

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

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Appellate Case No. 2012-213333

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The St. Clements Homeowners  
Association, Inc.,

Appellant,

v.

BE-MI, Inc.,

Respondent.

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RECORD ON APPEAL  
VOLUME II

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## VOLUME II

### Testimony (continued)

#### Barbara Brown - Recall

Direct Examination .....	296
Cross Examination .....	304
Redirect Examination .....	310
Direct Examination by The Court .....	310
Second Redirect Examination .....	315

#### Leon Bechtel

Direct Examination .....	319
Cross Examination .....	329
Redirect Examination .....	346
Recross Examination .....	347
Direct Examination by The Court .....	347
Second Redirect Examination .....	351

Closing Arguments .....	352
-------------------------	-----

### Plaintiff's Trial Exhibits

1 .....	413
1A .....	471
2 .....	472
3 .....	475
3A .....	479
4 .....	482
5 .....	485
6 .....	487
7 .....	489
8 .....	491
9 .....	498
10 .....	500
11 .....	502
12 .....	505
13 .....	506
14 .....	509
15 .....	518
16 .....	519
17 (including emails dated 9/21/09 and 9/28/09) .....	520

### Defendant's Trial Exhibits

1 .....	527
2 .....	528
3 .....	534

VOLUME II (continued)

Defendant's Trial Exhibits (continued)

4.....	535
5.....	536
6.....	537
7.....	538
8.....	539
9.....	540
10.....	541
11.....	542
12.....	543
13.....	544
14.....	545
15.....	546
16.....	547
17.....	548
Certificate of Appellant.....	549

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[CONTINUED FROM VOLUME I]

216

1 HER SHE'S STILL UNDER OATH,

2 THAT WILL BE FINE WITH ME.

3 THE COURT: OKAY. MS. BROWN, WE ARE

4 NOT GOING TO RE-SWEAR YOU

5 AS YOU WERE SWORN

6 YESTERDAY. WE'RE JUST

7 GOING TO REMIND YOU THAT

8 YOU WERE SWORN AS OF

9 YESTERDAY.

10 MS. BROWN: THANK YOU.

11 DIRECT EXAMINATION

12 BY MR. BARNETT:

13 Q: Ms. Brown, of course, you are the president of  
14 the association in this case, the plaintiff?

15 A: Yes.

16 Q: Okay. Ms. Brown, you were present yesterday, and  
17 I believe you heard some testimony given by the  
18 defense concerning the parking availability at  
19 St. Clements; ---

20 A: Yes.

21 Q: --- is that correct? And there was some  
22 testimony given, as you may recall, about the  
23 change in trash pickup procedures, and Mr.  
24 Pistone, I believe, indicated he felt that might  
25 have left three or four spaces where people could

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

5 A: All right. There were so many users on that  
6 compactor, it was a big problem. So we elected  
7 to go with the city compactor three blocks away  
8 and then stop using the site; and now that that's  
9 empty, it was mentioned maybe cars could park in  
10 there. Well, only four feet of that site is on  
11 our property. Nine feet is on the adjacent  
12 property. The adjacent property owns that, that  
13 ---

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

17 A: Yes.

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

19 A: Yes.

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

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

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

1       **that one that was jointly used?**

2       A: Yes.

3       **Q: And what trash pickup procedures were**  
4       **implemented?**

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

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

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

1 use.

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

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

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

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

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

12 A: Yes.

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

15 A: That's correct.

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

18 A: Because it was always made to be an access space.

19 You've got large pool equipment. You've got a

20 lawn mower. The maintenance man has an office

21 there. He has supplies. You've got pool

22 supplies. So that was always an access area.

23 Like I said, it's not the same width as a parking

24 space, and it was never numbered with the parking

25 spaces. It was never a parking space.

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

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

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

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

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

18 A: Yes.

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

20 A: Yes.

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

23 A: Since 1994.

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

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

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

6 A: Two.

7 **Q: And one is below ground?**

8 A: Yes.

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

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

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

14 A: Yes.

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

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

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

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

8       A: Yes. It's often full.

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

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

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

23       A: Calendar.

24       **Q: --- calendar from 2007?**

25       A: Yes.

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

2           A: May, May 30th, 2007.

3           **Q: Was the date he took the pictures?**

4           A: That's what, what he said.

5           MR. BARNETT: WE MOVE TO INTRODUCE A COPY

6           OF THE MAY 2007 CALENDAR

7           INTO EVIDENCE.

8           MR. NEWBY: NO OBJECTION.

9           THE COURT: WITHOUT OBJECTION.

10          PLAINTIFF'S EXHIBIT NUMBER 16

11          ADMITTED INTO EVIDENCE

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

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

21          **Q: Okay, thank you. I have no further questions.**

22          **Mr. Newby may have a question for you.**

23          A: Okay.

24          THE COURT: MR. NEWBY?

25          MR. NEWBY: JUST A COUPLE.

224

1 CROSS EXAMINATION

2 BY MR. NEWBY:

3 **Q: Ms. Brown, ---**

4 A: There was something that, do you have any -- Are  
5 you allowed to question me any more on this?

6 Because there's something ---

7 THE COURT: NO, HE'S NOT.

8 MS. BROWN: OKAY, OKAY.

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

10 MS. BROWN: OKAY, ALL RIGHT.

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

12 MS. BROWN: OKAY.

13 THE COURT: --- NEWBY'S TURN.

14 MS. BROWN: ALL RIGHT.

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

17 MS. BROWN: OKAY.

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

20 A: Yes.

21 **Q: And who signed that contract?**

22 A: I did.

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

24 A: For the association.

25 **Q: As the president?**

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

3 **Q: Anyone has the ---**

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

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

7 A: Yes, I do.

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

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

15 **Q: And that's okay with you?**

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

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

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

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

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

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

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

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

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

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

11 **Q: Tell us what you think.**

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

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

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

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

23 A: I would think so.

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

1 A: Yes.

2 Q: --- is that right?

3 A: Yes.

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

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

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

11 A: Yes, we did. We did.

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

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

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

20 A: Yes.

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

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

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

3 **Q: The maintenance man ---**

4 A: Yes.

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

6 A: Yes.

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

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

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

19 A: Yes.

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

22 A: No.

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

24 A: No.

25 **Q: Well, how does he do it?**

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

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

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

9 **Q: Including no objection by you?**

10 A: That's correct.

11 **Q: Has there been any objection by the board?**

12 A: No.

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

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

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

230

1 A: That's true.

2 **Q: Have you chosen not to tell him that?**

3 A: It has not come up.

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

6 THE COURT: OKAY. MR. BARNETT?

7 RE-DIRECT EXAMINATION

8 BY MR. BARNETT:

9 **Q: Ms. Brown, Mr. Newby asked you about the**  
10 **president signing certain agreements. As the**  
11 **president, are there agreements that you would**  
12 **require board approval before you would sign it?**

13 A: Well, we would have board approval, yes, but may  
14 have one signature on it.

15 **Q: And are there agreements that under the terms of**  
16 **your Master Deed and bylaws require a board**  
17 **written consent?**

18 A: Well, one of the duties would be to sign  
19 contracts and things like that. So, yes, that is  
20 one of our duties.

21 **Q: Okay, thank you.**

22 **MR. NEWBY: NOTHING FURTHER.**

23 **EXAMINATION**

24 BY THE COURT:

25 **Q: Ms. Brown, I have a couple of questions. Why did**

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

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

16          **Q: I'm sorry. I ---**

17          A: I'm sorry.

18          **Q: I didn't understand that.**

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

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

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

3 A: Okay.

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

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

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

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

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

22 A: Yes.

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

24 A: Yes.

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

1 A: Uh-huh (affirmative response).

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

6 A: Uh-huh (affirmative response).

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

9 A: Uh-huh (affirmative response).

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

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

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

1 have added them both in the lawsuit.

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

6 Q: But you were a homeowner at the time?

7 A: Yes.

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

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

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

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

17 Q: No.

18 A: Okay.

19 Q: Listen to my question ---

20 A: Okay.

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

25 A: Yes.

1 Q: And what was the answer given?

2 A: It was two different issues.

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

4 Thank you.

5 MR. BARNETT: YOUR HONOR, MAY I ASK HER A

6 QUESTION ON THAT?

7 THE COURT: CERTAINLY.

8 RE-DIRECT EXAMINATION

9 BY MR. BARNETT:

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

16 A: Yes.

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

19 A: Yes.

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

24 A: Yes.

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

1 LEADING THE WITNESS, HE'S  
2 ELICITING HEARSAY EVIDENCE,  
3 WHICH I THINK IS  
4 INAPPROPRIATE. SHE'S  
5 TESTIFIED FULLY ON THIS  
6 POINT. I MEAN, THE FACTS  
7 ARE PRETTY OBVIOUS ANYWAY,  
8 BUT I WOULD OBJECT TO THAT  
9 QUESTION OR LINE OF  
10 QUESTIONING.

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

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

17 MR. BARNETT: I'M NOT TRYING TO -- I'M  
18 NOT SUGGESTING AN ANSWER.

19 I'M JUST SAYING WAS IT  
20 DISCUSSED WITH THE  
21 ATTORNEY.

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

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

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

1           **should be included, was that discussed with the**  
2           **attorney?**

3           A: Yes.

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

7           A: Two different issues.

8           MR. NEWBY: YOUR HONOR, IT'S HEARSAY,  
9           WHATEVER THE ATTORNEY SAID.  
10          EVEN THOUGH THE ATTORNEY  
11          WAS THE AGENT FOR THE POA,  
12          AND WHETHER HE OR SHE WAS  
13          RIGHT OR WRONG IN THEIR  
14          ADVICE, THE BOARD IS BOUND  
15          BY IT, AS THEIR AGENT, BUT  
16          STILL, HE'S ELICITING  
17          HEARSAY.

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

1 QUESTION IS WHY DID THE  
2 ASSOCIATION NOT DO  
3 SOMETHING, AND THE FACT  
4 THAT HE MAY HAVE TOLD THEM  
5 SOMETHING, WHETHER THAT'S  
6 TRUE OR NOT TRUE, BEARS ON  
7 WHY THEY DID OR DIDN'T DO  
8 SOMETHING.

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

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

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

22 **Q: Thank you.**

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

1 MR. BARNETT: I DO, ONE.

2 THE COURT: ALL RIGHT, THANK YOU VERY  
3 MUCH. YOU MAY CALL THAT  
4 PERSON.

5 MR. BARNETT: THE PLAINTIFF CALLS LEON  
6 BECHTEL TO THE STAND.

7 LEON BECHTEL, AFTER HAVING BEEN CALLED TO THE STAND  
8 AND DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. BARNETT:

11 **Q: Mr. Bechtel, are you an owner at St. Clements?**

12 A: Yes, I am.

13 **Q: And when did you purchase your unit at St.  
14 Clements?**

15 A: December of '87.

16 **Q: All right, sir. So you were one of the very  
17 first owners; is ---**

18 A: Correct.

19 **Q: You've owned a unit there continuously, at all  
20 times since then?**

21 A: Correct.

22 **Q: And have you ever served on the board of  
23 directors for the association, the plaintiff in  
24 this case?**

25 A: Yes, I have.

1 Q: When were you first elected to the board?

2 A: I was elected at the first elected board, and  
3 that was in 1988.

4 Q: All right. And ---

5 A: November of 1988.

6 Q: And between the time of the filing of the Master  
7 Deed in December of '87 and your election in  
8 November of '88, who served on the board during  
9 almost that one year?

10 A: That was an appointed board, and that was Dwight  
11 Cox, Guy Collins, and Charlotte Collins.

12 Q: And did you attend the annual meetings of the  
13 members in November of '88, '89, and 1990?

14 A: Yes, I did.

15 Q: Hand you what has been marked Plaintiff's  
16 Exhibits 3, 3A, and 4 and ask you if you  
17 recognize those as the minutes of those three  
18 annual homeowners meetings.

19 A: (Pauses while reviewing documents.)

20 Q: Are those the minutes of those meetings?

21 A: Yes, they are.

22 MR. BARNETT: MOVE TO INTRODUCE THESE  
23 INTO EVIDENCE, PLEASE.

24 MR. NEWBY: MR. NEWBY, ANY OBJECTION TO  
25 3, 3A, AND 4?

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

3 THE COURT: SO ADMITTED.

4 PLAINTIFF'S EXHIBIT NUMBER 3

5 PLAINTIFF'S EXHIBIT NUMBER 3A

6 PLAINTIFF'S EXHIBIT NUMBER 4

7 ADMITTED INTO EVIDENCE

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

10 A: Three.

11 **Q: And who was elected along with yourself at the**  
12 **1988 meeting?**

13 A: Marshall Melton and Randolph Morgan.

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

15 A: Correct.

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

19 A: That's correct.

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

22 A: Elected directors.

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

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

5 A: Yes, I did.

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

9 A: Yes.

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

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

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

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

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

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

4 A: No.

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

8 A: No.

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

11 A: No.

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

14 A: No.

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

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

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

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

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

7 A: Yes, I did.

8 **Q: And what did you observe at that time?**

9 A: I observed a completed awning and deck.

10 **Q: Were there any board meetings between August of**  
11 **1990 and the annual election in November of 1990?**

12 A: Yes. I believe there were.

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

15 A: This deck issue did not come up.

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

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

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

1           **have been running at that time?**

2           A: Yes.

3           **Q: Who did you discuss it with?**

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

6           MR. NEWBY: YOUR HONOR, I'M GOING TO

7           OBJECT TO ANY HEARSAY FROM

8           SOMEBODY NOT IN THE

9           COURTROOM AND NOT HAVING

10          TESTIFIED.

11          MR. BARNETT: YOUR HONOR, THE ISSUE, I

12          THINK, IS, WAS THE BOARD

13          CONCERNED ABOUT IT AND HOW

14          WAS IT BROUGHT TO THEIR

15          ATTENTION.

16          THE COURT: MR. BECHTEL, PLEASE DON'T

17          TESTIFY AS TO WHAT DR.

18          CLEMENTS SAID TO YOU.

19          MR. BECHTEL: OKAY.

20          THE COURT: AS A RESULT OF WHAT DR.

21          CLEMENTS SAID TO YOU, YOU

22          CAN TESTIFY AS TO WHAT

23          ACTIONS YOU TOOK.

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

1 held in November of 1990 at the annual meeting?

2 A: Correct.

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

5 A: Myself and Dr. Clements and Marshall Melton.

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

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

13 Q: Let me show you what's been marked Plaintiff's  
14 Exhibit Number 5, which was the November 21,  
15 1991, letter from the property manager to the  
16 board and ask you if you recognize that.

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

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

19 A: Yes, I did.

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

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

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

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

9 A: No.

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

17 A: Yes, I did.

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

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

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

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

6 A: No.

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

11 A: No.

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

19 A: Yes.

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

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

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

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

10 A: No.

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

17 A: No, not to my knowledge.

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

21 A: Yes.

22 MR. BARNETT: NO FURTHER QUESTIONS.

23 THE COURT: MR. NEWBY?

24 CROSS EXAMINATION

25 BY MR. NEWBY:

1 Q: Good morning.

2 A: Good morning.

3 Q: Do you pronounce it Bechtel or Bechtel?

4 A: Bechtel, but I'm flexible.

5 Q: What's that?

6 A: I'm flexible.

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

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

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

13 A: Vice-president and secretary/treasurer.

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

16 A: I don't recall.

17 Q: Are you on the board now?

18 A: No.

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

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

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

22 A: Correct.

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

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

3 A: I don't recall that.

4 Q: Did you testify at the previous ---

5 A: No.

6 Q: --- trial?

7 A: No, I did not.

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

14 A: Uh-huh (affirmative response).

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

16 A: Yes.

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

21 A: Could you restate that?

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

25 A: Yes.

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

3 A: Correct.

4 Q: When some friends told you about ---

5 A: Verbal, correct.

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

8 A: Correct.

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

11 Clements?

12 A: Yes. There certainly was.

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

15 A: Correct.

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

21 A: Correct.

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

25 A: Correct.

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

3 A: That's my recollection.

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

7 A: They reported that.

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

10 A: No.

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

15 A: No.

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

17 A: They reported that they went.

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

20 A: No.

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

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

25 Q: Were they trying to get more insurance money?

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

3 **Q: You don't?**

4 A: No.

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

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

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

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

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

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

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

1 **building after Hugo?**

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

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

6 A: What was a big deal?

7 **Q: The damage to the building.**

8 A: Yes. It was a big deal.

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

11 A: It certainly was.

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

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

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

20 A: No.

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

23 A: No.

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

1 deck was approved.

2 A: Correct.

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

5 A: Correct.

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

8 A: Can't tell you that I did.

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

11 A: Yeah.

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

14 A: Yes.

15 Q: What business are you in?

16 A: Real estate business.

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

18 A: 25 plus years.

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

22 A: Not without following up in writing.

23 Q: Never have?

24 A: I don't recall.

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

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

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

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

8       MR. BARNETT: YOUR HONOR, I MUST OBJECT.

9       THE ISSUE IS THIS LAWSUIT,  
10       THIS ASSOCIATION. WHATEVER  
11       HE MAY OR MAY NOT HAVE DONE  
12       IN HIS BUSINESS IN THE PAST  
13       IS NOT RELEVANT TO THIS  
14       LAWSUIT. THE LAW IS WHAT  
15       THE LAW IS. HE'S TRYING TO  
16       GET INTO SOME LEGAL MATTERS  
17       BY TALKING ABOUT HIS  
18       BUSINESS OVER THE YEARS AND  
19       OTHER MATTERS. IT'S  
20       IRRELEVANT.

21       THE COURT: OVERRULED. IT'S CROSS  
22       EXAMINATION.

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

1       you?

2       A: Yes.

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

5       A: In some cases, not in all cases.

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

9       A: Sure.

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

11      A: Yeah.

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

14      A: I would agree with that.

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

17      A: Correct.

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

22      A: Correct.

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

25      A: Yes.

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

4 A: No.

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

7 A: No.

8 Q: Do you rent your unit?

9 A: Yes.

10 Q: Do you have more than one unit?

11 A: No.

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

14 A: What years are you referring to?

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

16 A: I had a good year this year.

17 Q: You did?

18 A: Yeah.

19 Q: Do you think the entire property did?

20 A: Say that again.

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

23 A: I don't know what they did.

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

25 A: Not a good year.

1 Q: Less traffic?

2 A: Less traffic.

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

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

9 Q: And my question was, notwithstanding the  
10 recession, you personally have had a good year  
11 this year?

12 A: Yeah.

13 Q: How about '07?

14 A: Are you talking rental history?

15 Q: Right.

16 A: I don't recall.

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

18 A: Yes.

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

24 A: Gas prices.

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

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

4 A: No way of knowing.

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

8 A: Yes.

9 Q: How long did you keep your car there?

10 A: Three, four years.

11 Q: Three or four years?

12 A: That's a guess.

13 Q: Could it be more?

14 A: Could be.

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

20 A: That's correct.

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

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

1 Q: Does that include the one that's there now?

2 A: I don't think it includes that one, no. It may.  
3 It may. I don't recall that.

4 Q: Okay, four or five or six, if we add that one?

5 A: It's a guess.

6 Q: So would you agree that for a period of years,  
7 the board, as it fluctuated in membership from  
8 time to time, chose not to enforce any rule or  
9 regulation or policy to require those people to  
10 move their vehicles?

11 A: Correct.

12 Q: And at the same time, they chose not to file any  
13 action or lawsuit against BE-MI over the deck; is  
14 that correct?

15 A: That's correct.

16 Q: And, in fact, from 1990 until this case was  
17 filed, the POA has brought no lawsuit against BE-  
18 MI over the side deck, has it?

19 A: No.

20 Q: Do you remember there being a camper stored in  
21 the basement for a time?

22 A: I don't recall a camper. I remember, you know, a  
23 trailer.

24 Q: Okay. And how long did that stay there?

25 A: I can't tell you that I know how long that was.

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

3 A: Not to my knowledge.

4 Q: Can you recognize that picture?

5 A: Yes.

6 Q: Is that the ---

7 A: That's what I was referring to.

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

10 HE'S IDENTIFIED IT.

11 MR. BARNETT: NO OBJECTION.

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

15 DEFENDANT'S EXHIBIT NUMBER 17

16 ADMITTED INTO EVIDENCE

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

20 A: No, I don't.

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

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

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

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

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

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

8       A: That's correct.

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

11      A: Over parking?

12      Q: Yes.

13      A: Not over parking.

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

16      A: Yes.

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

18      A: No.

19      Q: You never have?

20      A: Not to my recollection.

21      Q: Any reason why you haven't?

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

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

1 A: Oh, I'm sure they do.

2 Q: Have you seen people sit there?

3 A: I've seen a lot of people sitting there.

4 Q: So a lot of people do like it, they do find it  
5 not to be too unpleasant; would you agree?

6 A: Sure.

7 Q: And some of those people are owners, are they  
8 not?

9 A: They could be. I don't remember seeing owners  
10 there, but they could be.

11 Q: How about renters?

12 A: I'm sure there's renters.

13 Q: Is there any other place to sit outside at the  
14 St. Clements when the weather is inclement, that  
15 you can get out of the weather, other than on  
16 that covered deck?

17 A: Just around the pool.

18 Q: Is it covered?

19 A: No.

20 Q: Okay. So you can sit out in the rain at the  
21 pool, but you can't find anyplace to get out of  
22 the rain other than this covered deck, right?

23 A: Under the, under the overhang going into the  
24 lobby, you could.

25 Q: So you could sit there in the loading zone, I

266

1 **guess?**

2 A: Yeah.

3 Q: Okay.

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

6 THE COURT: MR. BARNETT?

7 MR. BARNETT: YES, YOUR HONOR.

8 RE-DIRECT EXAMINATION

9 BY MR. BARNETT:

10 Q: Mr. Bechtel, Mr. Newby asked you about whether or  
11 not there had been any action taken against  
12 people who were parking for long periods of time  
13 in the parking lot in the past years, and I show  
14 you what's been marked Plaintiff's Exhibit Number  
15 12, which was a parking policy adopted in 2006.

16 A: Okay.

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

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

24 "Owners will be notified of this new  
25 policy."

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

6 A: Not that I'm aware of.

7 MR. BARNETT: NO FURTHER QUESTIONS.

8 RE-CROSS EXAMINATION

9 BY MR. NEWBY:

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

14 A: Not to my knowledge.

15 MR. NEWBY: THAT'S ALL.

16 EXAMINATION

17 BY THE COURT:

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

21 A: That's correct.

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

24 A: I don't recall that.

25 Q: You and your wife both signed affidavits.

1 A: Okay.

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

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

5 **Q: Well, the affidavits were signed September 16th,**  
6 **2003.**

7 A: 2000?

8 **Q: 2003.**

9 A: 2003.

10 **Q: Yes, sir.**

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

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

17 A: Okay.

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

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

7           ---

8           A: Yes.

9           Q: --- besides you and your wife?

10          A: Yes.

11          Q: Who else is in the courtroom today?

12          A: Nancy Landis. Did you say James Moyer?

13          Q: Yes, sir.

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

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

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

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

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

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

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

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

25 A: Would you say that again?

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

2 A: I'm sorry, but ---

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

6 A: Correct.

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

11 A: No.

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

13 A: Okay. Thank you.

14 THE COURT: ANYBODY HAVE ANY FOLLOW-UP  
15 QUESTIONS?

16 MR. NEWBY: NO, THANK YOU.

17 THE COURT: ALL RIGHT. THANK YOU VERY  
18 MUCH.

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

21 RE-DIRECT EXAMINATION

22 BY MR. BARNETT:

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

CLOSING ARGUMENTS

272

1 A: I'm not aware of that. I wasn't.

2 MR. BARNETT: THAT'S ALL FOR ME.

3 THE COURT: YOU DON'T RESIDE HERE IN

4 HORRY ---

5 MR. BECHTEL: NO. THAT'S CORRECT.

6 THE COURT: THANK YOU, MR. BECHTEL.

7 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

8 (ON THE RECORD)

9 THE COURT: DID Y'ALL WANT TO MAKE ANY

10 KIND OF CLOSING ARGUMENT?

11 YOU DON'T HAVE TO IF YOU

12 DON'T WANT TO.

13 MR. BARNETT: YOUR HONOR, WE VERY MUCH

14 WOULD LIKE TO MAKE FULL USE

15 OF OUR CLOSING ARGUMENT

16 OPPORTUNITY.

17 THE COURT: OKAY, VERY WELL.

18 MR. BARNETT: AND WE HAVE NO FURTHER

19 WITNESSES. THAT'S OUR

20 CASE. THANK YOU.

21 THE COURT: ALL RIGHT. GO AHEAD, MR.

22 BARNETT.

23 MR. BARNETT: THANK YOU, MA'AM.

24 THE COURT: IT MAY ACTUALLY HELP ME.

25 MR. BARNETT: I'M SORRY?

1 THE COURT: I SAID IT MAY ACTUALLY HELP  
2 ME.

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

5 THE COURT: ALL RIGHT.

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

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

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

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

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

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

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

1 said, "I gave consent," but even Mr. Melton  
2 didn't say that the board ever approved it.  
3 And we've got the direct testimony of one of  
4 the three board members, who was on the board  
5 at the time in 1990 when the consent was  
6 alleged to have been obtained, who says he  
7 attended every board meeting, that he  
8 participated, and that this issue of the side  
9 deck not only was never approved, it was never  
10 brought up by anyone at the board meeting,  
11 including Mr. Melton, who testified that he  
12 gave the consent. And I would point out also,  
13 Your Honor, and I think it's quite telling,  
14 that if you recall, from the three letters that  
15 are Plaintiff's Exhibits 5 through 7, that  
16 we've alluded to several times, at which the  
17 question, and these are February and March of  
18 1991, the issue came up of whether or not there  
19 was in fact any written consent, or any  
20 consent, by the association or by the board to  
21 Mr. Goude constructing this side deck, that all  
22 three of those letters, February 21, February  
23 26, March 27, 1991, all three of those letters  
24 went to Mr. Melton, who was one of the board  
25 members at the time, who does not deny, when I

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

9 THE COURT: THOSE WERE ASKING FOR  
10 WRITTEN PERMISSION.

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

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

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

11 THE COURT: THAT'S A CONSENT INJUNCTION

12 ---

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

23 THE COURT: MR. BARNETT, IF YOU'LL

24 RECALL, YOUR OWN WITNESS . . .

25 COULD NOT RECALL EVEN

1           SIGNING AN AFFIDAVIT IN  
2           SUPPORT OF A LAWSUIT THAT  
3           WAS BROUGHT IN 2003.

4           MR. BARNETT: HE DOESN'T DENY ---

5           THE COURT: HE DOES NOT RECALL EVEN  
6           SIGNING THE AFFIDAVIT.

7           MR. BARNETT: I UNDERSTAND, YOUR HONOR.

8           THE COURT: MY POINT IS, YOU KNOW, THAT  
9           PEOPLE FORGET THINGS, AND

10          ---

11          MR. BARNETT: GRANTED, YOUR HONOR,  
12          GRANTED, GRANTED.

13          Mr. Barnett: That doesn't change what I was saying  
14          earlier, however, about when all this came up  
15          and these letters were going out and he was  
16          receiving them, that he never brought it to  
17          anybody's attention. It wasn't a question of  
18          forgetting that. That was occurring over a  
19          period of months. He never raised it to the  
20          board, that, "I'm the one that gave the  
21          consent."

