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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-000451
Case No. 2019-CP-26-06550

Marshall Griffin, ... Respondent,
v.

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association, ... Appellants.

RECORD ON APPEAL – VOLUME I

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2606550

Marshall Griffin
PLAINTIFF(S)

Tony Giovano et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Ex Parte Motion for Temporary Restraining Order is DENIED.
The motion is not supported by affidavit or verified complaint.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/09/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovano , defendant, et al

Case Number: 2019CP2606550

Type: Order/Electronic Form 4

Resident Circuit Court Judge, 15th Judicial Circuit

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-01-09 17:40:04 page 3 of 3

ELECTRONICALLY FILED - 2020 Jan 10 8:25 AM - HORRY - COMMON PLEAS - CASE#2019CP2606550

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2019CP2606550

Marshall Griffin
PLAINTIFF(S)

Tony Giovano et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The parties were to come before the Court on February 4, 2020. Prior to the hearing the parties informed the Clerk of Court that Plaintiff's Motion for Ex Parte TRO and Preliminary Injunction was to be withdrawn and the hearing was no longer necessary. This Motion is WITHDRAWN.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/04/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovano , defendant, et al

Case Number: 2019CP2606550

Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2020-02-04 17:04:15 page 3 of 3

ELECTRONICALLY FILED - 2020 Feb 05 12:34 PM - HORRY - COMMON PLEAS - CASE#2019CP2606550

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-26-06550

MARSHALL GRIFFIN
PLAINTIFF(S)

TONY GIOVANO ET, AL.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant
	or
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

A.) DEFENDANT'S MOTION TO COMEPL IS GRANTED. PLAINTIFF MUST FULLY RESPOND TO DISCOVERY WITHIN TEN (10) DAYS AND/OR PROVIDE A SUFFICIENTLY SPECIFIC PRIVILEGE LOG TO ENABLE OPPOSING COUNSEL TO DETERMINE WHETHER TO TAKE FURTHER ACTION. MS. GOLDING TO PREPARE A FORMAL ORDER.

B.) PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER IS GRANTED. DEFENDANTS ARE DIRECTED TO RETURN PLAINTIFF TO THE STATUS QUO THAT EXISTED FOR OVER 20 YEARS DURING THE PENDENCY OF THIS ACTION. PLAINTIFF MUST PAY A BOND IN THE AMOUNT OF \$5,000.00.

MR. GRANTLAND TO PROVIDE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note:** Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovano , defendant, et al

Case Number: 2019CP2606550

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-10-26 14:12:49 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-6550

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

This matter comes before the Court pursuant to Plaintiff's Motion for a Temporary Restraining Order, pursuant to SCRCF Rule 65(b). Plaintiff has also moved for a preliminary injunction. A hearing on this matter was held on October 9, 2020. In attendance was counsel for the Plaintiff, John M. Grantland, and counsel for the defendants, Henrietta Golding.

The sole purpose of temporary injunctive relief and preliminary injunctions is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 120 (S.C. 2001). To obtain a temporary injunction, the moving party must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted, (2) it will likely succeed on the merits of the litigation, and (3) there is no adequate remedy at law. *See MailSource, LLC v. M.A. Bailey & Assocs.*, 588 S.E.2d 635, 638 (S.C. Ct. App. 2003).

After considering the Motion, the pleadings, and the arguments of counsel, the Court finds that the Plaintiff has shown a sufficient likelihood of success on the merits of the litigation, that there is no adequately remedy at law, and that his only recourse is to seek a temporary restraining order and preliminary injunction. Therefore, Plaintiff's Motion is granted, and the

parties are to return to the status quo that has existed for over 37 years prior to the pendency of this action.

NOW, THEREFORE, IT IS HERBY ORDERED as follows:

1. Defendants are immediately enjoined from forcing Plaintiff to remove any private property from the Rooftop Penthouse condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.
2. Defendants must immediately return any and all furniture and or private property owned by Plaintiff previously removed by Defendants, including but not limited to the Plaintiff's outdoor tables and chairs.
3. Defendants are immediately enjoined from allowing individuals unfettered access to the elevator leading to Plaintiff's private property.
4. Defendants are to immediately return the elevator key to the abovementioned elevator and reconnect the elevator key that has been in place for the past 37 years.
5. Defendants are not to remove, cut or interfere with the arborvitaes located on the Rooftop Penthouse area.
6. Defendants must replace Plaintiff's turtle tile at a mutually convenient time scheduled by the parties.
7. Signs placed in the Rooftop Penthouse area by Defendants are to be immediately removed.
8. Plaintiff must pay a bond in the amount of \$5,000.00 with the Horry County Clerk of Court.

9. Access to the Shoreham Towers-HVAC Roof Units and Restricted Access Locations are limited to authorized personnel only which include the Rooftop Penthouse owner, HVAC technicians, and maintenance personnel.

a. Restricted Access Locations include:

- i. *PH1 & "A" units located on the NORTH END ROOF via restricted access thru North Stairwell Door-Rooftop Penthouse (10th Floor-Roof Terrace).
- ii. *RTPH, PH2, PH3 & "B", "C" & "D" units located on the CENTER ROOF via restricted access through the Hatch Door above stairs at North Stairwell-Rooftop Penthouse.
- iii. *PH4, "E" units located on the SOUTH END ROOF via restricted access thru South Stairwell Door-Rooftop Penthouse (10th Floor-Roof Terrace).

10. If servicing or maintenance regarding the abovementioned areas is required, Defendants are to contact Tradd Management prior to servicing of HVAC Roof units for access to roof. The Rooftop Penthouse Owner is to also be notified of any servicing or maintenance by HVAC technicians and maintenance personnel.

AND IT IS SO ORDERED

The Honorable R. Lawton McIntosh
Presiding Judge
Fifteenth Judicial Circuit
October __, 2020



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovano , defendant, et al
Case Number: 2019CP2606550
Type: Order/Temporary Restraining Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-11-09 12:47:18 page 4 of 4

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2606550

Marshall Griffin		Tony Giovino Bill West Carter Tackett Richard Aquino	Shoreham Towers Homeowners Association

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

We, the jury, unanimously find that the Rooftop Terrace, the planters, and elevator lobby on the 10th floor at Shoreham Towers are part of the Rooftop Penthouse dwelling and "not a common element".

We, the jury, unanimously find in favor of the Plaintiff against the Defendant Shoreham Towers Homeowners Association in the amount of \$20,000.00 actual damages and \$200,000.00 punitive damages as to Defendants Tony Giovino, Carter Tackett, Richard Aquino and Bill West. After a review of the punitive damages pursuant to Gamble the punitive damages are reduced to \$160,000.00 and shall be divided as stated below.

Defendant Tony Giovino's name shall properly reflect in the record as Tony Giovino, de novo.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

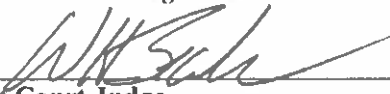
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Marshall Griffin	Shoreham Towers Homeowners Association	\$20,000.00
Marshall Griffin	Tony Giovino	\$17,600.00 (11%)
Marshall Griffin	Bill West	\$17,600.00 (11%)
Marshall Griffin	Carter Tackett	\$17,600.00 (11%)
Marshall Griffin	Richard Aquino	\$107,200.00 (67%)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2157

Judge Code

2/7/2023

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Martin Grantland PO Box 6648 Columbia, SC 29260
Thomas Casey Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

Henrietta U. Golding PO Box 336 Myrtle Beach, SC
29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Natalie Dahl

Renec N. Elvis - Clerk of Court

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin,

Plaintiff,

v.

Tony Giovino, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

VERDICT FORM

Please answer each of the following questions. Each answer must be the unanimous decision of the jury.

WE THE JURY unanimously find the following:

1. Do you find that the Rooftop Penthouse Terrace, the planters, and the elevator lobby on the 10th floor at Shoreham Towers are a "common element" and not part of the Rooftop Penthouse?

Yes _____

No ☒ _____

[Continue to the next page.]

2. Do you find that the Rooftop Penthouse Terrace, the planters, and elevator lobby on the 10th floor at Shoreham Towers are part of the Rooftop Penthouse dwelling and "not a common element"?

Yes ✓

No _____

3. Do you find for the Plaintiff Marshall Griffin against the Defendant Shoreham Towers Homeowners Association?

Yes ✓

No _____

4. Do you find the Defendant Richard Aquino acted willfully or wantonly?

Yes ✓

No _____

5. In regard to the civil conspiracy claim, do you find for the Plaintiff Marshall Griffin against the Defendant Richard Aquino?

Yes ✓

No _____

[Continue to the next page.]

6. Do you find the Defendant Bill West acted willfully or wantonly?

Yes ☒ _____

No _____

7. In regard to the civil conspiracy claim, do you find for the Plaintiff Marshall Griffin against the Defendant Bill West?

Yes ☒ _____

No _____

8. Do you find the Defendant Tony Giovino acted willfully or wantonly?

Yes ☒ _____

No _____

9. In regard to the civil conspiracy claim, do you find for the Plaintiff Marshall Griffin against the Defendant Tony Giovino?

Yes ☒ _____

No _____

10. Do you find the Defendant Carter Tackett acted willfully or wantonly?

Yes ☒ _____

No _____

11. In regard to the civil conspiracy claim, do you find for the Plaintiff Marshall Griffin against the Defendant Carter Tackett?

Yes ✓

No _____

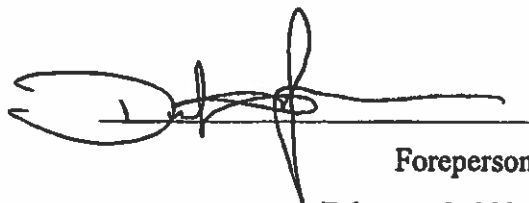
12. We find for the Plaintiff Marshall Griffin actual damages in the amount of

\$ 20,000.00 . ⁰⁰

13. We find for the Plaintiff Marshall Griffin punitive damages in the amount of

\$ 200,000.00 .

Now, you are done. Please sign the verdict form and notify the bailiff.



Foreperson

February 3, 2023

Conway, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin,

Plaintiff,

v.

Tony Giovino, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

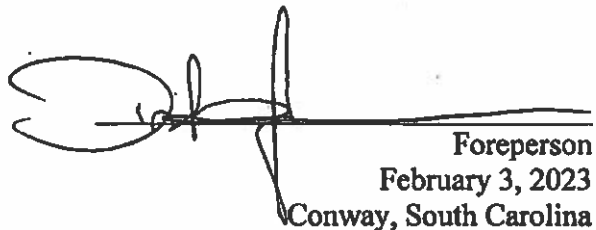
VERDICT FORM**Fault Apportionment Verdict Form**

Considering the punitive damage amount that caused the Plaintiff's injuries as 100%, what percentage of those damages are attributable to the Defendant Shoreham Towers Homeowners Association and what percentage is attributable to the individual Defendants: Richard Aquino, Bill West, Tony Giovino, and Carter Tackett? [The percentage must add up to 100%.]

Defendant Shoreham Towers Homeowners Association:	<u>0</u>	%
Defendant Richard Aquino:	<u>67</u>	%
Defendant Bill West:	<u>11</u>	%
Defendant Tony Giovino:	<u>11</u>	%
Defendant Carter Tackett:	<u>11</u>	%

TOTAL: 100%

Please let the bailiff know when you have completed this form and sign the document.


Foreperson
February 3, 2023
Conway, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin,

Plaintiff,

v.

Tony Giovino, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION AND SUPPLEMENTAL
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
NEW TRIAL NISI REMITTITUR, NEW
TRIAL ABSOLUTE, AND NEW TRIAL**

This case was tried in Horry County the week of January 30, 2023. The Jury returned a verdict for the Plaintiff in the amount of \$20,000 in actual damages and \$200,000 in punitive damages. This Court reduced the punitive award to \$160,000 after carefully considering the evidence pursuant to *Gamble. Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). The Defendants subsequently filed a Motion for Judgment Notwithstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, and New Trial on February 13, 2023. The Defendants filed a supplemental motion on February 14, 2023. Plaintiff, through his counsel, John Grantland, filed a Response in Opposition on February 27, 2023. The Defendants then filed a Reply to Plaintiff's Response on February 28, 2023.

"A motion for judgment notwithstanding the verdict may be granted only if no reasonable jury could have reached the challenged verdict." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). "The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and the trial court's decision will not be disturbed absent an abuse of discretion." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 569, 658 S.E.2d 80, 93 (2008). "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a

granting of a new trial upon the facts.” *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996) (emphasis added). “Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge determines the jury's verdict is contrary to the fair preponderance of the evidence.” *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (citation omitted). “If the amount of the verdict is *grossly* inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute.” *O’Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993) (emphasis in original). “Alternatively, the trial court may grant a new trial nisi additur or remittitur when it finds the verdict is merely inadequate or excessive.” *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). “The granting of a motion for new trial nisi additur or remittitur rests within the sound discretion of the trial court, but substantial deference must be afforded to the jury's determination of damages.” *Id.* at 155, 654 S.E.2d at 883. “Compelling reasons must be given to justify invading the jury's province in this manner.” *Id.*

After reviewing the record, the arguments of counsel, and the relevant case law, this Court holds that the evidence could support a verdict for the Plaintiff. Therefore, the motion for judgment notwithstanding the verdict is DENIED. Additionally, it does not appear to this Court that the verdict is either contrary to the evidence or that the damages are excessive. Accordingly, the motions for a new trial, new trial absolute, and new trial nisi remittitur are DENIED as well.

IT IS THEREFORE ORDERED that Defendants’ Motion is **DENIED**.

IT IS SO ORDERED.

JUDGE’S ELECTRONIC SIGNATURE TO FOLLOW

The Honorable William Seals
Chief Administrative Judge
Horry County

Marion, South Carolina

Date: _____



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovino , defendant, et al
Case Number: 2019CP2606550
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-03-09 09:27:43 page 4 of 4

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin,

Plaintiff,

v.

Tony Giovino, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION AND SUPPLEMENTAL
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
NEW TRIAL NISI REMITTITUR, NEW
TRIAL ABSOLUTE, AND NEW TRIAL**

This case was tried in Horry County the week of January 30, 2023. The Jury returned a verdict for the Plaintiff in the amount of \$20,000 in actual damages and \$200,000 in punitive damages. This Court reduced the punitive award to \$160,000 after carefully considering the evidence pursuant to *Gamble. Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). The Defendants subsequently filed a Motion for Judgment Notwithstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, and New Trial on February 13, 2023. The Defendants filed a supplemental motion on February 13, 2023. Plaintiff, through his counsel, John Grantland, filed a Response in Opposition on February 27, 2023. The Defendants then filed a Reply to Plaintiff's Response on February 28, 2023.

