

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2009-CP-22-01655

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

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SC Court of Appeals

FOURTH
AMENDED COMPLAINT
(Jury Trial Requested)

FILED
GEORGETOWN COUNTY, S.C.
2012 MAR 30 AM 11:44
ALMA Y. WHITE
CLERK OF COURT

Huggins and Margaret S. Dover, Thomas) Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H.) Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust) Agreement dated November 16, 1998 and) Mary M. Nisbet Trustee of the Mary M.) Nisbet Trust Agreement dated November 16,) 1998; Dorothy Jean Foster; Captains Quarters) D-24 Association of Owners, Inc., Michael H.) Sanders and Rebecca H. Sanders, Ruth Gray) Wheliss, David B. Shivell and Nicki M.) Shivell, Debra B. Leeke, Joseph Alan) Capobianco and Lara Serro, Sharon Gibson) Daniel, Gary C. Andes and Andrea W. Andes,) Jay Hendler and Laura Hendler, Joy P.) McConnell, Charles W. Fortner, Judith C.) Woodson, Warren W. Riggs and Charles G.) Martin, Riggs Ventures, LLC, and SGS Beach) Partners, LLC; Morgan J. Mann and Angela) M. Mann; Michael Cameron Foster, Sr. and) Laura Lee Foster; Captains Quarters Unit D-) 31 Association of Multiple Ownerships, Inc.,) Evelyn Gail Earnest, Francis G. Thomson and) Arleen S. Thomson, Robert W. Dalton, Red) Oak Limited Partnership, William R.) McKeown and Margaret A. McKeown,) Norman K. Moon and Barbara W. Moon,) David T. McGill and Carol G. McGill, Rick L.) Bledsoe and Susan H. Bledsoe, Geoffrey A.) Wienke and Pamela L. Wienke, A. Donald) Ross, III and Nancy Kay Ross, Dennis J.) Straw and Roxanne B. Straw, and Resort) Investments of Litchfield, LLC; Georgia M.) Pruitt and Howard M. Pruitt, Jr.; Jean T.) Blaylock; William C. Covington, Jr. and) Donna C. Covington; Litchfield Captain's) Quarters, LLC; James A. Schubert and) Laraine C. Schubert; Daniel P. Duvall and) Mary Lynn Duvall; Victor A. Medina and) Melinda Leigh Medina; Judy P. Hamer; Boyce)

F. Miller and Carole L. Miller, Raymond A.)
 Shingler and Louise O. Shingler, Paul Larry)
 Barnette and Carol Jane Barnette, James R.)
 Walker and Erika T. Walker, Kathy W.)
 Underwood, Andrew J. Wingo, Jr. and Susan)
 A. Wingo, Melanie S. Franklin, Lois E.)
 Cooley, Trustee of the Lois E. Cooley Living)
 Trust, B. Lee Smith and Margaret H. Smith,)
 Jason A. Underwood, and Camilla J. Wilson;)
 Stewart South, LLC; Quarter South, LLC;)
 Steven H. Frame and Kay B. Frame,)
)
 Plaintiffs,)
)
 v.)
)
 Shipyard Village Council of Co-Owners, Inc.)
)
 Defendant.)
)

The Plaintiffs, by and through their attorneys, Howell V. Bellamy, Jr., Howell V. Bellamy, III, and Jeffrey W. King of the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, PA., complaining of the Defendant Shipyard Village Council of Co-owners, Inc., (“Council of Co-owners”) would respectfully show unto this Honorable Court:

JURISDICTION AND VENUE

1. At all times relevant the Plaintiff, Richard A. Fisher (“Fisher”), was and is an interest owner of fee simple title to Condominium Unit No. C-35, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina. Further, Plaintiff Fisher is acting in an individual, and, also, a representative capacity for all other similarly situated Unit Co-owners located in Buildings C and D of the regime.

2. At all times relevant the Plaintiff, Marianne G. Kochanski (“Kochanski”), was and

is the owner of fee simple title to Condominium Unit No. D-45, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina. Further, Plaintiff Kochanski is acting in an individual, and, also, a representative capacity for all other similarly situated Unit Co-owners located in Buildings C and D of the regime.

3. At all times relevant the Plaintiff, Platte B. Moring, Jr., Trustee of the Plate B. Moring, Jr. Living Trust dated March 13, 2001 (“Moring Living Trust”), was and is the owner of fee simple title to Condominium Unit No. C-46, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina. Further, Plaintiff Moring is acting in an individual, and, also, a representative capacity for all other similarly situated Unit Co-owners located in Buildings C and D of the regime.

4. At all times relevant the Plaintiff, Jim H. Markley, III (“Markley”), was and is an interest owner of fee simple title to Condominium Unit No. C-25, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina. Further, Plaintiff Markley is acting in an individual, and, also, a representative capacity for all other similarly situated Unit Co-owners located in Buildings C and D of the regime.

5. This action is brought by the Plaintiffs, Fisher, Kochanski, Markley, and Moring, in their individual and representative capacity on behalf of all other similarly situated Unit Co-owners located in Building C and D, whose properties have been damaged, injured, and/or devalued by the Defendant’s improper, illegal, and unauthorized 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 this Amended Complaint.

6. The other similarly situated Unit Co-owners, who currently own condominium units located in Buildings C and D of the regime, are fairly and adequately represented by Plaintiffs, Fisher, Kochanski, Markley, and Moring, and these Plaintiffs have no interest adverse to that of any individual who might be entitled to the relief sought by this Amended Complaint.

7. That the Plaintiff Representatives, Fisher, Kochanski, Markley, and Moring, have attempted in good faith to resolve all differences with the Defendant Shipyard Village Council of Co-Owners, its agents, employees, and representatives, regarding the particular assertions made in this Amended 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 Amended Complaint.

8. Plaintiffs, Robert A. Wright, Mary Beth C. Wright, H. Allen Wright and Joyce Y. Wright, and Carolyn L. Wright ("Wright"), are the owners of fee simple title to Condominium Unit No. C-12, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Litchfield, County of Georgetown, State of South Carolina.

9. Plaintiffs, Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom ("Savoca"), are the owners of fee simple title to Condominium Unit No. C-13, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

10. Plaintiffs, James. T. Hunter and Mary D. Hunter (“Hunter”), are the owners of fee simple title to Condominium Unit No. C-14, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

11. Plaintiff, Dwain C. Andrews (“Andrews”), is the owner of fee simple title to Condominium Unit No. C-15, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

12. Plaintiff, WWS, LLC, a South Carolina Limited Liability Company (“WWS”), is the owner of fee simple title to Condominium Unit No. C-16, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

13. Plaintiffs, Donald L. Henson and Sandra L. Henson (“Henson”), are the owners of fee simple title to Condominium Unit No. C-21, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

14. Plaintiff, Allen M. Funk (“Funk”), is the owner of fee simple title to Condominium Unit No. C-22, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

15. Plaintiffs, Norman J. Rish and Mary T. Rish (“Rish”), are the owners of fee simple title to Condominium Unit No. C-23, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of

Georgetown, State of South Carolina.

16. Plaintiff, Angela M. Markley ("Markley"), is an interest owner of fee simple title to Condominium Unit No. C-25, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

17. Plaintiffs, Walter C. Worsham and Carolyn W. Worsham ("Worsham"), are the owners of fee simple title to Condominium Unit No. C-31, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

18. Plaintiffs, Enrico S. Piraino and Giusto Piraino ("Piraino"), are the owners of fee simple title to Condominium Unit No. C-32, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

19. Plaintiffs, Otis T. Harrison and Rose C. Harrison ("Harrison"), are the owners of fee simple title to Condominium Unit No. C-33, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

20. Plaintiff, James E. Newman, Jr. ("Newman"), is the owner of fee simple title to Condominium Unit No. C-34, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

21. Plaintiffs, Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning

("Fisher-Canning"), are interest owners of fee simple title to Condominium Unit No. C-35, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

22. Plaintiff, James D. Reynolds, Jr. ("Reynolds"), is the owner of fee simple title to Condominium Unit No. C-36, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

23. Plaintiff, Fuller Family LLC ("Fuller Family"), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. C-41, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

24. Plaintiffs, Richard T. White and Rory L. White ("White"), are the owners of fee simple title to Condominium Unit No. C-42, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

25. Plaintiff, Propst & Dawson, LLC ("Propst-Dawson"), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. C-43, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