22          THE COURT: I UNDERSTAND.

23          Mr. Barnett: Now, the key issue in this case really  
24          is the very clear law involved, and that's why  
25          I want to take the full opportunity to make

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

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

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

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

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

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

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

11 7.0, "Restrictions on use," "All laws  
12 and zoning ordinances shall be observed. No  
13 unlawful use may be made of the common area,  
14 and all laws and zoning ordinances shall be  
15 observed." I submit to you that when the  
16 defendant came in and encroached upon the city  
17 approved and required parking, he violated the  
18 zoning laws by doing so.

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

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

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

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

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

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

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

12 What we have is, in condominiums, is  
13 an association which is a non-profit  
14 corporation, with unpaid directors who come and  
15 go, and in the wisdom of people in drafting  
16 these master deeds, and I can't speak for all  
17 of them, but certainly in this one, which, by  
18 the way, was drafted by the defendant's  
19 attorney, they provided for this and provided  
20 that if you do fail to act, it's not going to  
21 waive your right to do so later. And, in fact,  
22 you'll notice that in one of the exhibits, in  
23 1992, Exhibit 10, where the property manager  
24 wrote in November of 1992 and sent to the  
25 defendant a resolution adopted by the board,

1 that that resolution adopted by the board in  
2 1992 stated that the side deck was in violation  
3 of the master deed, that it altered the  
4 exterior portion, it was not with the written  
5 consent of the directors, and the last sentence  
6 basically quotes or paraphrases those same  
7 provisions I'm citing from the master deed,  
8 that the failure to enforce any right,  
9 reservation, condition shall not be deemed a  
10 waiver and shall not bar or affect its  
11 enforcement thereafter.

12 So, as Mr. Bechtel testified, in the  
13 '90s, after Hugo, they were, and also as Ms.  
14 Brown testified, they were tied up to a large  
15 extent, initially, by Hugo and then by this  
16 construction litigation, which you may recall,  
17 in the '90s, was pretty common anyway along the  
18 beach with condominium defects, and they  
19 basically sent him a resolution saying, "We  
20 know it's illegal, and if we don't act on it  
21 now, the law says we can act on it later," and  
22 they set it aside for a time.

23 THE COURT: FOR 15 YEARS.

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

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

4 Mr. Barnett: Be glad to talk about estoppel.

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

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

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

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

1 THE COURT: ALL RIGHT.

2 Mr. Barnett: The law on estoppel is that the claim  
3 of estoppel includes elements for the party  
4 asserting estoppel and the party estopped. And  
5 let's look at the elements that are required to  
6 be established, and of course it's the  
7 defense's obligation to prove these elements,  
8 as to the estopped party. One is a  
9 misrepresentation or non-disclosure. There has  
10 never been any misrepresentation or non-  
11 disclosure by this association. That's number  
12 one, there is no such thing.

13 Number two, the intent to  
14 induce the other party to act, ---

15 THE COURT: WELL, WHAT ABOUT THE FACT  
16 THAT MARSHALL MELTON TOLD,  
17 MR. GOUDE THAT IT WAS OKAY?

18 Mr. Barnett: He said, "I approved it." He said, "I  
19 approved it."

20 THE COURT: "I APPROVED IT AS A BOARD  
21 MEMBER, AS THE PRESIDENT,"

22 ---

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

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

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

6 THE COURT: OKAY, FOR WHAT REASON?

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

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

20 Mr. Barnett: I'm saying two things. One is Mr.  
21 Melton never told him that the board approved  
22 it, he said, "I approved it." And number two  
23 ---

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

1 Mr. Barnett: Correct. But he never said ---

2 THE COURT: I MEAN, HE'S NOT JUST ANY

3 JOE BLOW CITIZEN. HE IS

4 THE PRESIDENT OF THE BOARD

5 OF DIRECTORS OF ST.

6 CLEMENTS.

7 Mr. Barnett: I understand. But what he didn't say

8 is the board approved it. He said, "I approved

9 it." That was his testimony.

10 THE COURT: BUT HE WAS THE PRESIDENT

11 ---

12 Mr. Barnett: He was the president. And if this

13 were ---

14 THE COURT: THAT'S NOT LIKE ME SAYING,

15 "I APPROVED IT."

16 Mr. Barnett: I understand, and let me distinguish

17 it this way. If this were a situation in which

18 they were asking, "Is it okay if we start

19 selling beach balls on the beach, in front of

20 the beach," or something that was not of such

21 importance that the master deed very explicitly

22 places a high level of requirement of consent,

23 then absolutely, he would've had the right to

24 rely upon what the president told him. If it

25 was something that was within the president's

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

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

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

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

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

12 THE COURT: I UNDERSTAND YOUR ARGUMENT.

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

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

8 In article -- Let me go to the bylaws  
9 now and hit another important point about this  
10 board. In the bylaws for this association,  
11 which are attached to and a part of the master  
12 deed, it says, in article VI, subparagraph J,  
13 ---

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

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

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

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

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

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

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

1 COME IN AND FUSS ABOUT THAT  
2 WHEN THE HOMEOWNERS  
3 ASSOCIATION ALLOWS  
4 HOMEOWNERS TO PARK,  
5 BASICALLY STORE THEIR CARS  
6 THERE FOR FOUR YEARS AT A  
7 TIME.

8 Mr. Barnett: Your Honor, if I may, respectfully,  
9 there's this distinction with the city. That's  
10 a valid use of a parking space from the city's  
11 standpoint. A car is parked in that parking  
12 space. The city is not going to object to  
13 that. It's a parking space.

14 THE COURT: WELL, IT MAY WHEN THOSE  
15 HOMEOWNERS ARE NOT THERE,  
16 WHEN THOSE HOMEOWNERS ARE  
17 IN NEW YORK OR PENNSYLVANIA  
18 OR SOMEWHERE ELSE. I MEAN,  
19 IT MAY ---

20 Mr. Barnett: I don't know what the city's going to  
21 do. I mean, it's certainly use of a parking  
22 space by a car, as opposed to the taking of a  
23 parking space by the building or structure upon  
24 it. There's a distinction. I don't know how  
25 the city would treat that, but certainly

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

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

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

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

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

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

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

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

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

13 THE COURT: LET ME JUST ASK YOU ONE  
14 THING.

15 Mr. Barnett: Sure.

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

1 WOULD'N'T COME IN HERE AND  
2 TELL THE TRUTH.

3 Mr. Barnett: The only thing to point out, Your  
4 Honor, is, two things, one is -- Three things.  
5 One is he and this defendant and Mr. Cox, the  
6 three of them, according to their testimonies,  
7 were the primary developers or salesmen for  
8 this condominium. They worked together. They  
9 were buddies. They were all trying to sell  
10 units.

11 THE COURT: BACK IN THE EARLY '90S.

12 Mr. Barnett: in the late '80s.

13 THE COURT: THE LATE ---

14 Mr. Barnett: Late '80s. Mr. melton said he was,  
15 his work resulting in the sale of about a third  
16 of them, ---

17 THE COURT: IN FACT, HE SAID HE SOLD  
18 SOME UNITS TO SOME OF THE  
19 PEOPLE SITTING IN THE ---

20 Mr. Barnett: Right.

21 THE COURT: --- COURTROOM TODAY.

22 Mr. Barnett: He was involved. Mr. Goude was the  
23 director of sales. Mr. Cox was ---

24 THE COURT: WAS THE DEVELOPER, BUILDER.

25 Mr. Barnett: And so, you know, they had this

1 interconnected relationship, and so that could  
2 be some reason why he might say something now.

3 But the second reason is, ---

4 THE COURT: I CAN UNDERSTAND THAT MAY

5 BE WHY HE GAVE HIM

6 PERMISSION, BUT I DON'T

7 UNDERSTAND WHY THAT WOULD

8 BE WHY HE WOULD COME IN THE

9 COURTROOM AND NOT TELL THE

10 TRUTH.

11 Mr. Barnett: Well, I can get -- two other things.

12 One is, I submit to you that the evidence, his  
13 credibility is somewhat tainted by what the SEC

14 did, but the third and most important one is,

15 one I pointed out earlier is, that three times  
16 in 1991, this was built in 1990. Mr. Bechtel

17 saw it in August when he came in, in a few

18 months, they had an election, they had a new

19 board. The new board was Mr. Bechtel, Mr.

20 Melton was re-elected, and this doctor, I can't  
21 recall his name.

22 THE COURT: DR. CLEMENTS.

23 Mr. Barnett: Dr. Clements, thank you. And then in  
24 early '91, now they started addressing this

25 thing, and they're sending letters saying,

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

7 THE COURT: DR. CLEMENTS KNEW THAT  
8 APPARENTLY.

9 Mr. Barnett: How did Dr. Clements know?

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

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

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

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

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

1 PERMISSION?" THE LETTERS  
2 SAID, "WHERE'S THE WRITTEN  
3 PERMISSION?"

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

17 THE COURT: I TEND TO BELIEVE HIM. I  
18 THINK YOU'RE STUCK WITH MR.

19 MELTON GAVE ----

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

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

6 THE COURT: ALL RIGHT. THANK YOU.

7 Mr. Barnett: Thank you.

8 THE COURT: MR. NEWBY? THAT WAS MORE

9 OF A GIVE AND TAKE THAN A

10 CLOSING ARGUMENT, BUT I

11 APPRECIATE ---

12 Mr. Newby: I took lots of notes.

13 THE COURT: I APPRECIATE MR. BARNETT

14 ---

15 MR. BARNETT: FELT LIKE AN APPELLATE

16 COURT APPEARANCE, YOUR

17 HONOR.

18 Mr. Newby: Your Honor, I'll try to be

19 somewhat short. First and foremost, as the

20 court knows, the plaintiff comes in here in

21 this proceeding seeking to invoke the equity

22 jurisdiction of The Court. It is not seeking

23 damages. It is seeking an injunction. And

24 only if it succeeds in getting an injunction

25 would it then be entitled to attorneys' fees,

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

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

5           Mr. Newby: But the language they rely on in the  
6           master deed says that the association must  
7           prevail in order to recover attorneys' fees.

8           So the fundamental issue before The Court today  
9           is one of equity, and I hesitate to quote the  
10          law of equity to the Master in Equity, but ---

11          THE COURT: PLEASE DO.

12          Mr. Newby: I think we all know that the courts  
13          have, as long as injunctions have been before  
14          the courts, have taken the position that they  
15          are an extraordinary remedy, and they're only  
16          to be issued in extraordinary circumstances.  
17          When you invoke the jurisdiction of equity, you  
18          subject yourself to equitable defenses. We  
19          have raised a number of equitable defenses.

20          Aside from the fact that we think that  
21          the facts do not support the plaintiff's  
22          position as a matter of law and as a matter of  
23          fact, most of the facts are really not  
24          contested. We all agree that the deck was  
25          built in 1990, even the plaintiff. We all

1 agree that it has been there continuously for  
2 17 years before the POA decided to bring this  
3 action. I think we all agree that it was built  
4 solely with Mr. Goude's money, and I certainly  
5 think that the weight of the evidence is that  
6 he built it after being told by the president  
7 of the association that he could, and after  
8 having it being suggested to him by the  
9 developer after Hugo, when they were doing the  
10 repair work.

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

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

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

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

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

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

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

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

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

25          Now, to argue that he's getting some

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

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

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

1           it?

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

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

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

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

17 The policies and the contractual  
18 obligations, I would submit, don't last just  
19 365 days, until the next election. They can't  
20 expect people to do business with them if every  
21 time there's an election and somebody gets all  
22 excited about an issue, they just change  
23 everything that they did in the past and say,  
24 "We're going to forget what we told you before,  
25 and this is what you've got to do now. But, of

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

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

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

1 and they're trying to get this so important one  
2 and a half parking spaces back, they still have  
3 a car that's in there, in storage, that's been  
4 there for three years, at least, since they  
5 said they changed their parking regulation.

6 For some reason, the group in charge  
7 has decided, for reasons we can't figure out,  
8 that Mr. Goude and his parking spaces are in a  
9 different category than all those others that  
10 they failed to enforce, and I don't think they  
11 can do that. I don't think they have the right  
12 to selectively enforce the rules and  
13 regulations that they asked the court to find  
14 to be so important against just one owner.

15 While I don't dispute in any way what  
16 the master deed says, because why would I  
17 bother, it says what it says; the Horizontal  
18 Property Regime Act says what it says. But the  
19 Court of Equity goes beyond the letter of the  
20 law in cases like this, when -- and I know I'm  
21 beating a dead horse, I apologize, but for 20  
22 years, this guy's had this deck. Give me a  
23 break. At what point does estoppel kick in if  
24 it doesn't kick in after 17, 18, 20 years? I  
25 think it does. I think we have met the

1 criteria of the appropriate provisions of law  
2 regarding estoppel.

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

15 I will be happy to submit  
16 cases, in fact, I have some here right now that  
17 I would draw The Court's attention to. One is  
18 the case of Nelson versus QHG of South  
19 Carolina, a 2003, 2004 case. There was, let me  
20 give you a couple more cites, Your Honor,  
21 Mccall versus State Farm, 2004, Court of  
22 Appeals' case, 359 South Carolina 372, Faile,  
23 F-A-I-L-E, versus South Carolina Department of  
24 Juvenile Justice, 350 South Carolina 315, a  
25 2002 case, Peterson versus West American

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

5 If I may finance a quote that I think  
6 is relevant, if you'll bear with me just a  
7 moment. I will point out that the side deck  
8 had existed, when they brought the first case  
9 in 2003, for 13 years at that point. They  
10 probably would have been estopped had they even  
11 brought it then, but they didn't choose to  
12 bring it. Well, I have it here somewhere, but  
13 rather than make The court wait any longer, I'm  
14 going to wait, and if you will allow me, I'll  
15 simply pass it up as part of a memorandum, but  
16 ---

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

21 Mr. Newby: Correct.

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

1 LAWSUIT, TO THE BEST OF  
2 YOUR KNOWLEDGE?

3 Mr. Newby: Well, if I may answer with a caveat,  
4 and that is that I am accused regularly of  
5 having a failing memory, especially by my wife,  
6 not to mention ---

7 THE COURT: I HAVE BEEN ACCUSED OF  
8 THAT.

9 Mr. Newby: Not to mention, failing  
10 hearing. But my recollection is that that was  
11 not an issue brought up in any fashion. I  
12 don't recall it being mentioned in the  
13 pleadings, and I don't think they presented  
14 evidence on it. So I can't say that it was an  
15 issue that was ruled on, because they didn't  
16 raise it. And I think the cases that I will  
17 cite state that if there is a cause of action  
18 that existed and that could have been, that  
19 either was brought or could have been brought,  
20 that they're barred by res judicata.

21 THE COURT: WELL, LET ME ASK YOU THIS.

22 IN THE FIRST LAWSUIT, AS I  
23 UNDERSTAND IT, THE ISSUE  
24 WAS NOISE; IS THAT CORRECT?

25 Mr. Newby: It was primarily noise. There were --

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

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

16 Mr. Newby: Not to my knowledge.

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

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

24 THE COURT: SITTING AROUND THE POOL  
25 SIDE DECK?

1 Mr. Newby: The pool.

2 THE COURT: JUST THE POOL, OKAY. I'M  
3 GOING TO READ THE OTHER, I  
4 HAVE THE OTHER LAWSUIT,  
5 I'LL READ THE PLEADINGS AND  
6 WHAT ALL IS IN THERE TO SEE  
7 IF THERE WAS ANY DISCUSSION  
8 CONCERNING THE SIDE DECK IN  
9 THAT LAWSUIT.

10 Mr. Newby: All right. Your Honor, I  
11 think I found the quote that I was looking for.  
12 It was in the case of Hilton Head Center of  
13 South Carolina versus Public Service  
14 Commission, 1987.

15 THE COURT: OKAY. WHAT IS THAT, NOW?

16 Mr. Newby: Hilton Head Center, C-E-N-  
17 T-E-R, of S.C., Inc. versus public service  
18 commission, 1987. It's 294 South Carolina 9.  
19 Also, Judy versus Judy is another case that  
20 seems to stand for the same principle, 383  
21 South Carolina 1. And to paraphrase it, the  
22 court said, when claims arising out of a  
23 particular transaction or occurrence are  
24 adjudicated, res judicata bars the parties to  
25 that suit from bringing subsequent actions on

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

11 THE COURT: NO. BUT IF YOU WOULD LIKE  
12 TO SUBMIT A MEMO, MR.

13 BARNETT HAS SUBMITTED A  
14 MEMORANDUM OF LAW. IF YOU  
15 WOULD LIKE TO SUBMIT ONE,  
16 YOU'RE CERTAINLY WELCOME TO  
17 DO THAT.

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

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

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

24 THE COURT: OKAY.

25 Mr. Barnett: Mr. Newby mentioned several items that

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

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

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

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

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

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

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

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

25 Finally, The Court, in Judy, goes even

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

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

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

22 ---

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

1 Mr. Barnett: Yes, ma'am. It's, on the copy I have,  
2 I say it's opinion, it's a 2009 opinion issued  
3 four months ago under opinion number 4528.

4 THE COURT: 4528?

5 Mr. Barnett: Now, Mr. Newby cited it as 383 S.C. 1.  
6 so maybe, by now, it's in the ---

7 THE COURT: 383 S?

8 Mr. Barnett: S.C. 1.

9 THE COURT: S.C. 1?

10 Mr. Barnett: Yes. That's what he cited.

11 THE COURT: OKAY.

12 Mr. Barnett: Anything else, Your Honor?

13 THE COURT: THAT'S ALL.

14 Mr. Barnett: Thank you, Your Honor.

15 THE COURT: AND, MR. BARNETT, ONCE WE  
16 RECEIVE MR. NEWBY'S MEMO,

17 IF YOU WANT TO REPLY TO

18 THAT, YOU CERTAINLY MAY.

19 Mr. Barnett: Thank you, Your Honor.

20 THE COURT: THANK YOU VERY MUCH,

21 HOMEOWNERS, FOR BEING HERE

22 AND BEING VERY COURTEOUS TO

23 THE COURT. YOU WERE VERY

24 QUIET. THANK YOU.


25 (THE HEARING CONCLUDED ON 08-25-09 AT 12:31 P.M.)

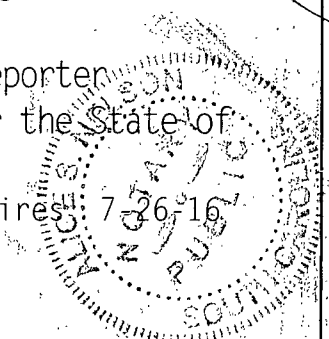
### CERTIFICATE

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

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

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

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



**COPY**

EXHIBIT  
1

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Pg 557

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

BY Josephine As

MASTER DEED  
ST. CLEMENTS

7-31-09

Horizontal Property Regime  
Myrtle Beach, South Carolina

December 8, 1987

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

BOOK 1182 PAGE 557

557

INDEX FOR MASTER DEED  
ST. CLEMENTS  
Horizontal Property Regime

I.	Submission of Property	1
II.	Description of Land and Plan of Development	1
III.	Unit Designation	2
IV.	Limited Common Elements or Areas and Appurtenances	3
V.	Description of General Common Areas	3
VI.	Nature and Incidents of Unit Ownership	4
VII.	Use and Restrictions on Use	5
VIII.	Easements	8
IX.	The Association	9
X.	Mortgage of Units	20
XI.	Partitioning	20
XII.	Amendment of Master Deed	21
XIII.	Termination	21
XIV.	Remedies in Event of Default	22
XV.	Rights Reserved Unto Institutional Lenders	23
XVI.	Severability	24
XVII.	Liberal Construction	24
XVIII.	Master Deed of Condominium Binding on Assigns and Subsequent Owners	24
XIX.	Eminent Domain	25
XX.	Warranties and Representations	25
XXI.	Transfer of Declarant Rights	25
XXII.	Definitions	25
	Exhibit A.....Legal Description	
	Exhibit B.....Percentage of Ownership in Common Elements	
	Exhibit C.....Articles of Incorporation	
	Exhibit D.....By-Laws	
	Exhibit E.....Narrative Description of Building	
	Exhibit F.....Survey of Project	
	Exhibit G.....Floor Plans	
	Exhibit H.....Architect's Certificate	

558

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

MASTER DEED FOR  
THE ST. CLEMENTS  
HORIZONTAL PROPERTY REGIME

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

W I T N E S S E T H :

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

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

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

ARTICLE I  
SUBMISSION OF PROPERTY

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

ARTICLE II  
DESCRIPTION OF LAND AND  
PLAN OF DEVELOPMENT

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

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

559

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

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

#### ARTICLE III UNIT DESIGNATION

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

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

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

3.3 Each unit is hereby defined to include:

- (a) All non-load bearing partition walls located entirely within the unit, & all kitchen & bathroom cabinets.
- (b) All materials, including but not limited to, carpet, paint, and vinyl attached to, or on, the interior finished surfaces of said walls, floors, ceilings of the unit; and all win-

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

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

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

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

#### ARTICLE IV LIMITED COMMON ELEMENTS OR AREAS AND APPURTANANCES

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

#### ARTICLE V DESCRIPTION OF GENERAL COMMON AREAS

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

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

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

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

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

BOOK 1182 PAGE 561

561

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

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

#### ARTICLE VI NATURE AND INCIDENTS OF UNIT OWNERSHIP

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

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

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

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

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

#### ARTICLE VII USE AND RESTRICTIONS ON USE

##### 7.0 RESTRICTIONS ON USE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

565

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

ARTICLE VIII  
EASEMENTS

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

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

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

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

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

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

566

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

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

#### ARTICLE IX THE ASSOCIATION

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

#### 9.1 MANAGEMENT OF ASSOCIATION.

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

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

BOOK 1182 PAGE 567

567

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

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

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

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

#### 9.5 MANAGEMENT AND MAINTENANCE.

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

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

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

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

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

#### 9.6 UNIT OWNERS MAINTENANCE.

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

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

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

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

#### 9.8 INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

(d) FIDELITY COVERAGE. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than One and one-half (1.1/2) times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The fidelity insurance policy shall also provide that it may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least Thirty (30) days prior written notice to the Association and all the mortgagees. Provided, however, if professional management is obtained by Association and it has this type of coverage and it handles the Association's funds, then this requirement shall be deemed satisfied.

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

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

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

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

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

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

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

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

#### 9.9 DAMAGE AND DESTRUCTION.

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

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

(1) UNITS.

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

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

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

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

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

(e) ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all unit owners in sufficient amount to provide funds for the payment of such costs. Such assessments shall be in proportion to the unit owner's share in the common areas and facilities.

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

#### 9.11 ASSESSMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE X MORTGAGE OF UNITS

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

#### ARTICLE XI PARTITIONING

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

ARTICLE XII  
AMENDMENT OF MASTER DEED

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

ARTICLE XIII  
TERMINATION

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

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

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

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

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

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

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

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

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

#### ARTICLE XIV REMEDIES IN EVENT OF DEFAULT

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

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

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

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

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

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

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

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

ARTICLE XV  
RIGHTS RESERVED UNTO  
INSTITUTIONAL LENDERS

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

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

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

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

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

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

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

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

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

#### ARTICLE XVI SEVERABILITY

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

#### ARTICLE XVII LIBERAL CONSTRUCTION

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

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

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

ARTICLE XIX  
EMINENT DOMAIN

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

ARTICLE XX  
WARRANTIES AND REPRESENTATIONS

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

ARTICLE XXI  
TRANSFER OF DECLARANT RIGHTS

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

ARTICLE XXII  
DEFINITIONS

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

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

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

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

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

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

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

WITNESS:

St. Clements Ltd., a California Limited Partnership

By: Whiteville Properties Development Company, Inc. General Partner

By: C. Dwight Cox  
C. Dwight Cox, President

Maria K. Jenkins  
F. S. H.

\*\*\*\*\*

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

Sworn before me this 8<sup>th</sup> day of December, 1987.