"A motion for judgment notwithstanding the verdict may be granted only if no reasonable jury could have reached the challenged verdict." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). "The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and the trial court's decision will not be disturbed absent an abuse of discretion." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 569, 658 S.E.2d 80, 93 (2008). "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a

granting of a new trial upon the facts.” *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 722 (Ct. App. 1996) (emphasis added). “Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge determines the jury’s verdict is contrary to the fair preponderance of the evidence.” *Burke v. AnMed Health*, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (citation omitted). “If the amount of the verdict is *grossly* inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute.” *O’Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993) (emphasis in original). “Alternatively, the trial court may grant a new trial nisi additur or remittitur when it finds the verdict is merely inadequate or excessive.” *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). “The granting of a motion for new trial nisi additur or remittitur rests within the sound discretion of the trial court, but substantial deference must be afforded to the jury’s determination of damages.” *Id.* at 155, 654 S.E.2d at 883. “Compelling reasons must be given to justify invading the jury’s province in this manner.” *Id.*

After reviewing the record, the arguments of counsel, and the relevant case law, this Court holds that the evidence could support a verdict for the Plaintiff. Therefore, the motion for judgment notwithstanding the verdict is DENIED. Additionally, it does not appear to this Court that the verdict is either contrary to the evidence or that the damages are excessive. Accordingly, the motions for a new trial, new trial absolute, and new trial nisi remittitur are DENIED as well.

IT IS THEREFORE ORDERED that Defendants’ Motion is **DENIED**.

IT IS SO ORDERED.

JUDGE’S ELECTRONIC SIGNATURE TO FOLLOW

The Honorable William Seals
Chief Administrative Judge
Horry County

Marion, South Carolina

Date: _____



Horry Common Pleas

Case Caption: Marshall Griffin VS Tony Giovino , defendant, et al
Case Number: 2019CP2606550
Type: Order/Amend

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-03-13 14:14:25 page 4 of 4

ELECTRONICALLY FILED - 2023 Mar 13 4:44 PM - HORRY - COMMON PLEAS - CASE#2019CP2606550

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint on the subscriber, at the address shown below, within thirty (30) days after the service thereof, exclusive of this day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in said Complaint.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
Rogers E. Harrell, III, Esquire, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association,

Defendants.

**COMPLAINT
(Jury Trial Demanded)**

**TO: TONY GIOVANO, CARTER TACKETT, RICHARD AQUINO, BILL WEST,
AND SHOREHAM TOWERS HOMEOWNERS ASSOCIATION:**

The Plaintiff complains of the Defendants as follows:

1. The Plaintiff is a citizen and resident of Richland County, State of South Carolina.
2. The Plaintiff owns the 10th floor rooftop condo ("Rooftop Penthouse")

located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

3. In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop this property and signed the Master Deed for Shoreham Towers on June 17, 1983. The property has remained in the Griffin family since the property was conveyed on June 30, 1983.

4. Plaintiff is informed and believes that Defendant, Shoreham Towers Homeowners Association ("Shoreham Towers HOA"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the State of South Carolina through its agents, servants, and/or employees.

5. Defendant Shoreham Towers HOA manages properties at Shoreham Towers I,

2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina. Further, Shoreham Towers HOA regularly transacts business in Horry County, South Carolina through its agents, servants, and/or employees.

6. Defendants Giovano, Tackett, Aquino, West, and Plaintiff are members of the Shoreham Towers HOA Board of Directors.

4. The Court has jurisdiction over the parties in this matter. Venue is proper in Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust.

6. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime.

7. Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The **only** common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area.

8. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the

landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane.

9. The Defendants and their agents breached their obligation under the contract, among other things, by failing to honor the terms of the deed, and by exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff when they converted the area into a common area for all guests.

10. As a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered damages in the loss of his property interest in the area adjacent to his dwelling.

11. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' breach of contract.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

12. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

13. The Defendants, and their agents, committed various fraudulent acts which accompanied the breach, including, but not limited to, making various false statements to the Plaintiff.

14. The Defendants' conduct and misrepresentation amounts to a fraudulent act which accompanied the breach and constituted fraudulent intent relating to the breach.

15. As a direct and proximate result of the aforementioned breach of contract accompanied by Defendants' fraudulent acts, the Plaintiff has sustained damages as set forth above.

16. The Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages as a result of the Defendants' breach of contract accompanied by a fraudulent act or acts.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

17. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

18. As a result of the Defendants exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff, the Defendants received a non-gratuitous benefit.

19. The Defendants unjustly retained the property owned by the Plaintiff.

20. The Plaintiff is informed and believes it would not be equitable if the Defendants were to retain the benefits bestowed upon them as a result of their exercise of unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

21. The Defendants' conduct constitutes unjust enrichment.

22. As a result of the unjust enrichment, the Plaintiff has been harmed as alleged above.

23. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' unjust enrichment.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

24. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

25. Plaintiff owns the 10th floor rooftop penthouse located at 2307 S Ocean

Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

26. Defendant, by its conduct complained of herein has exercised unauthorized possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse when they converted the area into a common area for all guests.

27. The conduct complained of herein has been intentional on the part of the Defendants.

28. As a direct and proximate result of the aforementioned unfair and deceptive acts, the Plaintiff has sustained the damages set forth above and the Plaintiff is entitled to a judgment against the Defendants for actual damages.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy)

29. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

30. In the Spring of 2019 and at various other times thereafter, Defendants Giovano, Tackett, Aquino, and West met, joined together, planned, and conspired to convert Plaintiff's Rooftop Penthouse into a common area for other guests, appropriated homeowners association funds in secret and without Plaintiff's consent, and communicated with his tenants without his consent.

31. All of the named Defendants agreed or understood that the purpose of their meetings was to conspire to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned Plaintiff by converting the area into a common area for all guests. All of the named Defendants understood that both their purpose and their methods of achieving this purpose were unlawful and would result in injury to Plaintiff.

32. In furtherance of the conspiracy described herein, Defendants have exercised the unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

33. Defendants undertook the acts described in Paragraphs 30 and 31 with malice and intent to injure Plaintiff.

34. As a result of the acts described in Paragraphs 30 and 31, Plaintiff has suffered the loss of his property and loss of rental income as a direct result of the actions of Defendants Giovano, Tackett, Aquino, and West.

35. Unless prevented by appropriate injunctive measures, Defendants will continue to inflict injury upon Plaintiff by continuing to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, consequential damages, punitive damages, treble damages, and attorney's fees and costs and for such other relief as this Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
Rogers E. Harrell, III, Esquire, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL CATION NO.: 2019-CP-26-06550

Marshall Griffin,	)
	)

Plaintiff,	)
	)

vs.	)
	)

ANSWER

Tony Giovano, Carter Tackett, Richard	)
Aquino, Bill West, and Shoreham Towers	)
Homeowners Association,	)
	)

Defendants.	)
	)

The Defendants, Tony Giovano ("Giovano"), Carter Tackett ("Tackett"), Richard Aquino ("Aquino"), Bill West ("West"), and Shoreham Towers Homeowners Association ("Shoreham") hereinafter may be referred to as "Defendants" hereby answer the Complaint and would state onto this Honorable Court as follows:

FIRST DEFENSE

1. Each and every allegation set forth in the Complaint, which is not hereinafter admitted, modified, or qualified, is denied and strict proof demanded thereof.
2. The allegations of Paragraphs 1, 2, 4 and 5 are admitted.
3. In answering Paragraph 3, the Defendants admit to the Master Deed but, do not have sufficient knowledge as to the remaining allegations, and therefore deny the same.
4. In answering the allegations of Paragraph 6, it is admitted that Defendants Giovano, Tackett, Aquino and West are members of the Shoreham Towers HOA Board of Directors; however, it is denied that Plaintiff is a member of the Shoreham Towers HOA Board of Directors.
5. In answering the allegations of Paragraphs 5 and 6, it is admitted that the Plaintiff is the owner of a unit at Shoreham Tower but the remaining allegations therein are denied.

6. In answering the allegations of Paragraph 7, the allegations therein are denied and reference is specifically craved to the Master Deed, the terms and conditions which govern this controversy.

7. The allegations of Paragraph 8 are denied in that the area adjacent to the Plaintiff's unit is a common area which the Plaintiff has improperly, and contrary to the terms and conditions of the Master Deed, utilized.

8. The remaining allegations in the Complaint are denied and strict proof demanded thereof.

SECOND DEFENSE

9. The allegations of the First Defense are incorporated herein and made a part and parcel of this Second Defense.

10. At no time have the Defendants, either individually or in concert, violated any provisions of the Master Deed for at all times they have acted in good faith and consistent with the terms of the Master Deed.

THIRD DEFENSE

11. The allegations of the First and Second Defense are incorporated herein and made a part and parcel of this Third Defense.

12. The affirmative defense of immunity as provided under the laws of the State of South Carolina, is hereby asserted as a complete bar to the Plaintiff's claims.

FOURTH DEFENSE

13. The allegations of the First, Second and Third Defense are incorporated herein and made a part and parcel of this Fourth Defense.

14. The Defendants assert the defenses of estoppel, waiver, laches and unclean hands as a complete and affirmative defenses.

FIFTH DEFENSE

15. The allegations of the First, Second, Third and Fourth Defense are incorporated herein and made a part and parcel of this Fifth Defense.

16. The Defendants assert the statute of fraud as a defense to any ownership claims of the Plaintiff to the common elements in that the Plaintiff is not an exclusive owner of the common elements and therefore is barred by the statute of fraud from asserting such claim.

WHEREFORE, having answered the Complaint, the Defendants pray for the following:

1. This Honorable Court issue an Order declaring that the Plaintiff has no right, title and interest to utilize, for his sole benefit, the common area on the roof top which the Plaintiff has unlawfully usurped from the Defendant Association;
2. For an Order of the Court directing that the Plaintiff remove from the roof top common area all plants located outside his unit, all landscaping located outside his unit, the irrigation system outside his unit, all furnishings outside his unit, and the purportedly private entrance he constructed to his penthouse unit;
3. The Plaintiff pay all costs and attorney's fees incurred by the Defendants in defending this action;
4. The dismissal of the Complaint with prejudice; and
5. For such other and further relief as this Court may deem just and proper.

BURR & FORMAN LLP

s/HENRIETTA U. GOLDING

Henrietta U. Golding, SC Bar 2173

Burr & Forman LLP

2411 N. Oak Street, Suite 206

Myrtle Beach, South Carolina 29577

843-444-1107

Email: hgolding@burr.com

Attorneys for the Defendants

Myrtle Beach, South Carolina
December 17, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-6550

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**Notice of Motion and Motion for An Ex
Parte Temporary Restraining Order and
Motion for a Preliminary Injunction**

Now Comes the Plaintiff, Marshall Griffin, before the Court of Common Pleas, Horry County South Carolina seeking a temporary restraining order, pursuant to Rule 65, SCRPC, enjoining and prohibiting the Shoreham Towers Home Owners Association Board of Directors from forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina and exercising custody and control of the area surrounding his rooftop condo. Plaintiff also moves the Court to issue a preliminary injunction after a hearing to be held within ten (10) days of the issuance of the *ex parte* temporary restraining order with notice to Defendants. The exigency of this matter is demonstrated in a letter dated January 7, 2020, which is attached hereto as Exhibit B, the Shoreham Towers HOA notified Plaintiff that he is being forced remove his furniture from the rooftop area that he occupies as his dwelling. It was further threatened that if his furniture was not removed by January 10, 2020 in some areas and January 27, 2020 in other areas, it would be forcibly removed and disposed of at Plaintiff's expense. Plaintiff asks that the status quo that has existed for many years be kept in place until such time as a final ruling on the merits can be reached.

Facts

In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop the Shoreham Towers property and signed the Master Deed for Shoreham Towers on June 17, 1983. The property has remained in the Griffin family since the property was conveyed on June 30, 1983. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime. Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The **only** common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane. The Rooftop Penthouse and area adjacent to the penthouse are additionally a source of income to the Plaintiff as he rents the space for tenants and vacationers, who select this particular property based largely on the desirability of this rooftop area.

The Defendants and their agents have attempted to exercise unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff by converting the area into a

common area for all guests. Plaintiff has filed suit for Breach of Contract, Conversion, Unjust Enrichment, and Civil Conspiracy in the above captioned case. The Complaint is attached hereto as Exhibit A. In a letter dated January 7, 2020, which is attached hereto as Exhibit B, the Shoreham Towers HOA notified Plaintiff that he is being forced remove his furniture from the rooftop area that he occupies as his dwelling. It was further threatened that if his furniture was not removed by January 10, 2020 in some areas and January 27, 2020 in other areas, it would be forcibly removed and disposed of at Plaintiff's expense.

Plaintiff seeks a temporary restraining order and/or preliminary injunction restraining Shoreham Towers HOA from maintaining the rooftop area adjacent to the penthouse as a common area unless and until there is a definite ruling as to the Defendants' rights to operate the area adjacent to the Rooftop Penthouse.

Law and Analysis

South Carolina law concerning temporary restraining orders and preliminary injunctions require the applicant to meet the same elements. The sole purpose of temporary injunctive relief and preliminary injunctions is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 120 (S.C. 2001); *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *MailSource, LLC v. M.A. Bailey & Assocs.*, 588 S.E.2d 635, 638 (S.C. Ct. App. 2003). An applicant must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Compton v. S.C. Dep't of Corr.*, 392 S.C. at 366. "Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at

law.” *Id.* Whether to grant a preliminary injunction or temporary injunctive relief is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous. *MailSource, LLC*, 588 S.E.2d, at 637-38; *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939), *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36–37 (Ct. App. 2005).

“When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.” *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (internal citations omitted). “Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.” *Peek*, 367 S.C. at 455, 626 S.E.2d at 36–37 (citing *MailSource, L.L.C. v. M.A. Bailey & Assocs.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003)).

a. Plaintiff Will Suffer Irreparable Harm Without the Requested Injunction

Plaintiff believes that unless a restraining order and or preliminary injunction is established forbidding the Defendants from exercising unauthorized possession, control, and/or ownership of the rooftop area by forcing Plaintiff to remove his personal property, until the matter is properly

adjudicated, Plaintiff will suffer irreparable harm. Plaintiff maintains the rooftop area as his own dwelling and believes that he is, therefore, allowed to keep his furniture on the rooftop for tenants as well as his own family. By possessing the rooftop area, converting it to a common area, and forcing Plaintiff to remove any and all furniture, Plaintiff will lose prospective income from tenants who wish to pay for an exclusive rooftop penthouse. Further, Plaintiff and his family will no longer be able to enjoy the area that they have continuously maintained as their dwelling. Here, an injunction would preserve the status quo until a later date when there is a definite ruling as to the Defendants' rights to operate the area adjacent to the Rooftop Penthouse.

b. Plaintiff is Likely to Succeed on the Merits

Plaintiff is likely to succeed on the merits of his case. At the preliminary injunction stage, Plaintiff need not prove his entire case but instead must make a prima facie showing of his entitlement to the relief sought in the Complaint. *See Levine v. Spartanburg Reg'l Serv. Dist.*, 367 S.C. 458, 465-466, 626 S.E.2d 38, 42 (Ct. App 2005). In other words, Plaintiff "need only present a fair question . . . as to the existence of such a right" *Id.* at 465, 42. "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

Here, Defendants have never had the authority to exercise custody and control of the rooftop area and have never had the authority to force Plaintiff to remove his furniture from the area. Plaintiff's Rooftop Penthouse is considered a dwelling, not a common area subject to the use of all of the owners and tenants of Shoreham Towers. As to each dwelling, the areas adjacent to each dwelling are not common areas. The only common areas listed in the Master Deed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the

rooftop area, and the planters on the rooftop area. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. For that reason, Plaintiff has a likelihood of prevailing on the merits of his claim.

c. Plaintiff Has No Adequate Remedy at Law

In this case, there is no adequate remedy at law. An award of money damages is not an adequate remedy for the protentional loss of control of Plaintiff's dwelling. A temporary restraining order and preliminary injunction are Plaintiff's only recourse to prevent Defendants from removing his personal property and maintaining the area adjacent to his home as a common area for all guests, resulting in a loss of quiet enjoyment of this dwelling for Plaintiff, his family, and tenants.

d. The Balance of Equities Favors Plaintiff

Before granting an injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts. Second, the court of equity must 'balance the equities' between the parties in determining what if any relief to give. The equities on both sides must be taken into account. *MailSource, LLC*, 588 S.E.2d, at 638.

