:

(1) has been convicted of a deliberate criminal act, or

(2) has been determined by a final adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any profit, advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** shall for any reason pay indemnifiable **Loss** on behalf of an **Insured Person,** the **Insurer** shall have the contractual right hereunder to recover from the **Organization** or any **Subsidiary** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Organization** or any **Subsidiary** and shall be subrogated to rights of the **Insured Persons** hereunder.

H. Conformity to Law

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

I. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

J. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, Post Office Box 66943, Chicago, Illinois, 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence.

K. Organization Represents Insured

By acceptance of this Policy, the **Organization** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Entire Agreement

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Proposal Forms submitted to the **Insurer** and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer.**

GREAT AMERICAN INSURANCE COMPANY®

Secretary

President

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GREAT AMERICAN.
INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

ExecPro sm
DECLARATIONS
for
Community Association Solution Insurance Policy

Insurance is afforded by the company indicated below: (Each a capital stock corporation)

☒ Great American Insurance Company
Policy Number: **EPP3654704-00** Policy Form Number: D26100 (2/10)

Item 1. Name of **Organization:** **Tilghman Beach & Racquet Club HOA Inc.**
Mailing Address: **11822 HIGHWAY 17 BYP**

City, State, Zip Code: **MURRELLS INLET, SC, 29576-9337**

Item 2. **Policy Period:** From **02-10-2015** *(Month, Day, Year)* To **02-10-2016** *(Month, Day, Year)*
(Both dates at 12:01 a.m. Standard Time at the address of the **Organization** as stated in Item 1.)

Item 3. (a) Limit of Liability for each **Policy Year:** **$1,000,000**
(b) **FLSA Defense Sublimit of Liability: $150,000 – This limit is part of and not in addition to the Limit of Liability provided for in 3(a).**

Item 4. Retentions:

Insuring Agreement A:	**$0**	Each **Claim**
Insuring Agreement B and/or C:	**$1,000**	Each **Claim**

Item 5. Premium: **$2,559.00** Annual Taxes/Surcharges: **$0.00** Annual Fees: **$0.00**

Item 6. Endorsements Attached:
ExecPro - Community Association Solution D 26100 (2/10)
Terrorism Coverage Endorsement DTCV_09P (11/09)
Terrorism Coverage Premium Disclosure DTDP_09P (11/09)
Deletion of Noise Exclusion D 26714-2 (11/12)
Terrorism Coverage Policyholder Disclosure NTDN_08P (1/08)
Data Security Wrongful Acts and Privacy Wrongful Acts Coverage Endorsement D26740 (10/14)

Item 7. Notices: All notices required to be given to the **Insurer** under this policy shall be addressed to:
Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, Illinois 60666

Item 8. Prior & Pending Litigation Date: **02-10-2015**

These Declarations along with the completed and signed Proposal Form and community Associations Solution Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer.**

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

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INSURANCE GROUP
580 Walnut Street, Cincinnati, OH 45202

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COVERAGE FOR ACTS OF TERRORISM

It is understood and agreed that the General Conditions of the Policy are amended by the addition of the following:

Act of Terrorism Coverage

Subject to all other terms and conditions of this Policy, coverage is available for **Loss** caused by an **Act of Terrorism** as defined below.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States –

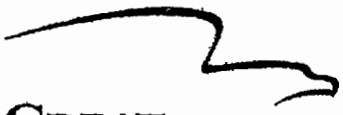
(i) to be an act of terrorism;
(ii) to be a violent act or an act that is dangerous to –
  (a) human life;
  (b) property; or
  (c) infrastructure;
(iii) to have resulted in damage within the United States, or outside of the United States in the case of -
  (a) an air carrier or vessel described in Section (5)(B) of the Terrorism Risk Insurance Act; or
  (b) the premises of a United States mission; and
(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more **Acts of Terrorism** under the Terrorism Risk Insurance Act, as amended in 2007, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

No act shall be certified by the Secretary as an **Act of Terrorism** if (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2015 - 02-10-2016**	Policy Number:	**EPP3654704-00**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2015**



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AMENDMENT TO DECLARATIONS PAGE

It is understood and agreed that the Declarations is amended by the addition of the following:

Act of Terrorism Premium: $0.00

It is further understood and agreed the Policyholder Disclosure of Terrorism Coverage is attached to and is to be considered as incorporated in and constituting a part of this Policy.

Other than as stated above, nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the Policy to which this endorsement is attached.

Insured:	**Tilghman Beach & Racquet Club HOA Inc.**		
Policy Period	**02-10-2015 - 02-10-2016**	Policy Number:	**EPP3654704-00**
Countersigned by:	**Not Required** *Authorized Representative*	Endorsement Effective Date:	**02-10-2015**

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DELETION OF NOISE EXCLUSION

It is understood and agreed that Section IV.N. of the policy is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Policy other than as above stated.