Maria K. Jenkins

F. S. H.  
Notary Public for South Carolina  
My commission expires: 8-16-94

584

EXHIBIT "A"

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

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

AND

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

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

585

THE ST. CLEMENTS  
EXHIBIT B TO MASTER DEED

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

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

586

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

\* Rounded from 99.9974

587

The State of South Carolina

CERTIFICATE OF INCORPORATION  
BY THE SECRETARY OF STATE

EXECUTIVE DEPARTMENT

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

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

THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

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

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

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

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

FIRST: Their names and residences are as above given.

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

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

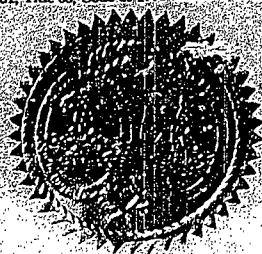
FOURTH: The purpose of the said proposed Corporation is (see Attached)

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

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

SIXTH: That they desire to be incorporated: in perpetuity

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



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

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

BOOK 1182 PAGE 588

588

EXHIBIT "C"  
ARTICLES OF INCORPORATION  
OF  
THE ST. CLEMENTS  
HOMEOWNERS ASSOCIATION, INC.  
(A CORPORATION NOT FOR PROFIT)

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

I.

The Name of the proposed Corporation shall be:

THE ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

II.

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

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

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

III.

The Corporation shall have the following powers:

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

BOOK 1182 PAGE 589

589

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

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

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

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

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

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

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

#### IV.

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

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

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

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

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

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

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

V.

The Corporation shall have perpetual existence.

VI.

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

VII.

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

VIII.

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

BOOK 1182 PAGE 591

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

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

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

IX.

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

X.

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

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

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

592

XI.

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

XII.

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

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

XIII.

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

XIV.

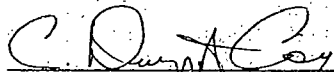
Every Director and every officer of the Corporation shall be indemnified by the Corporation against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason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

XV.

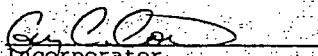
Any amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Corporation acting upon a vote of the majority of the Directors, or by the members of the Corporation owning a majority of the total value of the property in the condominium, whether meeting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

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

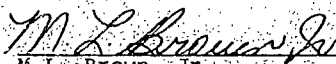
WHEREFORE, Your Petitioners pray that the Secretary of State does issue to the aforesaid "THE ST. CLEMENTS HOMEOWNER'S ASSOCIATION, INC.", a charter with all rights, powers, privileges and immunities and subject to all of the limitations and liabilities conferred by Chapter 31, Title 33, 1976 Code of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

  
Incorporator

  
Incorporator

  
Incorporator

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

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

BOOK 1162 PAGE 594

594

EXHIBIT 'D

BY-LAWS

OF

THE ST. CLEMENTS  
HOMEOWNERS ASSOCIATION, INC.

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

I.  
IDENTITY

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

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

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

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

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

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

II.  
MEMBERSHIP, VOTING,  
QUORUM, AND PROXIES

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

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

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

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

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

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

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

### III. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

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

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

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

596

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

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

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

- (i) Calling of the roll and certifying of proxies
- (ii) Proof of notice of meeting or waiver of notice
- (iii) Reading of minutes
- (iv) Reports of Officers
- (v) Reports of Committees
- (vi) Appointment by Chairman of Inspectors of Election
- (vii) Election of Directors
- (viii) Unfinished business
- (ix) New business
- (x) Adjournment

#### IV. BOARD OF DIRECTORS

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

- (i) One Hundred Twenty (120) days after Seventy-five (75%) percent of the units in the project have been conveyed; or
- (ii) Three (3) years following the date of the recording of the MASTER DEED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOOK 1182 PAGE 599  
599

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

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

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

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

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

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

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

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

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

BOOK 1182 PAGE 509  
600

liability or other risks as provided in the Master Deed.

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

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

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

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

#### V. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS & DIRECTORS

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

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

#### VI. OFFICERS

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

BOOK 1183 PAGE 601

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

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

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

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

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

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

#### VII. FISCAL MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

VIII.  
PARLIAMENTARY RULES

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

IX.  
AMENDMENTS

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

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

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

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

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

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


X.  
CONFLICTS

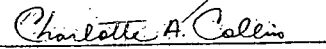
In the event of any conflict between the provisions of the MASTER DEED and the provisions of these By-Laws, the provisions of the MASTER DEED shall control.

XI.  
MISCELLANEOUS

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

Respectively Submitted and Approved,

  
Director

  
Director


  
Director

EXHIBIT E  
NARRATIVE DESCRIPTION OF  
UNITS AND IMPROVEMENTS

The Project consists of one building, that being a ten story residential facility, and parking garage.

Section 4.01 Buildings and Improvements. Access to the Property is by Ocean Boulevard and 70th Avenue North, Myrtle Beach, South Carolina.

The building contains eight habitable levels with a Mechanical Room (elevator) rising above the roof. Included within the building are both residential and commercial units, and other improvements for the benefit of all, as hereinafter described. The floors are numbered entrance through Penthouse and the residential units are numbered, albeit not consecutively, 101 through 709, plus the Penthouse. The commercial units are also numbered, and are designated on the Architectural Plan (Exhibit F and G) attached hereto and are described in the Master Deed (Exhibit B). In addition, there occur on each residential level (floors 1-7) Common Element and likewise there occur on the separate levels of the parking garage certain mechanical rooms(s) and storage area(s) which are without designation except by name and location and which are Common Elements.

The building is constructed of poured in place concrete and set upon pilings. Details of construction and finish are shown in Floor Plans (Exhibit G) hereinabove cited and attached hereto and incorporated by reference in this Master Deed.

All levels are serviced by two enclosed stairwells and two elevators. All habitable levels are serviced by an exposed corridor providing access to each apartment. In the garage the parking levels are joined vertically by a sloped driveway (ramp). Further for administrative purposes and for reasons of safety considerations, access to the entire roof area will, at all times, be restricted and all facilities, structures, and equipment located thereupon shall be designated as Common Elements as herein defined.

The Units are as shown on the plans and average between 450 square feet and 534 square feet, with the exception of the Penthouse. Each unit opens into a corridor which in turn is serviced by the stairwells and elevators.

606

EXHIBIT F

Exhibit F consists of a Survey of the project filed herewith  
in Condominium Plat Book B at Page 607, Office of the  
Clerk of Court for Horry County.

BOOK 1182 PAGE 607

607

EXHIBIT G

Exhibit G consists of a Set of Floor Plans of the project  
filed herewith in Condominium Plat Book B, Page 608,  
Office of the Clerk of Court for Horry County.

EGOR 1182 PAGE 608

608

EXHIBIT H

ARCHITECT'S CERTIFICATE

The Undersigned, an architect duly registered to practice under the laws of the State of South Carolina, hereby certifies that these plans entitled "St. Clement's Inn, Myrtle Beach, South Carolina" are an accurate copy of portions of the plans of the buildings as filed with, and approved, by the governmental subdivisions having jurisdiction over the issuance of permits for construction of buildings. These plans fully and accurately depict, within normal construction tolerances, the layout of the location, ceiling and floor heights, unit numbers and dimensions of the units, as well as the common areas of the building.

Timbes Wilund, Usry,  
Carter Inc.

By: *Bob Wilund*



BOOK 1182 PAGE 609

HORRY COUNTY ASSESSOR  
174-03-04-397  
Map Blk Parcel 8/1/88

07355

Deed BK 1240

FILED  
HORRY COUNTY, S.C.  
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R.M.C.

pg 22

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
AMENDMENT OF MASTER DEED  
THE "REGIME"

WHEREAS, St. Clements Horizontal Property Regime (the "Regime") was created by Master Deed (the "Master Deed") which was recorded on December 8, 1987 in Deed Book 1182, Page 557 in the real property records of Horry County; and

WHEREAS, Exhibit B of the Master Deed identifies the Pool Bar located on Regime as Commercial Condominium Unit Pool-1, but the floor plans of the Regime filed in Condominium Plat Book B, Page 600 do not contain the floor plans for such Condominium Unit since the final plans for such unit did not exist when the Master Deed was recorded; and

WHEREAS, the Board of Directors of the St. Clements Resort Homeowners Association, Inc. (the "Association") and St. Clements, Ltd. (the "Declarant") desire to correct such omission by recording the plans for Condominium Unit Pool-1 and amending the Master Deed.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Master Deed is hereby amended by adding the plans for Condominium Unit Pool-1, designed by Timbes, Wilund, Usry and Carter, and recorded in Condominium Plat Book B, Page 600, Horry County Records to the previously filed floor plans forming a part of the Master Deed. Also, the stairs leading to the roof above the Pool Bar and such room area are hereby designated as limited common elements appurtenant to such unit.

BOOK 1240 PAGE 022

22

A TRUE COPY AFFIDAVIT  
REGISTER OF MESNE CONVEYANCE

HORRY COUNTY, S.C.  
BY [Signature] 7-31-09







AMENDMENT TO BY LAWS  
ST. CLEMENTS HOMEOWNERS ASSOCIATION, INC.

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

FILED  
2008 SEP 24 AM 9:10  
HALL  
REGISTRAR OF DEEDS

AMENDMENT TO BY LAWS FOR  
THE ST. CLEMENTS HORIZONTAL  
PROPERTY REGIME, SAID BY LAWS  
BEING DATED DECEMBER 8, 1987  
AND RECORDED DECEMBER 8, 1987  
IN DEED BOOK 1182 PAGE 558  
RECORDS OF HORRY COUNTY  
SOUTH CAROLINA

A TRUE COPY, ATTEST  
HORRY COUNTY REGISTER OF DEEDS  
Bobbie V. Skippes, Director --- Bobbie V. Skippes

WHEREAS, the By Laws for the St. Clements Horizontal Property Regime was executed December 8, 1987, and recorded December 8, 1987, in Deed Book 1182 at Page 558, records of Horry County, South Carolina (said By Laws, as previously amended, is hereby referred to as the "St. Clements By Laws"); and

WHEREAS, Article IX of the By Laws provides the method by which the St. Clements By Laws may be amended; and

WHEREAS, pursuant to the terms of the St. Clements By Laws, a special meeting of the members of the Association (as defined in the St. Clements By Laws) was duly called for the purpose of amending the St. Clements By Laws; and

WHEREAS, pursuant to the St. Clements By Laws, the proposed amendment to the St. Clements By Laws was approved by an affirmative vote of at least 67% of the members of the Association.

NOW THEREFORE, pursuant to the terms and conditions of the St. Clements By Laws, St. Clements Homeowners Association, Inc. by and through its President and Secretary, with the consent and approval of at least 67% of all Owners of Units within St. Clements Horizontal Property Regime, does hereby amend to the St. Clements By Laws as follows:

Section iv of Article IV of the By Laws, entitled Board of Directors is hereby amended to read as follows:

"At the first annual members meeting following the recording of this Amendment, three (3) Directors shall be elected. One of the Directors, elected pursuant to this section, shall be elected to serve for a term of three (3) years and the two remaining Directors shall be elected to serve for a two (2) year term. Following the initial term, each Director thereafter will serve a 2 year term. The purpose of this Amendment is to stagger the terms of the Directors."

As amended, the St. Clements Master Deed and By Laws shall remain in full force and effect.

In accordance with the requirements of Article IX of the By Laws, execution of the President and Secretary on behalf of the St. Clements Homeowners Association, Inc. shall constitute the required certifications that the within Amendment has been duly adopted in accordance with the requirements of the By Laws, including the requirement that the Amendment be approved by at least 67% of all Co-Owners.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to the By Laws to be executed on this  
19th day of July, 2004.

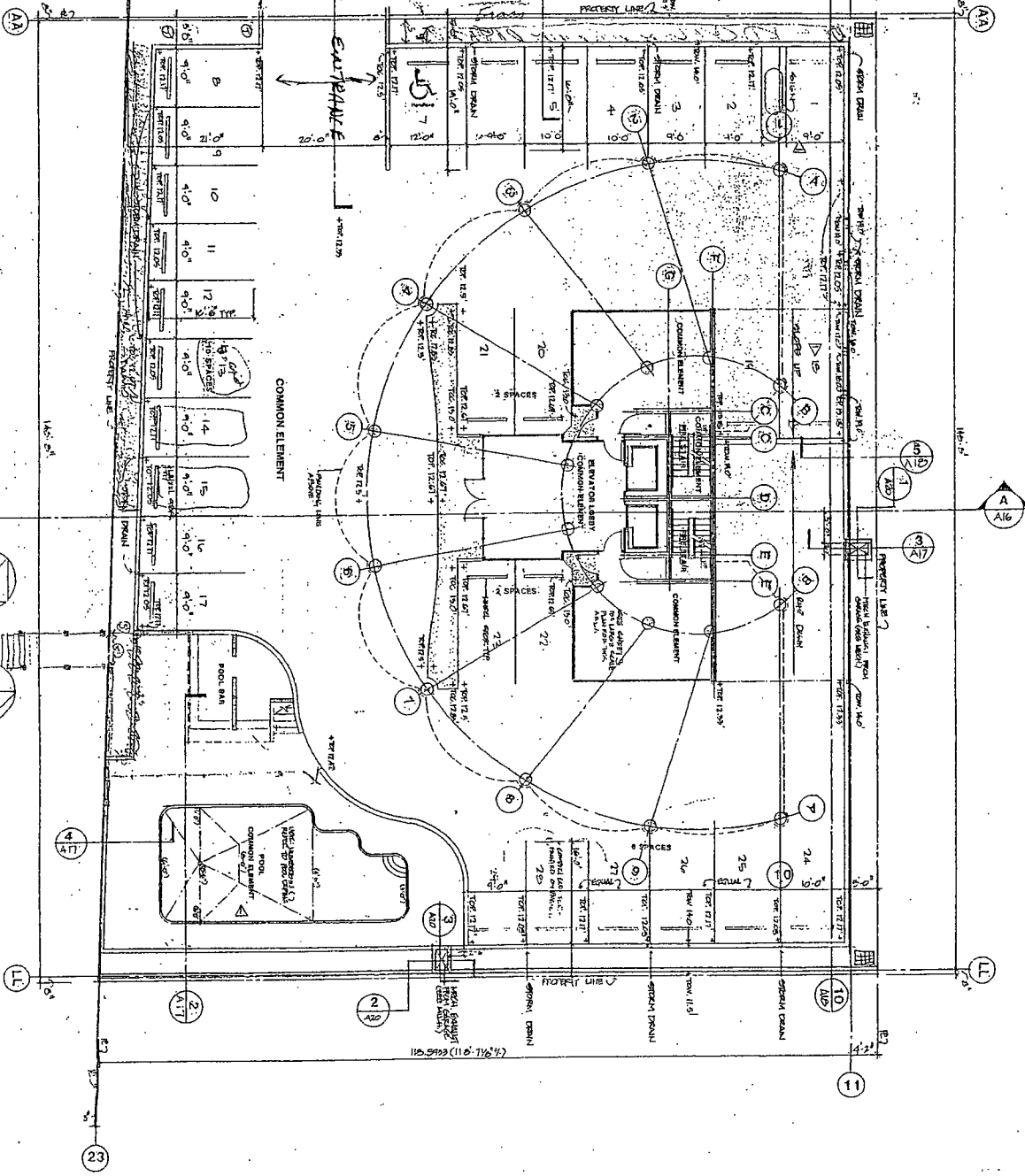
In the presence of:  
Angelina R. Snyder  
Donal Sisk

ST. CLEMENTS  
HOMEOWNERS ASSOCIATION, INC.  
BY: Robert S. [Signature]  
PRESIDENT  
ATTEST: Anna Cotes  
SECRETARY

DEED  
2982 1070

1070  
M



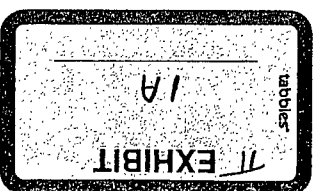


LEVEL 1 - ENTRANCE /MEETING LEVEL PLAN

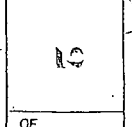
SCALE 1/8" = 1'-0"

STREET LEVEL PARKING DECK

Parking spaces #16 and #17 are the 2 spaces the car will park on side deck into on

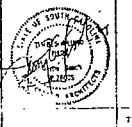


LEVEL 1 - ENTRANCE /MEETING LEVEL PLAN



**TIMBES WILKIND USBY ARCHITECTS**

5001 NORTH KINGS HIGHWAY RAINBOW HARBOR SUITE 203 MYRTLE BEACH S.C. 449-5244



**ST. CLEMENT'S INN**  
MYRTLE BEACH, SOUTH CAROLINA  
FOR DWIGHT COX

PROJ. NO.	REVISION
3284	DRIVE FOR 1 CENTRE AREA
SET NO.	
DATE	11/9/87
DRAWN BY	
CHECKED BY	

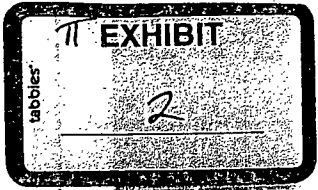
THESE DRAWINGS ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT OF THE ARCHITECT

FILED  
HORRY COUNTY, S.C.

HORRY COUNTY ASSESSOR  
174-03-04-397

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

INDENTURE DEED



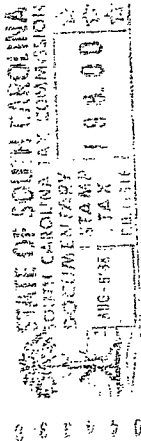
*Deed BK 1240 pg 25*

INDENTURE made the day herein below stated, by and between ST. CLEMENTS, LTD., a California Limited Partnership, hereinafter called GRANTOR, which expression shall include its successors and assigns, where the context so requires, or admits, on the one part, and

Be-Mi, Inc.  
Rt. 3, Box 269  
Hemingway, South Carolina 29554

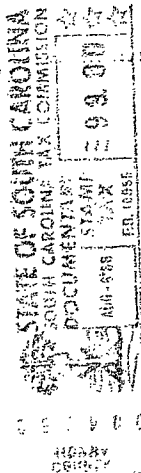
hereinafter called GRANTEE(S), which expression shall include their heirs and assigns, and/or its successors and assigns, where the context so requires or admits, on the other part; and in this agreement, the singular shall include the plural, and the gender shall include all genders.

FOR AND IN CONSIDERATION of the covenants and conditions hereinafter contained and the sum of EIGHTY NINE THOUSAND NINE HUNDRED AND 00/100 (\$89,900.00), paid to the GRANTOR by said GRANTEE(S), the GRANTOR has granted, bargained, sold and released, and by these presents, grants, bargains, sells and releases unto the said Be-Mi, Inc., its successors and assigns forever, all the real property located in Horry County, South Carolina, described as follows:



DWELLING NO. Pool-1 of St. Clements Horizontal Property Regime, a Horizontal Property Regime created by the Grantor pursuant to the South Carolina Horizontal Property Regime Act, Sec. 27-31-10 et. seq., South Carolina Code of Laws 1976, as amended, and submitted by Master Deed recorded December 8, 1987, in Deed Book 1182, at Page 557, Office of the Clerk of Court for Horry County, South Carolina, and as shown upon plans prepared and certified by Timbes, Wilund, Usry and Carter, Architects, dated November 9, 1987, and filed in the Office of the Clerk of Court for Horry County, South Carolina, in Condominium Plat Book B, at Page 600.

Subject to all of the provisions of the aforesaid Master Deed and all Exhibits thereto.



TOGETHER with all of the appurtenances thereto according to said Master Deed, and the GRANTEE(S) assume and agree to observe and perform their obligations under said Master Deed including, but not limited to, the payment of assessments for the maintenance and operation of the dwelling and condominium. AND SUBJECT to the provisions of the By-Laws of the St. Clements Homeowners Association, Inc. and to all other reservations and restrictions of record, easements, zoning ordinances, and rights-of-way of record, including those as set out in the aforesaid map.

BOOK 1240 PAGE 025

*8/8/88 1240/25*

The above described property is located in Myrtle Beach, South Carolina, and conveyed to the Grantor herein by deed recorded in Deed Book 1011 at Page 13, Office of the Clerk of Court for Horry County, South Carolina. As amended in Deed Book 1240, at Page 12, R. M. C. Office for Horry County, South Carolina.

ACKNOWLEDGEMENT AND RATIFICATION BY GRANTEE(S):

The GRANTEE(S), by the acceptance and execution of this Warranty Deed, acknowledge that this conveyance is subject to the provisions of the Master Deed and By-Laws of the St. Clements Homeowners Association, Inc., as described above, including the provisions of all exhibits. The GRANTEE(S) agree to be bound by all of the aforesaid provisions; and the GRANTEE(S) acknowledge and agree that all of said provisions are reasonable, fair and equitable; and GRANTEE(S) acknowledge and agree that the Master Deed and By-Laws of the St. Clements Homeowners Association, Inc. and Exhibits, and the Contract executed by the GRANTOR and GRANTEE(S), contain all of the warranties, representations, and inducements concerning the purchase by GRANTEE(S) of the dwelling described above.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Be-Mi, Inc. its successors and assigns forever.

AND the said GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular, the said premises unto the said Be-Mi, Inc., its successors and assigns forever, against itself and its successors and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

IN WITNESS WHEREOF, the GRANTOR, ST. CLEMENTS, LTD., a California Limited Partnership, has caused these presents to be signed by its General Partner and the GRANTEE(S) have caused these presents to be signed and sealed this 15th day of July, in the year of our Lord One Thousand Nine Hundred Eighty Eight, and the Two Hundred Twelfth Year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

*Ken R. Traub*  
*B...*

ST. CLEMENTS, LTD., a California Limited Partnership, by Whiteville Properties Development Company, Inc. General Partner

BY: *[Signature]*  
Cl. Dwight Cox  
its President

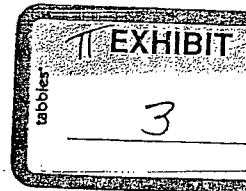
BOOK 1240 PAGE 023



# St. Clements

202 - 70TH AVENUE NORTH • MYRTLE BEACH, SOUTH CAROLINA 29577

[1988]



## ST. CLEMENTS HOMEOWNERS' ASSOCIATION 1st Annual Members' Meeting

Dan Hatch, the General Manager of the Caravelle, introduced himself and explained that ~~Dwight Cox~~, the developer, would be unable to attend the meeting; and in his absence and because the two other Board Members were ~~not present~~, Caravilla Management would conduct the meeting and follow the Agenda as agreed to earlier. Mr. Hatch also advised that the purpose of the meeting was to discuss the Homeowners' Association and subjects related to Association business.

He introduced Kevin Warren, the Assistant General Manager, who called the roll. Dan Hatch advised the membership that they were one unit short of having a quorum; however, another owner came in later making the meeting official and fulfilling the quorum requirements.

Proof of Notice of Meeting was established and the next item on the Agenda, the Reports of Officers, was addressed. Board Members usually give the committee reports; but in their absence, Kevin Warren began with the report on the budget.

Kevin went over and explained each item contained in the Proposed 1989 Budget to those attending. He also handed out a report which compared the Proposed 1989 Budget to actual expenditures. This report predicted what expenses would be at the end of 1988. It was the consensus of the membership to have the Association dues remain the same and to lower the reserve amount proportionately to the increase in expenses.

A question from the floor pertained to the Penthouse: whether it was completed, whether association fees were being collected for it, and how much the fees were. Kevin answered as follows: the sixty-three units, penthouse, and pool bar are all individually owned. The Penthouse is twice the amount of a normal unit, the Pool Bar is the same as a unit, and the small room on the left (used as an office or meeting room) is counted as half of a unit.

Percentages are used to determine the amount of association dues owed according to the recorded St. Clements' Master Deed. Although each unsold unit has been assessed and billed for full association dues, these dues are not collected by the Association until each individual unit is closed.

The new Board of Directors, which will be elected today, will need to investigate some of these concerns.

The Board of Directors have a right to put a lien on a unit if the Association dues have not been paid. If the unit is put up for sale, the dues must be paid before the unit can be sold.

Kevin Warren asked if it was agreeable to everyone to go to New Business on the Agenda and leave the Election of Board of Directors until last. The membership agreed.

Kevin discussed several things that had happened which increased expenses. One major expense occurred when guests bumped the sides of the building with their cars. We were unable to match the paint and had to repaint the entire bottom of the building. We have now been able to come up with a particular color number so any additional touch ups can be handled without repainting large areas. The tire bumpers have been moved back, a heavy steel corner has been added in the parking area, and a mirror has also been installed to enable people to see better in the parking area. Utilities were also a little higher than expected; otherwise, most other areas of the budget were in line.

Other new business included items that would lend to the attractiveness of the building; such as, colorful plants to be added near the entrance to the building. The building also needs ice machines. The Board should make a decision on this as well as discuss the issue of vending machine locations. There is a house phone in the lobby of the building now, but some additional improvements need to be made to improve the looks of the lobby. The Board has been asked to review those items with the management company and advise them what they would like accomplished.

The new officers of the Board of Directors were elected and are as follows: ~~President, Marshall Melton~~; Vice President, Leon Bechtel; and Treasurer, Randolph Morgan.

President, Marshall Melton, asked for a motion from the floor concerning the vending machines. Several questions were asked including if a contract exists with the owner of the pool bar regarding the vending machines. It was decided that the Board would look into all aspects of the vending machine question. In the meantime, however, a motion was made and seconded to take the vending machines out of the lobby.

A show of hands was requested to determine how many owners understood that there would be an ice machine on every other floor of the building. A show of hands was also requested to determine if the owners thought ice machines were needed in the building. A majority of owners agreed to both questions.

November 17 was given as the date when the microwave ovens would be delivered.

Kevin showed samples of laminated fabric which could be used to recover the four dining room chairs in the units. Quantity pricing is available, and the total price would be \$243.60. The recovering should be done in January. A decision must be made as soon as possible if you want to take advantage of this reduced price.