Plaintiff satisfies both of these elements, and the "balance of equities" favors Plaintiff. First, the Plaintiff alleges sufficient facts for the Court to declare that the area surrounding the Rooftop Penthouse where Plaintiff resides is a part of Plaintiff's dwelling, providing the Court with a more than sufficient basis to issue a preliminary injunction. Second, in view of all circumstances, the preliminary injunction is reasonably necessary to protect Plaintiff's rights

pending this litigation. Third, by granting a Temporary Restraining Order and Preliminary Injunction, the Court would visit no injury upon Defendants. Defendants would continue to function efficiently as they have to date.

CONCLUSION

Plaintiff has made the *prima facie* showing and satisfy each element required for a temporary restraining order and a preliminary injunction. The law and the balance of equities supports the provision of injunctive relief, and the Court should grant Plaintiff's motion for a temporary restraining order and motion for a preliminary injunction.

WHEREFORE, based upon the foregoing, the other supporting facts and exhibits, and the above-cited authority, Plaintiff requests that the Court:

1. Issue a Temporary Restraining Order prohibiting, restraining, and enjoining Defendants from (1) forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina and (2) from exercising custody and control of the area surrounding his rooftop condo that is maintained as part of Plaintiff's dwelling until the Court determines Defendant's rights to the property.

2. Schedule a hearing on Plaintiff's motion for a preliminary injunction within ten (10) days of its issuance of the Temporary Restraining Order with notice to Defendants, and, should the Court be unable to schedule this hearing within this period, for good cause shown, order that the Temporary Restraining Order remain in full force and effect until the hearing occurs;

3. Wherefore, after due notice and a hearing, issue a Preliminary Injunction prohibiting, restraining, and enjoining Defendants from (1) forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle

Beach, SC 29582 in Horry County, South Carolina and (2) from exercising custody and control of the area surrounding his rooftop condo that is maintained as part of Plaintiff's dwelling; and

4. For such other and further relief that the Court deems just and proper to protect the interests of Plaintiffs during this litigation.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158

Rogers E. Harrell, III, Esquire, Bar #101532

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Plaintiff

Columbia, South Carolina
January 9, 2020

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**SUMMONS
(Jury Trial Demanded)**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint on the subscriber, at the address shown below, within thirty (30) days after the service thereof, exclusive of this day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in said Complaint.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
Rogers E. Harrell, III, Esquire, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin,	Plaintiff,
v.	
Tony Giovano, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association,	
	Defendants.

COMPLAINT
(Jury Trial Demanded)

TO: TONY GIOVANO, CARTER TACKETT, RICHARD AQUINO, BILL WEST, AND SHOREHAM TOWERS HOMEOWNERS ASSOCIATION:

The Plaintiff complains of the Defendants as follows:

1. The Plaintiff is a citizen and resident of Richland County, State of South Carolina.
2. The Plaintiff owns the 10th floor rooftop condo ("Rooftop Penthouse") located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.
3. In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop this property and signed the Master Deed for Shoreham Towers on June 17, 1983. The property has remained in the Griffin family since the property was conveyed on June 30, 1983.
4. Plaintiff is informed and believes that Defendant, Shoreham Towers Homeowners Association ("Shoreham Towers HOA"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the State of South Carolina through its agents, servants, and/or employees.
5. Defendant Shoreham Towers HOA manages properties at Shoreham Towers I,

2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina. Further, Shoreham Towers HOA regularly transacts business in Horry County, South Carolina through its agents, servants, and/or employees.

6. Defendants Giovano, Tackett, Aquino, West, and Plaintiff are members of the Shoreham Towers HOA Board of Directors.

4. The Court has jurisdiction over the parties in this matter. Venue is proper in Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust.

6. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime.

7. Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The only common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area.

8. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the

landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane.

9. The Defendants and their agents breached their obligation under the contract, among other things, by failing to honor the terms of the deed, and by exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff when they converted the area into a common area for all guests.

10. As a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered damages in the loss of his property interest in the area adjacent to his dwelling.

11. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' breach of contract.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

12. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

13. The Defendants, and their agents, committed various fraudulent acts which accompanied the breach, including, but not limited to, making various false statements to the Plaintiff.

14. The Defendants' conduct and misrepresentation amounts to a fraudulent act which accompanied the breach and constituted fraudulent intent relating to the breach.

15. As a direct and proximate result of the aforementioned breach of contract accompanied by Defendants' fraudulent acts, the Plaintiff has sustained damages as set forth above.

16. The Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages as a result of the Defendants' breach of contract accompanied by a fraudulent act or acts.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

17. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

18. As a result of the Defendants exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff, the Defendants received a non-gratuitous benefit.

19. The Defendants unjustly retained the property owned by the Plaintiff.

20. The Plaintiff is informed and believes it would not be equitable if the Defendants were to retain the benefits bestowed upon them as a result of their exercise of unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

21. The Defendants' conduct constitutes unjust enrichment.

22. As a result of the unjust enrichment, the Plaintiff has been harmed as alleged above.

23. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' unjust enrichment.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

24. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

25. Plaintiff owns the 10th floor rooftop penthouse located at 2307 S Ocean

Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

26. Defendant, by its conduct complained of herein has exercised unauthorized possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse when they converted the area into a common area for all guests.

27. The conduct complained of herein has been intentional on the part of the Defendants.

28. As a direct and proximate result of the aforementioned unfair and deceptive acts, the Plaintiff has sustained the damages set forth above and the Plaintiff is entitled to a judgment against the Defendants for actual damages.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy)

29. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

30. In the Spring of 2019 and at various other times thereafter, Defendants Giovano, Tackett, Aquino, and West met, joined together, planned, and conspired to convert Plaintiff's Rooftop Penthouse into a common area for other guests, appropriated homeowners association funds in secret and without Plaintiff's consent, and communicated with his tenants without his consent.

31. All of the named Defendants agreed or understood that the purpose of their meetings was to conspire to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned Plaintiff by converting the area into a common area for all guests. All of the named Defendants understood that both their purpose and their methods of achieving this purpose were unlawful and would result in injury to Plaintiff.

32. In furtherance of the conspiracy described herein, Defendants have exercised the unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

33. Defendants undertook the acts described in Paragraphs 30 and 31 with malice and intent to injure Plaintiff.

34. As a result of the acts described in Paragraphs 30 and 31, Plaintiff has suffered the loss of his property and loss of rental income as a direct result of the actions of Defendants Giovano, Tackett, Aquino, and West.

35. Unless prevented by appropriate injunctive measures, Defendants will continue to inflict injury upon Plaintiff by continuing to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, consequential damages, punitive damages, treble damages, and attorney's fees and costs and for such other relief as this Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
Rogers E. Harrell, III, Esquire, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019

January 7, 2020

Mr. Marshall Griffin
151 Crown Lake Drive
Hopkins, SC 29061

Subject: Safety Inspection Report dated 12/17/2019

Dear Mr. Marshall Griffin,

The Shoreham Towers HOA Board of Directors (BOD) met last week to review a Safety Inspection Report from Fortier Loss Control Consultants Inc. dated December 17, 2019 (Report attached) concerning the existing Roof Top common area on which is located furniture and vegetation. Based on the Report's findings that hazards may exist, the Shoreham Towers BOD determined that you need to remove all your high back furniture (49" tall chairs) from the common area of the rooftop no later than January 10, 2020 and in addition all other furniture that is on any common area needs to be removed no later than January 27, 2020. If for some reason the furniture is not removed in a timely manner, the HOA will have any furniture remaining removed at your expense and then will be disposed of. Please be careful in having your personal property removed from the roof top common area for as you know the roof membrane cannot be harmed in any fashion.

Also, based on the Safety Report, the BOD has determined the arborvitae shrubs that you installed on the roof top needs to be removed within the next 60 days at your expense. As an alternative, you have the option to request that the HOA remove and dispose of the shrubbery at the HOA's expense.

Sincerely,
Shoreham Towers HOA Board of Directors



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2019-CP-26-6550

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**Notice of Motion and Motion for An Ex
Parte Temporary Restraining Order and
Motion for a Preliminary Injunction**

Now Comes the Plaintiff, Marshall Griffin, before the Court of Common Pleas, Horry County South Carolina seeking a temporary restraining order, pursuant to Rule 65, SCRCP, enjoining and prohibiting the Shoreham Towers Homeowners Association Board of Directors from 1) forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina, 2) allowing individuals unfettered access to Plaintiff's elevator to his private property, and 3) exercising custody and control of the area surrounding his rooftop condo. Plaintiff also moves the Court to issue a preliminary injunction after a hearing to be held within ten (10) days of the issuance of the *ex parte* temporary restraining order with notice to Defendants.

On January 9, 2020, Plaintiff previously filed a similar motion because of a January 7, 2020 demand from Shoreham Towers HOA to Plaintiff. Attached hereto as Exhibit A, is the letter where Shoreham Towers HOA notified Plaintiff that he was being forced to remove his furniture from the rooftop area that he occupies as his dwelling. Again, on May 25, 2020, Plaintiff's counsel received an email, attached as Exhibit B, instructing Plaintiff to remove furniture from the balcony/terrace adjacent to his Rooftop Penthouse by noon on Friday, May 29,

2020. Additionally, on May 27, 2020, Defendant Aquino, without Plaintiff's consent, removed the lock to the elevator leading to Plaintiff's private property and thereby, giving the general public unfettered access to Plaintiff's Rooftop Penthouse. Since 1983, Plaintiff and his family have had private access to the only one Rooftop Penthouse on the tenth floor by use of the private elevator key. Plaintiff asks that the status quo that has existed for many years be kept in place until such time as a final ruling on the merits can be reached.

FACTS

In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop the Shoreham Towers property and signed the Master Deed for Shoreham Towers on June 17, 1983. After helping develop the property, he retained access to the rooftop area for himself and his family. The property has remained in the Griffin family since the property was conveyed on June 30, 1983. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime. Since 1983, the Griffin family and their tenants have been the only individuals to use the penthouse and area surrounding the penthouse.

Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The **only** common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator

lobby, the stairwell to the rooftop area, and the planters on the rooftop area. The Master Deed, attached as Exhibit C states:

Access to the Rooftop Penthouse dwelling on the tenth floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also common. The rooftop area contains planters which are common.

It is clear that the creators of the Master Deed did not intend for the area directly outside of plaintiff's dwelling to be a common area or it would have been drafted into the deed. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a private dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane. The Rooftop Penthouse and area adjacent to the penthouse are additionally a source of income to the Plaintiff as he rents the space for tenants and vacationers, who select this particular property based largely on the desirability of this rooftop area.

The Defendants and their agents have attempted to exercise unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff by converting the area into a common area for all guests. In the letter dated January 7, 2020, which is attached hereto as Exhibit A, and email on May 25, 2020, attached as Exhibit B, the Shoreham Towers HOA notified Plaintiff that he is being forced remove his furniture from the rooftop area that he occupies as his dwelling. Defendants have gone beyond what is reasonable and also removed the lock to the elevator leading to Plaintiff's private property. Attached as Exhibit D is an enlarged floor plan of Plaintiff's Rooftop Penthouse. The plan shows that located within Plaintiff's kitchen, near the pantry, is the elevator remote button station. Additionally, this is the only

elevator that services Plaintiff's Rooftop Penthouse dwelling. Defendants have removed the lock from the floor-level elevator to give the general public access to Plaintiff's dwelling. Plaintiff has filed suit for Breach of Contract, Conversion, Unjust Enrichment, and Civil Conspiracy in the above captioned case. The Complaint is attached hereto as Exhibit E.

Plaintiff seeks a temporary restraining order and/or preliminary injunction restraining Shoreham Towers HOA from maintaining the rooftop area adjacent to the penthouse as a common area and from giving the general public unfettered access to the private elevator used by Plaintiff, Plaintiff's family, and Plaintiff's tenants unless and until there is a definite ruling as to the Defendants' rights to operate the area adjacent to the Rooftop Penthouse.

LAW AND ANALYSIS

South Carolina law concerning temporary restraining orders and preliminary injunctions require the applicant to meet the same elements. The sole purpose of temporary injunctive relief and preliminary injunctions is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 120 (S.C. 2001); *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *MailSource, LLC v. M.A. Bailey & Assocs.*, 588 S.E.2d 635, 638 (S.C. Ct. App. 2003). An applicant must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Compton v. S.C. Dep't of Corr.*, 392 S.C. at 366. "Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Id.* Whether to grant a preliminary injunction or temporary injunctive relief is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous.

MailSource, LLC, 588 S.E.2d, at 637-38; *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939), *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36–37 (Ct. App. 2005).

