SMITHMOORE
LEATHERWOOD
ATTORNEYS AT LAW

101 N. Third Street
Suite 400
Wilmington, NC 28401

Rec'd 6/23/17 LHA

VIA HAND DELIVERY

June 22, 2017

Mr. Hiram J. Marziano, II, CFM
Floodplain Administrator
Town Planning Director
Town of Sunset Beach
700 Sunset Blvd. N
Sunset Beach, NC 28468

The Honorable Lisa Anglin
Town Clerk
Town of Sunset Beach
700 Sunset Blvd. N
Sunset Beach, NC 28468

Re: **NOTICE OF APPEAL**
Appeal of Order to Take Corrective Action dated June 13, 2017
1844 East Main St., Sunset Beach, North Carolina
Palm Cove, Lot 8
Parcel 256MB008

Dear Mr. Marziano and Madam Clerk:

This law firm represents Finley Efard, LLC, the owner of the above-referenced property. Pursuant to Town of Sunset Beach ("Town") UDO Article 12, Section 12.03(D)(4), and all other applicable law and regulations, please accept this letter as my client's appeal to Town Council from the letter and Order to Take Corrective Action issued by Mr. Marziano dated June 13, 2017, a copy of which is attached hereto as Exhibit "A" (the "Order").

For reasons to be more fully set forth at the hearing before Town Council on this appeal, my client disagrees with the alleged violations and Findings set forth in the Order, including without limitation the Town's interpretation and application of UDO Article 12, Part I, 44 CFR 60.3(e), NCRC Section 322.1.6, NCRC Section 322.3.4 and IBC ASCE 24-05.

My client asserts the Town's approval of prior permit and building inspections and the Town's issuance of a certificate of occupancy and related construction and building permits and approvals as a complete or partial defense to the alleged violations set forth in the Order. My

client also asserts that to the extent that there may be technical violations of the UDO or other applicable regulations, which violations are denied herein, such violations result from implementing construction methods and techniques suggested and/or approved by the Town following prior consultation between my client's building professionals and Town building and permitting officials during the construction process. Accordingly, my client asserts the defenses of laches, waiver and estoppel as a complete or partial defense to the alleged violations.

Alternatively, my client asserts as a complete or partial defense in this matter that all or some of the alleged violations are de minimus and that enforcement should not be pursued in the current actions, particularly in light of the Town's prior building inspections and approvals and numerous other examples of similar construction methods and techniques that can be found throughout the Town.

Based upon the foregoing and the evidence and arguments to be made at the hearing of this appeal, my client respectfully contends that the alleged violations should be dismissed or reversed.

My client reserves the right to assert additional defenses as the facts and circumstances become further known in this matter.

Additionally, my client reserves its rights to request a variance from the applicable ordinances and regulations and/or seek any other exemptions or exceptions to the applicable ordinances and regulations that may be available under the circumstances.

If there are any required filing or appeal fees or forms associated with this appeal, please let me know, and my client will promptly pay any required fees and submit any required forms. Also, if you need any other information at this time please let me know.

We kindly request that that hearing on this appeal be scheduled for a date certain in the fall of 2017, in order to allow the parties additional time to continue to work toward a mutually agreeable resolution in this matter. Also, my client does appreciate the Town's allowance in the Order for a 180-day compliance timeframe for the alleged violations, and we look forward to further discussions with the Town in an effort to try to resolve this matter in the next few months without requiring a hearing, if possible.

Thank you for your time and assistance in this matter.

Sincerely,

Smith Moore Leatherwood LLP

Matthew A. Nichols

MAN/nc

Cc: Susan Parker, Town Administrator (via e-mail: sparker@sunsetbeachnc.gov)
G. Grady Richardson, Jr., Town Attorney (via e-mail: grady@ggrlawoffice.com)

EXHIBIT
A
PENGAD 800-631-6989

700 Sunset Boulevard North • Sunset Beach, N
Telephone: 910-579-6297 • Fax: 910-
Website: www.sunsetbeachnc.gov • Email: sunsetbeach@atmc.net

June 13, 2017

Finley Efard, LLC
2808 Chelsea Circle
Durham, NC 27707

SUBJECT: Floodplain Violation at property located at 1844 East Main Street, Sunset Beach [Parcel 256MB008] – Findings from June 9, 2017 Hearing and Order to Correct

Dear Property Owner:

On April 6, 2017, a Notice of Violation was sent regarding the property you own located at **1844 East Main Street, Sunset Beach, NC**. This notice identified violations of the Town of Sunset Beach Unified Development Ordinance related to floodplain development. This notice of violation was followed up with a notice of hearing dated June 1, 2017 for an on-site hearing for June 9, 2017. This letter serves as the findings of that hearing and as an order to take corrective action regarding the violations contained herein.