There was a question from the floor asking if a converter box with a remote control could solve the problems with the TVs being too high for guests to reach. It was decided that this wouldn't solve the problem because the volume on the TVs could not be controlled this way.

Another question from the floor concerned the requirements for flood insurance coverage. Dan Hatch replied that \$250,000 is the minimum requirement, but some banks require more than this. This is something the Board should look into.

Another question from the floor pertained to getting extended warranties on the A/C. Kevin said he would check into this.

There was a small leak from the swimming pool and the water had to be emptied; however, this has not yet been solved. It is the developer's responsibility to get this corrected. The parking deck needs to be sealed, and the Board is to advise the management company on what action needs to be taken.

It was mentioned from the floor that there should be some kind of sign saying the seagulls should not be fed from the balcony. Kevin will have a sign made up to put in each unit.

If anyone wants a copy of the by-laws, Kevin will put a sign-up sheet on the table.

The Board will address what the Penthouse should pay for association fees. A specific amount is specified in the By-laws and probably cannot be changed. A legal opinion on this should be obtained.

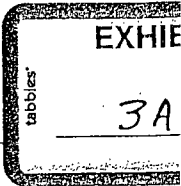
A discussion was held on the question of rates. Kevin explained that rates are established by taking a fair market analysis on like units in the Myrtle Beach area. Generally, we try to get as much revenue as possible considering what the market will bear. We also take into consideration soft rental periods. The 1989 rate season will contain fifteen rate breaks rather than the eight previously used. This should help increase occupancy during many slower rental periods.

A question was asked concerning what is being done to advertise the St. Clements. Dan Hatch discussed the marketing plan which was being followed this year and explained that it changes from year to year. Next year's marketing plan is in the process of being formulated.

There being no further business, the meeting was adjourned.

# St. Clements

202 - 70TH AVENUE NORTH • MYRTLE BEACH, SOUTH CAROLINA 29577



St. Clements Homeowners' Association  
2nd Annual Members' Meeting  
November 4, 1989

Kevin Warren, General Manager of the Caravelle, opened the meeting and called the roll. Kevin advised the membership that there was a quorum, making the meeting official and fulfilling the quorum requirements.

Proof of Notice of Meeting was established and the next item on the Agenda, Reports of Officers was addressed. The next item was the reading of the minutes. Marshall Melton made a motion that the minutes be read, Roger Sundgaard seconded. Kevin Warren read the minutes. Mrs. Clements made a motion that the minutes be approved as prepared and read, Marshall Melton seconded.

Kevin next handed the meeting over to Dwight Cox of Cox Development who has been handling the insurance claims relative to Hurricane Hugo. Dwight Cox advised the membership that there was no structural damage to the building, but there were some mechanical damages. Damages were to the elevators, carbonmonoxide equipment in parking garage, sump pumps, and the fire alarm system. Mr. Cox stated that the elevator companies along the Grand Strand were having problems getting parts and that the parts needed to fix one of the elevators arrived Friday. One of the elevators should be operational by Wednesday.

Next, Mr. Cox explained the Flood Insurance and the Wind Insurance policies. Due to the deductible on the Wind Insurance, we were unable to place a claim as of this date.

Mr. Cox informed all attending that if an engineer will write a letter stating that the building was built to with stand hurricane force winds we might have a chance in lowering our insurance premium.

A committee for Insurance was established to check into other insurance companies for the purpose of lowering the premiums and not the overall coverage. Dwight Cox and Luke Goude volunteered to head up the Insurance Committee.

Dwight Cox suggested that we investigate the possibility of lowering the deductible on the Wind Insurance so if we had losses in the future we would have a better chance of filing a claim. Kevin stated that he would check with Scottish Insurance and mail out a letter to each homeowner stating the deductible amount.

Kevin explained the proposed the 1990 budget. He handed out a report which compared the 1989 budget with the actual year end expenses. He stated that there were expense items that were higher than projected amounts, some of those being janitorial wages, payroll taxes on those wages, security, elevator repair and maintenance, utilities, and insurance.

Mr. Warren outlined that with the increase in expenses and the uncertainty of future insurance premiums, most homeowners' associations do a separate insurance assessment when the premium is due. If this is done with the St. Clements homeowners, the 1990 budgeted association dues would increase only a few dollars and one special assessment for insurance would take place during 1990.

Dr. Clements made a motion that we special access all homeowners for the insurance just for this year, instead of including it in the 1990 budget, the motion was seconded. Mrs. Clements made a motion to approve the 1990 budget as discussed and written, Dwight Cox seconded.

Mr. Sundgaard made a motion to take a portion of the association dues and place it into a money market fund. Money can only be removed from this account by Mr. Warren. If funds are removed, Mr. Warren is required to send the board a letter stating why and for what purpose the money was removed, Floyd Landis seconded.

Mr. Warren indicated that there was approximately \$28,000 in unpaid association dues. Kevin suggested that the homeowners' association put a lien on those units which still owe dues. He noted that in the Associations master deed the management company could only assess up to 18% interest on any unpaid dues. Suggestions from the floor were to take all dues out of the monthly rental checks. Kevin stated that he didn't think it was possible, but would check into it. Pete Morgan made a motion that Kevin be authorized to write a rather stern letter, stating that all owners who are behind in payments that they would have 30 days to clear their account. This letter would be vague but not specific and state that it has been discussed among the member of the homeowners association that any owner behind in payments will have specific action taken against them, Floyd Landis seconded.

Leon Bechtel made a motion that Caravilla Management send out a loss of rental income letter stating that we have an undetermined amount of loss and are currently assessing the situation, Mr. Turner seconded the motion.

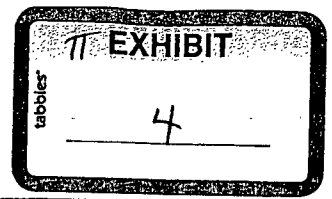
Dr. Clements made a motion to put the Coke machine in the lobby, Dwight Cox added that when he remodeled the lobby he would construct a wall around the machine so only the face would show, Mrs. Bechtel seconded the motion.

Dwight Cox made a motion to lease three ice machines to be put on every even floor, Dr. Clements seconded the motion.

Dwight Cox made a motion that coin operated washer and dryers be put in the underground parking level, the motion was seconded.

Dr. Clements made a motion that Dwight Cox sell all the scrap aluminum that was in the underground parking level, Ed Hanks seconded.

Being no other business, Marshall Melton motioned to adjourn the meeting, Dr. Clements seconded.



Minutes of the 3rd Annual  
Homeowners Association Meeting

The 3rd Annual Meeting of the St. Clements Homeowners Association was held at 2:00 P.M., Saturday, November 3, 1990 at the Caravelle's Santa Maria Restaurant.

Marshall Melton, President of the association, opened the meeting. Kevin Warren called the roll and certified proxies. Kevin advised the membership that there was a quorum, making the meeting official and fulfilling the quorum requirements.

Proof of "Notice of the Meeting" was established. The next item on the agenda was the reading of the minutes. Dr. Clements made a motion that we dispense with the minutes and approve them as written. Leonard Ruth seconded the motion.

Mr. Warren reported on the financial position of the association, ending with September 1990. He stated that we will be reviewing actual assessments and expenses. The hurricane expenditures and assessments are omitted. You will find a budget vs. the actual report enclosed. Mr. Warren presented the 1991 budget for approval. Dr. Clements made a motion to approve the 1991 budget as presented. All of the homeowners present approved. The quarterly dues will remain the same for 1991.

Mr. Warren proceeded to explain the hurricane damages and repairs. Please allow me to explain that after the hurricane we had two choices to make in order to restore the building. Caravilla Management could oversee all repairs taking place, or we could have the developer take care of the repairs. After lengthy discussions, the board made the decision to have Dwight Cox complete the repairs because of his extensive knowledge of the building. Mr. Cox agreed to repair the damages for the price on the initial proof of loss with no additional expenses. The initial proof of loss was valued at \$386,000. Once the FEMA adjuster inspected the property, they not only reduced the loss amount, but they discovered the building was built lower than what the elevation certificate indicates. At that time, the property was resurveyed in order to make sure the certificate was correct. It turned out that the elevation certificate was approximately the same as the initial one.

St. Clements was paying insurance based on the overall elevation. Because of the incorrect elevation certificate and the increased risk, this insurance was increased. The insurance increased from \$3,414.00 per year to \$35,796.00 per year. With the insurance policy due, the association had no other choice but to assess the homeowner \$539.54 per owner for payment of the premium. You will also recall receiving an assessment for \$278.90 for the regular property insurance. (The board made the decision in 1989 to separate the insurance expense from the quarterly dues) At the same time, the elevator bill was past due. The total outstanding elevator repair bill was \$55,000. U.S. Elevator indicated that if the elevator bill was not paid in full immediately they would remove the parts that were not paid for. If this were to take place it would make the elevator useless, therefore we would be unable to rent the building. The association now had to assess the homeowners \$829.99 in order to keep the elevators operating. Because of the increased flood insurance premiums, Dwight Cox and Bill Benik (owner of Scottish Insurance Agency) make a special trip to Washington to meet with the FEMA officials. As a result of that meeting, the flood insurance was reduced to \$19,000.

Mr. Warren explained that if all assessment and association dues were paid and current, we would have a \$44,522.59 overassessment on the books. The board agreed to credit homeowner accounts when everything is finalized.

Mr. Warren stated that the elevation was the main cause for these assessments. Basically, the building wasn't built in accordance to federal flood regulations. The building was built too low. The board will be taking legal action against the surveying company, the building contractor, and possibly the City of Myrtle Beach. The board will hopefully employ an attorney on a contingency basis in order to help with this problem.

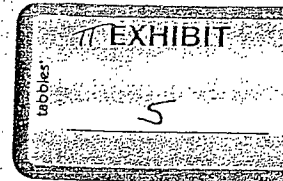
Mr. Warren announced to the homeowners that as of December 31, 1990, Caravilla Management would not be managing the property management the St. Clements. Kevin explained that Caravilla didn't specialize in property management, but rental management.

The next topic for discussion was the election of officers. Floyd Landis nominated Leon Bechtel. Leonard Ruth seconded the motion. Nancy Landis nominated Dr. Clements. Floyd Landis seconded the motion. Ed O'Reilly nominated Marshall Melton. Victoria Mead seconded the motion. Judge Clements moved that the nominations be closed. Eric Hillard seconded. All were in favor of the nominations.

Mr. Warren updated the board on the condition of the furnishings and carpet in the units. He explained that all the sofas needed to be replaced and the bucket chairs needed recovering with a coordination fabric. Many of the carpets are faded and worn. These carpets need to be replaced as soon as possible. We are recommending the owners use the teal green carpet as opposed to the peach color. The Caravelle has had much success with this color carpet in their other properties. The white dining chairs need to be recovered also. The white cannot withstand the amount of traffic in the units.

Dr. Clements moved the meeting be adjourned. The motion was seconded by Leonard Ruth. Being no other business, the meeting was adjourned.

St. Clements  
Homeowners' Association, Inc.



~~February 21, 1991~~

Dr. Robert Clements  
[REDACTED]  
[REDACTED]

Dear Dr. Clements:

Enclosed is a copy of a chronological summary to me from Mr. Bill Benik at the Scottish Insurance Agency dated February 14, 1991. I met with Bill on February 18 to discuss and review the issue surrounding Hurricane Hugo flood damage and its related dilemma with the claims and increase in premiums for which the following enclosed documentation summarizes same.

All of the documents referenced in Bill's letter dated February 14, 1991 are attached and numerous highlighted areas were emphasized by Bill. I would strongly suggest that each Board member read this documentation thoroughly and be familiar with same since I feel that the Board should invite Bill Benik to the next Board of Directors meeting to answer any questions or concerns regarding this entire issue.

My general feelings here, without knowing any more detail, is that possibly the surveyor, the City of Myrtle Beach and/or the architect/engineering firm, all of which were originally involved in the construction of St. Clements, were at fault. However, this is not a legal opinion and only one based on general observations as derived from the attached correspondence.

On an unrelated matter, I have met and spoken with Mr. Luke Gude regarding his pool bar structure. Based upon my request to Bill Benik, I am advised that Luke does not currently have a liquor liability policy, products and completed operations coverage, a general liability policy and/or an agreement of indemnification regarding the Homeowners Association. Since Luke operates a commercial establishment and since there is some probability that his patrons might be involved in an accident resulting from the consumption of alcoholic beverages, I am going to request copies of the above referenced insurance coverages from Luke

in the best interest of the Homeowners Association. If any of your Board colleagues know more about this liability insurance or indemnification issue, would you please call me and advise?

The last issue also references commercial activities and was recently raised as a question by one of the homeowners. Does Luke have specific written approval from the Homeowners Association or the developer which gave him permission to occupy two parking spaces? Further, was this approved by the City of Myrtle Beach since normally a certain number of parking spaces are required based upon the size of condominium development? Does Luke also have written approval to operate the vending machines in the common area? I will try to follow-up with Luke on these issues as well and advise you accordingly.

As always, if we can be of any assistance, please don't hesitate to call upon us.

With kindest regards.

Sincerely,

*Robert W. Johnston/ktc*

Robert W. Johnston  
Paragon, Inc.  
Managing Agent

PC: Mr. Leon Bechtel  
Mr. Marshall Melton

RWJ/ktc  
2-20ltr.stc

St. Clements  
Homeowners' Association, Inc.



February 26, 1991

Mr. Luke Gude  
BE-MI, Inc.

[REDACTED]  
[REDACTED]  
Dear Luke,

Good luck with the "Grand Opening" of your ~~pool bar~~ at St. Clements on March 1, 1991. I hope 1991 proves to be a profitable and enjoyable year for you.

The St. Clements Homeowners' Association Board of Directors carries the responsibility of making sure the property is properly insured; inclusive of that is the pool bar structure that you own. In this light, would you please provide proof of insurance (via a Certificate of Insurance) for the following coverage and show the Association as a named insured:

1. General Liability Coverage and/or an Agreement of Indemnification regarding the Homeowners' Association
2. Liquor Liability Coverage
3. Products and Completed Operations Coverage
4. Workers Compensation Coverage

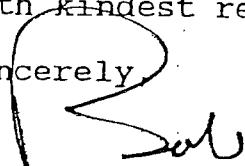
On another issue, several homeowners have questioned your authorization to utilize two parking spaces. Have you received written approval from the Association or the developer for said permission? As limited as parking spaces are, we would like to resolve this matter as soon as possible.

The vending machines located throughout the common areas are another item of concern. Do you have written approval from the Association to operate these machines? Is there any commission split between you and the Association?

Please provide written response to our office within thirty (30) days so a report can be given to the Board of Directors before their next meeting. Should you have any questions, comments or suggestions, please don't hesitate to call upon us.

With kindest regards.

Sincerely

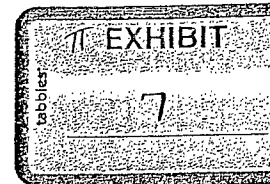
A handwritten signature in black ink, appearing to read "Rob Johnston". The signature is written in a cursive style with a large initial "R" and "J".

Robert W. Johnston  
Paragon, Inc.  
Managing Agent

PC: Board of Directors

RWJ/ktc  
2-22ltr.stc

St. Clements  
Homeowners' Association, Inc.



March 27, 1991

Mr. Luke Gude  
BE-MI, Inc.

[REDACTED]  
[REDACTED]

Dear Luke,

Pursuant to my letter to you dated February 26, 1991, thank you for your call to Kate Collins to inform her that Bill Benik of Scottish Insurance Agency will bind insurance coverage for your pool bar at St. Clements when the bar actually opens. Since we have observed business activities being conducted, we will assume that coverage is bound and we await the Certificate of Insurance from Scottish. Would you please forward Certificates of Insurance showing the Homeowners Association as a named insured on the following policies:

1. General Liability Coverage and/or an Agreement of Indemnification for the Homeowners Association
2. Liquor Liability Coverage
3. Products and Completed Operations Coverage
4. Workers Compensation Coverage

*Handwritten note:* 2/15/91  
W. Collins

That same letter (copy attached) addressed other issues which have not yet been resolved (parking spaces, vending machines and their associated income). I would appreciate your response to these issues before April 15, 1991 so a timely report can be given to the Board of Directors. Even though you have assured me verbally that you have written permission for the parking spaces and the vending rights, would you please help us update the Homeowners Association's files by supplying us with these written documents? Do you also have same for the storage area in the basement?

In response to some of your maintenance concerns with the on-site Project Manager, Mr. Todd Cannon, please be advised that he is willing and capable of addressing some special maintenance needs (plumbing, electrical, carpentry and painting). From time to time however, he may be forced to call upon outside contractors to correct a problem because he may lack the total expertise and/or equipment to properly handle the task at hand.

Also, with respect to the work done around the pool bar area, we understand that you secured a contractor to perform the work at a cost of \$700.00 versus \$850.00 proposed to Paragon by another vendor. First, the \$850.00 bid was based on a thorough waterproofing job versus the regular paint job which you saw recently performed. Furthermore, on or about March 8, 1991, I understand you spoke with Jose Ponton and quoted the work to cost \$450.00, yet the final billing was \$700.00 without further explanation. Perhaps you can provide us with further information on this issue.

As always, please feel free to call upon us when we can be of service with any of your Association needs.

With kindest regards.

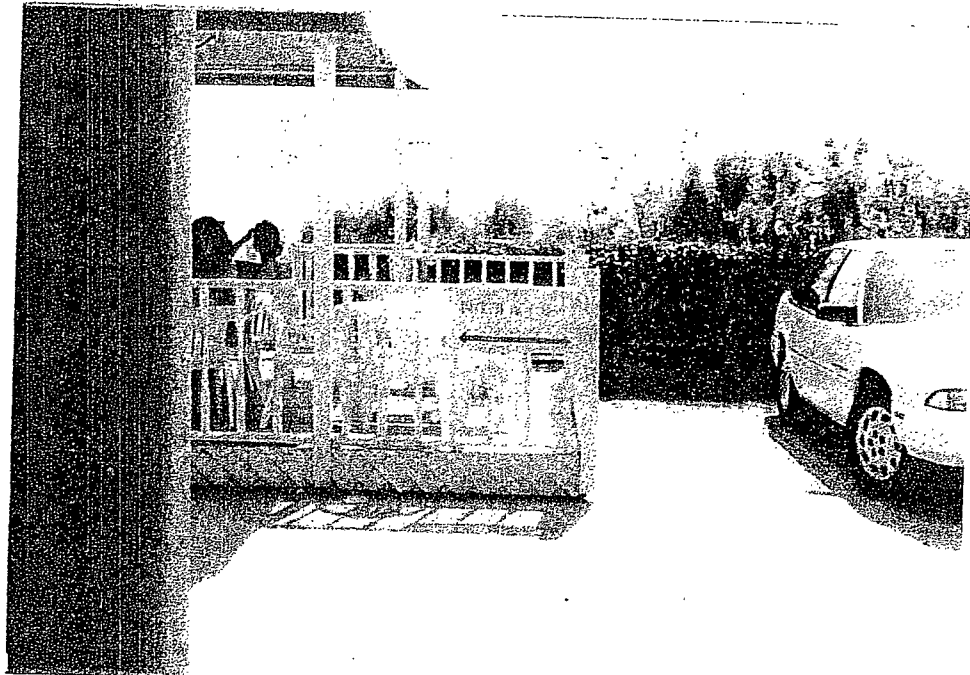
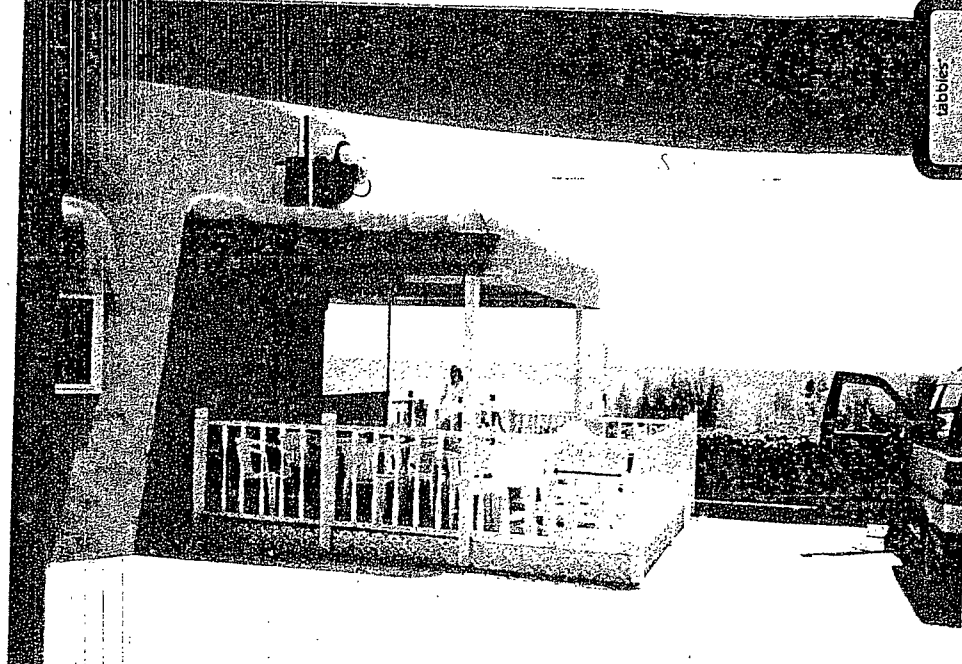
Sincerely,

*Robert W. Johnston/KK*

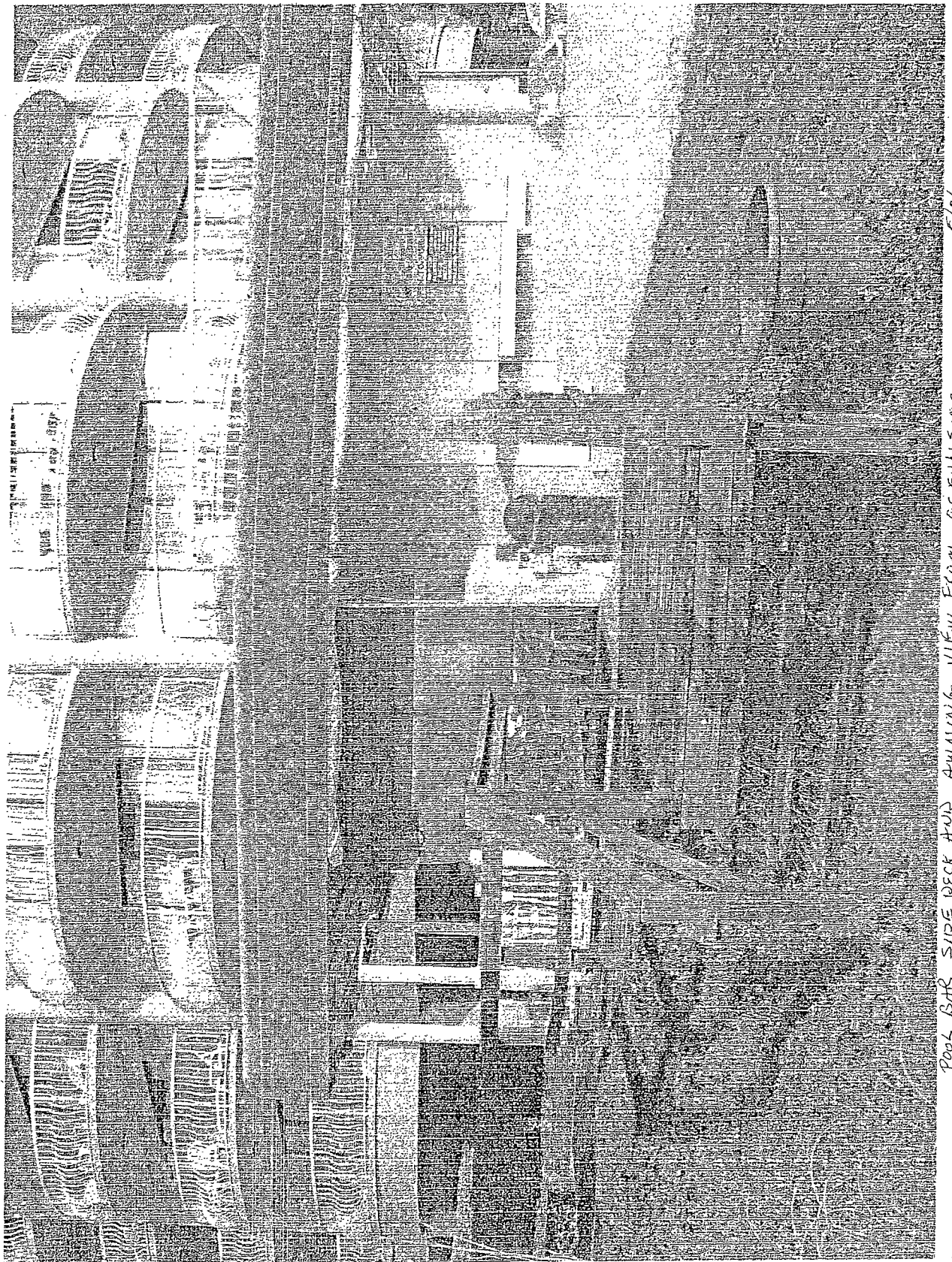
Robert W. Johnston  
Paragon, Inc.  
Managing Agent