“When a court is requested to issue a temporary injunction, it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate. Once prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits. A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.” *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

a. Plaintiff Will Suffer Irreparable Harm Without the Requested Injunction

Plaintiff believes that unless a restraining order and or preliminary injunction is established forbidding the Defendants from exercising unauthorized possession, control, and/or ownership of the rooftop area by allowing the general public to access the only elevator that services Plaintiff’s dwelling and by forcing Plaintiff to remove his personal property, until the matter is properly adjudicated, Plaintiff will suffer irreparable harm. Plaintiff maintains the rooftop area as his own dwelling and believes that he is, therefore, allowed to keep his furniture on the rooftop for tenants as well as his own family. Further, on May 27, 2020, Defendant Aquino removed the lock to the only elevator to Plaintiff’s dwelling allowing individuals, unknown to Plaintiff, to occupy his Rooftop area. By possessing the rooftop area, converting it to a common area, giving

the public access to the only elevator that services Plaintiff's dwelling, and forcing Plaintiff to remove any and all furniture, Plaintiff will lose prospective income from tenants who wish to pay for an exclusive Rooftop Penthouse. These tenants have already been scheduled for the upcoming months and have a reasonable expectation to use the Rooftop Penthouse as advertised and as used since 1983. Further, Plaintiff and his family will no longer be able to enjoy the area that they have continuously maintained as their dwelling. Plaintiff's dwelling is comprised of mainly glass walls to the outside of the penthouse. Allowing strangers and the public onto the area right outside Plaintiff's dwelling will create an invasion of privacy that Plaintiff, his family, and his tenants have never experienced since 1983. Here, an injunction would preserve the status quo until a later date when there is a definite ruling as to the Defendants' rights to operate the area adjacent to the Rooftop Penthouse.

b. Plaintiff is Likely to Succeed on the Merits

Plaintiff is likely to succeed on the merits of his case. At the preliminary injunction stage, Plaintiff need not prove his entire case but instead must make a prima facie showing of his entitlement to the relief sought in the Complaint. *See Levine v. Spartanburg Reg'l Serv. Dist.*, 367 S.C. 458, 465-466, 626 S.E.2d 38, 42 (Ct. App. 2005). In other words, Plaintiff "need only present a fair question . . . as to the existence of such a right" *Id.* at 465, 42. "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

Here, Defendants have never had the authority to exercise custody and control of the rooftop area and have never had the authority to force Plaintiff to remove his furniture from the area. Plaintiff's Rooftop Penthouse is considered a dwelling, not a common area subject to the

use of all of the owners and tenants of Shoreham Towers. As to each dwelling, the areas adjacent to each dwelling are not common areas. The only common areas listed in the Master Deed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Defendants will argue that they are now forcing Plaintiff to remove his furniture due to safety reasons. However, Defendants have never utilized this authority before and should not be able to start now. For that reason, Plaintiff has a likelihood of prevailing on the merits of his claim.

c. Plaintiff Has No Adequate Remedy at Law

In this case, there is no adequate remedy at law. An award of money damages is not an adequate remedy for the protentional loss of control of Plaintiff's dwelling and privacy violations. A temporary restraining order and preliminary injunction are Plaintiff's only recourse to prevent Defendants from removing his personal property and maintaining the area adjacent to his home as a common area for all guests, resulting in a loss of quiet enjoyment of this dwelling for Plaintiff, his family, and tenants.

CONCLUSION

Plaintiff has made the *prima facie* showing and satisfy each element required for a temporary restraining order and a preliminary injunction. The law and the balance of equities supports the provision of injunctive relief, and the Court should grant Plaintiff's motion for a temporary restraining order and motion for a preliminary injunction.

WHEREFORE, based upon the foregoing, the other supporting facts and exhibits, and the above-cited authority, Plaintiff requests that the Court:

1. Issue a Temporary Restraining Order prohibiting, restraining, and enjoining Defendants from (1) forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina 2) allowing individuals unfettered access to Plaintiff's elevator to his private property, and 3) exercising custody and control of the area surrounding his rooftop condo that is maintained as part of Plaintiff's dwelling until the Court determines Defendant's rights to the property.

2. Schedule a hearing on Plaintiff's motion for a preliminary injunction within ten (10) days of its issuance of the Temporary Restraining Order with notice to Defendants, and, should the Court be unable to schedule this hearing within this period, for good cause shown, order that the Temporary Restraining Order remain in full force and effect until the hearing occurs;

3. Wherefore, after due notice and a hearing, issue a Preliminary Injunction prohibiting, restraining, and enjoining Defendants from (1) forcing Plaintiff to remove any private property from his rooftop condo located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina, 2) allowing individuals unfettered access to Plaintiff's elevator to his private property, and 3) exercising custody and control of the area surrounding his rooftop condo that is maintained as part of Plaintiff's dwelling; and

4. For such other and further relief that the Court deems just and proper to protect the interests of Plaintiffs during this litigation.

(signature on following page)

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Thomas C. Brittain, Esquire, Bar #893
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
(843) 449-8562

Attorneys for Plaintiff

Columbia, South Carolina
June 2, 2020

January 7, 2020

Mr. Marshall Griffin
151 Crown Lake Drive
Hopkins, SC 29061

Subject: Safety Inspection Report dated 12/17/2019

Dear Mr. Marshall Griffin,

The Shoreham Towers HOA Board of Directors (BOD) met last week to review a Safety Inspection Report from Fortier Loss Control Consultants Inc. dated December 17, 2019 (Report attached) concerning the existing Roof Top common area on which is located furniture and vegetation. Based on the Report's findings that hazards may exist, the Shoreham Towers BOD determined that you need to remove all your high back furniture (49" tall chairs) from the common area of the rooftop no later than January 10, 2020 and in addition all other furniture that is on any common area needs to be removed no later than January 27, 2020. If for some reason the furniture is not removed in a timely manner, the HOA will have any furniture remaining removed at your expense and then will be disposed of. Please be careful in having your personal property removed from the roof top common area for as you know the roof membrane cannot be harmed in any fashion.

Also, based on the Safety Report, the BOD has determined the arborvitae shrubs that you installed on the roof top needs to be removed within the next 60 days at your expense. As an alternative, you have the option to request that the HOA remove and dispose of the shrubbery at the HOA's expense.

Sincerely,
Shoreham Towers HOA Board of Directors



From: "Golding, Henrietta" <HGolding@burr.com>
 Date: May 25, 2020 at 4:08:14 PM EDT
 To: "John M. Grantland" <jgrantland@murphygrantland.com>, "Tommy Brittain" <tommyb@brittainlawfirm.com> <tommyb@brittainlawfirm.com>
 Subject: FW: Shoreham Towers Roof Top Terrace Furniture Removal

Hello John and Tommy –

Below is an email that the Shoreham HOA President sent to the Griffins this afternoon. Let me know if you have any questions. Henri



Henrietta Golding • Partner

Founders Centre, 2411 Oak St. Suite 206, Myrtle Beach, South Carolina 29577

main 843-444-1107 • fax 843-444-4729

hgolding@burr.com • www.burr.com

AL • DE • FL • GA
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360 Attorneys. 19 Offices. 1 Firm. Southeast Strong.

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From: [Bill West](#)

Sent: Monday, May 25, 2020 3:32 PM

To: marshall.griffin@icloud.com

Cc: ctackett@consolidated.net; tgiovino@gmail.com; sukonieczki@gmail.com; richardaquino@aol.com

Subject: Shoreham Towers Roof Top Terrace Furniture Removal

Mr. and Mrs. Griffin:

The Shoreham Towers Board is notifying you that you MUST remove your furniture from the roof top common area by this Friday 5/29, by noon, so that the Board can replace the furniture with 6 chaise lounges, the same quality as the HOA provides for the pool common area. This is required because no unit holder is permitted to leave furnishings on a common area other than those provided by the HOA. If you do not have the furniture removed by noon the Board will have it removed, placed in storage, and you will be responsible for all costs relating to the storage until you decide to retrieve the furniture.

In addition, months ago you were provided a Safety Survey report that stated that no furniture is permitted closer than six feet from the common area



railing but you and your tenants fail to adhere to this safety report. You complained last week, through your attorney, about unsafe conditions. The Board immediately took steps to address your concerns. Safety tape was placed around railing but this was removed by your maintenance man. Also you permitted furniture to be put right next to the railings- not 6 feet away.

The Board will have signage placed in the area between the Oceanside railing and the windows of your condo saying "no furniture is to be placed in this 6 foot setback" and if this is violated appropriate fines will be levied.

Please work with us for the safety of all.

The Board of Directors of the Shoreham Towers Home Owners Association

Sent from Mail for Windows 10

Ind 802 pg 305 04767

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TO
MASTER DEED

FILED
HARRY COUNTY

13 JUN 22 AM 8:37

SHOREHAM TOWERS, A HORIZONTAL PROPERTY REGISTRATION
BULLIE G. RICHARDSON
CLERK OF COURT

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FILED
HORRY COUNTYMASTER DEED FOR
SHOREHAM TOWERS,
A HORIZONTAL PROPERTY REGIME

1993 JUN 22 AM 8 -7

North Myrtle Beach, Horry County, South Carolina

BILLIE G. RICHARDSON
CLERK OF COURT

Shoreham Associates, A Joint Venture authorized to do business in South Carolina and having an office at North Myrtle Beach, County of Horry, State of South Carolina, hereinafter referred to as the GRANTOR, as the sole owner in fee-simple of the land and improvements hereinafter described, does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the lands and buildings herein below described together with all other improvements thereon, including all easements, rights and appurtenances thereto belonging, to a Horizontal Property Regime (sometimes termed "condominium" ownership) to be known as Shoreham Towers, A Horizontal Property Regime, in the manner provided for by Sections 27-31-10 through 27-31-300 (both inclusive) of Chapter 31 entitled "Horizontal Property Act" of the 1976 Code of Laws of South Carolina as amended. In conformity with Sections 27-31-30 and 27-31-100 of said Act, the Grantor sets forth the following Particulars:

I.

PROPERTY DESCRIPTION

The lands which are hereby submitted to the Horizontal Property Regime are described as follows:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina County of Horry, Town of North Myrtle Beach, and being LOT NO. SIX (6) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot Seven (7) of Block Thirty (30), on the South by the high water mark of the Atlantic Ocean, and on the West by Lot No. Five (5) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 735 at Page 797, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. SEVEN (7) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot Eight (8) of Block Thirty (30), on the South by the High water mark of the Atlantic Ocean, and on the West by Lot No. Six (6) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 735 at Page 297, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. EIGHT (8) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot No. Nine (9) of Block Thirty (30), on the South by the high water mark of the Atlantic Ocean, and on the West by Lot No. Seven (7) of Block Thirty (30). Said lot measures 60 feet in width and approximately 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 2, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 735 at Page 297, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. EIGHT (8) of BLOCK THIRTY-THREE (33) of the property of Crescent Beach Corporation, and bounded on the North by Second Avenue (now Perrin Drive), on the East by Lot No. Nine (9) of Block Thirty-three (33), on the South by First Avenue (now Ocean Boulevard), and on the West by Lot No. Seven (7) of Block Thirty-three (33). Said lot measures 60 feet in width and 120 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 736 at Page 349, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or tract of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being more particularly described as being the property lying between the oceanfront lot lines of LOTS NO. SIX (6), NO. SEVEN (7), and NO. EIGHT (8) of BLOCK THIRTY (30), of the property of Crescent Beach Corporation, and the mean high water mark of the Atlantic Ocean, and bounded on the North by the oceanfront lot lines of the above mentioned lots, on the East and West by other properties lying between front lot lines in Block 30 and the mean high water mark of the Atlantic Ocean, and on the South by the high water mark of the Atlantic Ocean. Reference is made to the map recorded in Plat Book 3, at Page 23, Records of Horry County, as a part of this description for further particulars.

Derivation: Deed Book 801 at Page 877, Horry County records.

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II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Annexed hereto and expressly made a part hereof, as Exhibit A, is plat of survey showing the location of the buildings and other improvements, a set of floor plans of the buildings which show graphically the dimensions, area and location of each dwelling therein and the dimensions, area, and location of COMMON ELEMENTS affording access to each DWELLING. Each DWELLING is identified by specific number-letter combination on said Exhibit A, and no DWELLING bears the same designation as any other DWELLING.

III.

DWELLINGS AND COMMON ELEMENTS

The CONDOMINIUM consists of DWELLINGS AND COMMON ELEMENTS, as said terms are hereinafter defined.

DWELLINGS, as the term is used herein, shall mean and comprise the forty (40) separate and numbered DWELLING Units which are designated in Exhibit A to this Master Deed, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each Dwelling Unit, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of all interior loadbearing walls and/or unfinished bearing partitions, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to DWELLING and COMMON ELEMENTS.

COMMON ELEMENTS, as the term is used herein, shall mean and comprise all of the real property, improvements and facilities of the CONDOMINIUM other than the DWELLINGS, as same are hereinabove defined, and shall include easements through DWELLINGS for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility service to DWELLINGS and COMMON ELEMENTS and easements of support in every portion of a DWELLING which contribute to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of all of the owners of all such DWELLINGS.

IV.

OWNERSHIP OF DWELLINGS AND APPURTENANT
INTEREST IN COMMON ELEMENTS

Each DWELLING shall be conveyed and treated as an individual property capable of independent use and fee-simple ownership, and the owner or owners of each DWELLING shall own, as an appurtenance the COMMON ELEMENTS, the undivided interest appurtenant to each said DWELLING being that which is hereinafter specifically assigned thereto. The percentage of undivided interest in the COMMON ELEMENTS assigned to each DWELLING shall not be changed except with the unanimous consent of all of the owners of all of the DWELLING.

V.

RESTRICTIONS AGAINST FURTHER SUBDIVIDING
OF DWELLINGS AND SEPARATE CONVEYANCE
OF APPURTENANT COMMON ELEMENTS, ETC.

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

VI.

CONDOMINIUM SUBJECT TO RESTRICTIONS, ETC.

The DWELLINGS and COMMON ELEMENTS shall be, and the same are hereby, declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein, governing the use of said DWELLINGS and COMMON ELEMENTS, and setting forth the obligations and responsibilities incident to ownership of each DWELLING and its appurtenant undivided interest in the COMMON ELEMENTS, and said DWELLINGS and COMMON ELEMENTS are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the CONDOMINIUM.

VII.

PERPETUAL NON-EXCLUSIVE EASEMENT
IN COMMON ELEMENTS

The COMMON ELEMENTS shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the owners of DWELLINGS in the CONDOMINIUM for their use and the use of their immediate families, guests, and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said owners of DWELLINGS. Notwithstanding

anything above provided in this Article, Shoreham Towers Homeowners Association, Inc., hereinafter identified, shall have the right to establish the rules and regulations pursuant to which the owner or owners of any DWELLING may be entitled to the use of COMMON ELEMENTS including but not limited to, the exclusive use of any parking space or spaces.

VIII.

EASEMENT FOR UNINTENTIONAL AND NEGLIGENT ENCROACHMENTS

If any portion of the COMMON ELEMENTS now encroaches upon any condominium DWELLING or if any condominium DWELLING now encroaches upon any other condominium DWELLING or upon any portion of the COMMON ELEMENTS as a result of the construction or repair of any building or if any such encroachment shall occur hereafter as a result of settlement or shifting of any building or otherwise, a valid easement for the encroachment and for the maintenance of the same, so long as the building stands, shall exist. In the event any building, any condominium DWELLING, any adjoining condominium DWELLING, or any adjoining COMMON ELEMENTS shall be partially or totally destroyed as the result of fire or other casualty or as the result of condemnation or eminent domain proceedings and the reconstructed portion encroches upon any part of the COMMON ELEMENTS, upon or over any other condominium DWELLING, such reconstruction shall be permitted and valid easements for such encroachments and maintenance thereof shall exist so long as the building shall stand.

IX.

RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS

Recognizing that the proper use of a DWELLING by any owner or owners is dependent upon the use and enjoyment of the COMMON ELEMENTS in common with the owners of all other DWELLINGS, and that it is in the interest of all owners of DWELLINGS that the ownership of the COMMON ELEMENTS be retained in common by the owners of DWELLINGS in the CONDOMINIUM, it is declared that the percentage of the undivided interest in the COMMON ELEMENTS appurtenant to each DWELLING shall remain undivided and no owner of any DWELLING shall bring or have any right to bring any action for partition or division.

X.