At an on-site hearing, conducted by the Director of Planning for the Town of Sunset Beach on June 9, 2017 at the above referenced subject property, the following was found:

Finding I: Two service disconnects mounted on and penetrating two different breakaway wall systems. One to the right of the electrical meter and one to the left of the electrical meter. [See Photograph I]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding II: LP Gas service line penetrating the breakaway wall system. [See Photograph II]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding III: Water spigot penetrating the breakaway wall system. [See Photograph II]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**

- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding IV: HVAC condensation drip line penetrating the breakaway wall system on the left side of the house. [See Photograph III]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding V: HVAC condensation drip line penetrating the breakaway wall system on the right side of the house. [See Photograph IV]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding VI: Irrigation control timer attached to the breakaway wall system [See Photograph V]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

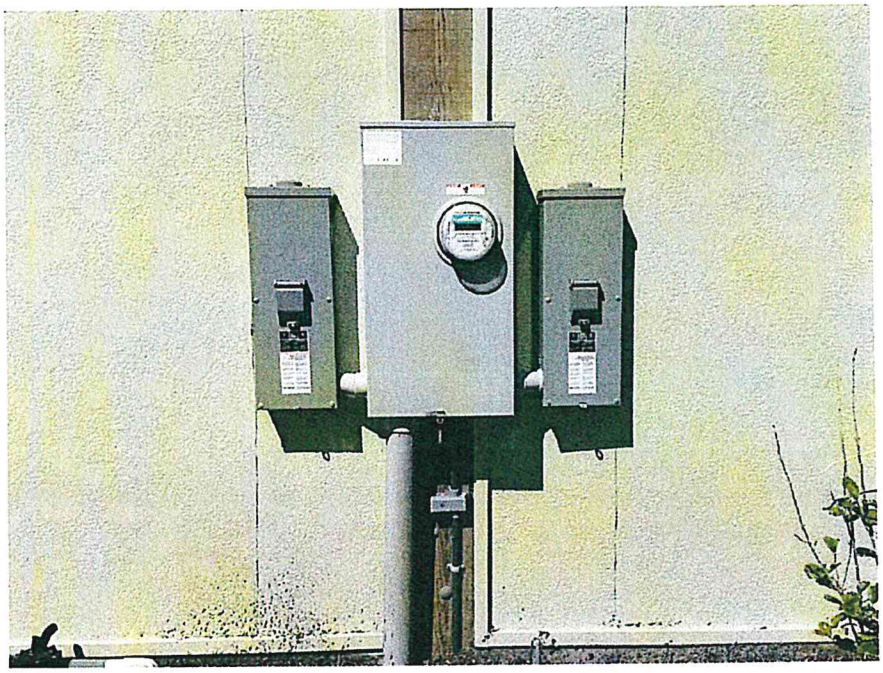
Finding VII: Grinder control box disconnecting means attached to the breakaway wall system. [See Photograph V]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

Finding VIII: Shower valve assembly attached to the breakaway wall system . [See Photograph VI]

- **Violation of the Section(s) of the Town's Unified Development Ordinance:** Article 12, Section 12.04(B)(4)(d) & 12.04(C)(3)(b) Coastal High Hazard Areas, breakaway walls
- **Violation of NCRC Sec. 322.3.4 Walls Below Design Flood Elevation**
- **Violation of IBC ASCE 24-05: Flood Resistant Design & Construction**