PC: Board of Directors

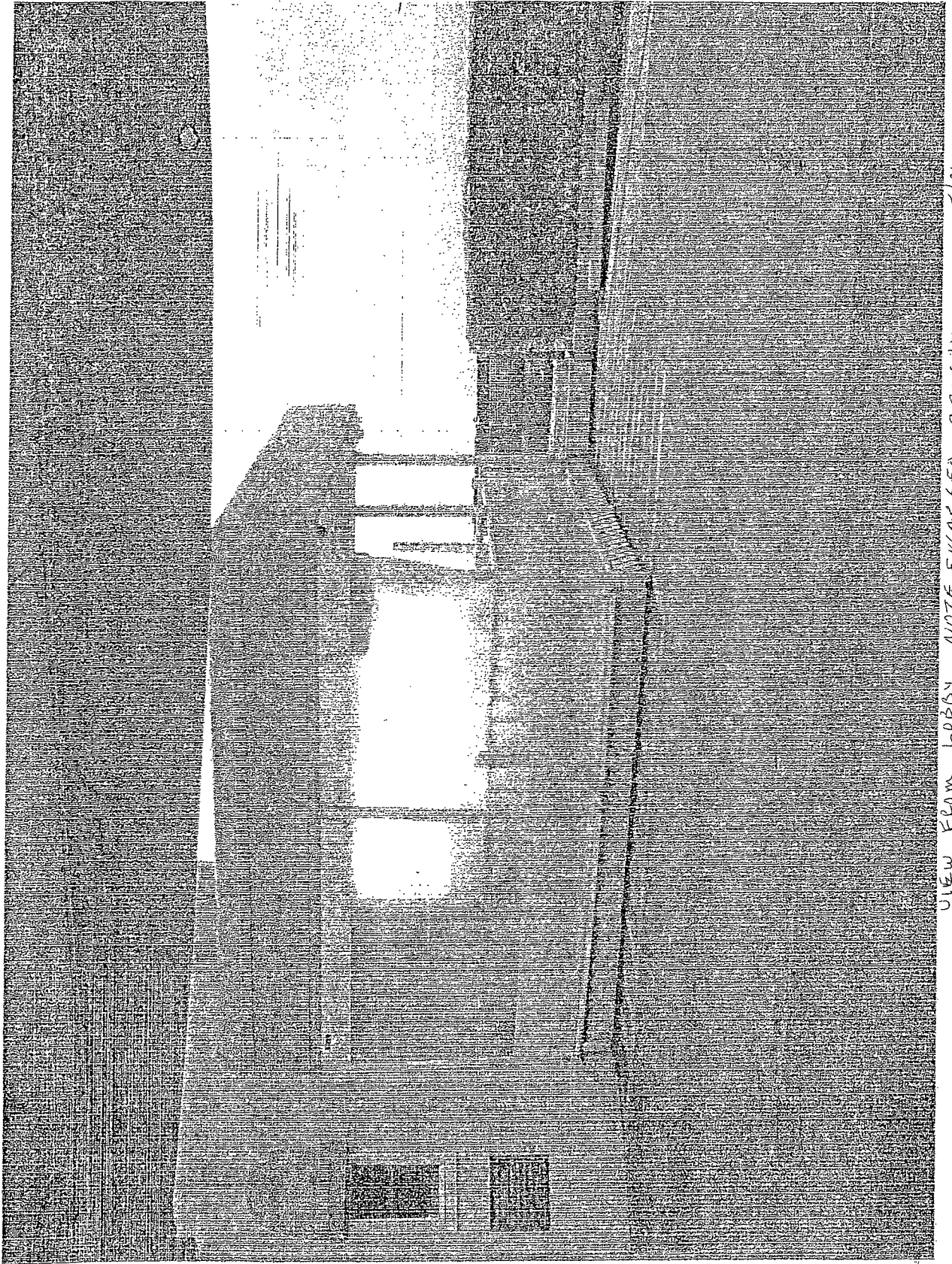
RWJ/ktc  
3-27ltr.stc



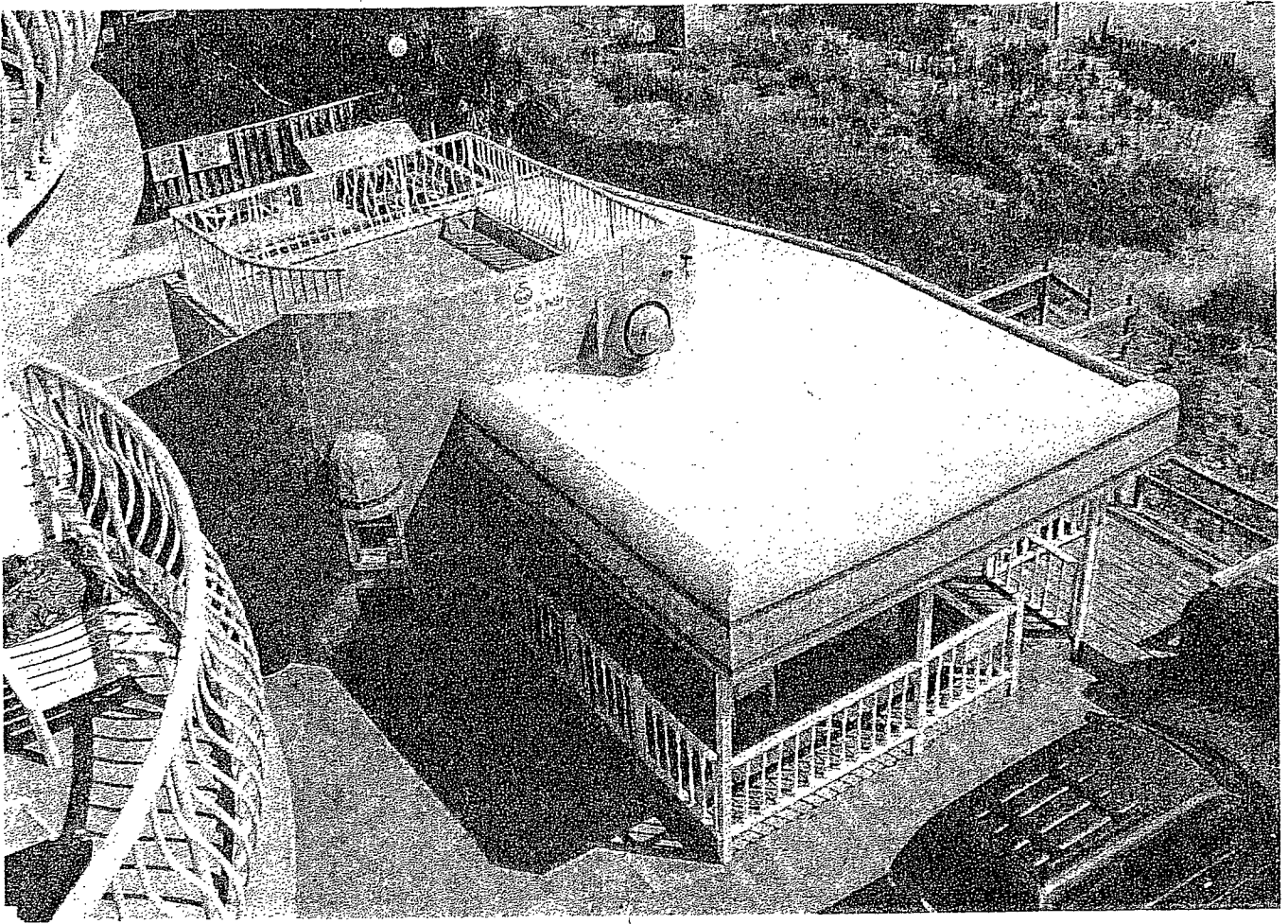
SIDE DECK - VIEW FROM LOBBY  
1992



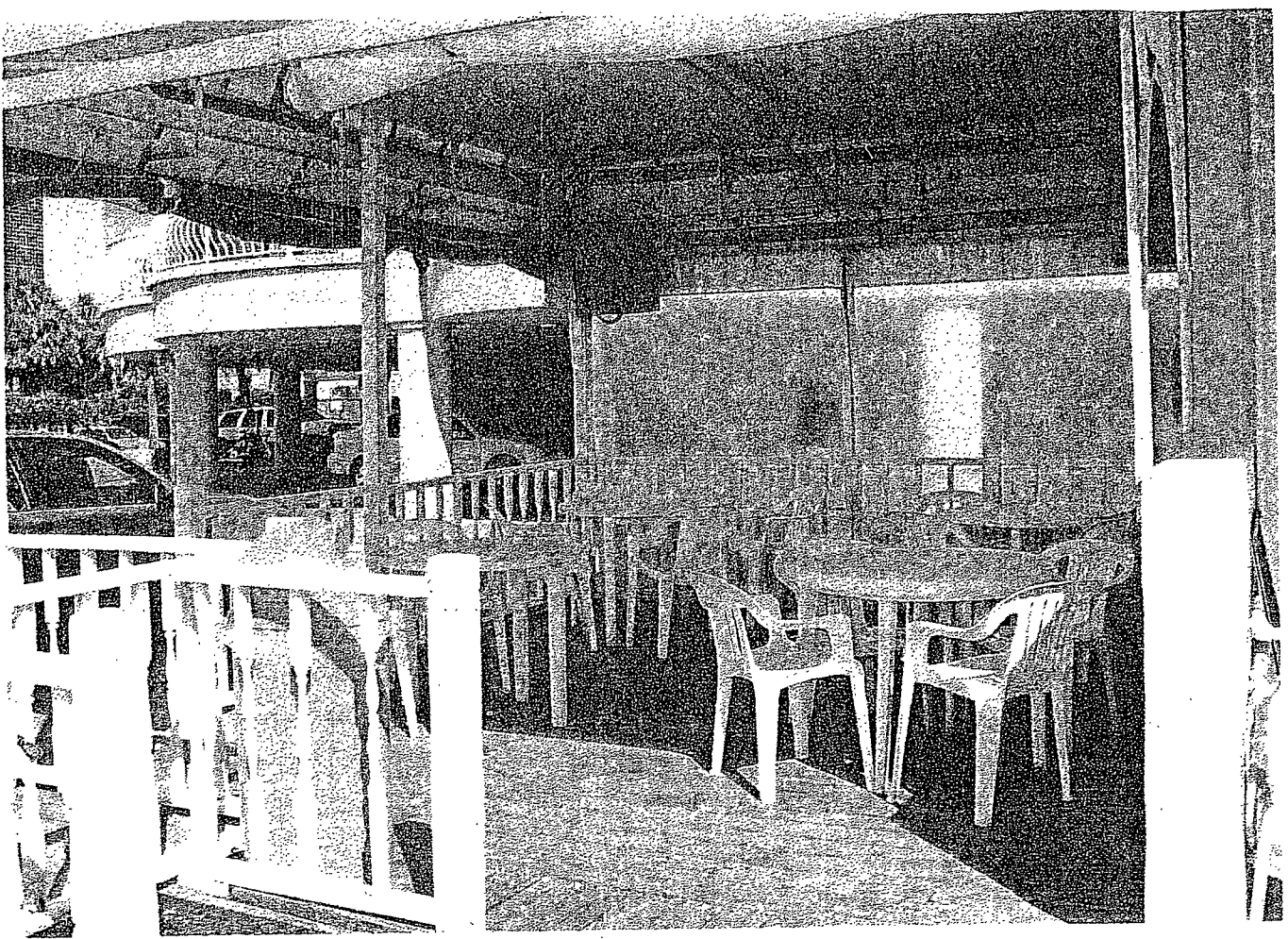
POOL BAR SIDE DECK AND AWNING VIEW FROM OCEAN SIDE 5/06



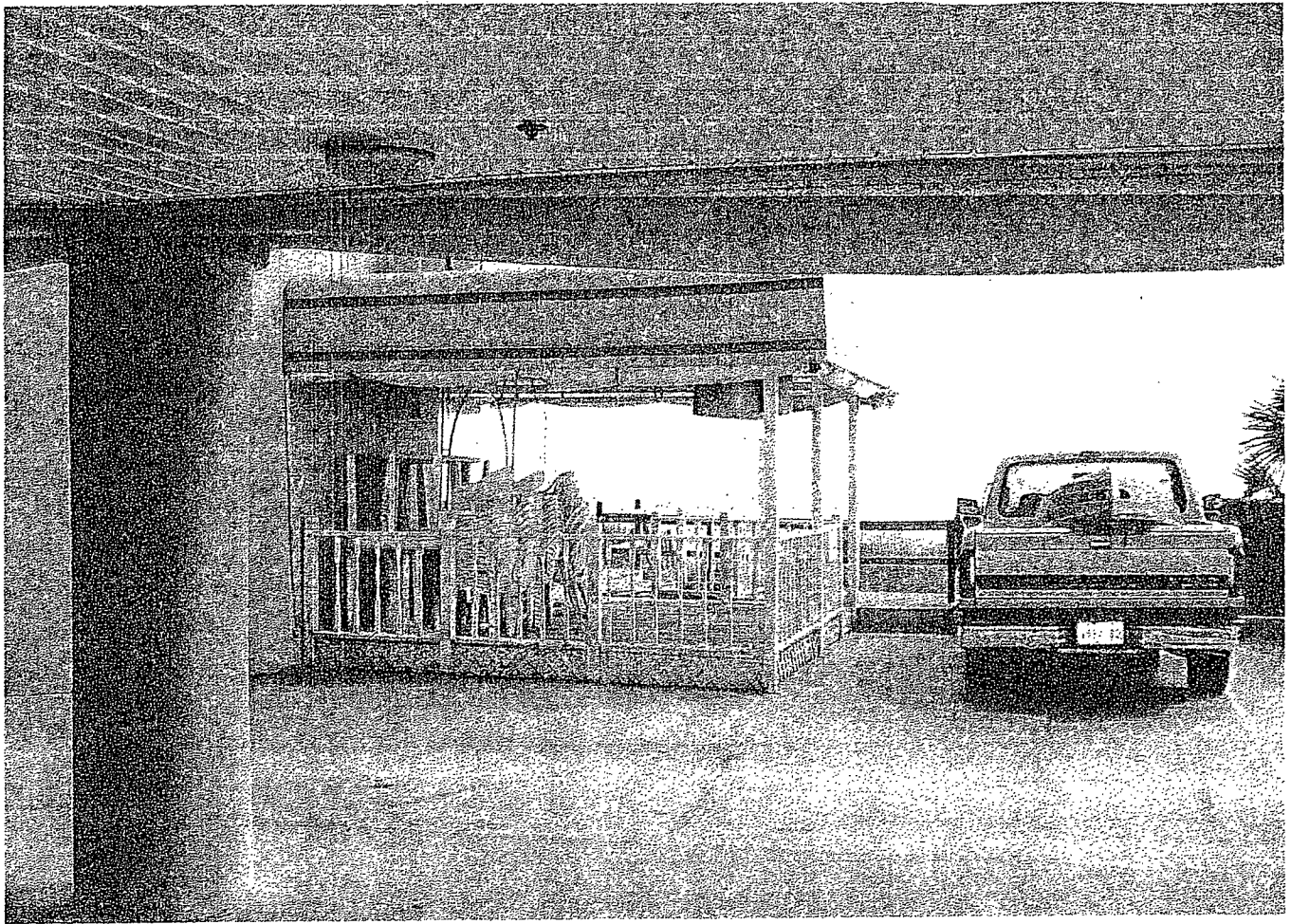
VIEW FROM LOBBY NOTE EXLAK KFA CAMPUS 5/10/6



SIDE DECK - VIEW FROM OWNER'S BALCONY  
2007



INTERIOR OF SIDE DECK  
2007



SIDE DECK VIEW FROM LOBBY  
APPEARANCE DURING 4 MONTHS  
OFF-SEASON NOV-DEC-JAN-FEB  
2008



(c) Copyright 2009, Pictometry International Corp.

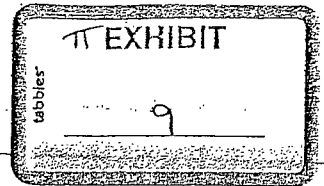
Creation Date: Feb 08, 2009 12:01

Modification Date: Feb 12, 2009 09:02

Average Scale: 1 inch = 19.4 feet

Distance between tick marks: 18.653262 feet

# St. Clements



August 27, 1992

VIA CERTIFIED AND  
REGULAR DELIVERY

Be-Mi Inc.  
Attn: Mr. Luke Goude  
[REDACTED]  
[REDACTED]

Dear Mr. Goude:

The reported agreement between you and Mr. Dwight Cox which apparently allows you to maintain vending machines on the common elements of the St. Clements property and to collect income generated by such machines is no longer valid. The transfer of rights and responsibilities for the management of the Association has been transferred to the unit owners as a collective whole. This event occurred some time ago and is defined in the Master Deed of the St. Clements Horizontal Property Regime. Mr. Cox, then a Director, Developer and Declarant no longer has the authority to grant you the collection of such vending income.

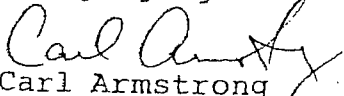
The vending machines that exist in the St. Clements building (5 soda machines and 4 snack machines) are the property of Coastal Coca-Cola Bottling and Lance. Effective 7:30 A.M., September 1, 1992, the income generated by those machines, or replacement machines, will be the property of the St. Clements Homeowners Association, to be placed in their operating account. Please be advised that you should remove all products that you have paid for and all monies prior to this date. Either the machines will be exchanged or the locks on the existing machines will be changed.

Additionally, no vending machines shall be placed anywhere on the common elements without the written consent of the Board of Directors. Also, no temporary or permanent modifications to the common elements are authorized without the permission of the Board.

Thank you for your attention to this matter.

Sincerely,

Chicora Development  
Managing Agent

  
Carl Armstrong  
Property Supervisor

CA/laj

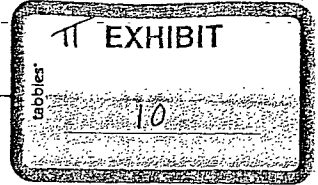
Page 498





**Certified Mail Receipt**  
No Insurance Coverage Provided  
Do not use for International Mail  
(See Reverse)

# EMILS



Sent to <i>Luke Goude</i>	
Street & No.	
P.O., State & ZIP Code	
Postage	\$ .29
Certified Fee	2.00
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing Date Delivered	

November 19, 1992

CERTIFIED DELIVERY

Mr. Luke Goude  
Be-Mi, Inc.  
[Redacted]  
Myrtle Beach, SC 29577

Re: St. Clements Homeowners Association, Inc.

Dear Mr. Goude:

The attached resolution is forwarded concerning the structure which serves as a deck and sitting area which was reported to have been constructed under your initiative. The Association is reviewing the liability aspects of this structure with St. Paul Fire & Marine Insurance Company.

The Board of Directors has disapproved your verbal request to attach a serving bar to the recently installed pool fence. Furthermore, the Board agrees that no modification of the fence (e. g. attachment of tables, chairs, advertisements) shall be made by any homeowner without the written consent of the Board.

Please note that Article VII of the Master Deed addresses the restrictions on the use of the common areas.

Sincerely,

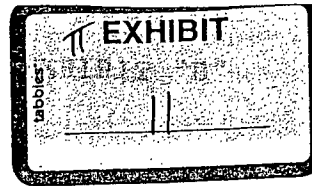
Chicora Development  
Managing Agent

Carl Armstrong  
Property Supervisor

CA/laj  
Enclosure

CHICORA P.O. Box 329, Myrtle Beach, South Carolina 29578 / Phone 803-272-8700





## MEMORANDUM

TO: Board of Directors/St. Clements Homeowners Association

FROM: Carl Armstrong

DATE: January 5, 1995

SUBJECT: Moisture Intrusion

The following is added to the list of eleven items:

### **ISSUE:**

The wallboard inside unit 201 has retained moisture following two recent heavy rainfalls. The wallpaper is separated from the damp and mildewed wallboard near the baseboard.

### **BACKGROUND:**

- The Rental Manager is hesitant about keeping the unit on the rental program because of the rough appearance.
- The owner has been advised by the Rental Manager that repairs are necessary.
- The owner has asked the Managing Agent for recommendations on repairs.
- The wallpaper has separated from the wallboard near the bottom and will not reattach because of moisture and mildew.
- Procon Waterproofing, Inc. recently inspected the interior of Unit 201. The contractors stated that the possible sources of water intrusion may be:
  - a) The corner of the balcony (point "A" on the diagram); the effect of wind driven rain from the northeast
  - b) Breaches in the exterior wall system. Although the wall was inspected and caulked in January, 1993, by Procon, new cracks may have opened up during high winds and building movement. The exterior wall cannot be properly inspected without expensive staging equipment.

### **ALTERNATIVES:**

- Caulk the balcony: juncture of the slab with the vertical wall (a simple procedure to be done as soon as possible)
- Waterproofing contractor to hang stage equipment, and inspect for breaches and caulk as appropriate. This could be coordinated with the removal of mildew on the exterior wall.
- Contact the architect previously used during destructive testing to inspect the west wall.
- To improve the interior appearance of Unit 201
  - a) Replace wallboard
  - b) Replace wallpaper

Possibilities:

1. Fund and hire an additional on site cleaner to provide seven day a week coverage.
2. Contract the rental manager to clean the property at least two days a week.
3. The rental manager can perform spot checks at night

**ISSUE:** Construction Litigation

Background - Coordination between the Board of Directors and the attorney, Steve Ouverson, should result in a smooth flow of information. The Managing Agent acts as a peripheral, taking direction from the Board of Directors to provide available data or to perform basic tasks. The Association will be invoiced a fee of \$50.00 per hour for specialized services as stated in the management agreement. As authorized by the former Board President, the Managing Agent may bill the Association for up to ten hours at \$500.00 of specialized services with regard to the litigation. As of November 28, 1994 no services have been completed.

Possibilities:

1. The Managing Agent is waiting for the attorney to establish a date to meet and open the Association's files for his review. This authorization was granted by Al Metcalf.

**ISSUE:** Balcony Carpets

Background - The rental manager has inquired about replacing a few of the carpets on the balconies. According to the Master Deed, the balcony is a limited common element for the specific use of the owner of the unit.

According to Section 9.6 of the Master Deed:

"Each unit owner shall also perform normal maintenance for any deck or balcony adjacent to his unit, even though it is a limited common element, and he shall keep it clean, orderly, and sanitary."

The carpet on the balcony is considered to belong to the owner of the unit. The condition of the balcony carpets is average for the age. Replacement of a carpet would be at the expense of the owner.

Possibilities:

1. Replacement of a balcony's carpet should be the responsibility of the unit owner.
2. The replacement carpet should match, as close as possible, the existing carpet to maintain a uniform appearance.

**ISSUE:** Pool Bar

Background - The owner of the pool bar, a separate unit identified in the Association's documents, has modified the exterior of the unit on at least two separate occasions, both being in violation of the Master Deed as no prior permission was acquired in writing from the Board of Directors: constructed a deck which consumed two parking places; installed a pay telephone on the exterior of the pool bar unit. In November, the owner installed a wind barrier which encloses the majority of the pool bar. The device appears reasonable and is considered to be temporary for the winter; however, the Board should have been consulted prior to its installation.

**Possibilities:**

1. Continue to monitor and report as necessary.

**ISSUE:** - Maintenance Office

Background - The on site maintenance person operates out of a corner space in the basement which is enclosed by the basement walls and a chain link fence. The environment in the basement during the summer is intolerable due to heat and humidity. The only air conditioned area to relax in during a break is in the maintenance office of an adjoining building.

**Possibilities:**

1. Continue to allow the person to take breaks off site.

**ISSUE:** Americans with Disabilities Act (ADA)

Background - The ADA (federal legislation) requires a building to accommodate those with disabilities. A condominium building which operates similar to a hotel is not exempt to this act according to the federal agencies contacted.

**Possibilities:**

1. Acquire the services of a professional to determine the requirements necessary to provide accommodations as stated in the act
2. Monitor the implementation of this act and respond accordingly

**ISSUE:** Appraisal of the Property

Background - The last appraisal, dated June 1991, was conducted to ensure adequate coverage of property insurance.

**Consideration:**

1. Consider a new appraisal for the future



Board of Directors Meeting  
April 5, 2006

St. Clements Parking Policy

It's important to make sure that all parking spaces are available for parking. This is especially true when the greatest demand for parking spaces is from Memorial Day through Labor Day.

For the St. Clements there is only one parking space for each of the 65 condos, and 2 parking spaces for the penthouse condo.

If an owner will leave a car parked on the property for a longer period of time and that owner also rents/lets others use his condo, then 2 parking spaces are being occupied per one condo. This can prevent another owner/guest from parking.

To improve the parking, this will be the policy:

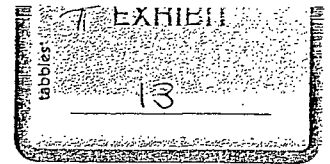
If an owner has a car parked at the St. Clements, and rents/lets others use his condo, he will have to remove his car from the property from Memorial Day through Labor Day so the required number of parking spaces are available.

Owners will be notified of the new policy.

Jim Moyer  
Merrill Landes  
Barbara Brown

LAW OFFICES  
**McCrackin, Barnett & Richardson, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405



E. WINDELL McCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

Writer's email: [mbarnett@sc.rr.com](mailto:mbarnett@sc.rr.com)

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

November 3, 2006

BE-MI, Inc.  
Attn: Mr. Raymond L. Goude  
[REDACTED]  
Myrtle Beach, SC 29572

Re: Side deck and awning adjoining to St. Clements Pool Bar

Dear Mr. Goude:

We have been retained by The St. Clements Homeowners Association, Inc. to contact you concerning the above referenced wooden side deck and teal colored awning attached to your Dwelling No. Pool-1 (the "Pool Bar") at St. Clements Condominiums. The Association respectfully demands that you detach and permanently remove within thirty-five days of the date of this letter the following property: the wooden side deck that covers portions of two paved parking spaces adjacent to the Pool Bar, the portion of the teal colored awning that overhangs the two parking spaces, and any gutters, lighting, electrical wiring, and other property of every description adjoining or covering the two parking spaces. Please also remove at the same time the eight (8) large screw eyes that you installed in the pool deck common area near the Pool Bar, so as to avoid having anyone trip over them. Please avoid damaging any of the common elements when you remove the above-described property, since you would be responsible for the cost of repairing any such damage, but if any minor damage occurs that does not render the premises unsafe, such minor damage can be repaired by the Association when the entire concrete parking deck is repaired in the near future.