PERCENTAGE OF UNDIVIDED INTEREST IN COMMON ELEMENTS APPURTENANT TO EACH DWELLING

The undivided interest in COMMON ELEMENTS appurtenant to each DWELLING is that percentage of undivided interest which is set forth and assigned to each DWELLING in that certain Schedule which is annexed hereto and expressly made a part hereof as Exhibit B.

XI.

EASEMENT FOR AIR SPACE

The owner of each DWELLING shall have an exclusive easement for the use of the air space occupied by said DWELLING as it exists at any particular time and as said

DWELLING may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

XII.

ADMINISTRATION OF SHOREHAM TOWERS,
HOMEOWNERS ASSOCIATION, INC.

To efficiently and effectively provide for the administration of the CONDOMINIUM by the owners of DWELLINGS, a non-profit South Carolina Corporation, known and designated as Shoreham Towers Homeowners Association, Inc. (herein ASSOCIATION), has been organized, and said Corporation shall administer the operation and management of the CONDOMINIUM and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions and conditions of this Master Deed, and in accordance with the terms of the Article of Incorporation of the Homeowners Association, hereinafter referred to as the ASSOCIATION, and by-laws of said corporation. A true copy of the By-Laws and Articles of Incorporation of said ASSOCIATION are annexed hereto and expressly made a part hereof as Exhibits C and D respectively. The owner or owners of each DWELLING shall automatically become members of the ASSOCIATION upon his, their or its acquisition of an ownership interest in title to any DWELLING and its appurtenant undivided interest in COMMON ELEMENTS, and the membership of such owner or owners shall terminate automatically upon each owner or owners being divested of such ownership interest in the title to such DWELLING, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any DWELLING shall be entitled, by virtue of such lien, mortgage, or other encumbrance, to membership in the ASSOCIATION, or to any of the rights or privileges of such membership. In the administration of the operation and management of the CONDOMINIUM, said ASSOCIATION shall have and is hereby granted the authority and power to enforce the provisions of this Master Deed, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the DWELLINGS and COMMON ELEMENTS, as the Board of Directors of the ASSOCIATION may deem to be in the best interests of the CONDOMINIUM.

XIII.

RESIDENTIAL USE RESTRICTION APPLICABLE
TO DWELLINGS

Each DWELLING is hereby restricted to residential use by the owner or owners thereof, their immediate families, guests and invitees; provided, however, that so long as Grantor shall retain any interest in CONDOMINIUM, it may utilize a DWELLING or DWELLINGS of its choice from time to time, for sales office, model, or other usage for the purpose of selling DWELLINGS in said CONDOMINIUM. Further still, Grantor may assign this commercial usage right to such other persons or entities as it may choose; provided, however, that when all DWELLINGS have been conveyed, this right of commercial usage shall immediately cease.

XIV.

USE OF COMMON ELEMENTS SUBJECT TO
RULES OF ASSOCIATION

The use of COMMON ELEMENTS by the owner or owners of all DWELLINGS, and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may hereafter be prescribed and established by the ASSOCIATION.

XV.

CONDOMINIUM TO BE USED FOR LAWFUL
PURPOSES, RESTRICTIONS AGAINST
NUISANCES, ETC.

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

XVI.

RIGHT OF ENTRY INTO DWELLINGS IN
EMERGENCIES

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

XVII.

RIGHT OF ENTRY FOR MAINTENANCE
OF COMMON ELEMENTS

Whenever it is necessary to enter any DWELLING for the purpose of performing any maintenance, alteration or repair to any portion of the COMMON ELEMENTS, the owner of each DWELLING shall permit other owners or their representatives, or the duly constituted and authorized Agent of ASSOCIATION, to enter such DWELLING, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVIII.

LIMITATION UPON RIGHT OF OWNERS
TO ALTER AND MODIFY DWELLINGS

No owner of a DWELLING shall permit there to be made any structural modifications or alterations therein without first obtaining the written consent of ASSOCIATION, which consent may be withheld in the event that a majority of the Board of Directors of said ASSOCIATION determine, in their sole discretion, that such structural modification or alterations would affect or in any manner endanger the Building in part or in its entirety. If the modification or alteration desired by the owner of any DWELLING involves the removal of any permanent interior partition, ASSOCIATION shall have the right to permit such removal so long as the permanent interior partition to be removed is not a load bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provisions of utility services constituting COMMON ELEMENTS located therein. No owner shall cause any balcony abutting his DWELLING to be enclosed, or cause any improvements or changes to be made on the exterior of the Building, including painting or other decoration, or the installation of electrical wiring, television antenna, machines or air conditioning units, which may protrude through the walls or roof of the Building, or in any manner change the appearance of any portion of the building not within the walls of such DWELLING, nor shall storm panels or awnings be affixed, without the written consent of ASSOCIATION being first obtained.

XIX.

RIGHT OF ASSOCIATION TO ALTER AND
IMPROVE COMMON ELEMENTS AND
ASSESSMENT THEREFOR

ASSOCIATION shall have the right to make or cause to be made such alterations or improvements to the COMMON ELEMENTS which do not prejudice the rights of the owner of any DWELLING, provided the making of such alterations and improvements are approved by the Board of Directors of said ASSOCIATION, and the cost of such alterations or improvements shall be assessed as common expenses to be assessed and collected from all of the owners of DWELLINGS according to the percentages set out in Exhibit B of the Master Deed. However, where any alterations and improvements are exclusively or substantially exclusively for the benefit of the owner or owners of a DWELLING or DWELLINGS requesting the same, then the cost of such alterations and improvements shall be assessed against and collected solely from the owner or owners of the DWELLING or DWELLINGS exclusively or substantially exclusively benefited, the assessment to be levied in such proportions as may be determined by the Board of Directors of ASSOCIATION.

XX.

MAINTENANCE AND REPAIR BY OWNERS
OF DWELLINGS

Every owner must perform promptly all maintenance and repair work within his DWELLING which, if omitted, would affect the CONDOMINIUM in its entirety or in part belonging to other owners, being expressly responsible for the damages and liability which his failure to do so may engender. The owner of each DWELLING shall be liable and responsible for

the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or other connections required to provide water, light, power, telephone, sewage and sanitary service to his DWELLING and which may now or hereafter be situated in his DWELLING. Such owner shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, wall, ceiling and floor exterior surfaces, painting, decorating and furnishings, and all other accessories which such owner may desire to place or maintain in his DWELLING. Wherever the maintenance, repair and replacement of any items for which the owner of a DWELLING is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by ASSOCIATION, the proceeds of the insurance received by ASSOCIATION, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair or replacement, except that the owner of such DWELLING 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, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The balcony floor, walls facing the balcony, and balcony railings attached to his DWELLING shall be maintained by the owner at his expense. Provided, however, said owner shall take no action that will alter the exterior appearance of the building. Should the owner fail to provide the maintenance and/or repairs as required, the ASSOCIATION shall have the right to enter the DWELLING to accomplish same at the sole cost and expense of the owner and said cost and expense shall be charged against the owner and shall become a lien on his DWELLING in like manner as a monthly assessment.

XXI.

MAINTENANCE AND REPAIR OF COMMON ELEMENTS
BY ASSOCIATION

ASSOCIATION, at its expense, shall be responsible for the maintenance, repair and replacement of all of the COMMON ELEMENTS, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring and other facilities located in the COMMON ELEMENTS for the furnishing of utility services to the DWELLINGS and said COMMON ELEMENTS, and should any incidental damage be caused to any DWELLING by virtue of any work which may be done or caused to be done by ASSOCIATION in the maintenance, repair, or replacement of any COMMON ELEMENTS, the said ASSOCIATION shall, at its expense repair such incidental damage.

XXII.

PERSONAL LIABILITY AND RISK OF LOSS
OF OWNER OF DWELLING AND SEPARATE
INSURANCE COVERAGE, ETC.

The owner of each DWELLING may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects and other personal property belonging to such owner and may, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while within such owner's DWELLING or upon the COMMON

ELEMENTS. All such insurance obtained by the owner of each DWELLING shall, wherever such provision shall be available, provide that the insurer waives its right of subrogation as to any claims against other owners of DWELLINGS, ASSOCIATION, and the respective servants, agents and guests of said other owners and ASSOCIATION, and such other insurance coverage should be obtained from the insurance company from which ASSOCIATION obtains coverage against the same risk, liability or peril, if said ASSOCIATION has such coverage. Risk of loss of or damage to any furniture, furnishings, personal effects and other personal property (other than such furniture, furnishings and personal property constituting a portion of the COMMON ELEMENTS) belonging to or carried on the person of the owner of each DWELLING, or which may be stored in any DWELLING, or in, to or upon COMMON ELEMENTS shall be borne by the owner of each such DWELLING. All furniture, furnishings and personal property constituting a portion of the COMMON ELEMENTS and held for the joint use and benefit of all owners of all DWELLINGS shall be covered by such insurance as shall be maintained in force and effect by ASSOCIATION as hereinafter provided. The owner of a DWELLING shall have no personal liability for any damages caused by the ASSOCIATION or in connection with the use of the COMMON ELEMENTS. The owner of a DWELLING shall be liable for injuries or damage resulting from an accident in his own DWELLING, to the same extent and degree that the owner of a house would be liable for an accident occurring within the house.

XXIII.

INSURANCE COVERAGE TO BE MAINTAINED BY
ASSOCIATION: INSURANCE TRUSTEE, APPOINTMENT AND
DUTIES: APPROVAL OF INSURERS BY INSTITUTIONAL
LENDER: USE AND DISTRIBUTION OF INSURANCE PROCEEDS, ECT.

The following insurance coverage shall be maintained in full force and effect by ASSOCIATION covering the operation and management of the CONDOMINIUM and the said CONDOMINIUM, meaning the DWELLINGS and COMMON ELEMENTS, to-wit:

(a) Casualty insurance covering all of the DWELLINGS, and COMMON ELEMENTS, in an amount equal to the maximum insurance replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the insurance carrier, such coverage to afford protection against (i) loss or damage by fire or other hazards covered by the standard extended coverage or other perils endorsements; and (ii) such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings similar in construction, location and use to the CONDOMINIUM, including but not limited to vandalism, malicious mischief, windstorm, water damage and war risk insurance, if available.

(b) Public liability and property damage insurance in such amounts and in such form as shall be required by ASSOCIATION to protect said ASSOCIATION and the owners of all DWELLINGS, including but not limited to, water damage, legal liability, hired automobile, nonowned automobile and off-premises employee coverage.

(c) Workmen's Compensation insurance to meet the requirements of law.

(d) Such other insurance coverage, other than title insurance, as the Board of Directors of ASSOCIATION, in its sole discretion may determine from time to time to be in the

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best interests of ASSOCIATION and the owners of all of the DWELLINGS or as an institutional type lender may reasonably require so long as it is the owner of a mortgage on any DWELLING.

All liability insurance maintained by ASSOCIATION shall contain cross liability endorsements to cover liability of all owners of DWELLINGS as a group to each DWELLING owner.

All insurance coverage authorized to be purchased shall be purchased by ASSOCIATION for itself and for the benefit of all of the owners of all DWELLINGS. The cost of obtaining the insurance coverage authorized above is declared to be a common expense, as are any other fees and expenses incurred which may be necessary or incidental to carrying out the provisions hereof.

All policies of casualty insurance covering the CONDOMINIUM shall provide for the insurance proceeds covering any loss to be payable to the Insurance Trustee named as hereinafter provided, or to its successors, and the insurance proceeds from any casualty loss shall be held for the use and benefit of ASSOCIATION and all of the owners of all DWELLINGS and their respective Mortgages, as their interests may appear, and such insurance proceeds shall be applied or distributed in the manner herein provided. ASSOCIATION is hereby declared to be and appointed as Authorized Agent for all of the owners of all DWELLINGS for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss, which may be covered under any policy of casualty insurance, and is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to insured property.

So long as any Mortgagee or the assignee of such mortgagee's rights in any mortgage (which assignment shall be evidenced by a recordable document, a certified copy of which shall be furnished the ASSOCIATION), hereinafter referred to as Lenders, is the holder of a mortgage on any DWELLING in the CONDOMINIUM, said Lenders shall have the right to approve the company or companies with whom ASSOCIATION shall place its casualty insurance coverage, and such casualty insurance coverage shall only be placed by ASSOCIATION with such company or companies as are approved by such Lenders. At such time as Lenders shall not hold a mortgage on any DWELLINGS, then the company or companies with whom such casualty insurance may be placed shall be selected by ASSOCIATION, and all parties beneficially interested in such insurance coverage shall be bound by such selection of insurance company or companies made by ASSOCIATION.

The ASSOCIATION shall have the right to designate the Insurance Trustee and all parties beneficially interested in such insurance coverage shall be bound thereby. The Insurance Trustee shall be a banking institution having trust powers and doing business in the State of South Carolina. The Insurance Trustee shall not be liable for the payment of premiums nor for the renewal of any policy or policies of casualty insurance, nor for the sufficiency of coverage, nor for the form or content of the policies, nor for the failure to collect any insurance proceeds.

The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold same in trust for the purpose herein stated, and for the benefit of ASSOCIATION and the owners of all DWELLINGS

and their respective mortgages, such insurance proceeds shall be disbursed and paid by the Insurance Trustee as hereinafter provided. ASSOCIATION, as a common expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Wherever the Insurance Trustee may be required to make distribution of insurance proceeds to owners of DWELLINGS and their Mortgagees, as their respective interests may appear, the Insurance Trustee may rely upon a Certificate of the President and Secretary of ASSOCIATION, executed under oath, and which certificate will be provided to said Insurance Trustee upon request of said Insurance Trustee made to ASSOCIATION, such Certificate to certify unto said Insurance Trustee the name or names of the owners of each DWELLING, the name or names of the Mortgagee or Mortgagees who may hold a mortgage or mortgages encumbering each DWELLING, and the respective percentages of any distribution which may be required to be made to the owner or owners of any DWELLING or DWELLINGS, and his or their respective Mortgage or Mortgagees, as their respective interests may appear. Where any insurance proceeds are paid to the Insurance Trustee for any casualty loss, the holder of holders of any mortgage or mortgages encumbering a DWELLING shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of any mortgage or mortgages, unless such insurance proceeds represent a distribution to the owner or owners of any DWELLING or DWELLINGS, and their respective mortgagees, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty insurance proceeds are authorized to be distributed to the owner or owners of any DWELLING or DWELLINGS, and their respective mortgagee or mortgagees, by reason of loss of or damage to personal property constituting a part of COMMON ELEMENTS and as to which a determination is made not to repair, replace or restore such personal property. So long as Lenders shall have the right to approve the company or companies with whom said casualty insurance coverage is placed, Lenders shall also have the right to approve the amount of such insurance coverage to be maintained.