26. Plaintiffs, Litchfield Quarters, LLC, a South Carolina Limited Liability Company, and Larry O. Snider and Paula D. Snider ("Litchfield Quarters"), are the owners of fee simple title to Condominium Unit No. C-44, in Condominium Building C located at Captains Quarters at Shipyard

Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

27. Plaintiffs, William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust (“Hammond Living Trust”), are the owners of fee simple title to Condominium Unit No. C-45, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

28. Plaintiff, GAB IV, LLC, a Virginia Limited Liability Company (“GAB”), is the owner of fee simple title to Condominium Unit No. C-51, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

29. Plaintiffs, Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t July 24, 2008, (“McBride Family Trust u/d/t July 24, 2008”), are the owners of fee simple title to Condominium Unit No. C-52, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

30. Plaintiff, Evelyn J. Valuska (“Valuska”), is the owner of fee simple title to Condominium Unit No. C-53, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

31. Plaintiff, Barbara W. Beymer (“Beymer”), is the owner of fee simple title to Condominium Unit No. C-54, in Condominium Building C located at Captains Quarters at Shipyard

Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

32. Plaintiff, Montrose Associates, LLC ("Montrose"), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. C-55, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

33. Plaintiffs, Harry L. Belk and Jan C. Belk ("Belk"), are the owners of fee simple title to Condominium Unit No. C-56, in Condominium Building C located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

34. Plaintiffs, Dennis E. Barrett and Wilma J. Barrett ("Barrett"), are the owners of fee simple title to Condominium Unit No. D-12, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

35. Plaintiffs, First Family Properties, Inc., a South Carolina Domestic Corporation, Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, and Harold LeMaster and Patti LeMaster ("First Family"), are the owners of fee simple title to Condominium Unit No. D-13, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

36. Plaintiffs, Joseph P. Heaton and Frances H. Heaton ("Heaton"), are the owners

of fee simple title to Condominium Unit No. D-14, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

37. Plaintiff, Robert N. Kelly ("Kelly"), is the owner of fee simple title to Condominium Unit No. D-15, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

38. Plaintiffs, H. S. Keeter and Sandra C. Keeter ("Keeter"), are the owners of fee simple title to Condominium Unit No. D-16, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

39. Plaintiffs, Brian and Mary M. Nisbet, are the owners of fee simple title to Condominium Unit No. D-21, in condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

40. Plaintiff, Dorothy Jean Foster, is the owner of fee simple title to Condominium Unit No. D-23, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

41. Plaintiffs, Captains Quarters D-24 Association of Owners, Inc., a South Carolina Domestic Corporation, Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P.

McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, and Riggs Ventures, LLC, a South Carolina Limited Liability Company, and SGS Beach Partners, LLC, a South Carolina Limited Liability Company ("CQ D-24"), are the owners of fee simple title to Condominium Unit No. D-24, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

42. Plaintiffs, Morgan J. Mann and Angela M. Mann ("Mann"), are the owners of fee simple title to Condominium Unit No. D-25, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

43. Plaintiffs, Michael Cameron Foster, Sr. and Laura Lee Foster ("Foster"), are the owners of fee simple title to Condominium Unit No. D-26, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

44. Plaintiffs, Captains Quarters D-31 Association of Multiple Ownership, Inc., a South Carolina Domestic Corporation, Evelyn Gail Earnest, Francis G. Thomson and Arleen S. Thomson, Robert W. Dalton, Red Oak Limited Partnership, William R. McKeown and Margaret A. McKeown, Norman K. Moon and Barbara W. Moon, David T. McGill and Carol G. McGill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, LLC, a South Carolina Limited Liability Company ("Association of Multiple Ownership"), are the owners of fee simple title to Condominium Unit No. D-31, in Condominium Building D located at Captains

Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

45. Plaintiffs, Georgia M. Pruitt and Howard M. Pruitt, Jr. ("Pruitt"), are the owners of fee simple title to Condominium Unit No. D-33, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

46. Plaintiff, Jean T. Blaylock ("Blaylock"), is the owner of fee simple title to Condominium Unit No. D-34, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

47. Plaintiffs, William C. Covington, Jr. and Donna C. Covington ("Covington"), are the owners of fee simple title to Condominium Unit No. D-35, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

48. Plaintiff, Litchfield Captain's Quarters, LLC ("LCQ"), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. D-36, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

49. Plaintiffs, James A. Schubert and Laraine C. Schubert ("Schubert"), are the owners of fee simple title to Condominium Unit No. D-41, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Litchfield, County of Georgetown, State of South Carolina.

50. Plaintiffs, Daniel P. Duvall and Mary Lynn Duvall (“Duvall”), are the owners of fee simple title to Condominium Unit No. D-42, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

51. Plaintiffs, Victor A. Medina and Melinda Leigh Medina (“Medina”), are the owners of fee simple title to Condominium Unit No. D-44, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

52. Plaintiffs, Judy P. Hamer, Boyce F. Miller, and Carole L. Miller, Raymond A. Shingler and Louise O. Shingler, Paul Larry Barnette and Carol Jane Barnette, James R. Walker and Erika T. Walker, Kathy W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Franklin, Lois E. Cooley, Trustee of the Lois E. Cooley Living Trust, B. Lee Smith and Margaret H. Smith, Jason A. Underwood, and Camilla J. Wilson, (“Unit D-52, Phase III”), are the owners of fee simple title to Condominium Unit No. D-52, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

53. Plaintiff, Stewart South, LLC (“Stewart South”), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. D-54, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

54. Plaintiff, Quarter South, LLC (“Quarter South”), is a South Carolina Limited Liability Company, and the owner of fee simple title to Condominium Unit No. D-55, in

Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Litchfield, County of Georgetown, State of South Carolina.

55. Plaintiffs, Steven H. Frame & Kay B. Frame (“Frame”), are the owners of fee simple title to Condominium Unit No. D-56, in Condominium Building D located at Captains Quarters at Shipyard Village, Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

56. At all times relevant the Plaintiffs above were and are shareholders and/or members of the Shipyard Village Council of Co-owners, when the Defendant, by and through its agents, employees, and representatives, committed the improper, illegal, and unauthorized acts and omissions as set forth below in the subsequent paragraphs.

57. Defendant Shipyard Village Council of Co-owners, Inc. (“Council of Co-owners”), is now, and at all times relevant, an incorporated legal entity organized and existing under the Laws of the State of South Carolina. Accordingly, the Defendant is now, and was at all times relevant, responsible for the management, operation, and repair of the condominium complex commonly known as Shipyard Village Horizontal Property Regime (“Shipyard Village HPR”) from 1989 to the present.

58. The property which is the subject of this matter is located in Georgetown County, State of South Carolina, and is more particularly described as follows:

A. Phase I of Shipyard Village containing Condo Buildings “A” and “B”:

ALL THAT PIECE, PARCEL OR TRACT OF LAND known as Phase I situate, lying and being Southeast of U.S. Highway No.17 between U.S. Highway #17 and the Atlantic Ocean, being a portion of a tract conveyed by Fairlane/Litchfield Company, Inc. to Litchfield-by-the-Sea, joint venture under the Uniform Partnership Act of South Carolina as described in a deed dated

May 27, 1981 and recorded May 27, 1981 in the Office of the Clerk of Court for Georgetown County in Book 191, at Page 18, and having according to plat entitled Phases I, II, III, IV and Driveways of Shipyard Village a part of Litchfield-by-the-Sea dated February 9, 1982, prepared by Samuel M. Harper, R.L.S., said survey being incorporated herein as Exhibit A to the Master Deed and recorded simultaneously herewith in the Office of the Clerk of Court of Georgetown County in Plat Book 2 at Page 25 as follows: Highway #17 and the Atlantic Ocean, being a portion of a tract conveyed by Fairlane/Litchfield Company, Inc. to Litchfield-by-the-Sea, joint venture under the Uniform Partnership Act of South Carolina as described in a deed dated May 27, 1981 and recorded May 27, 1981 in the Office of the Clerk of Court for Georgetown County in Book 191, at Page 18, and having according to plat entitled Phases I, II, III, IV and Driveways of Shipyard Village a part of Litchfield-by-the-Sea dated February 9, 1982, prepared by Samuel M. Harper, R.L.S., said survey being incorporated herein as Exhibit A to the Master Deed and recorded simultaneously herewith in the Office of the Clerk of Court of Georgetown County in Plat Book 2 at Page 25 as follows:

“Building A:” Beginning at a point on the Southeastern side of South Dunes Drive at the corner of property designated on Exhibit A as “Driveway A;” thence with the line of Phase ITS. 62-13 E. 101.6 feet to the point of beginning; thence S. 00-46W. 172.8 feet to point; thence S. 81-40E. 288.5 feet to a point on the Atlantic Ocean and the mean high water mark (February, 1982); thence with the mean high water mark of the Atlantic Ocean N. 31-35 E. 111 feet to a point; thence leaving the mean high water mark of the Atlantic Ocean and running N. 37-16 W. 260 feet to a point; thence N. 78-14 W. 44.2 feet to a point; thence S. 60-46 W. 147 feet to a point; thence with the line of “Driveway A” S. 27-07 W. 27 feet to the point of beginning.