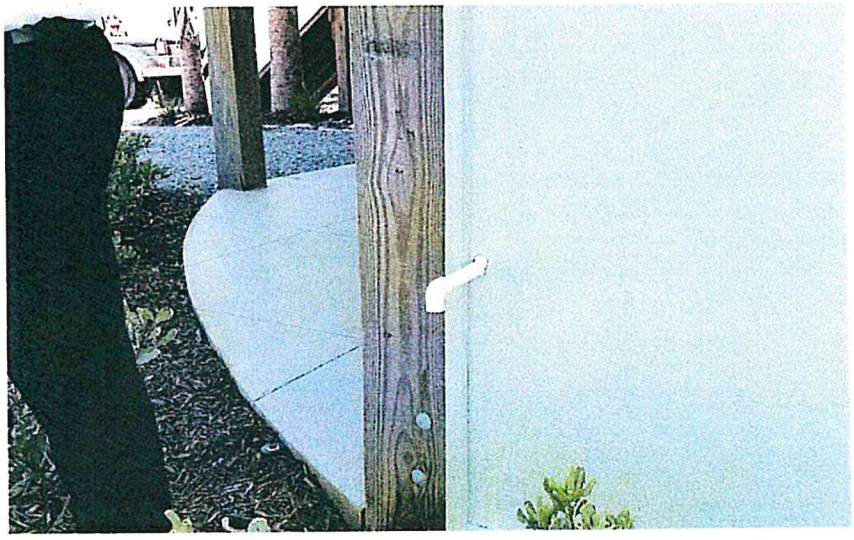
Photograph I:



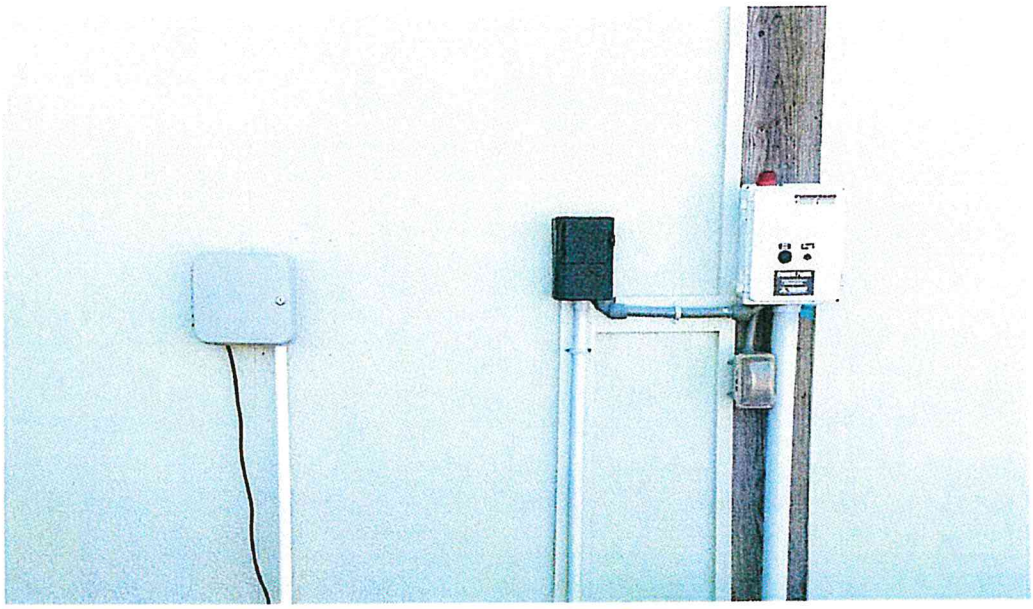
Photograph II:

Photograph III:

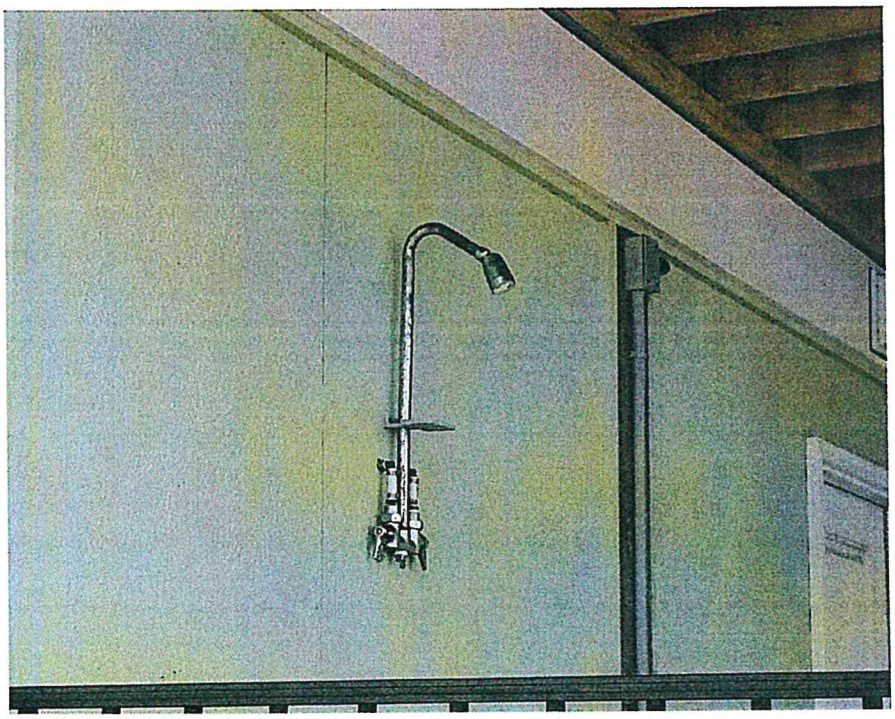
Photograph IV:



Photograph V:



Photograph VI:



As a result of these findings, the Town of Sunset Beach is issuing the following order as allowed by the Town of Sunset Beach Unified Development Ordinance: Article 12, Section 12.03(D)(3):

Order to Take Corrective Action

All violations listed in the above findings of this letter are to be corrected so as to reach full compliance with the Town of Sunset Beach Flood Damage Prevention Ordinance (UDO Article 12 Part I), NFIP regulations under 44 CFR 60.3(e) and NCRC regulations under R322.1.6 and R322.3.4. More specifically, nothing is to be attached to, run along, or penetrate a breakaway wall so as to comply with breakaway wall design and free-from-obstruction requirements of the National Flood Insurance Program.

As allowed by the Town's ordinances, you have one hundred eighty (180) calendar days from the date of this letter to complete the necessary actions to come into compliance. The deadline for full compliance is Sunday, December 10, 2017.

This order may be appealed to the Town Council of the Town of Sunset Beach as per the Town of Sunset Beach Unified Development Ordinance: Article 12, Section 12.03(D)(4). Appeals must be made in writing to the Floodplain Administrator and the Town Clerk no later than ten (10) days after the date of this order.

Please contact the Town of Sunset Beach at (910) 579-0068 so that we may assist you in this matter.

Regards,

Hiram J. Marziano, II
Director of Planning

CC: Susan Parker, Town Administrator, Town of Sunset Beach
Grady Richardson, Town Attorney, Town of Sunset Beach
Heather Keefer, NFIP Planner, Eastern Branch, NC Department Public Safety
Roy McClure, Program Specialist, DHS/FEMA Region IV
Matthew A. Nichols, Attorney, Smith Moore Leatherwood Attorneys at Law

AUTHORITY FOR APPOINTMENT OF PERSON
TO ACT ON MY BEHALF

The undersigned owner, Finley Efard, LLC, a North Carolina limited liability company, does hereby appoint Matthew A. Nichols of Smith Moore Leatherwood LLP to act on its behalf for the purpose of appealing the Order to Take Corrective Action issued on June 13, 2017 for an alleged Floodplain Violation on property located at 1844 East Main Street, Sunset Beach (Parcel 256MB008).

The owner does hereby covenant and agree with the Town of Sunset Beach that said person has the authority to do the following acts for and on behalf of the owner:

1. To submit a proper application for appeal and the required supplemental materials.

2. To appear at public meetings to give testimony and make commitments on behalf of the owner.

3. To accept conditions or recommendations of the governing body regarding the owner's property.

4. To act on the owner's behalf without limitation regarding any and all things directly or indirectly connected with or arising out of this appeal.

This appointment agreement shall continue in effect until final disposition of the appeal submitted in conjunction with this appointment.

6/20/17
Date

Appointee's Name, Address & Telephone:

Matthew A. Nichols
Smith Moore Leatherwood LLP
101 N. Third St., Suite 400
Wilmington, NC 28401
(910) 815-7100

Signature of Owner:

Finley Efard, LLC
By: Neal Triplett
Title: Managing Member