In the event of the loss of or damage only to COMMON ELEMENTS, real or personal property, which loss or damage is covered by the casualty insurance, the proceeds paid to the Insurance Trustee to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such COMMON ELEMENTS, then such excess insurance proceeds shall be paid by the Insurance Trustee to the owners of all of the DWELLINGS and their respective Mortgagees, the distribution to be separately made to the owner of each DWELLING insurance proceeds paid to the owner of each DWELLING and his said mortgagee or mortgagees, if any, shall bear the same ratio to the total excess insurance proceeds as does the undivided interest in COMMON ELEMENTS appurtenant to each DWELLING bear to the total undivided interest in COMMON ELEMENTS appurtenant to all DWELLINGS. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Insurance Trustee are

not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then ASSOCIATION shall deposit with the Insurance Trustee a sum which, together with the insurance proceeds received or to be received, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be deposited by ASSOCIATION with the Insurance Trustee, in said latter event, may be paid by ASSOCIATION out of its Reserve for Replacements Fund, and if the amount in such Reserve for Replacements Fund is not sufficient, then ASSOCIATION shall levy and collect an assessment against the owners of all DWELLINGS and said DWELLINGS in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

In the event of the loss of or damage to COMMON ELEMENTS and any DWELLING or DWELLINGS which loss or damage is covered by the casualty insurance, the proceeds paid to the Insurance Trustee to cover such loss or damage shall be first applied to the repair, replacement or reconstruction, as the case may be, of COMMON ELEMENTS, real or personal, and then any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any DWELLING or DWELLINGS which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the COMMON ELEMENTS, the excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the owners of all DWELLINGS, and to their mortgagee or mortgagees, as their respective interests may appear, such distribution to be made in the manner and in the proportions as are provided hereinbefore. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Board of Directors of ASSOCIATION shall, based upon reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the COMMON ELEMENTS and the DWELLING or DWELLINGS sustaining any loss or damage. If the proceeds of said casualty insurance are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to COMMON ELEMENTS, but should the same not be sufficient to repair, replace or reconstruct any loss of or damage to any DWELLING or DWELLINGS, then ASSOCIATION shall levy and collect an assessment from the owner or owners of the DWELLING or DWELLINGS sustaining any loss or damage, and the assessment so collected from said owner or owners shall be deposited with said Insurance Trustee so that the sum on deposit with said Insurance Trustee so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all COMMON ELEMENTS and DWELLING or DWELLINGS. In said latter event, the assessment to be levied and collected from the owner or owners of each DWELLING or DWELLINGS sustaining loss or damage shall be apportioned between such owner or owners in such manner that the assessment levied against such owner of a DWELLING and his DWELLING shall bear the same proportion to the total assessment levied against all of said owners of DWELLINGS sustaining loss or damage as does the cost of repair, replacement or reconstruction of each owner's DWELLING bear to the cost applicable to all of said DWELLINGS sustaining loss or damage. If the casualty insurance proceeds payable to the Insurance Trustee in the

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event of the loss of or damage to COMMON ELEMENTS and DWELLING or DWELLINGS is not in an amount which will pay for the complete repair, replacement or reconstruction of the COMMON ELEMENTS, it being recognized that such insurance proceeds are to be first applied to payment for repair, replacement or reconstruction of said COMMON ELEMENTS before being applied to the repair, replacement or reconstruction of a DWELLING or DWELLINGS, then the cost to repair, replace or reconstruct said COMMON ELEMENTS in excess of available casualty insurance proceeds shall be levied and collected as an assessment from all of the owners of all DWELLINGS in the same manner as would such assessment be levied and collected had the loss or damage sustained been solely to COMMON ELEMENTS and the casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction, and the cost of repair, replacement or reconstruction of each DWELLING or DWELLINGS sustaining loss or damage shall then be levied and collected by assessment of the owner or owners of DWELLING or DWELLINGS sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between the owner or owners of DWELLING or DWELLINGS sustaining such loss or damage.

In the event of loss of or damage to property covered by such casualty insurance, ASSOCIATION shall, within sixty (60) days after any such occurrence, obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before such loss or damage, such estimates to contain and include the cost of any professional fees and premium for such Bond as the Board of Directors of ASSOCIATION may deem to be in the best interests of the membership of said ASSOCIATION. Wherever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of the repair, replacement or reconstruction thereof, the additional monies required to completely pay for such repair, replacement or reconstruction of said loss or damage, whether to be paid by all of the owners of DWELLINGS or only by the owner or owners of any DWELLING or DWELLINGS sustaining loss or damage, or both, shall be deposited with said Insurance Trustee not later than thirty (30) days from the date on which said Insurance Trustee shall receive the monies payable under the policy or policies of casualty insurance.

In the event of the loss of or damage to personal property belonging to ASSOCIATION, the insurance proceeds, when received by the Insurance Trustee, shall be paid to ASSOCIATION. In the event of the loss of or damage to personal property constituting a portion of the COMMON ELEMENTS, and should the Board of Directors of ASSOCIATION determine not to replace such personal property as may be lost or damaged, then the insurance proceeds received by the Insurance Trustee shall be paid to all of the owners of all DWELLINGS and their respective mortgagees or mortgagees, as their interests may appear, in the manner and in the proportions hereinbefore provided for the distribution of excess insurance proceeds.

XXIV.

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

In the event that any taxing authority having jurisdiction over the CONDOMINIUM shall levy or assess any

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Tax or Special Assessment against the CONDOMINIUM, as a whole, as opposed to levying and assessing such Tax or Special Assessment against each DWELLING and its appurtenant undivided interest in COMMON ELEMENTS as now provided by law, then such Tax or Special Assessment so levied shall be paid as a common expense by ASSOCIATION, and any Taxes or Special Assessments which are to be so levied shall be included, wherever possible, in the estimated Annual Budget of ASSOCIATION, or shall be separately levied and collected as an assessment by ASSOCIATION against all of the owners of all DWELLINGS and said DWELLINGS if not included in said Annual Budget. The amount of any Tax or Special Assessment paid or to be paid by ASSOCIATION in the event that such Tax or Special Assessment is levied against the CONDOMINIUM, as a whole, instead of against each separate DWELLING and its appurtenant undivided interest in COMMON ELEMENTS shall be apportioned among the owners of all DWELLINGS so that the amount of such Tax or Special Assessment so paid or to be paid by ASSOCIATION and attributable to and to be paid by the owner or owners of each DWELLING shall be that portion of such total Tax or Special Assessment which bears the same ratio to said total Tax or Special Assessment as the undivided interest in COMMON ELEMENTS appurtenant to all DWELLINGS. In the event that any Tax or Special Assessment shall be levied against the CONDOMINIUM in its entirety, without apportionment by the taxing authority to the DWELLINGS and appurtenant undivided interests in COMMON ELEMENTS, then the assessment by ASSOCIATION, which shall include the proportionate share of such Tax or Special Assessment attributable to each DWELLING and its appurtenant undivided interest in COMMON ELEMENTS, shall separately specify and identify the amount of such assessment attributable to such Tax or Special Assessments, and the amount of such Tax or Special Assessment so designated shall be and constitute a lien prior to all mortgages and encumbrances upon any DWELLING and its appurtenant undivided interest in COMMON ELEMENTS, regardless of the date of the attachment and/or recording of such mortgage or encumbrance, to the same extent as though such Tax or Special Assessment had been separately levied by the taxing authority upon each DWELLING and its appurtenant undivided interest in COMMON ELEMENTS.

All personal property taxes levied or assessed against personal property owned by ASSOCIATION shall be paid by said ASSOCIATION and shall be included as a common expense in the Annual Budget of the ASSOCIATION.

XXV.

ASSOCIATION TO MAINTAIN REGISTRY
OF OWNERS AND MORTGAGES

ASSOCIATION shall at all times maintain a Register setting forth the names of the owners of all of the DWELLINGS, and in the event of the sale or transfer of any DWELLING to a third party, the purchaser or transferee shall notify ASSOCIATION in writing of his interest in such DWELLING 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 DWELLING. Further the owner of each DWELLING shall at all times notify ASSOCIATION of the names of the parties holding any mortgage or mortgages on any DWELLING, 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 DWELLING may, if he so desires, notify ASSOCIATION of the

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existence of any mortgage or mortgages held by such party on any DWELLING, and upon receipt of such notice, ASSOCIATION shall register in its records all pertinent information pertaining to the same.

XXVI.

ASSESSMENTS: LIABILITY, LIEN
AND ENFORCEMENT

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

A. All assessments levied against the owners of DWELLINGS and said DWELLINGS shall be uniform and, unless specifically otherwise provided for in this Master Deed, the assessments made by ASSOCIATION shall be in such proportion that the amount of assessment levied against each owner of a DWELLING and his DWELLING shall bear the same ratio to the total assessment made against all owners of DWELLINGS and their DWELLINGS as does the undivided interest in COMMON ELEMENTS appurtenant to each DWELLING bear to the total undivided interest in COMMON ELEMENTS appurtenant to all DWELLINGS. Should ASSOCIATION be the owner of any DWELLING or DWELLINGS, the assessment which would otherwise be due and payable to ASSOCIATION by the owner of such DWELLING or DWELLINGS, reduced by an amount of income which may be derived from the leasing such DWELLING or DWELLINGS by ASSOCIATION, shall be apportioned and assessment therefor levied ratably among the owners of all DWELLINGS which are not owned by ASSOCIATION, based upon their proportionate interests in the COMMON ELEMENTS exclusive of the interests therein appurtenant to any DWELLING or DWELLINGS owned by ASSOCIATION.

B. The assessment levied against the owner of each DWELLING and his DWELLING shall be payable in annual, quarterly or monthly installments, or in such other installments and at such times as may be determined by the Board of Directors of ASSOCIATION.

C. The Board of Directors of ASSOCIATION shall establish an Annual Budget in advance for each fiscal year which shall correspond to the calendar year, and such Budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the 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 amount required to be collected as an assessment each year. Upon adoption of such

Annual Budget by the Board of Directors of ASSOCIATION, copies of said Budget shall be delivered to each owner of a DWELLING 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 determine that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the CONDOMINIUM, or in the event of emergencies, said Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

D. The Board of Directors of ASSOCIATION, in establishing said Annual Budget for operation, management and maintenance of the Project shall include therein a sum to be collected and maintained as reserve fund for replacement of COMMON ELEMENTS, which reserve fund shall be for the purpose of enabling ASSOCIATION to replace structural elements and mechanical equipment constituting a part of the COMMON ELEMENTS as well as the replacement of personal property which may constitute a portion of the COMMON ELEMENTS held for the joint use and benefit of all of the owners of all DWELLINGS. The amount collected and allocated to the Reserve Fund for Replacement from time to time shall be maintained in a separate account by ASSOCIATION, although nothing herein contained shall limit ASSOCIATION from applying any monies in each Reserve Fund for Replacements to meet other needs or requirements of ASSOCIATION in operating or managing the Project in the event of emergencies, or in the event that the sums collected from the owners of DWELLINGS are insufficient to meet the then fiscal financial requirements of ASSOCIATION, but it shall not be a requirement that these monies be used for such latter purposes, as a separate assessment may be levied therefor if deemed to be preferable by the Board of Directors of ASSOCIATION in the sole discretion of said Board of Directors.

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

F. All monies collected by ASSOCIATION shall be treated as the separate property of the said ASSOCIATION, and such monies may be applied by the said ASSOCIATION to the payment of any expense of operating and managing the CONDOMINIUM, or to the proper under taking of all acts and duties imposed upon it by virtue of this Master Deed and the Articles of Incorporation and By-Laws of said ASSOCIATION and as the monies for any assessment are paid unto ASSOCIATION by any owner of a DWELLING the same may be co-mingled with the monies paid to the said ASSOCIATION by the other owner of DWELLINGS. Although all funds and other assets of ASSOCIATION, and any increments thereto or profits derived therefrom, or from the leasing or use of COMMON ELEMENTS, shall be held for the benefit of the members of ASSOCIATION, who shall own any common surplus in the proportions of their percentage of undivided interest in the CONDOMINIUM, no member of said ASSOCIATION shall have the right to assign, hypothecate, pledge or in any manner

transfer this membership interest therein, except as an appurtenance to his DWELLING.

G. The payment of any assessment or installment thereof due to ASSOCIATION shall be in default if such assessment, or any installment thereof, is not paid unto ASSOCIATION, on or before the due date for such payment. When in default, the Board of Directors may accelerate the remaining installments of the annual assessment upon notice thereof to the DWELLING owner, whereupon the entire balance of the annual assessment shall become due upon the date stated in the notice, which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within twenty (20) days after their due date, the ASSOCIATION, through its Board of Directors, may proceed to enforce and collect the said assessments against the DWELLING owner owing the same in any manner provided for the Act, including the right of foreclosures and sale. When in default, the delinquent assessment or delinquent installment thereof due to ASSOCIATION shall bear interest at the rate of 12% per annum until such delinquent assessment or installment thereof, and all interest due thereon, has been paid to ASSOCIATION.

H. The owner or owners of each DWELLING shall be personally liable to ASSOCIATION for the payment of all assessments, regular or special, which may be levied by ASSOCIATION while such party or parties are owner or owners of a DWELLING in the CONDOMINIUM. In the event that any owner or owners are in default in payment of any assessment or installment thereof owed to ASSOCIATION, such owner or owners of any DWELLING shall be personally liable for interest on such delinquent assessment or installment thereof as above provided, and for all cost of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

I. No owner of a DWELLING may exempt himself from liability for any assessment levied against such owner and his DWELLING by waiver of the use of enjoyment of any of the COMMON ELEMENTS, or by abandonment of the DWELLING, or in any other manner.

J. Recognizing that the necessity for providing proper operation and management of the Project entails the continuing payment of costs and expenses therefor, which results in benefit to all of the owners of DWELLINGS, and that the payment of such common expense represented by the assessments levied and collected by ASSOCIATION is necessary in order to preserve and protect the investment of the owner of each DWELLING, ASSOCIATION is hereby granted a lien upon such DWELLING and its appurtenant undivided interest in COMMON ELEMENTS, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the owner of each DWELLING, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to ASSOCIATION, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by ASSOCIATION in enforcing this lien upon said DWELLING and its appurtenant undivided interest in the COMMON ELEMENTS. The lien granted to ASSOCIATION may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina, and in any suit for the foreclosure of said lien, the ASSOCIATION shall be entitled to rental from the owner of any DWELLING 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 DWELLING. The rental required to be paid shall be equal to the rental charged on comparable types of Dwelling Units in South Carolina. The lien granted to the ASSOCIATION shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the ASSOCIATION in order to preserve and protect its lien, and the ASSOCIATION shall further be entitled to interest at the rate of 12% per annum on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any DWELLING, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to ASSOCIATION, and shall acquire such interest in any DWELLING expressly subject to such lien.

K. The lien herein granted unto ASSOCIATION shall be effective from and after the time of recording in the Public Records of Horry County, South Carolina, a claim of lien stating the description of the DWELLING encumbered thereby, the name of the record owner, the amount due and the date when due, 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 claim of lien filed by the ASSOCIATION shall be subordinate to the lien of any mortgage or any other lien recorded prior to the time of recording of the ASSOCIATION'S claim of lien.