“Building B:” Beginning at a point on the Southeastern side of South Dunes Drive at the corner of property designated on Exhibit A as “Driveway B;” thence N. 85-33 E. 81.2 feet to a point; thence S. 5 8-57 E. 175.9 feet to a point, the point of beginning; thence S.00-46 W. 171.5 feet to a point; thence S. 81-59 E. 279.3 feet to a point on the Atlantic Ocean at the mean high water mark (February, 1982); thence with the mean high water mark of the Atlantic Ocean N. 31-35 E. 112 feet to a point; thence leaving the mean high water mark of the Atlantic Ocean and running N. 36-29 W. 282.5 feet to a point; thence S. 60-46 W. 174.3 feet to a point; thence along the line of “Driveway B” S. 27-57 W. 30 feet to a point, the point of beginning.

B. Phase II of Shipyard Village containing Condo Buildings “C” and “D”:

ALL THAT PIECE, PARCEL OR TRACT OF LAND, situate, lying and being Southeast of U.S. Highway No.17 between U.S. Highway #17 and the Atlantic Ocean, being a portion of a tract conveyed by Fairlane/Litchfield Company, Inc. to Litchfield-by-the Sea, a joint venture under the Uniform Partnership Act of South Carolina as described in a deed dated May 27, 1981 and recorded May 27, 1981 in the Office of the Clerk of Court for Georgetown County in Book 191, at Page 18, and having according to plat entitled Phases I, II, III, IV and Driveways of Shipyard Village a part of Litchfield-by-the-Sea dated February 9, 1982, prepared by Samuel M. Harper, R.L.S., said survey being incorporated herein as Exhibit A to the Master Deed and recorded simultaneously herewith in the Office of the Clerk of Court of Georgetown County in Plat Book 2 at page 25 as follows: Beginning on the Southeastern side of South Dunes Drive at the corner of property designated on Exhibit A as "Driveway A"; South Dunes Drive being a private road leading from U.S. Highway #17 and running thence with the line of "Driveway A" S. 62-13 E. 101.6 feet to a point; thence with the line of Phase I (Building A) S. 00-46 W. 172.8 feet to a point; thence N. 83-39W. 90 feet to a point; thence S. 30-46W. 136.2 feet to a point in the line with Phase III; thence S. 34-49 E. 90 feet to a point; thence S. 60-46 W. 174.3 feet to a point; thence with the line of "Driveway B" N. 55-04 W. 148.6 feet to a point; thence N. 30-49W. 140 feet to a point on the Southeastern side of South Dunes Drive; thence with the Southern side of South Dunes Drive the following: N.35-45 E. 81.8 feet, N.50-46E. 165.1 feet, N.59-44E. 219.7 feet to a point, the point of beginning.

A Copy of Shipyard Village HPR's Master Deed and By-Laws, marked Exhibit No. 1, is attached to this Amended Complaint and incorporated by reference.

59. Venue is proper in Georgetown County.

60. Based upon the foregoing, this Court has subject matter and personal jurisdiction over the above-named parties hereto.

BACKGROUND FACTS

61. The Shipyard Village HPR's Master Deed and By-Laws were created pursuant to the South Carolina Horizontal Property ("Act"), Title 27, Chapter 31, S.C. Code Ann. § 27-31-10 et seq., 1976, as Amended, and recorded on July 9, 1982, in Deed Book 201, at Page 880, in the Office of

Register of Deeds for Georgetown County, South Carolina.

62. Insofar as is relevant to Plaintiffs' assertions in this Amended Complaint, Article II,

§ 2.1 of the Master Deed, Definitions, defines certain terms in pertinent part as follows:

- a. "Act" shall mean and refer to the Horizontal Property Act of South Carolina, Chapter 31, Title 27, Code of Laws of South Carolina, 1976, as amended.
- b. "Assessment" shall mean and refer to the co-owner's share of the Common Expenses assessed against such co-owner and his Unit from time to time by Shipyard Village in the manner hereinafter provided.
- c. "Common Elements" shall mean and refer to both the General Common Elements and Limited Common Elements and include all portions of the Regime Property not included within the Units.
- d. "Common Expenses" shall mean and refer to (a) all expenses incident to the administration, maintenance, repair, and replacement of the General Common elements and the Limited Common Elements, after excluding therefrom such expenses which are the responsibility of a co-owner as set forth herein....
- e. "Co-owner" shall mean and refer to persons, firms, corporations, partnerships, associations, trusts or other legal entities or any combination thereof who own of record a Unit within a Building.
- f. "General Common Elements" shall mean and refer to all Regime Property exclusive of Units and Limited Common Elements.
- g. "Limited Common Elements" shall mean and refer to those special Common Elements designated as appurtenant to and reserved for the exclusive use of a special Unit.

63. Article III, Section 3.4 of the Master Deed, Building Locations for Phase I,

provides the site locations of the Buildings A and B as shown on the Plat of Phase I Regime Property set forth in Exhibit "A", attached hereto and specifically incorporated by reference herein. The Buildings are of the general design as graphically depicted in the certified architect's plans which are compiled and set forth in Exhibit "B", attached hereto and specifically incorporated by reference

herein. Each Building has five (5) floors and contains eight (8) Units on each floor.

- a. Building A of Phase I contains forty (40) Units designated as Units All through A18, A21 through A28, A31 through A38, A41 through A48, A51 through A58, inclusive.
- b. Building B of Phase I contains forty (40) Units designated as Units B11 through B18, B21 through B28, B31 through B38, B41 through B48, B51 through B58, inclusive.

64. Article III, Section 3.7 of the Master Deed, Common Elements, provides that the Common Elements include all of the Property submitted to condominium ownership which is not included within the Units. Shipyard Village HPR's Master Deed graphically depicts the areas encompassing the Common Elements in Phase I as follows:

- (a) General Common Elements. The General Common Elements shall include, without limitation, the following:
 - (i) Except for such portion reserved as Limited Common Elements, all land within the boundaries of the Regime Property, together with all easements, rights and hereditaments appurtenant thereto.
 - (ii) All improvements, exclusive of the Units and Limited Common Elements, erected upon the Property, including without limitation: (a) the roof covering the Buildings including built-up asphalt roof of roofing felt and tar and gravel; (b) the exterior of stucco over reinforced concrete masonry, including those limited exterior areas having plywood over masonry; (c) the pipes, wires, conduits, pumps, motors, and other equipment installed to provide utility service to the Units or to portions of the Common Elements; (d) certain parking areas, street signs, storm draining, guttering, retaining walls walkways, paths, trees, gardens, irrigation systems, outside electric lighting systems and landscaping and (e) the foundations, pilings and structural members, subflooring, girders, beams, supports, load bearing interior walls and interior walls enclosing pipe chases and utility installations serving more than one Unit; (f) pool easement area subject to all rights and reservations set forth in this

Master Deed; and (g) all other elements rationally of common use.

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

65. The By-Laws of Shipyard Village HPR ("By-Laws) were enacted pursuant to the provisions of the Horizontal Property Act of South Carolina, Chapter 31, Title 27, for the purpose of governing the Council of Co-owners.

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

67. Article XII, § 12.1 of the Master Deed, Reconstruction and Repair, provides in relevant part that damage to the common elements resulting from the "neglect" of a Unit Co-owner shall be charged to such Unit Co-owner as an individual assessment.

68. Article V § 5.2 of the By-Laws, Budget, provides that the "Board of Directors shall prepare, adopt and present, or cause to be prepared and presented, to the Unit Co-owners at their annual meeting an annual Budget (the "Budget") for the Regime for the next fiscal year. The budget as adopted by the Board of Directors shall set forth with particularity the anticipated Common

Expenses for the Fiscal year together with the amount of reasonable reserve for the payment of future Common Expenses and contingencies.”