Although I am informed that the property to be removed has been in place for a number of years, the Association's rights and reasons for demanding removal now include, but are not limited to, the following:

1. Master Deed Article 7.2 provides that any failure to enforce any right, reservation, or condition contained in the Master Deed, however long continued, shall not be deemed a waiver of the right to do so.
2. Master Deed Article 14(d) provides that the failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Master Deed shall not constitute a waiver of the right of the Association to enforce such right, provision or covenant in the future.

3. The members of the Association and the Board have voted their desire to have the side deck removed.
4. Although efforts were made in meetings with you to reach some amicable resolution of this issue, including a meeting held as recently as April of this year, an amicable resolution could not be reached, and the above-described property must now be removed.
5. The property needs to be removed so that the concrete parking deck upon which the side deck is located can be properly used, maintained and repaired. Repairs of the entire parking deck have been scheduled by the Association to begin in the near future.
6. With two parking spaces covered by the side deck, there are not sufficient parking spaces to accommodate parking for all the Association's members.
7. Even if parking were sufficient without the two paved parking spaces that the side deck covers, those two spaces are required to be maintained for parking by the zoning ordinances of Myrtle Beach.
8. Master Deed Article 7(b) provides that no unlawful use may be made of any common areas and that all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction shall be observed. As stated above, the zoning ordinances of the City of Myrtle Beach required at the time the side deck was built and continue to require that all 70 of the paved parking spaces at St. Clements remain available for parking.
9. Master Deed Article 7(d) prohibits any structural modification or alteration of any unit, the installation of awnings, or the alteration of the appearance of the exterior portions of the building without the written consent of the Board of the Association, which consent the Association is informed and believes was not obtained by you when you installed the side deck, awning and screw eyes.
10. Master Deed Article 7(e) provides that no business activity of any kind shall be conducted on any portion of the condominium property not designated as a commercial area. The two parking spaces covered by the side deck are not designated as a commercial area.
11. Master Deed Article 6.2 provides that all of the general common elements, which include the two paved parking spaces covered by the side deck, shall be subject to a perpetual, non-exclusive easement in favor of all of the owners of units at St. Clements, for their use and the use of their immediate families, guests or invitees. The side deck encroaches upon this easement.
12. Master Deed Article 8(d) provides that ingress and egress is reserved for vehicular traffic over and across the portions of the common area and facilities that are paved for all unit owners at St. Clements. The side deck encroaches upon this easement.
13. Master Deed Article 14.0 provides that each unit owner shall comply with the provisions of the Master Deed

Master Deed Article 14(c) provides that in the event of default by an owner, the Association is entitled to any relief available at law or equity, including the recovery of the costs of any proceeding and reasonable attorney's fees. If you comply with the demands set forth in this letter within thirty-five days of the date hereof, then no legal action will be brought against you by the Association as a result of the maintenance of the side deck and awning on the Association's property in violation of the Master Deed as cited above, and the Association will not seek recovery from you of the substantial attorney's fees incurred by the Association to date as a result of the legal work performed by my law firm in this matter. However, if you fail to timely comply with the demands set forth herein, then the Association intends to commence appropriate legal proceedings to enforce its rights and to collect all costs and expenses, including all reasonable attorney's fees, incurred as a result of your violations of the Master Deed.

Sincerely yours,

Michael J. Barnett

MJB:mn

cc: BE-MI, Inc.  
Attn: Mr. Raymond L. Goude

[REDACTED]  
[REDACTED]

The St. Clements Homeowners Association, Inc.  
c/o Ally Management  
PO Box 7706  
Myrtle Beach, SC 29578

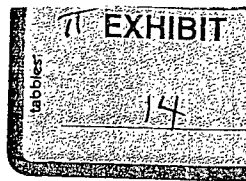


EXHIBIT 14

TOTAL ATTORNEY'S FEES/COSTS PER ATTACHED FEE STATEMENTS:	\$ 30,552.66
CREDIT FOR SANCTIONS FEES PAID BY DEFENDANT:	- <u>900.00</u>
NET TOTAL	<u>\$ 29,652.66</u>

LAW OFFICES  
**McCrackin, Barnett & Richardson, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL McCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

Writer's email: [mbarnett@sc.rr.com](mailto:mbarnett@sc.rr.com)  
August 21, 2009

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from January 6, 2009 to noon this date in The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conferences with Barbara Brown, Fred Newby, and potential witnesses; office conferences with Barbara Brown and potential witnesses; review of letters from Barbara Brown, Michelle DiScipio, and Fred Newby; review of pleadings, applicable case law and statutory law, discovery documents, Master Deed, photos, plats, letters, HOA records, and numerous other file documents in preparation for trial; review of Defendant's Motion to Amend Answer and Defendant's Motion for Summary Judgment; preparation of Motion for Order of Reference, Affidavits of Service my Mail, Chronology of Events, and Memorandum of Law; preparation of notes and exhibits for trial; and, preparation of letters to Barbara Brown, court reporter, and Fred Newby.

(MJB - 28.7 hrs. @ \$275/hr.)	\$ 7,892.50
(Paralegal - 4.3 hrs. @ \$75/hr.)	<u>322.50</u>
SUBTOTAL - Fee	8,215.00
Clerk of Court's filing fee - Motion	25.00
Master's hearing fee	125.00
Copying and postage costs	<u>130.80</u>
SUBTOTAL TO NOON TODAY:	8,495.80

Estimated time from noon today through the end of trial scheduled to start Monday morning, including further review of file documents and final trial preparation this afternoon and this weekend, including conference scheduled this weekend with Plaintiff's president for final trial preparation; and, representation at trial (which for the purposes of this statement is estimated

to be concluded by the end of the day on August 24; and, preparation of proposed Order for Master following trial.

(MJB - est. 26.5 hrs @ \$275/hr.)	7,287.50
Estimated additional copying costs	<u>35.00</u>
TOTAL DUE	<u>\$ 15,818.30</u>

Thank you,



Michael J. Barnett

MJB:mn

cc: Ms. Barbara Brown

LAW OFFICES  
**McCrackin, Barnett & Richardson, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL McCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com  
January 6, 2009

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from September 1, 2008 to date in The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conferences with Barbara Brown, Kevin Warren, and Fred Newby; office conferences with Barbara Brown and Leon Bechtel; review existing file documents in preparation for conferences; efforts to locate listed witnesses; preparation of proposed Order of Reference; and, preparation of letters to Barbara Brown and Fred Newby.

(MJB - 8.1 hrs. @ \$275/hr.)	\$ 2,227.50
(Paralegal - .3 hrs. @ \$75/hr.)	<u>22.50</u>
SUBTOTAL - Fee	2,250.00
Copying costs:	<u>2.80</u>
TOTAL DUE:	<u>\$ 2,252.80</u>

Thank you,



Michael J. Barnett

MJB:mn  
cc: Ms. Barbara Brown

LAW OFFICES  
**McCrackin, Barnett & Richardson, L.L.P.**  
POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL McCrackin  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com  
September 1, 2008

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

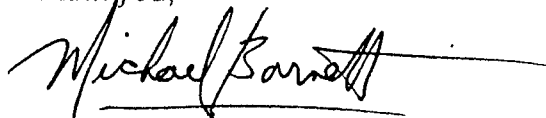
St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from May 8, 2008 to date in connection with The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including telephone conference with Fred Newby; review of letters from Barbara Brown and Fred Newby; review of Motions Roster, existing file documents in preparation for Motion Hearing, photos, SC Rules of Civil Procedure, Defendant's supplemental responses to Plaintiff's Interrogatories and Requests for Production; attendance at hearing on July 28 on Plaintiff's Motion to Strike Answer; preparation of Order Compelling Discovery; and, preparation of letters to Barbara Brown, Judge Ben Culbertson, Fred Newby, Dwight Cox, Raymond Goude, Chris Kotsovos, Jimmy Gerald, and Marshall Melton.

(6.6 hrs. @ \$275/hr.)	\$ 1,815.00
Clerk of Court's Filing Fees - Motion	25.00
Postage and copying costs	<u>38.45</u>
SUBTOTAL	1,878.45
Credit for \$900.00 received from Defendant by Court Order for Defendant's failure to comply with discovery	<u>-900.00</u>
TOTAL DUE:	<u>\$ 978.45</u>

Thank you,



Michael J. Barnett

MJB:mn  
cc: Ms. Barbara Brown

LAW OFFICES  
**McCrackin, Barnett & Richardson, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL McCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

Writer's email: mbarnett@sc.rr.com  
May 8, 2008

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

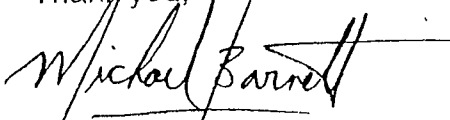
St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from April 11, 2007 to date in connection with The St. Clements Homeowners Association, Inc. v. BE-MI, Inc. (07-CP-26-1426), including review of letters from Barbara Brown, Roger Masters, Leigh Andrews, and Fred Newby; review of Master Deed; photos, pleadings, numerous file documents provided by client, SCRCF, Defendant's Answers to Interrogatories, Defendant's Responses to Request for Production, Motions and Trial Rosters, and existing file documents; office and telephone conferences by paralegal with client's president to prepare draft discovery responses; preparation of Motion to Compel Discovery, Affidavits of Service by Mail, Order Compelling Discovery, Plaintiff's Answers to Defendant's Interrogatories, Plaintiff's Responses to Defendant's Request for Production, and Plaintiff's Motion to Strike Answer; attendance at hearing on Plaintiff's Motion to Compel Discovery; and, preparation of letters to Fred Newby, Judge Jack Early, and Barbara Brown.

(MJB - 9.1 hrs. @ \$250/hr.)	\$2,275.00
(Paralegals - 29.8 hrs. @ \$75/hr.)	<u>2,235.00</u>
SUBTOTAL - FEE	4,510.00
Clerk of Court's Filing Fees - Motions (2)	50.00
Postage and copying costs	<u>112.50</u>
TOTAL DUE:	<u>\$4,672.50</u>

Thank you,



Michael J. Barnett

MJB:mn  
cc: Ms. Barbara Brown

LAW OFFICES  
**MCCRACKIN, BARNETT & RICHARDSON, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL MCCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON

April 11, 2007

OFFICES: -  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

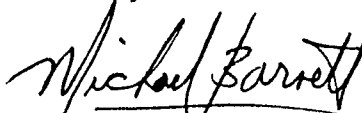
St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from December 19, 2006 to date in connection with The St. Clements Homeowners Association, Inc. V. BE-MI, Inc. (07-CP-26-1426) including telephone conferences with Barbara Brown, Fred Newby, and Horry County Sheriff's Department; review of letters from Barbara Brown, Luke Goude, Steve Chapman and Fred Newby; preparation, filing and service of Civil Cover Sheet, Summons and Complaint; review of Affidavit of Non-Service, Summons, Answer and Counterclaim, Certificate of Service, and other documents from Defendant's attorney; preparation and service of Reply, Plaintiff's Interrogatories, and Plaintiff's Request for Production; and, preparation of letters to Barbara Brown, Fred Newby, Williamsburg County Sheriff, and Horry County Sheriff.

(10.2 hrs. @ \$250/hr.)	\$ 2,550.00
Long distance telephone, fax, postage and copying costs:	35.44
Clerk of Courts Filing Fee - Complaint	150.00
Sheriffs' Service Costs	<u>30.00</u>
TOTAL DUE:	<u>\$ 2,765.44</u>

Thank you,



Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

LAW OFFICES  
**MCCRACKIN, BARNETT, RICHARDSON & CLEMMONS, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL MCCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON  
ALAN D. CLEMMONS

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

December 19, 2006

St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

---

Fee for representation from June 14, 2006 to date in connection with dispute with BE-MI, Inc. regarding removal of side deck and awning adjacent to pool bar, including telephone conferences with Barbara Brown and phone call to Fred Newby's office; office conference with Barbara Brown, Jim Moyer, and Merrill Landes; review of letters from Barbara Brown and Fred Newby; review of documents received from Barbara Brown including plats, letters and portions of master deed, etc.; and, preparation of letters to Barbara Brown, BE-MI, Inc., and Fred Newby.

(7.3 hrs. @ \$250/hr.)

\$ 1,825.00

Long distance telephone and copying costs:

21.72

TOTAL DUE:

\$ 1,846.72

Thank you,



Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

LAW OFFICES  
**McCrackin, Barnett, Richardson & Clemmons, L.L.P.**

POST OFFICE BOX 1182  
MYRTLE BEACH, SOUTH CAROLINA 29578  
(843) 448-8405

E. WINDELL MCCRACKIN  
MICHAEL J. BARNETT  
JOHN R. RICHARDSON  
ALAN D. CLEMMONS

June 14, 2006

OFFICES:  
1000 21ST AVENUE NORTH  
MYRTLE BEACH, SC 29577  
FAX (843) 448-5724

St. Clements Homeowners Association, Inc.  
c/o Ally Management Co.  
PO Box 7706  
Myrtle Beach, SC 29572

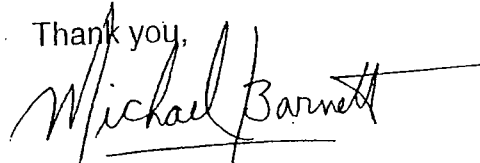
Fee for representation from May 5, 2006 to date in connection with concerns regarding location of pool bar and various actions taken over the years by the owner of Unit Pool-1, including telephone conference with Jim Moyer; review of master deed, articles of incorporation, bylaws, amendment of master deed, amendment of bylaws, deeds, plats, plans, minutes of meetings, and correspondence provided by Barbara Brown and/or obtained from the Register of Deeds of Horry County; and , office conferences with Barbara Brown.

(MJB - 4.8 hrs. @ \$250/hr.)	\$1,200.00
(Paralegal - 1.2 hrs. @ \$75/hr.)	90.00
Subtotal - fee	\$1,290.00

Long distance telephone and copying costs:

	28.45
<b>TOTAL DUE:</b>	<b><u>\$1,318.45</u></b>

Thank you,

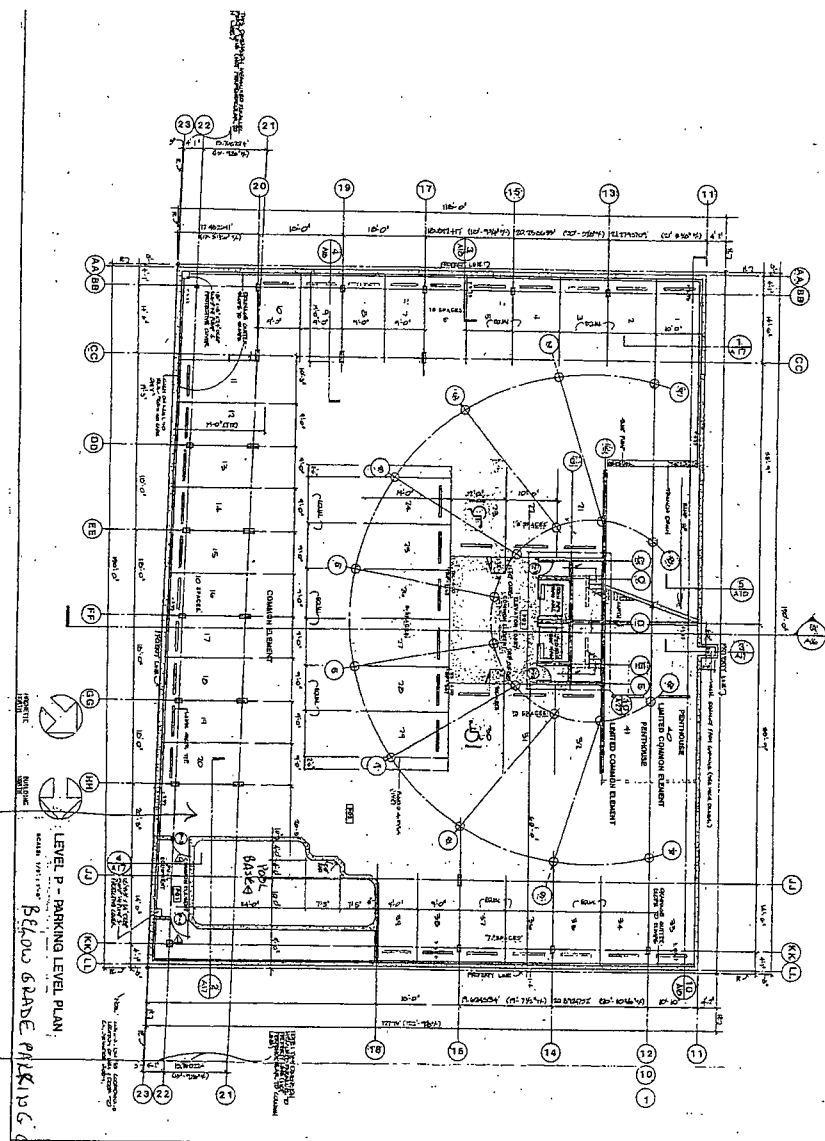


Michael J. Barnett

MJB:mcn

cc: Ms. Barbara Brown

PS to Barbara Brown: Barbara, when we last meet in my office on May 25, you were going to talk with the association's board about exactly what they want to demand that the Unit Pool-1 owner should do, so that I could write a letter to that owner setting forth such demand(s). As soon as you provide me with that information, I shall be happy to prepare a letter to that owner. In the meantime, if you have any questions, or if I may be of other assistance, please let me know. MJB



*This space is in access to Pool Equipment Room. It never was a parking space. It is marked "No Parking" so we refer to this space.*

LEVEL P - PARKING LEVEL PLAN

		<b>ST. CLEMENT'S INN</b> MYRTLE BEACH, SOUTH CAROLINA FOR DWIGHT COX	PROJ. NO. 3284	REVISION	NO. DATE
			SET NO.	CHECKED LEVEL # 1020-10-14	PL 5/28/02
800 NORTH KING HIGHWAY RAINBOW HARBOR BLVD 503 MYRTLE BEACH S.C. 29578			DATE: 11/18/07		
			DRAWN BY		
			CHECKED BY		
<small>THESE DRAWINGS ARE THE PROPERTY OF THE ARCHITECT (FIRM) AND NOT BE USED IN WHOLE OR IN PART WITHOUT WRITTEN CONSENT OF THE ARCHITECT</small>					

MAY

2007

April 2007

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

SUNDAY

MONDAY

TUESDAY

NOTES

121/244  
WEEK 18

May 2007

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

6 126/239  
WEEK 19

127/238

128/237

June 2007

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

13 133/232  
WEEK 20  
Mother's Day

134/231

135/230

July 2007

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

20 140/225  
WEEK 21

21 141/224  
Victoria Day  
(Canada)

22 142/223

August 2007

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

27 147/218  
WEEK 22

28 148/217  
Memorial Day,  
Observed

29 149/216

September 2007

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

122/243

22

123/242

23

124/241

24

125/240

5

129/236

9

130/235

10

131/234

11

132/233

12

136/229

16

137/228

17

138/227

18

139/226  
Armed Forces  
Day

19

143/222

23

144/221

24

145/220

25

146/219

26

150/215

30

151/214

31

NOTES

AT-A-GLANCE



CITY OFFICIALS  
MYRTLE BEACH, SOUTH CAROLINA

MAYOR AND COUNCIL  
ROBERT M. GRISSOM, MAYOR

Councilman H. G. Charles	Councilman Phillip J. Newsome
Councilman James E. Putrell	Councilman Marjorie D. Stensbrook
Councilman Mary Jeffcoat	Councilmen E. A. Thomas

Richard M. Marvin, CITY MANAGER

PLANNING AND ZONING COMMISSION  
Jack Stirrup, Chairman

Commissioner Sam Burns	Commissioner John P. "Pat" Gore
Commissioner Ray Caudle	Commissioner J. Ferrin Lawson, Jr.
Commissioner Keith Compton	Commissioner Russell Mann
Commissioner James Cross	Commissioner Melvin Haze

February 1, 1986

# Myrtle Beach Zoning Ordinance (pub. 1986)

## TABLE OF CONTENTS (Continued)

<u>Section</u>	<u>Subject</u>	<u>Page</u>
<u>32-5</u>	<u>USE, DIMENSIONAL, PARKING, AND SIGN REGULATIONS</u> <u>Zoning Districts</u>	5-1
A-1,	Accommodations, Single-Family Residential . . . . .	5-1
A-2,	Accommodations, Two-Family Residential . . . . .	5-2
A-3,	Accommodations, Multi-Family Residential . . . . .	5-4
A-3-1,	Accommodations, Multi-Family Residential . . . . .	5-6
A-4,	Accommodations, Resort . . . . .	5-8
A-5,	Accommodations, Resort Residential . . . . .	5-9
A-5-1,	Accommodations, Resort Residential . . . . .	5-11
<del>A-5-2,</del>	<del>Accommodations, Resort Residential . . . . .</del>	<del>5-15</del>
A-6,	Accommodations, Mobile Residential . . . . .	5-15
A-7,	Accommodations, Mobile Resort Residential . . . . .	5-15
CS,	Cabana Section . . . . .	5-25
AC-1,	Accommodations-Commercial, . . . . . Office-Residential	5-26
AC-2,	Accommodations-Commercial, . . . . . Business-Residential	5-29
AC-3,	Accommodations-Commercial, Resort . . . . .	5-30
C-1,	Commercial, Primary . . . . .	5-33
C1-A,	Commercial, Primary Extension . . . . .	5-34
C-2,	Commercial, Highway Oriented . . . . .	5-36
C-3,	Commercial, Highway . . . . .	5-38
C-4,	Commercial, General . . . . .	5-41
C-4-1,	Commercial, General . . . . .	5-42a
C-5,	Commercial, Neighborhood . . . . .	5-43
I-1,	Industrial, Limited . . . . .	5-44
M-1,	Medical . . . . .	5-45
PUD,	Planned Unit Development . . . . .	5-46
CP,	Coastal Protection (Overlay Zone) . . . . .	5-51

GENERAL ZONING

2-1-2. Accommodations, Resort Residential

OBJECTIVES

To provide for the orderly development of certain areas within the community where both residential and resort-type land uses are now in evidence, and where, because of proximity to the ocean, the continuation of such "mixed development" would promote year-round use of public facilities, and allow for flexibility of development, in accordance with the economic practicality for various type of residential and resort uses.

USE GROUPS PERMITTED

No.	Uses
4	Residential, Multi-Family
5	Residential, Resort
8	Social and Cultural

SPECIAL REGULATIONS

Appropriate open space and landscaping as required by Section 32-6, Open Space and Landscaping Requirements.

MINIMUM LOT REQUIREMENTS

Total Area Per Dwelling Unit	1,500 sq. ft. per unit for all uses in Use Group 4, Residential, Multi-Family. No requirements elsewhere.
Total Lot Area	6,000 sq. ft.
Front Lot Width	50 ft.
Lot Depth	90 ft.

MINIMUM YARD REQUIREMENTS

Front Yard Depth	12 ft.
Side Yard Width (2)	12 ft.
Rear Yard Depth	12 ft.

Where a building exceeds eighty (80) feet horizontally and/or forty (40) feet vertically, whichever is greater, such side yard shall increase by the ratio of one (1) foot for each additional seven (7) feet in width and by the ratio of one (1) foot for each additional three (3) feet in height.

On lots with two or more principal residential buildings or uses, the minimum distance between such buildings or uses shall not be less than fifteen (15) feet.

\* OFF-STREET PARKING REQUIREMENTS

For hotels, motels, rooming and boarding houses, one (1) space for each unit plus one (1) space for each ten (10) units or fraction thereof. A unit will consist of no more than five hundred fifty (550) square feet and units which exceed five hundred fifty (550) square feet will be required to provide one and one-half (1½) spaces per unit. One and one-half (1½) spaces will be required for dwelling units whether denominated apartments, town houses or any other apartment or dwelling unit. For all other uses, one (1) space for each two hundred fifty (250) square feet of gross floor space is required. (Amended 4/3/84)



**Michael Barnett**

---

**From:** "Michael Barnett" <mbarnett@sc.rr.com>  
**To:** "Fred B. Newby" <fnewby@newbylaw.com>; <lawsona@horrycounty.org>  
**Sent:** Monday, September 21, 2009 12:43 PM  
**Subject:** Re: St. Clements v. Be-Mi, Inc. (07-1426)

Thanks again. If the **Master's office can please send a confirmation email affirming that those 5 pages are now deemed admitted as a plaintiff's exhibit in this case**, this issue about those 5 pages being admitted will be resolved.

Best regards,

Michael Barnett  
McCRACKIN, BARNETT, & RICHARDSON, LLP  
P.O. BOX 1182  
~~MYRTLE-BEACH, SC-29578~~  
PH. 843-448-8405  
FAX 843-448-5724

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

THIS MESSAGE MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL OR PRIVILEGED UNDER AN ATTORNEY-CLIENT RELATIONSHIP. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL(S) OR ENTITY TO WHICH IT IS ADDRESSED, AND ANY OTHER DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND MAY BE ILLEGAL UNDER FEDERAL OR STATE LAW. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY EMAIL OR BY TELEPHONE AT 843-448-8405 (COLLECT) AND BY DELETING THE ORIGINAL MESSAGE AND ANY COPIES. THANK YOU.