Insured:

Policy Period - Policy Number:

Countersigned by: _____ Endorsement Effective Date:
Authorized Representative

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POLICYHOLDER DISCLOSURE OF TERRORISM COVERAGE

The Terrorism Risk Insurance Act establishes a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an Act of Terrorism. The Act provides that, to be certified, an Act of Terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals as part of an effort to coerce the government or population of the United States.

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

The Terrorism Risk Insurance Act, as amended in 2007, contains a $100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds $100 billion. If the aggregate insured losses for all insurers exceed $100 billion, your coverage may be reduced.

In accordance with the Terrorism Risk Insurance Act, we are required to offer you coverage for losses resulting from an act of terrorism **that is certified under the federal program** as an Act of Terrorism. All other provisions of this policy will still apply to such an act. That is, a loss will not be excluded or covered just because it was caused by an Act of Terrorism.

The portion of the annual premium that is attributable to coverage for Acts of Terrorism that are certified under the Terrorism Risk Insurance Act is $0.00.

All other terms and conditions of the policy remain unchanged.

If you would like to reject the coverage for "certified" Acts of Terrorism, please provide Great American written confirmation of such, and an exclusion will be attached to your policy.

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GREAT AMERICAN. INSURANCE GROUP

Community Association Solution
Insurance Policy

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

Solely for purposes of coverage provided by this endorsement, it is understood and agreed that the following changes are made to the Policy:

THIRD PARTY COVERAGE

Section I. is deleted and replaced with the following:

Section I. Insuring Agreements

A. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Insured Persons**, **Loss** and **Costs of Defense** resulting from such **Claim**, except for any **Loss** and **Costs of Defense** which the **Organization** or any **Subsidiary** actually pays as indemnification.

B. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against any **Insured Persons** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act** the **Insurer** shall pay on behalf of the **Organization**, **Subsidiary** or **Property Manager**, **Loss** and **Costs of Defense** resulting from such **Claim**, but only to the extent the **Organization** or any **Subsidiary** is required or permitted by law to indemnify the **Insured Persons**.

C. If during the **Policy Period** or the **Discovery Period** any **Claim**, including a **Regulatory Action**, is first made against the **Organization**, **Subsidiary** or **Property Manager** for a **Data Security Wrongful Act** or a **Privacy Wrongful Act**, the **Insurer** shall pay on behalf of the **Organization** or any **Subsidiary**, **Loss** and **Costs of Defense** resulting from such **Claim**.

The **Insurer** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of such **Claim** are groundless, false or fraudulent.

FIRST PARTY COVERAGE FOR ORGANIZATION AND SUBSIDIARIES

Section VIII. is amended by the addition of the following:

D. Privacy Event Expenses Provision

The **Insurer** shall reimburse or pay on behalf of the **Organization** or any **Subsidiary** all **Privacy Event Expenses** in excess of the applicable Retention stated in Item 4. of the Declarations and up to the applicable Limits of Liability stated in Item 3. of the Declarations that the **Organization** or any **Subsidiary** incurs as a direct result of a **Data Breach** provided:

Insured: Tilghman Beach & Racquet Club HOA Inc.

Policy Period: 02-10-2015 - 02-10-2016 Policy Number: EPP3654704-00

Countersigned by: _____ Endorsement Effective Date: 02-10-2015
Authorized Representative

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) such **Data Breach** is first discovered during the **Policy Period;**

(2) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed, no **Insured** had a basis to believe that any such **Data Breach** might reasonably be expected;

(3) the **Insured** reports such **Data Breach** in accordance with the Reporting Obligations for a **Data Breach** section below; and

(4) the **Insured** obtains the **Insurer's** advance written consent to incur such **Privacy Event Expenses.**

AMENDMENT TO DEFINITIONS

1. Section III.A. is amended by the addition of the following:

   Claim shall also mean a **Regulatory Action.**

2. Section III.J. is amended by the addition of the following:

   Loss shall also mean **Privacy Regulatory Fines and Penalties, Privacy Event Expenses** and **Regulatory Restitution Funds.**

3. Section III. is amended by the addition of the following:

   "Computer Systems" shall mean any computer, network of computers, mobile device, or internet-enabled or networked telephone, printer, copier or other device, if owned, leased or operated by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Insured's** ordinary business activities, including if operated by a cloud computer provider on behalf of the **Organization** or any **Subsidiary.**

   "Data Asset" shall mean software and electronic data, including but not limited to databases, audio files, video files or other image files, maintained by or on behalf of the **Organization** or any **Subsidiary** in connection with the **Organization** or any **Subsidiary's** business operations.