69. Consistent with the provisions of the Master Deed, Article VI, § 6.3 of the By-Laws, Default by Unit Co-owner, provides that “[i]n the event a Unit Co-owner fails to perform the maintenance required of him” the Board of Directors “shall, after giving such Co-owner reasonable notice and an opportunity to perform such maintenance, cause such maintenance to be performed and charge all reasonable expenses of so doing to such Unit Co-owner by an individual assessment.”

70. Finally, Article VI of the By-Laws, Improvements, provides in Section 6.5 that:

The Board of Directors shall provide for the making of improvements and additions to the Common Elements as may be approved from time to time by a majority of the Co-owners. The cost of such improvements shall be Common Expenses; provided, however, that no Co-owner shall without his consent be assessed in any one (1) year for the making of improvements to the Common Elements an amount in excess of one (1%) percent of the value of his Unit as set forth in the Master Deed unless such improvements have been approved by Co-owners holding two thirds (2.13) of the Percentage Interest in the Common Elements.

71. Upon information and belief, responsibility for the General Common and Limited Common Elements, including, but not limited to, Buildings A and B as designated in the Master Deed and By-Laws of Shipyard Village HPR were turned over to the Defendant Council of Co-owners by the Litchfield Group/Developer on or about 1989.

72. On July 8, 2009, Vicki Gallagher (“Gallagher”) of K. A. Diehl & Associates, Inc., (“K. A. Diehl”), on behalf of the Defendant Council of Co-owners, notified in writing the Plaintiffs and all other Unit Co-owners regarding the board’s request and/or calling for a Special Members Meeting scheduled for Saturday, August 1, 2009, for the sole purpose of voting on a special

assessment to fund the extensive repairs needed for Buildings A and B. Gallagher's letter provided in pertinent part as follows:

Dear Shipyard Village Homeowners,

As you are aware, Buildings A and B are in need of extensive repairs. As reported to the membership the major issues with the buildings are the deterioration of the balconies and walkways as a result of severe corrosion of the cantilever beams and various floor panels. As a result of the continued corrosion, the Associations engineering firm, Sutton-Kennerly & Associates (SKA), recommended that several balconies and walkways be shored as a precautionary measure to ensure structural stability of the walkway and balcony components at both buildings.

This determination came as a result of the following summarized observations by SKA: 1) A number of structural prestressed concrete hollow slab components and reinforced concrete beam elements both at walkways and balconies are exhibiting significant deterioration from corrosion of embedded steel. This has manifested as cracking and spalling parallel to slab reinforcing steel and apparent reduction in a cross-sectional area of portions of the embedded steel resulting in a reduction in structural capacity. 2) Delaminated and displaced stucco and concrete from corrosion of the reinforcing steel presents a safety hazard due to the potential for falling objects. Various prestressed hollow core slabs, reinforced concrete beams and other components have impending spalls'. Impending spall' is a term used to describe cracked or delaminated concrete or stucco that could potentially separate and fall in the near future and injure an occupant below. In addition to the safety concerns, impending spalls can increase the rate of deterioration due to exposure to water.

...
In addition, the windows and sliding glass doors will be replaced. The envelopes around the windows/sliding glass doors are experiencing water penetration. and therefore the windows and sliders will be replaced with windows that meet current code. It is imperative that these components be replaced so that the contractors can ensure the window and door assemblies are watertight.

...
A Copy of Gallagher's letter dated July 8, 2009, marked Exhibit No. 2 is attached to this Amended Complaint and incorporated by reference.

73. Gallagher's letter, further, set out the amount of the proposed special assessment that was going to be charged to the Plaintiffs and other Unit Co-owners. The special assessment was based on SKA's construction budget including a 15 % contingency. Further, SKA prepared a

construction cost breakdown of the proposed special assessment for the Defendant, Council of Co-owners, as follows:

**Structural and Facade Repairs for Shipyard Village Regime Property
SKA Project No. 080489.2
Opinion of Project Cost**

**Phase I (Building "B"): Sept. 2009 to May 2010
Phase 2 (Building "A"): Sept. 2010 to May 2011**

Slab and Beam Repairs	\$1,865,520
New Windows and Doors	\$2,459,000
Wall Systems	\$ 156,000
Stucco and Flashings	\$ 100,000
Waterproofing and Coatings	\$ 497,000
New Handrails	\$ 352,500
Other Concrete Repairs	\$ 379,000
Interior Finishes and Temporary Walls	\$ 326,000
Misc. Repairs	\$ 82,500
General Conditions	\$1,365,500
Overhead and Profit (-10%)	\$ 758,302
Total:	\$ 8,341,322
Engineering Design Fees	\$ 131,500
Engineering Contract Admin. Estimate	\$ 415,000
Subtotal:	\$ 8,887,822

Contingency (15%)	\$ 1,251,198
Reimbursement to Reserves for Repair Investigation Expenses	\$ 628,726
Shoring Expense	\$ 146,722
Project Management by KAD	\$ 30,000
Total:	\$10,944,468

(Exhibit No. 2, Gallagher's letter dated July 8, 2009).

74. Gallagher's letter, further, evidenced the cost to make the necessary repairs to Buildings A and B per unit, pursuant to the proposed special assessment, would be as follows:

- | | | |
|----|---|-------------------|
| a. | A & B Unit Co-owners | \$88, 398.00; |
| b. | C & D Unit Co-owners - 3 Bdr.(Plaintiffs) | \$64, 868.00; and |
| c. | C & D Unit Co-owners - 4 Bdr (Plaintiffs) | \$68, 471.00 |

(Exhibit No.2, Gallagher's letter dated July 8, 2009).

75. All conditions precedent to the institution and maintenance of this action have been performed by the Plaintiffs, or have otherwise occurred.

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

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

77. The Defendant, by and through its agents, employees, and representatives, owed an affirmative duty of care to the Plaintiffs and all other similarly situated Unit Co-owners in Buildings C and D as prescribed by the provisions of the Master Deed and By-Laws, to exercise that degree of skill necessary to insure that the regime property was properly maintained and to keep

the Unit Co-owners informed of defects and deficiencies found, or discovered in Common Elements in order to protect Plaintiffs' property interests, and, finally to adequately fund the reserves to prevent defects and deficiencies.

78. As a direct and proximate result and consequence of the negligent, grossly negligent, and reckless acts or omissions of Defendant as set forth below, the Plaintiffs have spent sums of money to pay for the extraordinary repairs and reconstruction of major portions of Buildings A and B including the individual units. The Plaintiffs were improperly assessed in direct contravention of the provisions of the Master Deed and By-Laws, and required to pay an excessive amount of the special repair and reconstruction costs as described above even though these costs were directly caused by the negligence, gross negligence and recklessness of the Defendant, including, but not limited to, the following particulars, to-wit:

- a. In failing to properly inform the Unit Co-owners of the conditions known or which should have been known so that the Buildings A and B of the Shipyard Village HPR and the individual units could be repaired and protected from the damage due to the construction and design defects;
- b. In failing to properly oversee the regime property in order to insure that all defects were reported to the Co-owners so that repairs could proceed in timely manner and in accordance with the customary and ordinary standards of the construction, and the prescribed provisions of the Master Deed and By-Laws;
- c. In allowing and failing to report non-conforming or defective conditions;
- d. In failing to inform the Unit Co-owners of the true nature of the defective conditions of Buildings A and B and the individual units of the Shipyard Village HPR;
- e. In failing to and improperly pursuing or obtaining adequate remedies as a result of the defective condition of Buildings A and B of the Shipyard Village HPR;

- f. In failing to use available funds to mitigate the substantial damage which was and is resulting from the aforementioned significant, structural design or construction defects or deficiencies, and in failing to invest the available funds or otherwise prepare adequate reserves so as to fund the now required extraordinary repairs to Buildings A and B of the Shipyard Village HPR as described above;
- g. In failing to adequately fund the reserves for the maintenance, replacement, and repair of the General Common and Limited Common Elements, including, but not limited to, Buildings A and B of the Shipyard Village HPR;
- h. In failing to employ experienced contractors, architects, and engineers to maintain, replace, repair, assess and inspect the General Common and Limited Common Elements, including, but not limited to, Buildings A and B of the Shipyard Village HPR;
- i. In failing to timely institute, or intervene in litigation or administrative proceedings in their own name or on behalf of the Unit Co-owners on matters affecting the General Common and Limited Common Elements, including, but not limited to, Buildings A and B of the Shipyard Village HPR;
- j. In failing to uphold its common law duty to pursue a recovery and institute litigation for the construction defects and deficiencies associated with Buildings A and B of the Shipyard Village HPR;
- k. In failing to enforce the provisions of the Master Deed and Bylaws, regarding the maintenance, replacement, and repair of the General Common and Limited Common Elements, including, but not limited to, Buildings A and B of the Shipyard Village HPR;
- l. In failing to conduct periodic and timely Reserve Studies to plan and prepare for the future maintenance, replacement, and repair costs associated with the building components of Buildings A and B of the Shipyard Village HPR;
- m. In failing to individually assess A and B Unit Co-owners for their direct negligence in not maintaining, repairing, and/or replacing their windows and sliding glass doors which caused substantial water intrusion damage to Buildings A and B of the Shipyard Village HPR;
- n. In failing to adopt and present the 2010 budget to the Unit Co-owners at their annual meeting as required by the Master Deed, and By-Law of the Shipyard Village HPR;