----- Original Message -----

**From:** Fred B. Newby  
**To:** 'Michael Barnett' ; [lawsona@horrycounty.org](mailto:lawsona@horrycounty.org)  
**Sent:** Monday, September 21, 2009 12:22 PM  
**Subject:** RE: St. Clements v. Be-Mi, Inc. (07-1426)

Hello Mike,

You are correct, I think the court would be fine taking judicial notice of the Ordinance, and I have no objection to having the hard copy as part of the record. Let me know if you need anything else.

Fred

---

**From:** Michael Barnett [mailto:[mbarnett@sc.rr.com](mailto:mbarnett@sc.rr.com)]  
**Sent:** Monday, September 21, 2009 12:12 PM  
**To:** [lawsona@horrycounty.org](mailto:lawsona@horrycounty.org); Fred Newby  
**Subject:** Re: St. Clements v. Be-Mi, Inc. (07-1426)

Fred, confirming our phone conversation a few minutes ago, you have kindly agreed to consent to the admission of the 5 pages of city law as a plaintiff's exhibit as requested in my 9/18/09 letter sent to the Master, with copy to you, per my emails below. Could you **please send to me and the Master's office a brief reply to this email confirming that consent?** Upon her receipt of your confirmation email, if the Master is also agreeable to those 5 pages being now deemed admitted into evidence, I am requesting that the **Master's office also please send me a brief reply email affirming that those 5 pages are now deemed admitted as a plaintiff's exhibit in this case.**

Thank you.

**Michael Barnett**

---

**From:** "Michael Barnett" <mbarnett@sc.rr.com>  
**To:** "Graham Howe, Cynthia" <HoweC@HorryCounty.org>; "Fred Newby" <fnewby@newbylaw.com>  
**Sent:** Monday, September 28, 2009 10:56 AM  
**Subject:** Re: St. Clements v. Be-Mi, Inc.  
Thank you.

Best regards,

Michael Barnett  
McCRACKIN, BARNETT, & RICHARDSON, LLP  
P.O. BOX 1182  
MYRTLE BEACH, SC 29578  
PH. 843-448-8405  
FAX 843-448-5724

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----- Original Message -----

**From:** Graham Howe, Cynthia  
**To:** mbarnett@sc.rr.com ; Fred Newby  
**Sent:** Monday, September 28, 2009 10:48 AM  
**Subject:** St. Clements v. Be-Mi, Inc.

Dear Mr. Barnett and Mr. Newby:

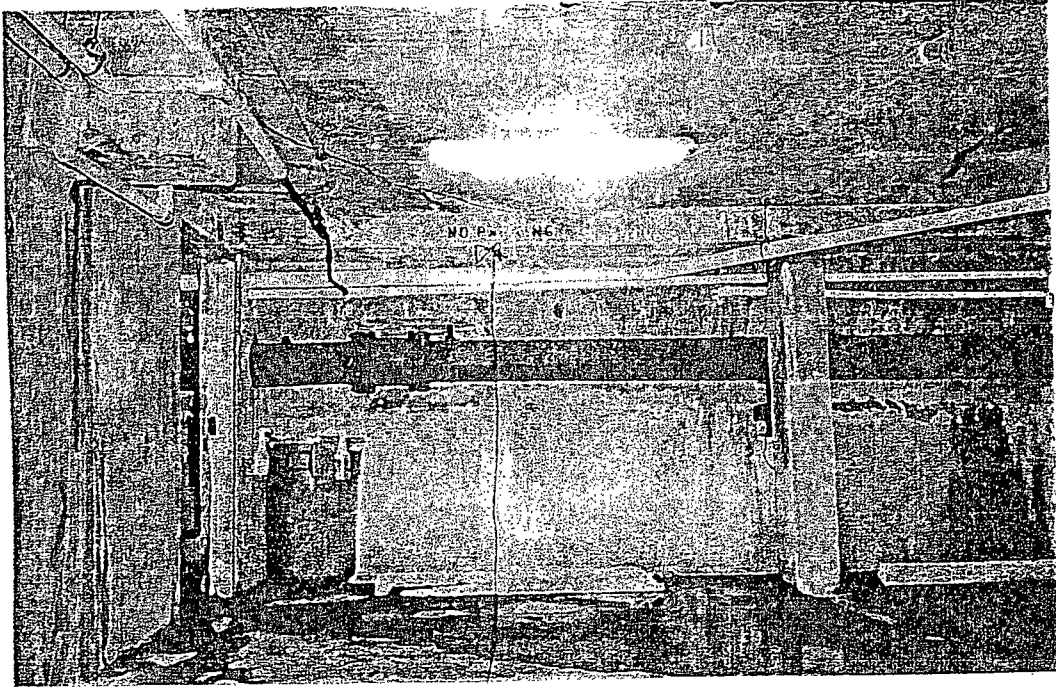
This will confirm that pages 9 through 13 of the Plaintiff's Memorandum of Law have been admitted as an Exhibit for the Plaintiff, without objection.

With my regards, I am

Very truly yours,

Cynthia Graham Howe  
Horry County Master in Equity  
P.O. Box 1236  
Conway, South Carolina 29528-1236  
843-915-5310 (phone)  
843-915-6310 (fax)  
howec@horrycounty.org

DEFENDANT'S EXHIBITS



DEFENDANT'S  
EXHIBIT  
1  
8-24-09

# St. Clements

July 26, 2001

BE-MI Inc.  
Luke Goude  
312 70<sup>th</sup> Avenue North  
Myrtle Beach, SC 29527

Dear Luke:

We continue to receive many complaints from owners and guests in regard to the pool bar at St. Clements. The complaints include:

- Loud noises too late at night and into the morning hours, music, talking, laughter, etc.
- Left over trash in the common areas surrounding the pool and bar areas.
- Poor condition and trash in common area (lobby) restrooms in the early morning.

In my letter, dated May 8, 2001, I asked for your help in regard to these complaints. Al Metcalf reported that he had spoken to you since that time and that you had assured him that these issues were being addressed. The continued complaints suggest that an adequate solution has not been executed. This was discussed at a recent Board of Director's meeting. The Board feels that you are responsible for your guests the same as any other unit owner and strongly request that you eliminate the reasons for these complaints. The Board recommends that:

- The music volume to be turned down at midnight and turned off at one o'clock am.
- Trash be gathered and removed from the area around the pool and bar at closing by your staff.
- Restrooms be cleaned and trash removed at closing by your staff.
- The bar to be closed at one o'clock am.

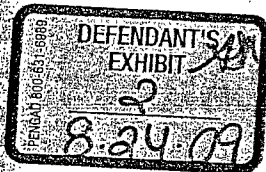
During the weekend of July 14<sup>th</sup> & 15<sup>th</sup> it was reported that one of your local patrons left their vehicle parked directly in front of the lobby doors overnight. Parking in the ingress/egress and loading/unloading areas is an imposition to the guests and owners of the St. Clements.

The Board feels that these will be major issues at the Annual Meeting if corrections are not made.

FOR THE BOARD OF DIRECTORS

*Paula Holland*

Paula Holland,  
Association Manager,  
Ally Property Management



P.O. Box 7706, Myrtle Beach, South Carolina 29572  
(843) 497-3555 • Fax (843) 497-3652

REGULAR MEETING OF THE BOARD OF DIRECTORS

THURSDAY, JUNE 28, 2001

MINUTES

Pursuant to call, a Regular Meeting of the Board of Directors of St. Clements Homeowners Association, Inc. was held on Thursday, June 28, 2001 at 9:00 AM, by telephone conference, from the offices of Ally Property Management, Inc., located at 5001 North Kings Highway, Suite 210, Myrtle Beach, South Carolina.

1. **Opening of Meeting**

Directors present at the meeting were Al Metcalf, Stephen Klaiber, and Mark Korros. Representing Ally Property Management, Inc. were Paula Holland and Angel Palermo.

2. **Waiver of Notice**

It was noted that the meeting had been scheduled via telephone, no written notice had been sent to the Board members. Upon a motion duly made, seconded and approved, it was:

**MOVED; that notice of the meeting be waived as the meeting was scheduled via telephone.**

Al Metcalf, President of the Board of Directors and Association, served as Chairman of the meeting and Mark Korros, Secretary/Treasurer of the Board of Directors and Association, served as Secretary of the meeting.

3. **Approval of Minutes – None**

4. **Old/New Business**

A. **Pool Bar**

Mr. Metcalf told the Board members that he had spoken with the owner of the pool bar and the owner stated that he is cleaning the lobby bathrooms and is asking people not to park on the property. The owner asked who was filing the complaints against the pool bar. Ms. Holland mentioned that she had received complaints from a few homeowners regarding the loud music from the pool bar. Mr. Metcalf asked that Ms. Holland obtain any complaints that may have been received by the Caravelle Resort regarding the pool bar.

Ms. Holland told the Board that she had sent a letter to the owner of the pool bar requesting that he clean up the common areas around the bar and clean the lobby bathrooms that his patrons use. She told the Board that she received no response from the owner.

Mr. Metcalf told the Board members that the deck where the bar is located was originally built by the owner of the bar, but the Association owns the deck. He stated that the only leverage the Association has is to disallow him to occupy the pool deck. Mr. Korros suggested that the Board request that the owner turns the music off and close the bar by 1:00 AM.

Mr. Metcalf stated that having the pool bar on the property is an asset and would like to work with the owner of the pool bar to curb some of the complaints. He stated that a letter should be sent to the owner requesting that the music be turned off at a reasonable time, the lobby bathrooms need to be cleaned, the common areas around the bar need to be cleaned up and that patrons are not to be parking on St. Clements property. Mr. Korros stated that the letter should be friendly and show that the Board wants to be cooperative.

The Board discussed the matter further and upon a motion duly made, seconded and approved, it was:

**MOVED; that a letter will be sent to the owner of the pool bar recommending that the music from the bar be turned off and the bar closed at one o'clock am. The lobby bathrooms and the common areas around the bar must be cleaned at closing. The Board asked that the letter state that they are asking for the owner's help in solving these problems. The matter will be reviewed in 30 days to make sure the owner is in compliance with the Board's requests.**

The resulting letter is attached as "exhibit A".

#### **B. Waterproofing Project**

Ms. Holland then discussed the major problems of water infiltration on the 01 stack or the northwest side of the building. She told the Board that there were a couple of options they could choose. The first option was to have an architectural engineer inspect the building and tell them what their problems are. The cost for this would be approximately \$16,000.00. The second option is to have SpecTech Systems Corporation, a waterproofing company, perform tests cuts on the stucco to determine what the problem is and if the Board would need to have an engineer inspect the building. The cost for this would be \$2500.00

The Board discussed using the lawsuit monies to make the repairs to the building. They discussed if they could utilize the monies to waterproof the building. Ms. Holland told the Board that they could use those monies to make the necessary repairs to the building. Ms. Holland told the Board that she had obtained bids for a building similar to St. Clements and the total cost for the bid was approximately \$90,000.00. She told the Board that the cost might be lower due to the fact that there are no exterior hallways at St. Clements.

The Board also discussed the possibility of waterproofing the northwest wall only, not the entire building. Ms. Holland stated that the lifespan of normal waterproofing on a stucco building is seven years and that lifespan is expired. She told the Board that in her opinion the entire building should be waterproofed.

After further discussion, the Board asked that Ms. Holland contract with SpecTech to perform the test cuts on the stucco at a cost of \$2500.00. The Board also requested that a bid be obtained from SpecTech to waterproof the northwest wall and a bid to waterproof the entire building. Ms. Holland told the Board that she would obtain three bids from three different companies for the waterproofing of the building.

**C. Lawsuit Filed by Owner of Penthouse**

With regard to the status of the lawsuit filed by the owner of the penthouse, Ms. Holland reported that the information had been sent to the Association's liability insurance carrier for the purpose of inquiring about coverage for payment of legal fees involved with the litigation of the counter claim filed by the penthouse owner against the association. She told the Board that the liability insurance carrier stated that there was no insurance coverage for legal fees. The information has now been sent to the Association, Directors and Officers insurance carrier for their review. Ms. Holland told the Board that she is still waiting to hear from them regarding insurance coverage for legal fees.

A Board member asked if the lawsuit affected the foreclosure action on the penthouse by the Association. Ms. Holland told the Board that the Association Attorney is proceeding with the foreclosure of the unit and should not be affected by the owner filing a counter claim against the Association. She told the Board that the owner is suing for \$78,000.00 in damages with no invoices or documentation to back up the claim. The Association Attorney has requested the documentation.

A Board member asked if the fence had been removed from the designated parking area for the penthouse. Ms. Holland told the Board that the fence had been removed. She told the Board that owner has been very uncooperative and will not provide a key to his unit.

**D. Fire Sprinkler System**

Ms. Holland reported that recently the City of Myrtle Beach Fire Inspector performed an inspection on the fire alarm system. Corrosion and paint were found on the sprinkler heads in the outside lobby area and the inspector is ordering that they must be replaced. Ms. Holland stated that the cost to replace the sprinkler heads would be approximately \$3000.00. The Board approved to have the sprinkler heads replaced.

The proposal from Eastern Carolina Fire Protection Inc. for repairs/replacements recommended for the St. Clements is attached as **exhibit "B"**.

**E. Exterior Lobby Ceiling Repair**

Ms. Holland reported that the ceiling on the right side of the exterior lobby had fallen and had to be replaced. She told the Board that the reason the ceiling fell was because the material previously installed was regular interior sheetrock. Ms. Holland told the Board that green board, a product made to withstand the elements, was recommended by the vendor and was installed in the area. Mr. Metcalf stated that the right side of the exterior

lobby ceiling should also be replaced to alleviate the possibility of it falling down. He stated that this should be done after Labor Day.

With regard to the lights in the exterior lobby area, Ms. Holland reported that the lights needed to be replaced. The Board asked that bids be obtained for the replacement of the lights in the exterior lobby area.

The invoices relative to the ceiling repair are attached as exhibit "C".

E. Other

The Board then discussed the possibility of refurbishing the interior of the elevator. They asked that bids be obtained for the upgrade of the interior of the elevator.

With regard to serving on the Board of Directors, the Board discussed the possibility of paying one quarter of dues as an incentive for a homeowner to serve on the Board. There had been a problem getting homeowners to serve on the Board of Directors. They asked Ms. Holland to research the Master Deed with regard to this issue.

A Board member mentioned that the wallpaper in the hallways is beginning to deteriorate and they should look at replacing the wallpaper. Mr. Metcalf asked Ms. Holland to ask the on-site maintenance supervisor if he would be willing to replace the wallpaper in the hallways.

Ms. Holland then presented bids to the Board for the installation of an ice machine in the parking deck. She told the Board she obtained two bids for two different size ice machines. The machines would be coin operated and dispense 2 ½ pounds of ice for twenty-five cents. One unit would make 600 pounds of ice and the cost would be \$2500.00. The other unit can make 500 pounds of ice and would cost \$1700.00. After some discussion, the Board decided to table this issue and revisit it in the future.

The Board also discussed of installing automatic doors in the lobby area. Ms. Holland presented a bid for the installation of new doors at a cost of \$6500.00. The Board decided to table this issue and revisit it in the future.

With regard to security issues, the Board asked that Ms. Holland obtain a schedule from the Caravelle as to when their guards patrol the property and how much coverage they are getting.

Mr. Klaiber then discussed the parking garage area. He stated that the wall on the north side of the parking garage is obstructing motorist's ability to exit the area. He suggested removing approximately 30 to 40 feet of the wall to make it easier to get out of the parking garage. Mr. Korros suggested reversing the ingress and egress of the garage. After some discussion, the Board asked Ms. Holland to obtain bids to remove a portion of the wall.

Ms. Holland mentioned to the Board that the pool furniture is in disrepair and they should consider replacing it in the near future. The Board asked that bids be obtained for the replacement of the pool furniture and this cost should be included in the 2002 operating budget.

The Board asked that a newsletter be drafted and sent to the homeowners to inform them of what is happening at the property and what the Board is planning for the building.

The resulting newsletter is attached as "exhibit D".

The Board members praised Ms. Holland for all her hard work with regards to St. Clements.

The Board will meet again once the waterproofing bids are obtained.

5. **Adjournment**

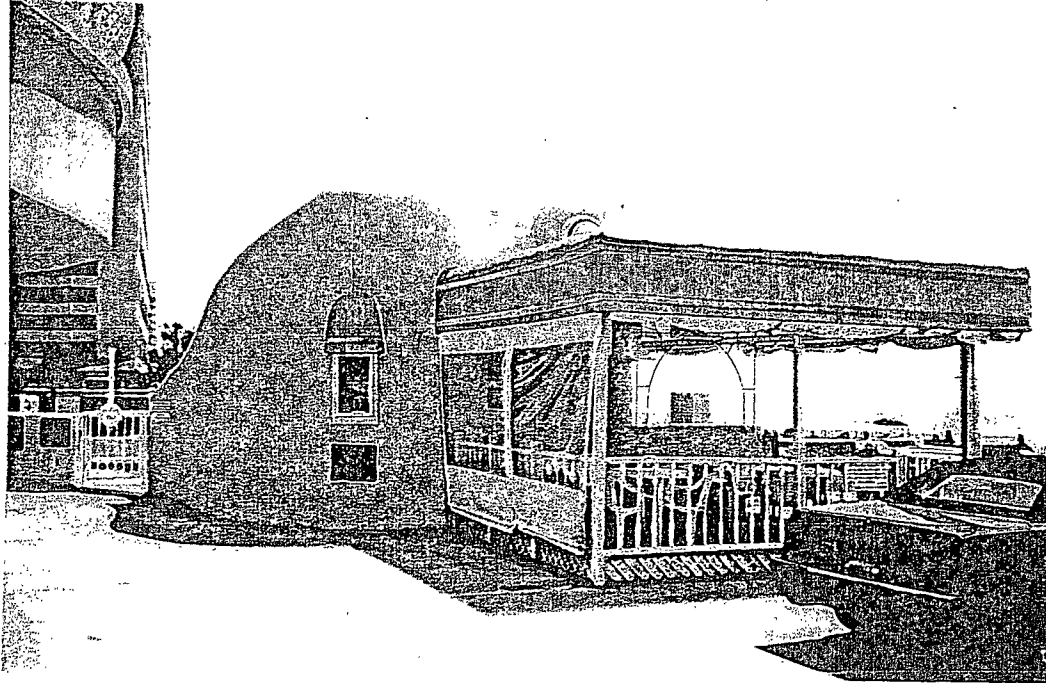
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Mark Korros, Secretary

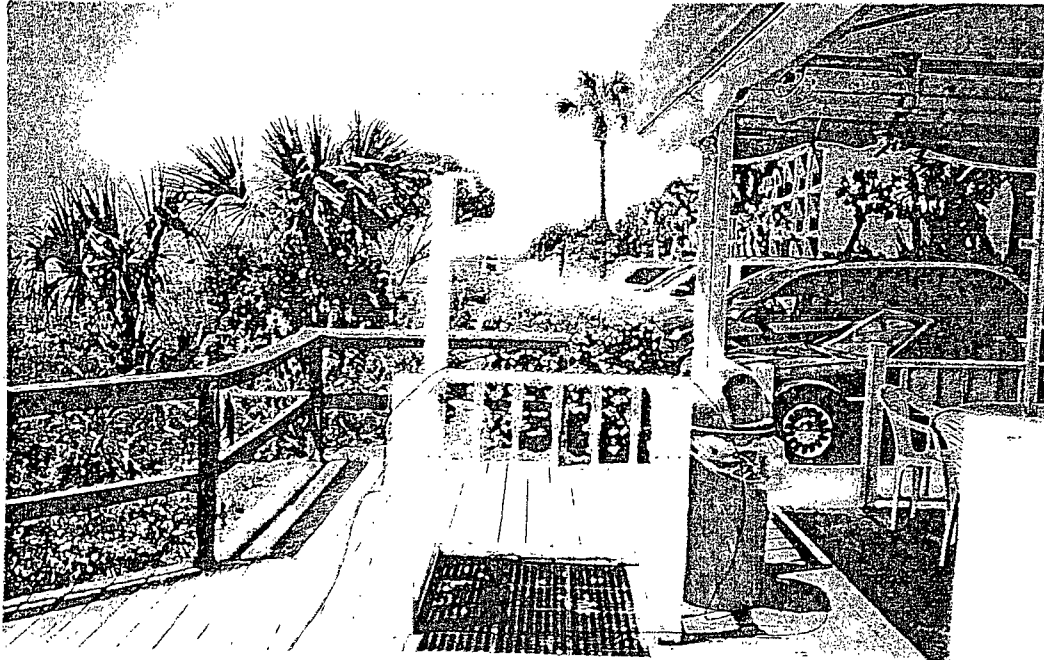
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Al Metcalf, Chairman

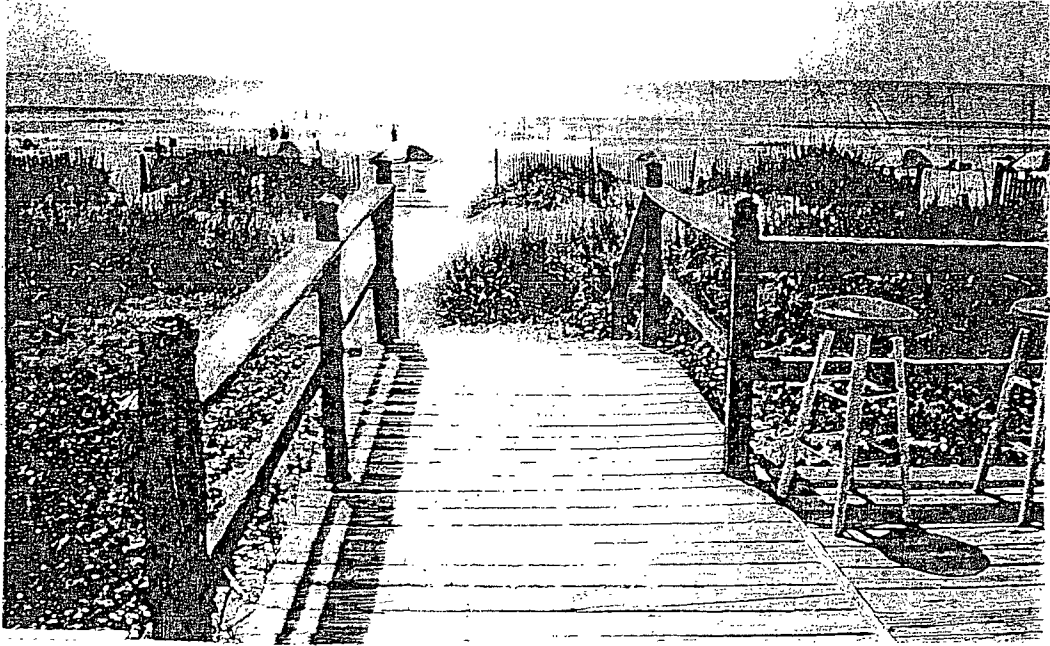
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Meeting Adjourned: 10:30 o'clock AM