   "Data Breach" shall mean the unauthorized access to, loss of control over or disclosure of **Protected Information** maintained by the **Insured** or by those acting on behalf of the **Insured.**

   "Data Security Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) the theft of, or unauthorized access to, or disclosure or use of, the **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(2) unauthorized access to or use of the **Computer Systems** that results in the alteration, corruption, destruction, deletion or damage to **Data Asset** of a client or customer of the **Organization** or any **Subsidiary** stored on the **Computer Systems**;

(3) the transmission of any virus, worm, trojan horse, backdoor or similar malicious software program or code from the **Computer Systems** to a third party's computer systems;

(4) unauthorized access to or use of the **Computer Systems** that results in damage or disruption to computer systems of any third party or any **Data Asset** on such third party computer systems, including through a denial-of-service attack or similar action by an unauthorized person; or

(5) a denial-of-service attack or similar action by any unauthorized person that makes the **Computer Systems** unavailable to authorized clients or customers of the **Organization** or any **Subsidiary.**

"Privacy Event Expenses" shall mean the reasonable and necessary:

(1) legal and forensic fees and costs to investigate the cause of the **Data Breach,** identify persons affected or potentially affected and determine the extent that any law, regulation, statute or contract requires notification of the **Data Breach;**

(2) costs of notification of the **Data Breach,** if required by law, regulation, statute or contract or voluntarily incurred with the **Insurer's** prior written consent; and

(3) costs to monitor, freeze or thaw credit or provide credit restoration services for persons affected by the **Data Breach.**

"Privacy Wrongful Act" shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Organization** or any **Subsidiary's** business that causes or fails to prevent:

(1) the theft of, or unauthorized access to, or disclosure or use of, **Protected Information** held or maintained by or on behalf of the **Organization** or any **Subsidiary,** including by a cloud service provider or other vendor for the **Organization** or any **Subsidiary,** if such theft, access, disclosure or use:

a) results in identity theft or other misuse of such **Protected Information;** or

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

b) violates any federal, state, local or foreign law or regulation, or the **Organization** or any **Subsidiary's** published policies, regarding the maintenance, protection, use or disclosure of **Protected Information**;

(2) violation of any federal, state, local or foreign law or regulation, or any publicly stated policy of the **Organization** or any **Subsidiary,** relating to **Protected Information** that:

a) prohibits or restricts the **Insured's** collection, sharing or selling of **Protected Information**; or

b) requires the **Insured** to provide access to **Protected Information** or upon request, correct incomplete or inaccurate **Protected Information**; or

(3) any fraudulent website or electronic communication, including a phishing email, from impersonating the **Insured** and causing financial loss to any customer or client of the **Organization** or any **Subsidiary.**

"Privacy Regulatory Fines and Penalties" shall mean the sums the **Organization** or any **Subsidiary** is required to pay as part of the settlement or judgment of a covered **Regulatory Action.**

"Protected Information" shall mean:

(1) any non-public personally identifiable information, including financial, medical or health care information, held or maintained by or on behalf of the **Insured** in connection with the **Organization's** or any **Subsidiary's** business operations, whether in electronic form or otherwise, which is protected from unauthorized access or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Insured**; and

(2) confidential, non-public business information of a third party that is in the care or custody of the **Organization** or any **Subsidiary** pursuant to a confidentiality agreement between the **Organization** or any **Subsidiary** and such third party.

"Regulatory Action" shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach.** However, **Regulatory Action** shall not include any written request, investigation or proceeding brought by or on behalf of the Securities and Exchange Commission.

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

"Regulatory Restitution Fund" shall mean any sums deposited into a fund and used to provide compensation to individuals affected by a **Privacy Wrongful Act** as part of the settlement or judgment of a **Regulatory Action.**

4. Section III.Q. is amended by the addition of the following:

Wrongful Act shall also mean a **Data Security Wrongful Act** and a **Privacy Wrongful Act.**

AMENDMENT TO EXCLUSIONS

1. Section IV.B. is deleted and replaced with the following:

B. to the extent it is insured in whole or in part by any other valid and collectible policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent, or otherwise; provided, however, that coverage for all **Data Breaches** and **Claims** for **Personal Injury Wrongful Acts, Data Security Wrongful Acts** and/or **Privacy Wrongful Acts** shall be specifically excess of any similar coverage provided pursuant to terms and conditions of any general liability policy, business owner policy or cyber liability policy issued to the **Organization** or any **Subsidiary.**

2. Section IV.D. is deleted and replaced with the following:

D. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving: (1) bodily injury, sickness, disease or death of any person, assault or battery; (2) damage to or destruction of any tangible property; or (3) humiliation, mental anguish, or emotional distress; provided, however, that part (3) of this exclusion shall not apply to any **Claim** for a **Privacy Wrongful Act;**

3. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged:

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

(1) mechanical or electrical failure or outage, routine wear and tear, or a disruption or failure of any infrastructure service or utility supplied by a third-party, including but not limited to power, water, gas, communications or connectivity; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**;