- o. In failing to access and inspect all A and B Unit Co-owners' units at reasonable times to care for and prevent water intrusion damage to the Common Elements of Buildings A and B of the Shipyard Village HPR;
- p. In failing to individually assess the A and B Unit Co-owners for the soft costs to fix the substantial water intrusion damage to contiguous construction to their buildings by their lack of maintenance, repair and/or replacement of their unit's windows and sliding glass doors;
- q. In failing to plan for the necessary repairs and maintenance to Buildings A and B of the Shipyard Village HPR since their inception;
- r. In failing to maintain, repair and replace the deficient and defective conditions (as documented in SKA's reconstruction and repair budget and/or report) of the General Common and Limited Common Elements of Building A and B in timely manner. The Defendant, by and through agents, employees, and representatives, had actual knowledge and/or constructive notice of these deficient and defective conditions at least three (3) years before the Defendant instituted this ultra virus and excessive assessment against the Plaintiffs, in part, on January 1, 2010, and, consequently the Defendant is equitably estopped to assert the statute of limitations as an affirmative defense to Plaintiffs' claims, including, but not limited to, negligence, negligent misrepresentation, and breach of fiduciary duty all arising from the Defendant's negligent, grossly negligent, and reckless acts or omissions as described in Paragraph 78 and its subparts herein;
- s. In improperly assessing the Plaintiffs without their consent in the years of 2010 and 2011 (in violation of section 6.5 of the By-Laws) for improvements made to Buildings A and B's General Common Elements and Limited Common Elements in an amount in excess of one (1%) percent of the value of their units as set forth in the Master Deed, as properly amended, since such improvements were not approved in 2010 and 2011 by the Unit Co-owners holding two-thirds (2/3) of the percentage interest in the Common Elements;
- t. In allowing any claims that the regime property Unit Co-owners may have had against any potentially responsible party to be barred by the applicable statute of limitation or repose or by res judicata, such that the regime property co-owners have been forced to expend substantial amounts of money to repair, replace, and reconstruct substantial portions of Buildings A and B's common elements and the individual units;
- u. In failing to directly assess the A and B Unit Co-owners for the soft costs

and/or collateral damage resulting from water intrusion leaks around their unit's windows and sliding glass doors as required by the provisions in the Master Deed and By-Laws; and

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

79. The Defendant's acts as set out above caused no physical injury to regime's tangible property, nor did these acts result in a loss of use of that property. **Plaintiffs will be subject to economic loss damages, and, also, property 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's negligence and recklessness conduct.** These monetary damages are a direct and proximate result of the Defendant's 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 Defendant in an amount to be proved at trial, and such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence and Gross Negligent Misrepresentation)

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

81. Each of the wrongful acts as described above that occurred in connection with the failure to maintain, replace, and repair Buildings A and B's Common Elements and individual units were more than momentary thoughtlessness, inadvertence, or error in judgment on the part of the Defendant, by and through its agents, employees, and representatives, with regard to the representations, consisting of either affirmative statements or silence, when there was a duty to speak

to the Plaintiffs concerning its budget deficits and needed repair and reconstruction of Buildings A and B. Instead, these wrongful acts or omissions constitute an entire want of care and conscious indifference to the rights, welfare, or property interest of the Plaintiffs, and caused financial harm to the Plaintiffs such that these acts constituted gross negligence.

82. Said wrongful acts and conduct were the direct and proximate cause of the damages suffered by the Plaintiffs, and, upon information and belief, the Plaintiffs are entitled to recover actual damages from Defendant in an amount to be proved at trial.

83. Moreover, Plaintiffs are entitled to recover a judgment against the Defendant for punitive/exemplary damages for such gross negligence and heedless, careless, and reckless disregard for the rights, welfare, and property interest in a sum as this Court deems just and equitable.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

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

85. Upon information and belief, the Defendant through advertisements, product literature, and the statements and actions of its agents, made numerous representations, including, but not limited to, statements that the regime property was in good repair and properly maintained as mandated by the provisions of Master Deed and By-Laws.

86. Defendant, by and through its agents, employees, and representatives, upon information and belief, induced one or more of the Plaintiffs to affirm the purchase of their condominium unit (transactions in which the Defendant had pecuniary interests) by supplying false or misleading information (either by silence or affirmative statements) for their guidance in making

business decisions about these transactions, namely, those misrepresentations stated above.

87. Defendant, by and through its agents, employees, and representatives, owed a duty of care to see that it communicated truthful information to Plaintiffs with regard to the aforementioned transactions.

88. Defendant, by and through its agents, employees, and representatives, failed to exercise reasonable care or competence to obtain or communicate true information thereby breaching its duty of care to communicate truthful information as mandated by the provisions of the Master Deed and By-Laws for the regime property. Said false and/or misleading information, under the circumstances, was justifiably and reasonably relied upon by Plaintiffs to their detriment.

89. At all times relevant, the Defendant, by and through its agents, employees, and representatives, knew or should have known that the information supplied to Plaintiffs would be and was actually relied upon by Plaintiffs, and that Plaintiffs intended to rely upon the information in making business decisions. Moreover, Defendant, by and through its agents, employees, and representatives, had actual knowledge of the reliance on said misrepresentations by the Plaintiffs.

90. As a direct and proximate result of the reliance on the Defendant's misrepresentations, the Plaintiffs have suffered monetary losses and will continue to incur substantial pecuniary losses as described above, and, upon information and belief, are entitled to recover actual damages from the Defendant in an amount to be proved at trial, and such punitive damages as may be appropriate.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

91. The Plaintiffs reiterate each and every allegation set forth above as if fully

incorporated herein.

92. Article II, Section 2.1 of the Bylaws, Form of Administration, provides that the Council of Co-owners shall act by and through its Board of Directors.

93. Article VI, Section 6.1 of the Bylaws, Maintenance by Manager, provides the Board of Directors shall provide for the maintenance, repair, and replacement of the Common Elements.

94. Article VI, Section 8.3 of the Bylaws, Liability of Directors and Officers, provides in pertinent part:

No director or officer of the Council shall be liable to any Co-owner for any decisions, action, or omission made performed by such Director or officer in the course of his duties unless such Director or officer acted in bad faith or reckless disregard of the rights of any person or of the terms of the act, Master Deed, or these Bylaws.

95. Defendant Council of Co-owners is an agent of the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D at all times relevant to this Amended Complaint.

96. Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D reposed a special confidence in the Defendant's knowledge and skill because:

- a. The Defendant Council of Co-owners, by and through its agents, employees, and representatives, was well aware of the challenges presented by high-rise multi-residential buildings, EIFS and/or a hard coat stucco system after having amassed significant experience from its prior inadequate repairs and maintenance of Buildings A and B;
- b. The Defendant Council of Co-owners, by and through its agents, employees, and representatives, was responsible for maintaining, repairing, and replacing the buildings components of condominiums A and B after receiving authority and control over the General Common and Limited Common

Elements from the Developer; and

- c. The Defendant Council of Co-owners, by and through its agents, employees, and representatives, was possessed of extensive experience as managers, board members, and operators of multi-unit residential buildings complex in the coastal environment of Georgetown County.

97. A special relationship exists between the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, and the Defendant based on the following:

- a. The Defendant Council of Co-owners, by and through its agents, employees, and representatives' managers, board of directors, operators, and enforcers of the provisions of the Master Deed and By-Laws of the Shipyard Village HPR; and
- b. The knowledge of Buildings A and B's latent and patent defects that the Defendant Council of Co-owners, by and through its agents, employees, and representatives, gained from making inadequate repairs and incomplete maintenance to these Buildings.