In the event that any person, firm or corporation shall acquire title to any DWELLING and its appurtenant undivided interest in COMMON ELEMENTS by virtue of any foreclosure, judicial sale, or deed in lieu of foreclosure, such person, firm or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said DWELLING and its appurtenant undivided interest in COMMON ELEMENTS subsequent to the date of acquisition of such title, and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. Such DWELLING however shall be so acquired subject to the lien of any assessment by ASSOCIATION representing an apportionment of Taxes or Special Assessment levied by taxing authorities against the CONDOMINIUM in its entirety. In the event of the acquisition of title to a DWELLING by 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 all owners of all DWELLINGS as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

L. Whenever any DWELLING may be sold or mortgaged by the owner thereof, which sale shall be concluded only upon compliance with other provisions of this Master Deed, ASSOCIATION, upon written request of the owner of such DWELLING, shall furnish to the proposed purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to ASSOCIATION by the owner of such DWELLING. Such statement shall be

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executed by any Officer of the ASSOCIATION and any purchaser or mortgagee may rely upon such statement and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, and ASSOCIATION shall be bound by such statement. In the event that a DWELLING is to be sold or mortgaged at the time when payment of any assessment against the owner of said DWELLING and such DWELLING due to ASSOCIATION shall be in default (whether or not a claim of lien has been recorded by the ASSOCIATION) then the proceeds of such purchase or mortgage proceeds, shall be applied by the purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to ASSOCIATION before the payment of any proceeds of purchase or mortgage proceeds to the owner of any DWELLING who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a DWELLING, the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by ASSOCIATION which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

Notwithstanding anything in this Master Deed to the contrary, it is declared that until December 30, 1983, each DWELLING (condominium unit) shall be exempt from the assessment created herein until such time as the DWELLING is conveyed by the grantor to a grantee (owner). Except as expressly provided herein, no DWELLING and its appurtenant percentage interest shall be exempt from said assessment. Moreover, until such time as a DWELLING is conveyed by the grantor, to a grantee, the grantor shall be assessed and pay to the ASSOCIATION in lieu of an assessment thereof a sum equal to the actual amount of operating expenditures for the calendar year less an amount equal to the total assessments made by the ASSOCIATION against owners of DWELLINGS other than those owned by Grantor. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 1984, the Grantor shall be subject to assessments as provided for in this Master Deed so that it will pay assessments on the same basis provided for under this Master Deed as the same are paid by DWELLING owners.

XXVII.

TERMINATION

This Master Deed and said Plan of Condominium Ownership may only be terminated by the unanimous consent of all of the owners of all DWELLINGS and all of the parties holding mortgages, liens or other encumbrances against any of said DWELLINGS, in which event the termination of the CONDOMINIUM shall be by such plan as may be then adopted by said owners and parties holding any mortgages, liens or other encumbrances. Such election to terminate this Master Deed and the Plan of Condominium Ownership established herein shall be executed in writing by all of the aforementioned parties, and such instrument or instruments shall be recorded in the Public Records of Horry County, South Carolina.

XXVIII.

AMENDMENT OF MASTER DEED

Except for any alteration in the percentages of ownership in COMMON ELEMENTS appurtenant to each DWELLING, or alteration of the basis for apportionment of assessments which may be levied by ASSOCIATION in accordance with the provisions hereof, in which said instances consent of all of the owners of all DWELLINGS and their respective mortgagees shall be required, and except for any alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Grantor, and the Lender which said rights and privileges granted and reserved unto the said Grantor and the Lender shall only be altered, amended or modified with the respective express written consent of the said Grantor or Lender, as the case may be, this Master Deed may be amended in the following manner:

An amendment or amendments to this Master Deed may be proposed by the Board of Directors of ASSOCIATION acting upon a vote of the majority of the Directors, or by the members of ASSOCIATION owning a majority of the DWELLINGS in the CONDOMINIUM, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Master Deed being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of ASSOCIATION, or other Officer of ASSOCIATION in the absence of the President, who shall thereupon call a Special Meeting of the members of ASSOCIATION for a date not sooner than twenty (20) days nor later than sixty (60) days from 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 Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonable detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special 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 ASSOCIATION, the postage thereon paid. Any member may, by written waiver of notice, signed by such member, waive such notice and such waiver, when filed in the records of ASSOCIATION, 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 all the members owning a DWELLING in the CONDOMINIUM in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments of this Master Deed shall be transcribed and certified by the President and Secretary of ASSOCIATION as having been duly adopted, and the original or an executed copy of such amendment or amendments so certified and executed with the same formalities as a Deed shall be recorded in the Public Records of Horry County, South Carolina, within ten (10) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording data identifying the Master Deed. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the Officers of ASSOCIATION shall be delivered to all of the owners of all DWELLINGS and mailed to the mortgagees listed in the Registry required to be maintained by Article XXV hereof, but delivery and mailing of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of 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 ASSOCIATION at or prior to such meeting. Furthermore, no amendment to this Master Deed shall be adopted which would operate to affect the validity or priority of any Mortgage held by a Mortgagee or which would alter, amend or modify in any manner whatsoever the rights, powers and privileges granted and reserved herein in favor of any Mortgagee or in favor of Grantor without the consent of all such Mortgagees or Grantor as the case may be.

XXIX.

REMEDIES IN EVENT OF DEFAULT

The owner or owners of each DWELLING shall be governed by and shall comply with the provisions of this Master Deed, and the Articles of Incorporation and the By-Laws of ASSOCIATION and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. A default by the owner or owners of any DWELLING shall entitle ASSOCIATION or the owner or owners of other DWELLING or DWELLINGS to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of ASSOCIATION, or its rules and regulations, shall be grounds for relief which may include without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof and which relief may be sought by ASSOCIATION, or, if appropriate, by an aggrieved owner of a DWELLING.

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

C. In any proceeding arising because of an alleged default by the owner of any DWELLING, the ASSOCIATION, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the owner of any DWELLING be entitled to such attorney's fees.

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

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

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

XXX.

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

All present or future owners, tenants, or any other person who might use the facilities of the CONDOMINIUM in any manner, are subject to the provisions of this Master Deed and all documents appurtenant hereto and incorporated herewith, and the mere acquisition or rental of any DWELLING, or the mere act of occupancy of any DWELLING, shall signify that the provisions of this Master Deed are accepted and ratified in all respects.

XXXI.

RIGHT OF GRANTOR TO SELL OR LEASE DWELLING
OWNED BY IT AND RIGHT OF GRANTOR TO
REPRESENTATION ON BOARD OF DIRECTORS OF ASSOCIATION

So long as the grantor herein, Shoreham Associates, shall own any DWELLING, the said Shoreham Associates shall have the absolute right to lease or sell any such DWELLING to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interest. Further, so long as Shoreham Associates is the owner of five (5) or more DWELLINGS, then Shoreham Associates 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. Whenever Shoreham Associates shall be entitled to designate and select any person or persons to serve on any Board of Directors of ASSOCIATION the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of ASSOCIATION, and Shoreham Associates shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Shoreham Associates, need not be a resident in the CONDOMINIUM. The power of the owner to designate Directors as above referred to shall terminate no later than the 1st day of January, 1984.

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

XXXII.

ANNUAL REPORTS TO BE PROVIDED TO LENDER

So long as any Lender is the owner or holder of a mortgage encumbering a DWELLING in the CONDOMINIUM, at

Lender's request ASSOCIATION shall furnish said Lender with at least one (1) copy of the Annual Financial Statement and Report of ASSOCIATION audited and prepared by Certified Public Accountants satisfactory to Lender and setting forth such details as the said Lender may reasonably require, including a detailed statement of annual carrying charges or income collected, and operating expenses, such Financial Statement and Report to be furnished within ninety (90) days following the end of each fiscal year.

XXXIV.

SEVERABILITY

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

XXXIV.

LIBERAL CONSTRUCTION AND ADOPTION OF PROVISIONS OF CONDOMINIUM ACT

The provisions of this Master Deed shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. The South Carolina Horizontal Property Act, 1976 Code of Laws, as the same may be amended from time to time thereafter is hereby adopted and expressly made a part hereof. In the event of any conflict between the provisions of this Master Deed and the said South Carolina Horizontal Property Act of South Carolina, as the same may be amended, said Act shall take the place of the provisions in conflict with the Master Deed.

XXXV.

MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSORS AND ASSIGNS, AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each DWELLING and its appurtenant undivided interest in COMMON ELEMENTS and this Master Deed shall be binding upon Grantor its successors and assigns, and upon all parties who may subsequently become owners of DWELLINGS in the CONDOMINIUM, and their respective heirs, legal representatives, successors and assigns.

XXXVI.

DEFINITIONS

A. The term "DWELLING" or "DWELLINGS" shall be synonymous with the term "Apartment" or "Apartments" as those terms are used under the Horizontal Property Act of the 1976 Code of Laws of South Carolina, as amended.

B. "Building" means a structure or structures containing in the aggregate two or more apartments comprising a part of the property.

C. "Co-owner" means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof, who owns a dwelling within the building.

D. "Assessment" means a dwelling owner's pro rata share of the common expenses which from time to time is assessed against a dwelling owner by the Association.

E. "Association" means council of co-owners as defined by the Horizontal Property Act and also means Shoreham Towers Homeowners Association Inc., the corporate form by which the council of co-owners shall operate.

F. Shoreham Towers "Common Expense" means the expenses for which the dwelling owners are liable to the Association and include:

1. Expenses of administration, expenses of maintenance, insurance, operation, repair or replacement of the common elements and of the portions of dwellings which are the responsibility of the Association;

2. Expenses declared common expenses by provisions of this Master Deed;

3. Any valid charges against the Regime as a whole.

G. "Common Surplus" means the excess of or receipts of the ASSOCIATION, including, but not limited to assessments over the amount of common expenses.

H. "Condominium" means the form of individual ownership of a particular dwelling (apartment) in a building and the common right to a share with other co-owners in the general common elements.

1. "Common Elements" means and includes the elements described in the Horizontal Property Act, and in the Master Deed (including Exhibits), as "general common elements" and also the following:

1. Easements through apartments for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to apartments and the general common elements; provided, however, such easements through an apartment shall be only according to the plans and specifications for the apartment building, or as the building is constructed unless approved in writing by the apartment owner.

2. An easement of support in every portion of an apartment which contributes to the support of a building.

3. Easements through the apartments and general common elements for maintenance, repair and replacement of the apartments and general common elements.

4. Installations for the furnishing of utility services to more than one apartment or to the general common elements or to an apartment other than the one containing the installation, which installation shall include ducts, plumbing, wiring and other facilities for the rendering of such services.

5. The tangible personal property required for the maintenance and operation of the Regime, even though owned by the Association.

IN WITNESS WHEREOF, the GRANTOR, Shoreham Associates, a Joint Venture, has caused these presents to be signed by its Joint Venturers, Robert P. Griffin, and Grover C. Cauthen, and Keys Development Corporation of South Carolina, Joint Venturer, and sealed this 17th day of June, in the year of our Lord One Thousand Nine Hundred Eighty-Three and the Two Hundred Seventh year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

[Signature]
Witness

[Signature]
Witness

SHOREHAM ASSOCIATES,
A Joint Venture, by its
Venturers

By: [Signature] (LS)
Robert P. Griffin,
Joint Venturer

By: [Signature] (LS)
Grover C. Cauthen,
Joint Venturer

KEYS DEVELOPMENT CORPORATION
OF SOUTH CAROLINA,
Joint Venturer

[Signature]
Witness

[Signature]
Witness

By: [Signature] (LS)
President

Attest: [Signature] (LS)
Asst. Secretary

STATE OF FLORIDA)
COUNTY OF MONROE)

PROBATE

BEFORE me appeared the undersigned witness, who after first being duly sworn deposes and states that (s)he saw Keys Development Corporation of South Carolina, by its duly authorized officers, sign, seal and deliver the within Master Deed; and that (s)he with the other witness signing above witnessed the execution thereof.

[Signature]
Witness

SWORN to before me this
17th day of June, 1983.

[Signature]
Notary Public for Florida
My Commission Expires April 12, 1986

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

BEFORE me appeared the undersigned witness, who after first being duly sworn deposes and states that (s)he saw Shoreham Associates, A Joint Venture, by Robert P. Griffin, Venturer and Grover C. Cauthen, Venturer, sign, seal and deliver the within Master Deed and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.


Witness

SWORN to before me this
19th day of June, 1983.


My Commission Expires: 11-16-87

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EXHIBIT "A"

MASTER DEED
FORSHOREHAM TOWERS, A HORIZONTAL PROPERTY REGIME

NOTE: Exhibit A consists of a plat of survey showing the location of the buildings and other improvements, including the location of common elements, said Plat being recorded in Plat Book 76, at Page 179, Horry County Records, a set of floor plans of the buildings which show graphically the dimensions, area and location of each dwelling therein and the dimensions, area and location of Common Elements affording access to each dwelling, said plans being recorded in Condominium Plat Book 2, Page 50, Horry County Records. If any variation exists between the said plat and plans, the plat shall control. Said Exhibit further includes the following:

There are forty dwellings, all located in a single building consisting of nine habitable floors, floor two being the first habitable floor. All dwellings having a number designation beginning with "2" are on the second floor, "3" on the third floor, "4" on the fourth floor, "5" on the fifth floor, "6" on the sixth floor, "7" on the seventh floor, "8" on the eighth floor. All dwellings having a first letter designation beginning with "P" are on the ninth floor. One dwelling having a designation as "Rooftop Penthouse" is on the tenth floor. The second letter designation for dwellings on Floors 2 through 8, inclusive, and the second number designation for dwellings on floor 9, identify the location of the particular dwelling with respect to other dwellings on the same floor. Only one dwelling is on the tenth floor. The unit identity, designation and location with respect to common elements and other dwellings is as shown upon the plans referred to above by Bartholomew Associates, Inc., Architects, and the plat of survey by C. B. Berry, R.L.S., recorded as set forth above.

Dwellings are of varying sizes. Dwellings on floors 2 through 8, inclusive, with letter designations B, C, and D contain approximately 1,353 square feet. Dwellings on floors 2 through 8 inclusive, with letter designations A and E contain approximately 1,610 square feet. Dwellings on the ninth floor with number designations 2 and 3 contain approximately 1,701 square feet. Dwellings on the ninth floor with number designations 1 and 4 contain approximately 1,936 square feet. The "Rooftop Penthouse" dwelling on the tenth floor contains approximately 2,630 square feet. Actual ground location of the building and improvements is as shown upon the aforesaid plat of survey by C. B. Berry, R.L.S., and shall control over any variation of the building on common elements shown on the plans.

Access to all floors is provided by both stairways and elevators. Access to each dwelling on floors 2 through 9 inclusive is provided by a corridor which runs along the Northwestern side of each building in a generally Southwest-Northeast direction. Each dwelling contains a door which fronts on a branch of the corridor and such branch is a common area. Access to the "Rooftop Penthouse" dwelling on the tenth floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also common. The rooftop area contains planters which are common. On the first floor, on which no dwellings are located, all areas and facilities are common.

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These include all parking areas, drives, landscaping, swimming pools and decks, restroom facilities, bar, seawall, stairs affording access to the upper floors and the beachfront, equipment and mechanical rooms, lobbies and elevators.