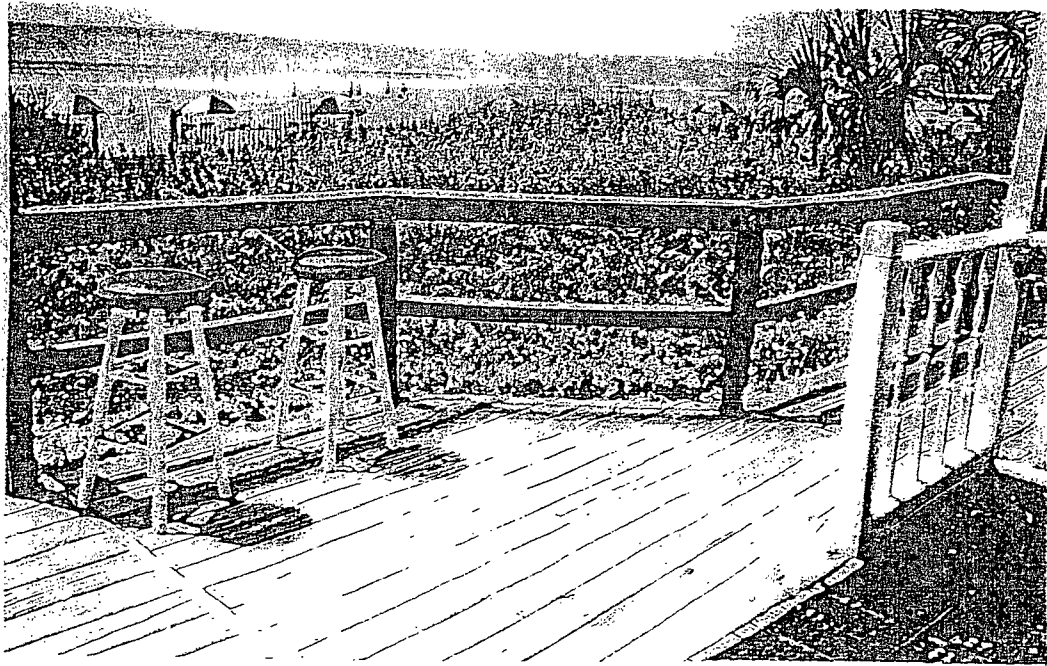
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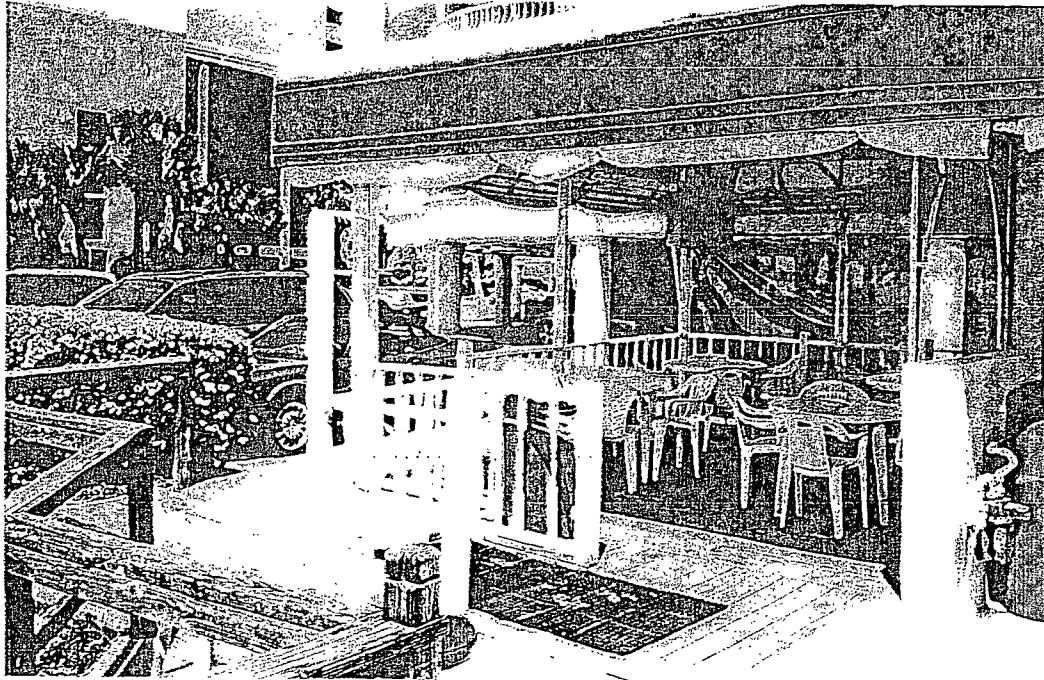
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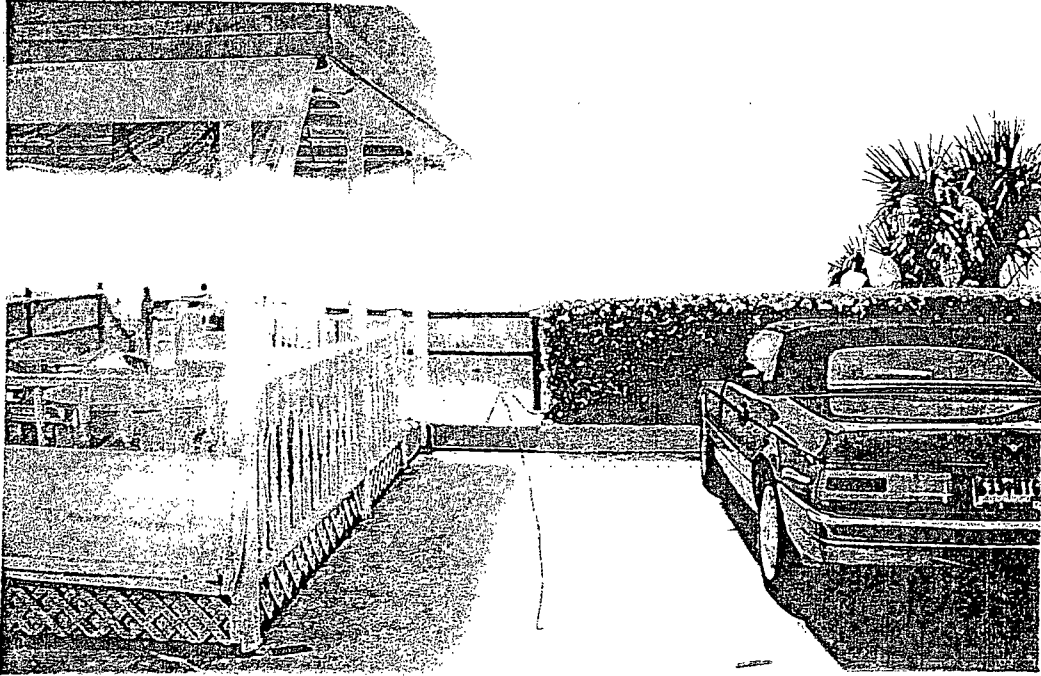
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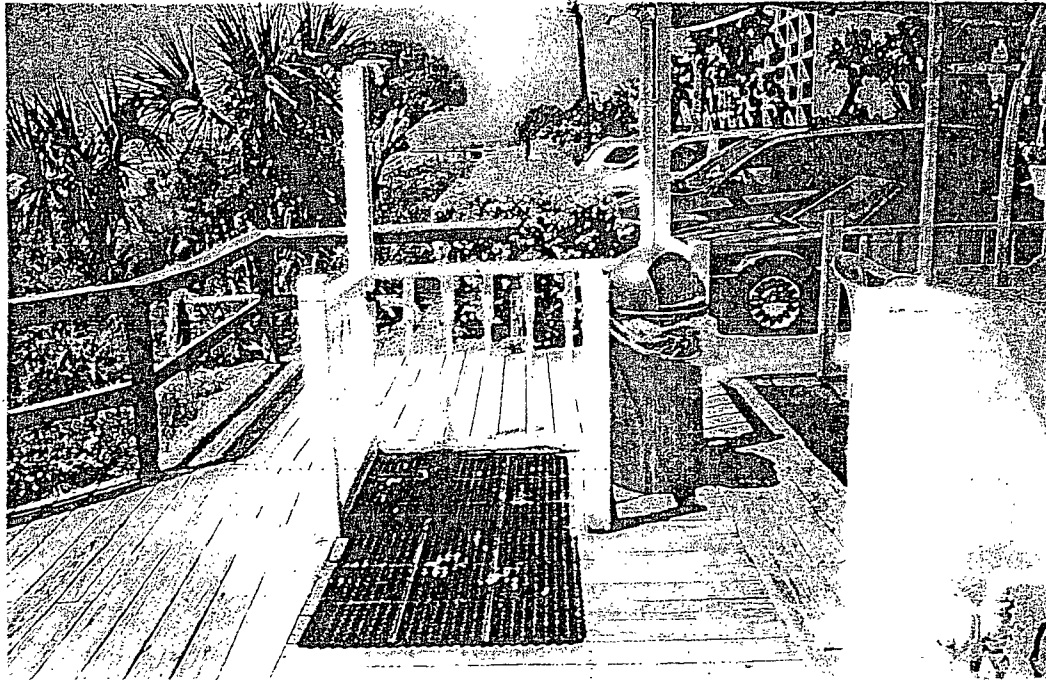
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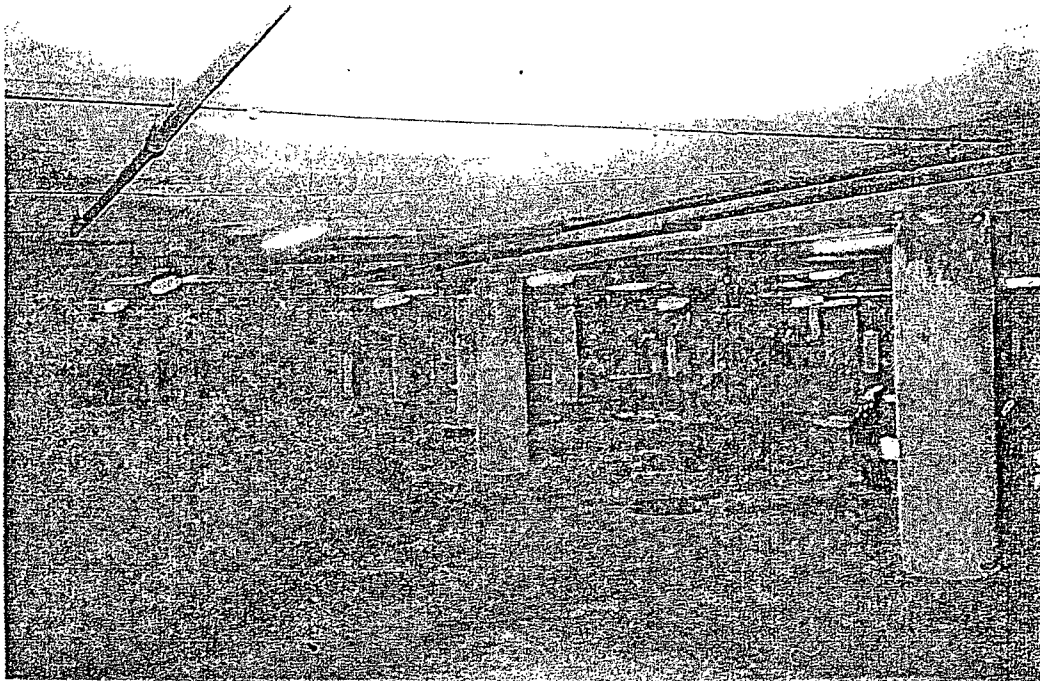
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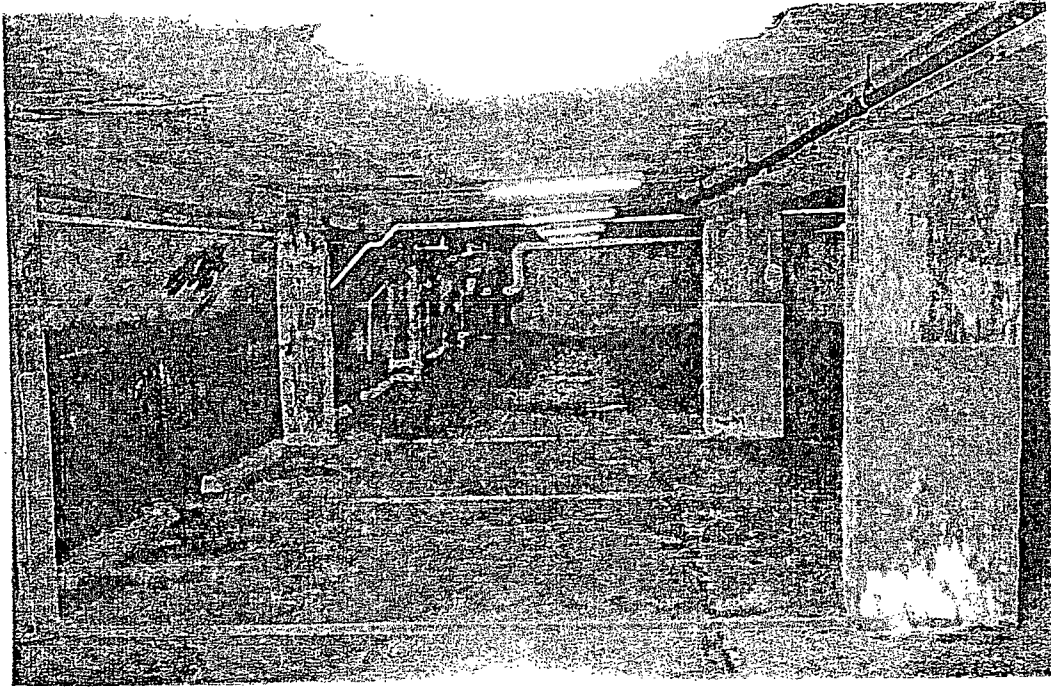
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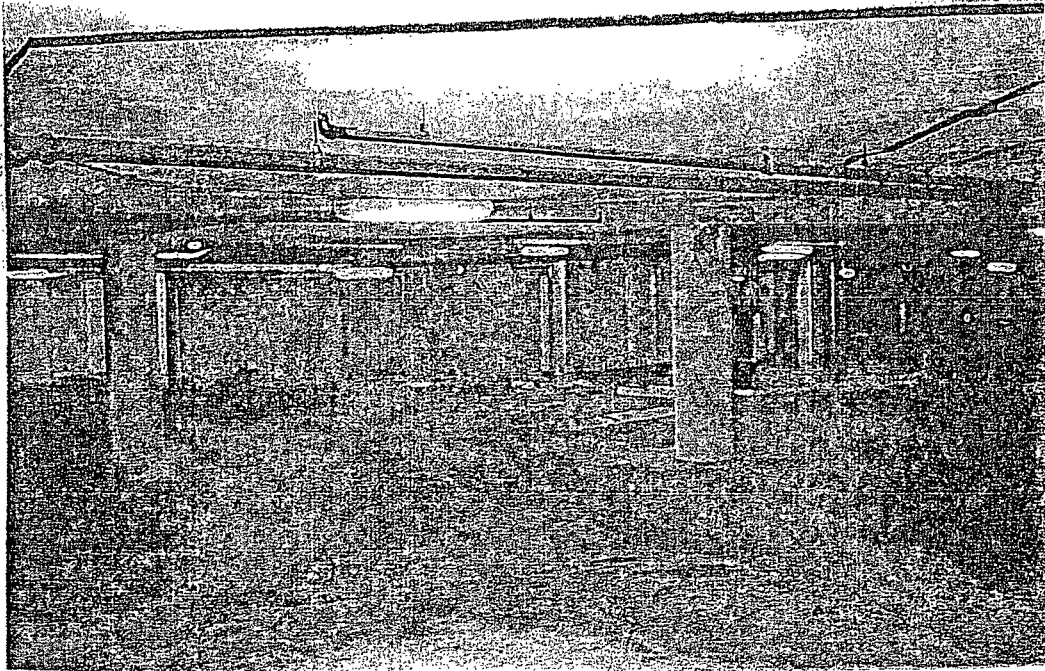
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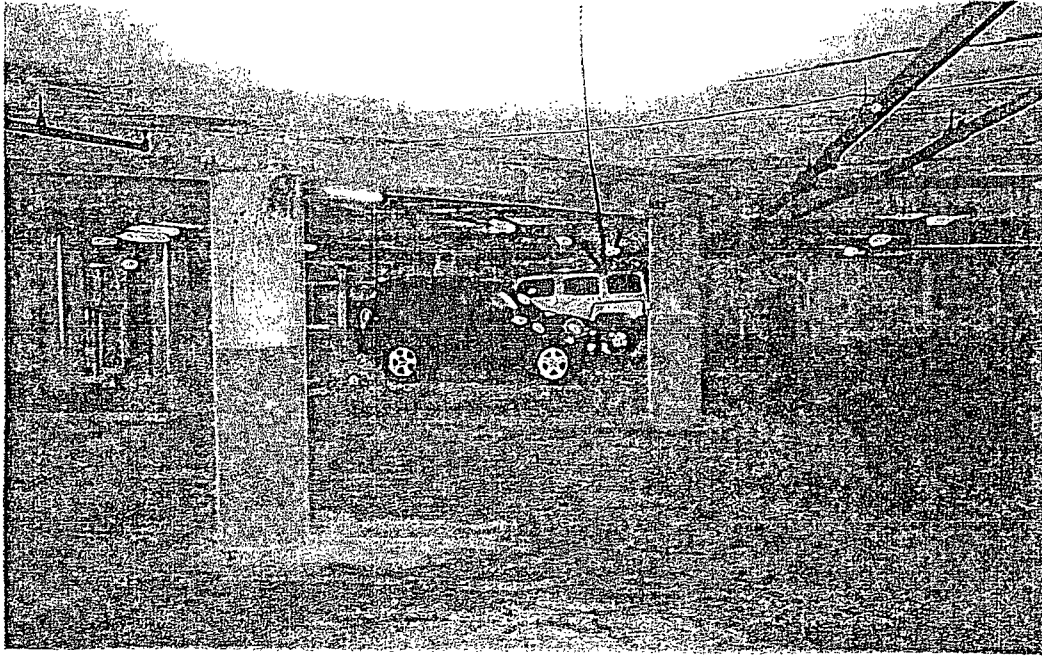
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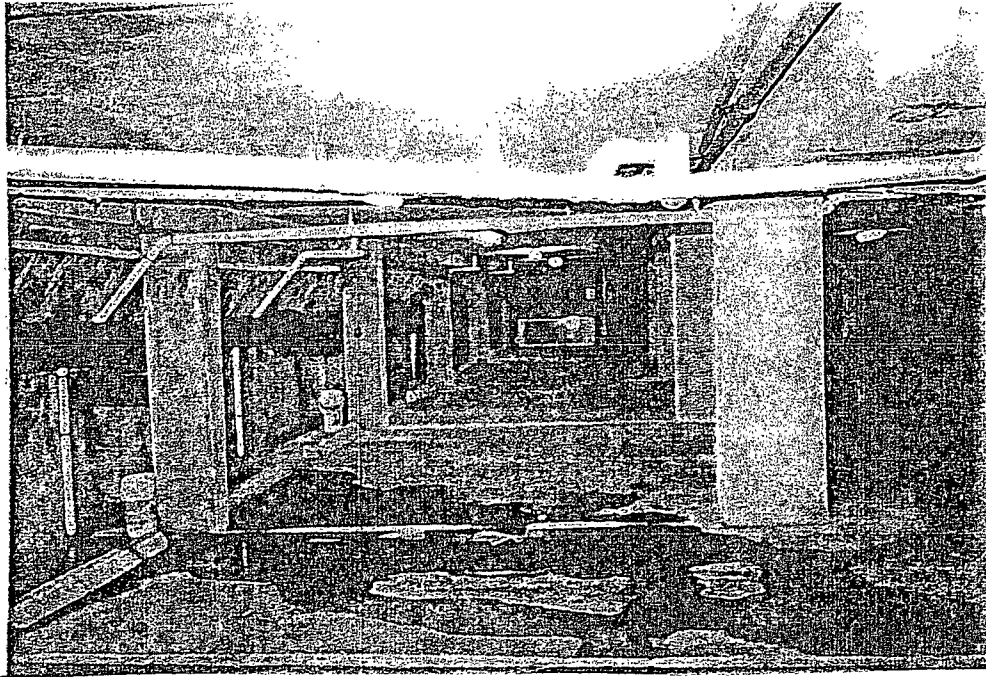
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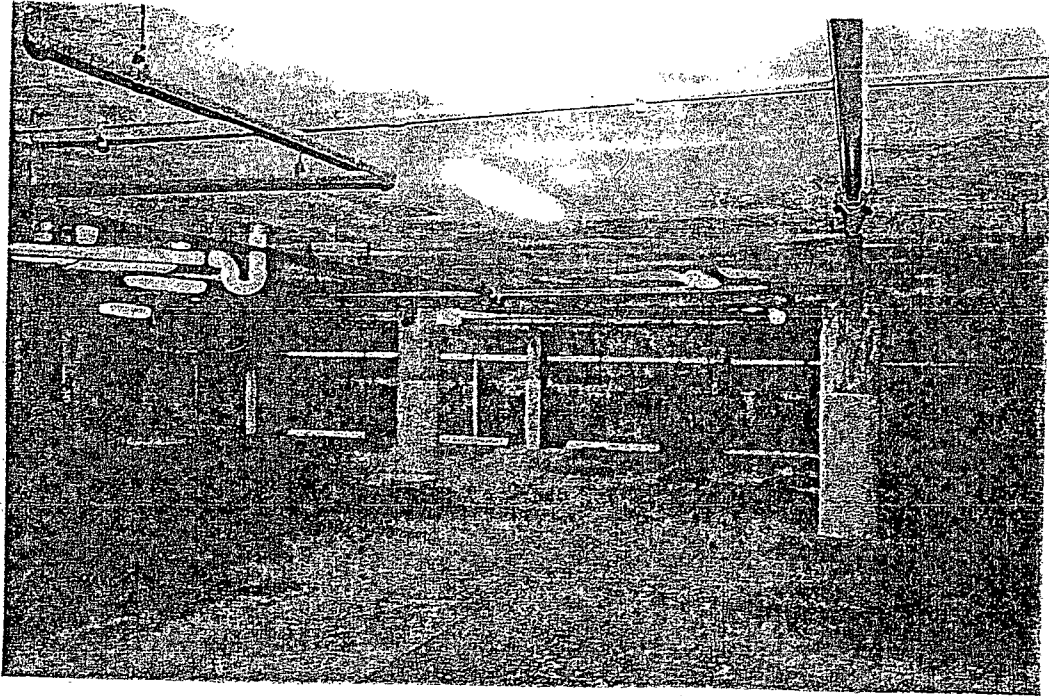
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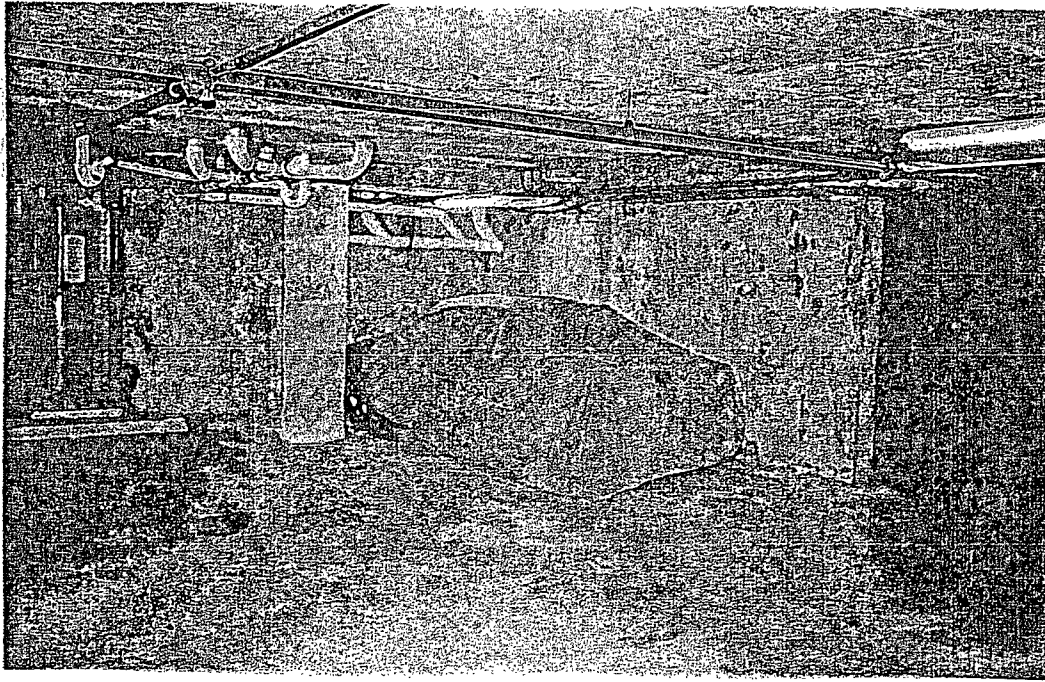
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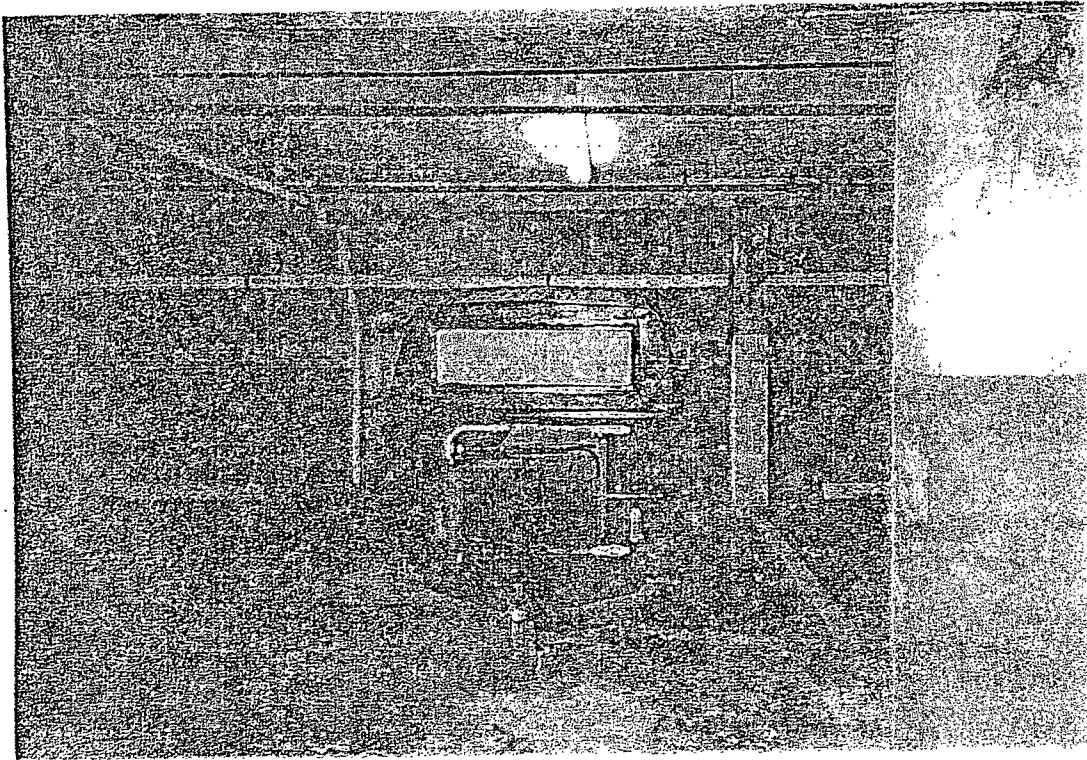


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Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

The undersigned also hereby certifies that the Record on Appeal complies with the August 13, 2007 order of the South Carolina Supreme Court regarding Appellate Court Filings.

March 27, 2013



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

RECEIVED

MAR 29 2013

SC COURT OF APPEALS

Appellant Case No. 2012-213333

The St. Clements Homeowners  
Association, Inc.,

Appellant,

v.

BE-MI, Inc.,

Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on BE-MI, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on March 28, 2013, addressed to its attorney of record, Fred B. Newby, Newby Sartip Masel & Casper, LLC, 4593 Oleander Drive, Myrtle Beach, South Carolina 29577.

March 28, 2013



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