98. Defendant Council of Co-owners, by and through its agents, employees, and representatives, owed a fiduciary duty to the plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, because, *inter alia*, they reposed a special confidence in the Defendant Council of Co-owners' knowledge, experience, and representations concerning the necessary maintenance, repair, and replacement of the building components for Buildings A and B.

99. In the maintenance, repair, and replacement of the General Common and Limited Common Elements of Buildings A and B, the Defendant, by and through its agents, employees, and representatives, knew or should have known that:

- a. Buildings A and B required a greater amount of maintenance due to the harsh coastal environment than a similar structure would require in a non-coastal environment;
- b. Buildings A and B's maintenance program, performed by the Defendant Council of Co-owners' agents, employees, and representatives was failing to prevent the rapid deterioration of both structures;

- c. Buildings A and B's concrete frame, concrete slabs, balconies, metal parapets, and EIFS and/or hard coat stucco system, were and are being structurally compromised from the unchecked water and salt intrusion;
- d. The cost of repairing the previous defects and deficiencies in Buildings A and B was incomplete;
- e. The cost of conducting a proper maintenance program to prevent similar damage in the future far exceeded the program which the Defendant Council of Co-owners had in place;
- f. The material injury to the market value of Buildings C and D due to the construction defects and deficiencies associated with Buildings A and B;
- g. The Litchfield Group/Developer failed to provide Defendant Council of Co-owners with sufficient funds to repair the existing defects and deficiencies when the Developer turned over ownership and control of the General Common and Limited Common Elements, including, but not limited to, Buildings A and B to the Defendant Council of Co-owners and the A and B Unit Co-owners; and
- h. The failure to repair Buildings A and B's numerous defects and deficiencies would require a substantial expenditure of funds in the future, and their construction costs would cause an extreme hardship on the Plaintiffs and other similarly situated Unit Co-owners located in Buildings C and D.

100. Defendant Council of Co-owners, by and through its agents, employees, and representatives, breached its fiduciary duty by acting in bad faith and without due regard to the interests of the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D by failing to disclose the defects and deficiencies associated with Buildings A and B, cited in preceding paragraphs, prior to the Plaintiffs purchasing their units in Buildings C and D.

101. In addition to its direct knowledge of the defects and deficiencies with Buildings A and B, the Defendant Council of Co-owners, by and through its agents, employees, and representatives, failed to undertake any investigation and consultation with third parties experts concerning the Buildings' defects and deficiencies, both known and unknown until 2007.

102. The Defendant Council of Co-owners, as described above, had and has fiduciary relationships and owes fiduciary duties and obligations to Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D. The Defendant Council of Co-owners, at all times relevant, was or should have been aware of the extensive and severe construction and design defects and/or problems associated Buildings A and B, due to: their duty to properly investigate for these type defects and problems; their duty to properly mitigate damaging effects of these type defects and problems; their duty to adequately invest for or otherwise fund the reserves for the above-described repairs and required maintenance to these buildings; and finally their duty obtain adequate information to safeguard the rights and property interests of Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D as mandated by the provisions of the Master Deed and By-Laws.

103. Furthermore, the Defendant Council of Co-owners, by and through its agents, employees, and representatives, failed to disclose the serious construction and design defects, and problems associated with Buildings A and B, in timely manner, to the Plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, to their extreme detriment, and, consequently, the Defendant Council of Co-owners breached important fiduciary obligations owed by them, including: its duty to comply with the affirmative obligations under the Master Deed and By-laws, its duty of care and skill, its duty of good conduct, its duty to give adequate information, its duty to act in a reasonable and informed manner in making decisions, its duty to acquire adequate and complete information, its duty to act only as authorized, its duty not to act as or for an adverse party, and its duty of loyalty; which breaches have proximately caused injures and damages to the Plaintiffs. As such, the Plaintiffs, upon information and belief, are entitled to recover from the

Defendant Council of Co-owners in an amount to be proved at trial, and such punitive damages as may be appropriate.

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

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

105. Article VII, Section 7.3 of the Bylaws, Enforcement, provides that the Board of Directors shall enforce the terms of the Act the Master Deed, and these Bylaws and the Regulations promulgated pursuant hereto by taking prompt and appropriate action to correct any violations.

106. Defendant Council of Co-owners, by and through its agents, employees, and representatives, breached and violated, including, but, not limited to, Sections 1.2, 1.10, 2.2, 2.11, 5.2, 5.6, 6.1, 6.3, 6.4, 6.5, and 7.3 of By-Laws, and Sections 3.6, 4.3, 5.6, 6.2, 7.4, 9.4, 12.1, 14.1, and 16.2 of Master Deed and for the reasons described above.

107. As a direct result of the Defendant Council of Co-owners' breach of the provisions of the Master Deed and By-Laws of the Shipyard Village HPR, the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, are entitled to an award of actual damages in amount to be proven at trial.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment)

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

109. This is an action for a declaratory judgment 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, for the purpose of determining the rights, status or other legal relations between the parties arising under the deed, statute, and municipal ordinance in actual controversy in this action.

110. Section 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. (Emphasis added)

111. A justiciable controversy exists between the parties regarding their rights, status, and other legal relations concerning the Shipyard Village Property Regime's Master Deed and By-Laws as described above.

112. Plaintiffs do not have an adequate remedy at law.

113. Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, are informed and believe that they are entitled to a decree from the Court ordering the following relief:

- a. For an Order of the Court declaring the Defendant Council of Co-owners, by and through its agents, employees, and representatives, breached and violated, including, but not limited to, Sections 1.2, 1.10, 2.2, 2.11, 5.2, 5.6, 6.1, 6.3, 6.4, 6.5, and 7.3 of the Master Deed and By-Laws of Shipyard Village HPR;
- b. For an Order of the Court declaring that the Plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, are entitled to a credit in the amount of One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars if settlement proceeds¹ were used to correct and repair the construction defects and deficiencies associated with Buildings A

¹ Settlement proceeds obtained in accordance with Civil action No.: 2002- CP-22-0447.

and B of the of the Shipyard Village HPR;

- c. For an Order of the Court declaring the Defendant Council of Co-Owners, by and through its agents, employees, failed to adequately fund the reserves for the maintenance and repair of the General Common Elements, and Limited Common Elements, including, but not limited to, Buildings A and B of the of the Shipyard Village HPR ; and
- d. For an Order of the Court declaring the Defendant Council of Co-Owners, by and through its agents, employees, failed to employ experienced contractors, architects, and engineers to maintain, replace, and conduct repair inspections of the General Common and Limited Common Elements, including, but not limited to, Buildings A and B of the Shipyard Village HPR;
- e. For an Order of the Court declaring the Defendant Council of Co-owners' Annual Budget for 2010 is improper, invalid, and in violation of Shipyard Village HPR's Master Deed and By-Laws, and the Act;
- f. For an Order of the Court directing the Defendant Council of Co-owners to individually assess A and B unit co-owners for their direct negligence in not maintaining, repairing, and/or replacing their windows and sliding glass doors which caused substantial water intrusion damage to Buildings A and B;
- g. For an Order of the Court declaring that the Plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, were improperly assessed by the Defendant Council of Co-owners, and, also, a determination by the Court of what percentage of the alleged common expense repair assessment cost they are obligated to pay for the repair and reconstruction of Buildings A and B as required by Shipyard Village HPR's Master Deed and By-Laws, and the Act;
- h. For an Order of the Court declaring that the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D (three (3) bedrooms), were improperly assessed by the Defendant Council of Co-owners, in the amount of Sixty Four Thousand Eight Hundred Sixty-Eight and No/100 (\$64, 868.00) Dollars or more in violation of the Shipyard Village HPR's Master Deed and By-Laws, and the Act;
- i. For an Order of the Court declaring that the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D (four (4) bedrooms), were improperly assessed by the Defendant Council of Co-owners, in the amount of Sixty Eight Thousand Four Hundred Seventy-One and No/100 (\$68, 471.00) Dollars or more in violation of the Shipyard Village HPR's

Master Deed and By-Laws, and the Act;