(2) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;

(3) price-fixing, restraint of trade or monopolization;

(4) violation of any federal, provincial, state, local or foreign statute or regulation prohibiting or restricting unsolicited communications, regardless of whether such communication was transmitted via facsimile, email, text, telephone or otherwise, including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, the Canadian Anti-Spam Law (CASL) and the Telephone Consumer Protection Act (TCPA);

(5) misappropriation, infringement or theft, or inducement of misappropriation, infringement or theft of trade secrets;

(6) war including undeclared or civil war, or seizure, confiscation, expropriation, nationalization, or destruction of a **Computer System** by order of any governmental authority;

(7) potential violation of any federal, state, foreign or local law or regulation and investigated or pursued by a federal, state, foreign or local regulatory agency or other governmental body, provided, however, this exclusion shall not apply to a **Regulatory Action**;

(8) act, error, omission or circumstance, which was known by the President, Executive Director, Chairman of the Board, Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager, General Counsel (or the functional equivalent of any of the foregoing) prior to the inception date of the first policy issued by the **Insurer** to the **Organization** and continuously renewed and which could have been reasonably foreseen to be the basis for a **Claim** or **Data Breach**, including, but not limited to, knowledge of security weaknesses, or vulnerabilities in software, hardware or firmware; or

(9) breach of any express or implied contract, agreement, warranty or guarantee, including, but not limited to, any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or

b) a **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information.**

4. The **Insurer** shall not be liable for **Loss, Costs of Defense** or any other payment for any **Claim** made against any **Insured** or any **Data Breach** for:

(1) any fees or costs to update or improve a **Data Asset** to a level beyond that which existed prior to any **Data Breach** or **Data Security Wrongful Act;**

(2) any fees or costs to correct or remediate software program errors or vulnerabilities or deficiencies or problems with any **Computer System** not directly resulting from a **Data Security Wrongful Act;**

(3) any amounts incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to Section VII. or a **Data Breach** is reported pursuant to the Reporting Obligations set below;

(4) any overhead expenses of the **Organization** or any **Subsidiary,** including but not limited to compensation or benefits; or

(5) the economic or market value of any **Data Asset.**

AMENDMENTS TO LIMITS OF LIABILITY AND RETENTIONS

1. Item 3. of the Declarations is amended by the addition of the following:

(c) $50,000 Sublimit of Liability for all **Privacy Event Expenses** from all **Data Breaches.** This Sublimit is part of and not in addition to the Limit of Liability provided for in 3(a).

(d) $250,000 Limit of Liability for all **Loss** from all **Claims,** including **Regulatory Actions,** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.** This limit is part of and not in addition to the Limit of Liability provided for in 3(a).

ELECTRONICALLY FILED - 2018 Apr 23 4:14 PM - HORRY - COMMON PLEAS - CASE#2016CP2604464

DATA SECURITY WRONGFUL ACTS AND PRIVACY WRONGFUL ACTS COVERAGE ENDORSEMENT

2. Item 4. of the Declarations is deleted and replaced with the following:

Item 4. Retentions

Insuring Agreement A:	$ 0	Each **Claim** for **Privacy Wrongful Acts**
Insuring Agreement B and/or C:	$1,000	Each **Claim** for **Privacy Wrongful Acts**
	$1,000	Each Reimbursement for **Privacy Event Expenses** pursuant to Section VIII.D. of the Policy

3. Section V. of the Policy is amended by the addition of the following:

The "Each Reimbursement for **Privacy Event Expenses**" Retention amount stated in Item 4. of the Declarations is the **Organization's** obligation for all **Privacy Event Expenses** from each **Data Breach.**

The "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention stated in Item 4. of the Declarations is the **Organization's** obligation for each **Claim,** including any **Regulatory Action.** If a **Claim** and **Privacy Event Expenses** arise out of the same **Privacy Wrongful Act** or **Data Breach**, any amounts paid by the **Organization** in satisfaction of the "Each Reimbursement **Privacy Event Expenses**" Retention will also erode the "Each **Claim** for **Data Security Wrongful Acts** or **Privacy Wrongful Acts**" Retention with respect to such **Claim.**

4. Section V.C. is deleted and replaced with the following:

C. **Costs of Defense** incurred by either the **Insurer** or **Insured** shall be subject to applicable Retention and the Limit of Liability for all **Claims**, including **Regulatory Actions**, for **Data Security Wrongful Acts** or **Privacy Wrongful Acts.**

REPORTING OBLIGATIONS FOR A DATA BREACH

After a **Data Breach** is first discovered by an **Insured,** the **Insured** shall, as a condition precedent to coverage pursuant to this endorsement:

(a) notify the **Insurer** of the **Data Breach** as soon as practicable but in no event later than thirty (30) days after the **Data Breach** is first discovered;