- j. For an Order of the Court declaring that the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, are entitled to a reimbursement, deduction, offset, and/or credit for their timely payments, under protest, of the invalid common expense repair assessment in the amount of Ten Million Nine Hundred Forty-Four Thousand Four Hundred Sixty-Eight and No/100 (\$10,944,468.00) Dollars or more for the special repair and reconstruction of Buildings A and B;
- k. For an Order of the Court declaring the improvements made to Buildings A and B's General Common Elements and Limited Common Elements in the years of 2010 and 2011 were in an amount in excess of one (1%) percent of the value of their units as set forth in the Master Deed, as amended, and, therefore, in violation of section 6.5 of the By-Laws since such improvements were not approved in 2010 and 2011 by the Unit Co-owners holding two-thirds (2/3) of the percentage interest in the General Common Elements;
- l. For an Order of the Court declaring the Defendant Council of Co-owners' alleged common expense repair assessment in the amount of Ten Million Nine Hundred Forty-Four Thousand Four Hundred Sixty-Eight and No/100 (\$10,944,468.00) Dollars or more was improperly apportioned between the A and B verses C and D Unit Co-owners for the special repair and reconstruction of Buildings A and B, and is in violation of the Shipyard Village HPR's Master Deed and By-Laws;
- m. For an Order of the Court declaring that the Defendant Council of Co-owners, by and through agents, employees, and representatives, had actual and/or constructive knowledge of these deficient and defective conditions at least three (3) years before Defendant Council of Co-owners instituted this ultra virus and excessive assessment against the Plaintiffs on January 1, 2010, and, therefore, this special repair and reconstruction assessment (as it relates to the Plaintiffs) is time barred by the three (3) year statute of limitations. The Plaintiffs consequently plead the statute of limitations as an affirmative defense and/or reply to the payment of the Defendant Council of Co-owners' ultra virus and excessive assessment in the amount of Ten Million Nine Hundred Forty-Four Thousand Four Hundred Sixty-Eight and No/100 (\$10,944,468.00) Dollars or more for the special repair and reconstruction of Buildings A and B; and
- n. In failing to maintain, repair and replace the deficient and defective conditions (as documented in SKA's reconstruction and repair budget and/or report) of the General Common Elements and Limited Common

Elements of Building A and B in a timely manner. The Defendant Council of Co-owners, by and through agents, employees, and representatives, had actual knowledge and/or constructive notice of these deficient and defective conditions at least three (3) years before the Defendant Council of Co-owners instituted this ultra virus and excessive assessment against the Plaintiffs, in part, on January 1, 2010, and, consequently the Defendant Council of Co-owners is equitably estopped to assert the statute of limitations as an affirmative defense to Plaintiffs' claims, including, but not limited to, negligence, negligent misrepresentation, and breach of fiduciary duty all arising from the Defendant Council of Co-owners' negligent, grossly negligent, and reckless acts or omissions as described in Paragraph 78 and its subparts herein.

FOR A SEVENTH CAUSE OF ACTION
(Injunctive Relief)

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

115. The Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, have been injured as a direct and proximate result of the Defendant Council of Co-owners, by and through its agents, employees, and representatives' violation of the provisions of Shipyard Village HPR's Master Deed and By-Laws.

116. Injunctive relief is necessary to remedy the past violations of the Defendant Council of Co-owners, and prevent future injury to the Plaintiffs.

117. Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, have no adequate remedy at law for the above-described acts and omissions of the Defendant Council of Co-owners, by and through its agents, employees, and representatives, and they will suffer irreparable harm unless they obtain injunctive relief as described below.

118. Plaintiffs and other similarly situated unit co-owners located in Buildings C and D, seek an Order of the Court granting them the following relief from the Defendant Council of Co-

owners, its agents, employees, and representatives, as set forth below:

- a. A permanent injunction enjoining and restraining the Defendant Council of Co-owners, its agents, employees, and representatives, from utilizing the settlement proceeds in the amount of One Million Five Hundred Thousand and No/100 (\$1, 500, 000. 00) Dollars (received pursuant to Civil Action No.: 2002-CP-22-0447), in any manner inconsistent with rights of any Unit Co-owner, or of the terms and conditions of Master Deed, and Bylaws of Shipyard Village HPR;
- b. A permanent mandatory injunction directing the Defendant Council of Co-owners, its agents, employees, and representatives, to credit the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D for the specific amount of settlement proceeds (obtained in accordance with Civil Action No.: 2002-CP-22-0447) which were used in the correction and repair of the construction defects and deficiencies associated with Buildings A and B of the Shipyard Village HPR;
- c. A permanent mandatory injunction directing the Defendant Council of Co-owners, its agents, employees, and representatives, to reimburse, deduct, offset, and/or credit the Plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, for their timely payments, under protest, of the invalid common expense repair assessment in the amount of Ten Million Nine Hundred Forty-Four Thousand Four Hundred Sixty-Eight and No/100 (\$10,944,468.00) Dollars or more for the special repair and reconstruction of Buildings A and B; and
- d. A permanent mandatory injunction enjoining the Defendant Council of Co-owners, its agents, employees, and representatives, from continuing to violate the provisions of the Shipyard Village HPR's Master Deed and By-Laws resulting from their improper and unauthorized improvements of the regime's common elements.

FOR A EIGHTH CAUSE OF ACTION
(Specific Performance)

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

120. Defendant Council of Co-owners, through its failure to require the Unit Co-owners in Buildings A and B to repair damage to the Common Elements resulting from leaks around the

windows and sliding glass doors of the units, have breached affirmative duties and obligations owed to the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D as proscribed by the Shipyard Village HPR's Master Deed and By-Laws.

121. Defendant Council of Co-owners, by and through its agents, employees, and representatives, have further breached affirmative duties and obligations owed to the Plaintiffs, and all other similarly situated Unit Co-owners located in Buildings C and D, by failing to effect the repairs to the common elements damaged by water intrusion from leaks around the window units and sliding glass doors of the Unit Co-owners in Buildings A and B and by not individually assessing those costs to A and B Unit Co-owners.

122. There is no adequate remedy at law to remediate for the foregoing breaches on the part of the Defendant Council of Co-owners.

123. Plaintiffs request an Order of the Court entering a judgment on their behalf and all other similarly situated Unit Co-owners located in Buildings C and D, and, further, requiring the Defendant Council of Co-owners to specifically perform its affirmative duties and obligations under the Shipyard Village HPR's Master Deed and By-Laws by imposing individual assessments upon the A and B Unit Co-owners for all water intrusion damages to the common elements of Buildings A and B as a consequence of their units' leaking windows and sliding glass doors.

FOR A NINTH CAUSE OF ACTION
(Judicial Dissolution of the Council of Co-Owners)

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

125. Plaintiffs' action for Involuntary or Judicial Dissolution is filed pursuant to the provisions of S.C. Code Ann. § 33-31-1430 (2006).

126. Plaintiffs hold more than five (5%) percent of the voting power of the Defendant Council of Co-owners as required by the South Carolina Nonprofit Corporation Act in order to bring this action for Judicial Dissolution under S.C. Code Ann. § 33-31-1430(a)(2) (2006).

127. Defendant Council of Co-owners is a mutual benefit corporation organized and existing under the laws of the State of South Carolina and the South Carolina Nonprofit Corporation Act, with its principal office located at Litchfield by the Sea, in the Town of Pawleys Island, County of Georgetown, State of South Carolina.

128. Don S. Johnson ("Johnson"), Doris R. Bray ("Bray"), Jim Poag ("Poag"), Clinton Carter ("Carter"), Robert Postiglione ("Postiglione"), Dr. Jack C. Eblin ("Eblin"), and Tim Cassidy ("Cassidy") are the current directors of Defendant Council of Co-owners' corporation, and have held those offices at all times relevant mentioned in Plaintiffs' action for Judicial or Involuntary Dissolution.

129. By virtue of their position as the majority shareholders in the Defendant Council of Co-owners' corporation, Bray, Poag, Eblin, and Carter (as the current majority directors from Buildings A and B) along with the other A and B Unit Co-owners, owe both a fiduciary duty and a duty good faith and fair dealing to Plaintiffs and those similarly situated Unit Co-owners in Buildings C and D.

130. Plaintiffs assert the past and current directors and the A and B Unit Co-owners as majority shareholders in control of the Defendant Council of Co-owners, have acted, and are acting, and will act in a manner that is ultra vires, illegal, oppressive, or unfairly prejudicial either to the corporation or to the Plaintiffs as minority shareholders as described under S.C. Code Ann. § 33-31-1430(a)(2)(ii) and (iv) (2006). For example, they have violated such affirmative duties by,

among other things, engaging in: (a) burdensome, harsh, willful and wrongful conduct; (b) a lack of probity and fair dealing in the affairs of the Council of Co-owners to the detriment and prejudice of the Plaintiffs and other similarly situated residents of Buildings C and D; (c) a visual departure from the standards of fair dealing; (d) a violation of the fair play on which every Unit Co-owner who entrusts his/her money to a corporation is entitled to rely; (e) the management of the Council of Co-owners with a view toward directly or indirectly deriving personal profit and advantage from their position as majority shareholders which is not shared by the Plaintiffs as minority shareholders; (f) and recklessly deviating from their duty to enforce and abide by the terms of the Master Deed and By-laws, and their proper Amendments.

131. Specifically, Plaintiffs assert, including, but not limited to, the following grounds for Judicial Dissolution of Defendant corporation, to-wit:

- a. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to properly assess the Unit Co-owners in Buildings A and B for the repair costs that are their responsibility pursuant to the Master Deed and By-Laws and their lawful Amendments. Additionally, the Plaintiffs are being over-assessed based on the Defendant Council of Co-owners' failure to properly maintain and repair the General Common and Limited Common Elements of Buildings A and B;
- b. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to designate and/or earmark the One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars of the remaining settlement proceeds² from the C and D lawsuit for the future maintenance and repair of the Common Elements of Buildings C and D of the Shipyard Village HPR;
- c. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to adequately fund the reserves for the maintenance, replacement, and repair of the General Common and Limited Common Elements of Buildings A, B, C, and D by Not advising the Reserve Specialist that the One Million Five

² Settlement proceeds obtained in accordance with Civil action No.: 2002- CP-22-0447.

Hundred Thousand and No/100 (\$1,500,000.00) Dollars as mentioned in the 2007 Reserve Study prepared by Miller Dodson was only earmarked for the Common Elements of Buildings C and D;

- d. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to properly maintain, repair, replace the General Common and Limited Common Elements of Buildings A, B, C, and D by **NOT** having a systematic annual inspection of the Common Elements to use as a basis for routine preventative maintenance of the Common Elements;
- e. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to set aside adequate reserves for capital repairs and replacements, in conjunction with its failure to properly maintain, repair and replace the General Common and Limited Common Elements of Buildings A, B, C, and D in a timely manner which has contributed and is contributing to the extraordinarily high cost of repairs to these buildings which have increased substantially over time;
- f. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to fully disclose to the Plaintiffs and other similarly situated residents of Buildings C and D, the true conditions for capital repairs and replacements of Buildings A, B, C, and D as required by Sections 2.14 and 5.2 of the By-Laws, in conjunction with its failure to properly maintain, repair and replace the General Common and Limited Common Elements of these buildings;
- g. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, continues to act in an ultra vires, oppressive, and/or unfairly prejudicial manner towards the rights and interest of the Plaintiffs by attempting to enforce an illegal Window Amendment known also as "The Third Amendment to the Master Deed" which was **NOT** properly adopted by a proxy vote mailed to the Association members because the amendment was not properly voted on at a meeting as required by Section 1.3 of the By-Laws. Furthermore, the record indicates the Association members did **NOT** unanimously consent to the proposed amendment as required by Section 1.5 of the By-Laws;
- h. That the improvements made to Buildings A and B's General Common and Limited Common Elements in the years of 2010 and 2011 were in an amount in excess of one (1 %) percent of the value of these units as set forth in the Master Deed and By-Laws and their Amendments. Accordingly, the Defendant Council of Co-owners violated Section 6.5 of the By-Laws since such improvements were not approved in 2010 and 2011 by the Unit Co-

owners holding two-thirds (2/3) of the percentage interest in the General Common and Limited Common Elements of Buildings A, B, C, and D;

- i. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to comply with its affirmative duty to adequately fund reserves for the maintenance, repair and replacement of the General Common and Limited Common Elements of Buildings A, B, C and D as required by Section 5.2 of the By-Laws;
- j. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has denied and continues to deny Plaintiffs adequate and/or complete access to the corporations' books and records, that is, its receipts and disbursements connected with its operation, administration, maintenance, repair and replacement of the regime property in violation of Section 6.7 of the Master Deed, as amended;
- k. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to keep accurate and complete corporate books and records as required by Section 6.7 of the Master Deed, as amended;
- l. That the Defendant Council of Co-owners, mismanagement of the corporate affairs, assets, and regime property as described above amounts to oppressive behavior against Plaintiffs and other similarly situated Unit Co-owners in Buildings C and D;
- m. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to affirmatively enforce the terms of the Master Deed and By-Laws and their lawful Amendments for the mutual benefit of all Unit Co-owners, like the Plaintiffs, as required by subsection (6)(2.2) of the By-Laws, as amended;
- n. That the Defendant Council of Co-owners, by and through its agents, employees, and representatives, has failed and continues to fail to govern the regime property for the mutual benefit of all Unit Co-owners, like the Plaintiffs, as required by subsection (7)(2.2) of the By-Laws, as amended; and
- o. In acting unreasonably in other such ways as previously discussed in this 4th Amended Complaint, and, also, as may be revealed during the discovery and as shown at the trial of this action.

132. The voting structure of the Defendant corporation as established under the Master

Deed and By-Laws is such that the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D cannot now or in the future avoid this oppressive misconduct or otherwise protect their rights with the regime.

133. Plaintiffs request that this Court make and file its Order requiring directors to wind up the affairs of Defendant corporation, and dissolve Defendant corporation, subject to the supervision of this Court, in accordance with the provisions of S.C. Code Ann. § 33-31-1430 (2006); that this court entertain such proceedings as may be necessary or proper for the involuntary winding up or dissolution of Defendant corporation; and that this Court grant Plaintiffs costs, and such other and further relief as the Court deems just and proper.

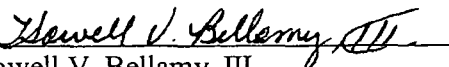
WHEREFORE, having fully set forth their Fourth Amended Complaint, the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D pray for the following relief:

- a. For an Order of the Court finding the Defendant Council of Co-owners, by and through its agents, employees, and representatives, breached and violated, including, but not limited to, Sections 1.2, 1.10, 2.2, 2.11, 5.2, 5.6, 6.1, 6.3, 6.4, 6.5, and 7.3 of Shipyard Village HPR's By-Laws, and Sections 3.6, 4.3, 5.6, 6.2, 7.4, 9.4, 12.1, 14.1, and 16.2 of Shipyard Village HPR's Master Deed;
- b. As to the **First, Second, Third, and Fourth Causes of Action**, for the conduct complained of herein, the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, 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 Council of Co-owners' willful and reckless violations of the provisions of the Act, and Shipyard Village HPR's Master Deed and By-Laws;
- c. As to the **Fifth Cause of Action**, the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, are entitled to an award of actual damages in an amount to be proven at trial;
- d. As to the **Sixth Cause of Action**, the Plaintiffs and all other similarly situated Unit Co-owners located in Buildings C and D, request a decree from the Court ordering the following relief, in whole or in part, petitioned for in subparagraphs (a) through

(n) of Paragraph 113 of the Fourth Amended Complaint;

- e. As to the **Seventh Cause of Action**, the Plaintiffs request an Order of the Court granting the following injunctive relief, in whole or in part, petitioned for in subparagraphs (a) through (d) of Paragraph 118 of the Fourth Amended Complaint;
- f. As to the **Eighth Cause of Action**, the Plaintiffs request an Order of the Court entering a judgment on their behalf, and all other similarly situated Unit Co-owners located in Buildings C and D, and, further, requiring the Defendant Council of Co-owners to specifically perform its affirmative duties and obligations, required under the Shipyard Village HPR's Master Deed and By-Laws, by imposing individual assessments upon the A and B Unit Co-owners for all the water intrusion damage to the common elements of Buildings A and B as a consequence of their units' leaking windows and sliding glass doors;
- g. As to the **Ninth Cause of Action**, the Plaintiffs request an Order of the Court requiring directors to wind up the affairs of Defendant Council of Co-owners corporation, and dissolve Defendant Council of Co-owners corporation, subject to the supervision of this Court, in accordance with the provisions of S.C. Code Ann. § 33-31-1430 (2006); that this court entertain such proceedings as may be necessary or proper for the involuntary winding up or dissolution of Defendant Council of Co-owners corporation; and that this Court grant Plaintiffs costs, and such other and further relief as the court deems just and proper. Alternatively, that the Court fashion a remedy which it deems proper for protecting the interests of the Plaintiffs in this mutual benefit corporation;
- h. For attorneys fees, costs and expenses incurred in this action;
- i. For a trial by Jury; and
- j. For such other and further relief as the Court may deem proper.

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Myrtle Beach, S. C.