There is located on the second floor to the Northeast of the common corridor a "Meeting Room" as designated on the plans, which is a common area. Nothing herein shall prohibit Shoreham Towers Homeowners Association, Inc. from using said room for any lawful purpose pursuant to proper corporate authority. There is an additional parking area to the Northeast of the building across Ocean Boulevard. Nothing herein shall prohibit its use by Shoreham Towers Homeowners Association, Inc. for any lawful purpose pursuant to proper corporate authority, including its sale should it not be needed for parking or other use.

As to each dwelling: all built-in kitchen appliances, the refrigerator, air conditioning and heating units, and hot water heaters located in or providing service to each unit are a part of the unit in which they are located or which they service and are not common elements. All balconies adjacent to each dwelling, including the railing attached thereto, are a part of that dwelling and not common areas, although such may be subject to other restrictions on use as set out elsewhere in this Master Deed, including but not limited to a restriction in favor of a common design, painting and color scheme for the building.

Reference to areas as common elements or areas herein shall be in addition to and be read in conjunction with further designation of common elements and areas set out in other portions of this Master Deed or Exhibits hereto.

EXHIBIT "B"

MASTER DEED

SHOREHAM TOWERS, A HORIZONTAL PROPERTY REGIME

SCHEDULE of percentage (%) of undivided interest in common elements appurtenant to dwellings in Shoreham Towers, a Condominium. Statutory value is for statutory purposes only and has no relationship to the actual value of each dwelling.

<u>DWELLING NUMBER</u>	<u>VALUE FOR STATUTORY PURPOSES</u>	<u>% OF UNDIVIDED INTEREST IN COMMON ELEMENTS</u>
2A	\$125,000.00	2.6456
3A	"	"
4A	"	"
5A	"	"
6A	"	"
7A	"	"
8A	"	"
2E	"	"
3E	"	"
4E	"	"
5E	"	"
6E	"	"
7E	"	"
8E	"	"
2B	120,000.00	2.2232
3B	"	"
4B	"	"
5B	"	"
6B	"	"
7B	"	"
8B	"	"
2C	"	"
3C	"	"
4C	"	"
5C	"	"
6C	"	"
7C	"	"
8C	"	"
2D	"	"
3D	"	"
4D	"	"
5D	"	"
6D	"	"
7D	"	"
8D	"	"
P1	135,000.00	3.1813
P4	"	"
P2	130,000.00	2.7951
P3	"	"
Rooftop Penthouse	150,000.00	<u>4.3216</u>
		100.0000%

EXHIBIT "C"

BY-LAWS OF
SHOREHAM TOWERS HOMEOWNERS ASSOCIATION INC.

(A Corporation Not for Profit)

1. IDENTITY

These are the By-Laws of Shoreham Towers Homeowners Association, Inc., a non-profit corporation existing under the laws of the State of South Carolina, (hereinafter referred to as ASSOCIATION), 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 of the 1976 Code of Laws of South Carolina. This Horizontal Property Regime is identified by the name of Shoreham Towers, A Horizontal Property Regime, (hereinafter referred to as CONDOMINIUM), and is located upon the following lands in Horry County, South Carolina:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. SIX (6) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot No. Seven (7) of Block Thirty (30), on the South by the high water mark of the Atlantic Ocean, and on the West by Lot No. Five (5) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 735 at Page 297, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. SEVEN (7) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot No. Eight (8) of Block Thirty (30), on the South by the high water mark of the Atlantic Ocean, and on the West by Lot No. Six (6) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 735 at Page 297, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT

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NO. EIGHT (8) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot No. Nine (9) of Block Thirty (30), on the South by the high water mark of the Atlantic Ocean, and on the West by Lot No. Seven (7) of Block Thirty (30). Said lot measures 60 feet in width and approximately 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 2, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars

Derivation: Deed Book 735 at Page 297, Horry County Records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. EIGHT (8) of BLOCK THIRTY-THREE (33) of the property of Crescent Beach Corporation, and bounded on the North by Second Avenue (now Perrin Drive), on the East by Lot No. Nine (9) of Block Thirty-three (33), on the South by First Avenue (now Ocean Boulevard), and on the West by Lot No. Seven (7) of Block Thirty-three (33). Said lot measures 60 feet in width and 120 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

Derivation: Deed Book 736 at Page 349, Horry County records.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or tract of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being more particularly described as being the property lying between the Ocean front lot lines of LOTS NO. SIX (6), NO. SEVEN (7), and NO. EIGHT (8) of BLOCK THIRTY (30), of the property of Crescent Beach Corporation, and the mean high water mark of the Atlantic Ocean, and bounded on the North by the Ocean front lot lines of the above mentioned lots, on the East and West by other properties lying between front lot lines in Block 30 and the mean high water mark of the Atlantic Ocean, and on the South by the high water mark of the Atlantic Ocean. Reference is made to the map recorded in Plat Book 3, at Page 23, Records of Horry County, as a part of this description for further particulars.

Derivation: Deed Book 801, at Page 877 Horry County Records.

a) The property (the term "property" as used herein means and includes the land, the buildings, all improvements, and structures thereon) located in Horry County, South Carolina, known as Shoreham Towers, A Horizontal Property Regime, which has been or will be submitted to the provisions of the Horizontal Property Act

of South Carolina, any and all of which property shall hereafter be known as Shoreham Towers, a Horizontal Property Regime (hereinafter referred to as "Regime").

b) The provisions of these By-Laws are applicable to said CONDOMINIUM, 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.

c) All present and future owners, tenants, future tenants, or their employees, 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 these By-Laws and in said Articles of Incorporation and Master Deed.

d) The office of the ASSOCIATION shall be at North Myrtle Beach, South Carolina or such other place as the Board of Directors may designate from time to time.

e) The fiscal year of the ASSOCIATION shall be the calendar year.

f) The seal of the ASSOCIATION shall bear the name of the ASSOCIATION, and the word "South Carolina" the words "Corporation Not for Profit," and the year of incorporation, an impression of which seal is as follows:

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

a) The qualification 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 IV of 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, either personally or by proxy, shall constitute the presence of such person for the purpose of determining a quorum.

c) The vote of the owners of a DWELLING 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 DWELLING and filed with the Secretary of the ASSOCIATION, and such certificate shall be valid until revoked by 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 DWELLING owner upon any matters, whether or not in 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 the same may otherwise be required by law, the affirmative vote of the owners of a majority of the DWELLINGS represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

a) The Annual Members' Meeting shall be held at the office of the ASSOCIATION at 10:00 o'clock P.M. E.S.T., on the fourth Saturday in September of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Saturday.

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 DWELLINGS.

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 to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States mails addressed to the member at his post office address as it appears on the records of the ASSOCIATION, the postage thereon prepaid. Proof of such mailing shall be given by the Affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the ASSOCIATION, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, 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 meeting from time to time until a quorum, or the required percentage of attendance is 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

4. BOARD OF DIRECTORS

a) The first Board of Directors of the ASSOCIATION and succeeding Boards of Directors shall consist of five (5) 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. Provided that so long as Shoreham Associates, hereinafter referred to as "OWNER", is the owner of five (5) or more DWELLINGS, then Shoreham Associates 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. The power of the OWNER to designate Directors as above referred to shall terminate not later than the 1st day of January, 1984.

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

i) OWNER, Sponsor of the CONDOMINIUM, 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, said 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 provision 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, such vacancy shall be filled by OWNER designating and selecting, by written instrument delivered to any Officer of the ASSOCIATION, the successor Director to fill the vacated Directorship for the unexpired term thereof.

iv) At the first Annual Meeting of the members held after the Master Deed has been recorded in the Public Records of Horry County, South Carolina, the term of office of the two (2) Directors receiving the highest plurality of

votes shall be established at two (2) years, and the three (3) Directors selected by Shoreham Associates shall serve until Shoreham Associates, 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 DWELLING as many votes for Directors as there are Directors to be elected, provided, however, that no member or owner of any Dwelling 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 other 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 to be replaced and 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 organization 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 organization meeting shall be necessary provided a quorum shall be present.

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

e) Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third 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 Directors' meeting cannot be organized because a quorum has not attended, or because the greater percentage of the Directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, the By-Laws or the Master Deed, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

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

(i) Directors' 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, if 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' DWELLINGS to defray the costs of the common areas and facilities of the Condominium, and to use the 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 DWELLINGS 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 DWELLINGS and the appurtenances thereto, and to assess the same against the members and their respective DWELLINGS subject to such liens.

ix) To carry insurance for the protection of the members and the ASSOCIATION against casualty and liability.

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 DWELLINGS; 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.

(k) The first Board of Directors of the ASSOCIATION shall be comprised of the five (5) persons designated to act and serve as Directors in the Articles of Incorporation, which said persons shall serve until their successors are elected at the first Annual Meeting of the members of the ASSOCIATION called after the property identified herein has been submitted to the plan of Condominium ownership and the Master Deed has been recorded in the Public Records of Horry County, South Carolina. Should any member of said first Board of Directors be unable to serve for any reason, a majority of the remaining members of the Board of Directors shall have the right to select and designate a party to act and serve as a Director for the unexpired term of said Director who is unable to serve.

(l) The undertakings and contracts authorized by said 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 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 in accordance with all applicable Condominium documents.

(m) Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina corporations for profit.

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5. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS

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

6. OFFICERS

(a) The executive offices 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 preemptorily 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 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. He shall further have the power to approve (but not to disapprove) proposed purchasers of DWELLINGS and to waive the ASSOCIATION'S right of first refusal in the manner specified in the Master Deed.

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

(e) The Treasurer shall have custody of all of the property of the ASSOCIATION, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of 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.

7. 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 DWELLING. Such an account shall designate the name and address of the owner or owners, the amount of each assessment against the 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 upon assessments.

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

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

ii) Proposed assessments against each member.

Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 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 or the Board of Directors.

(d) The depository of the ASSOCIATION shall be such bank or banks as shall be designated from time to time by

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the Directors and in which the monies of the ASSOCIATION shall be deposited.

(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 1 of the year following the year for which the report is made.

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

8. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles 6. OFFICERS

(a) The executive offices 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 preemptorily 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 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. He shall further have the power to approve (but not to disapprove) proposed purchasers of DWELLINGS and to waive the ASSOCIATION'S right of first refusal in the manner specified in the Master Deed.

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

(e) The Treasurer shall have custody of all of the property of the ASSOCIATION, including funds, securities and

evidences of indebtedness. He shall keep the assessment rolls and accounts of 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.

7. 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 DWELLING. Such an account shall designate the name and address of the owner or owners, the amount of each assessment against the 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 upon assessments.

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

- i) Common expense budget, which shall include, without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of COMMON ELEMENTS, landscaping, street and walkways, office expense, swimming pool, utility services, casualty insurance, liability insurance, administration and reserves (operating and replacement); and
- ii) Proposed assessments against each member.

Copies of the proposed budget and proposed assessments shall be transmitted to each member on or before January 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 or the Board of Directors.

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(d) The depository of the ASSOCIATION shall be such bank or banks as shall be designated from time to time by the Directors and in which the monies of the ASSOCIATION shall be deposited.

(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 become effective without the prior written consent of Shoreham Associates.

10. 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.

SHOREHAM TOWERS
HOMEOWNERS ASSOCIATION, INC.

By: 
Secretary

Date: 6/21/83

The State of South Carolina

EXECUTIVE DEPARTMENT

CERTIFICATE OF INCORPORATION

BY THE SECRETARY OF STATE

WHEREAS, Robert P. Griffin, 1301 48th Ave., North Myrtle Beach, SC
Grover C. Cauthen, 1301 48th Ave., North Myrtle Beach, SC

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

SHOREHAM TOWERS HOMEOWNERS ASSOCIATION, INC.,

which has been duly and regularly organized, did on the 15th day of

June A. D. 1985 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 as 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 SHOREHAM TOWERS HOMEOWNERS ASSOCIATION, INC.,

THIRD The place at which it proposes to have its headquarters or be located is 2107 S. Ocean Blvd., N. Myrtle Beach, SC

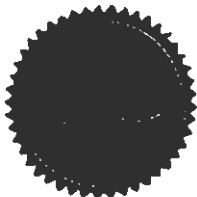
FOURTH The purpose of the said proposed Corporation is to administer the operation and management of Shoreham Towers Horizontal property Regime in accordance with the attached proposed Articles of Incorporation of the Homeowners association of said regime and its bylaws.

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

Robert P. Griffin	1301 48th Ave. N., Myrtle Beach, SC	Dir.-Pres.
Grover C. Cauthen	1301 48th Ave. N., Myrtle Beach, SC	Dir.-Sec.-Treas.

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 15th day of June
in the year of our Lord one thousand nine hundred and
85 and in the two hundred and
seventh
year of the Independence of the
United States of America.

John T. Campbell
JOHN T. CAMPBELL
Secretary of State.

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EXHIBIT 808 P. 350

ROA 00118

EXHIBIT "D"

ARTICLES OF INCORPORATION
OF SHOREHAM TOWERS 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 Shoreham Towers Homeowners Association, Inc.

II.

The purpose and objects of the corporation shall be to administer the operation and management of Shoreham Towers, a Horizontal Property Regime (hereinafter referred to as "the CONDOMINIUM"), a multi-story apartment project to be established in accordance with the Horizontal Property Act of the State of South Carolina upon the following described property situate, lying and being in Horry County, South Carolina, to wit:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO SIX (6) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot Seven (7) of Block Thirty (30), on the South by the High water mark of the Atlantic Ocean, and on the West by Lot No Five (5) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. SEVEN (7) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot Eight (8) of Block Thirty (30), on the South by the High water mark of the

Atlantic Ocean, and on the West by Lot No Six (6) of Block Thirty (30). Said lot measures 60 feet in width and 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. EIGHT (8) of BLOCK THIRTY (30) of the property of Crescent Beach Corporation, and bounded on the North by First Avenue (now Ocean Boulevard), on the East by Lot Nine (9) of Block Thirty (30), on the South by the High water mark of the Atlantic Ocean, and on the West by Lot No Seven (7) of Block Thirty (30). Said lot measures 60 feet in width and approximately 190 feet in depth, as will appear upon reference to the map recorded in Plat Book 2, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being LOT NO. EIGHT (8) of BLOCK THIRTY-THREE (33) of the property of Crescent Beach Corporation, and bounded on the North by Second Avenue (now Perrin Drive), on the East by Lot Nine (9) of Block Thirty-three (33), on the South by First Avenue (now Ocean Boulevard), and on the West by Lot No Seven (7) of Block Thirty-three (33). Said lot measures 60 feet in width and 120 feet in depth, as will appear upon reference to the map recorded in Plat Book 3, at Page 23, Records of Horry County, which map is hereby made a part of this description for further particulars.

ALSO:

ALL AND SINGULAR, all that certain piece, parcel or tract of land situate, lying and being in Little River Township, State of South Carolina, County of Horry, Town of North Myrtle Beach, and being more particularly described as being the property lying between the Ocean front lot lines of LOTS NO SIX (6), NO. SEVEN (7), and NO. EIGHT (8) of BLOCK THIRTY (30), of the property of Crescent Beach Corporation, and the mean high water mark of the Atlantic Ocean, and bounded on the North by the Ocean front lot lines of the above mentioned lots, on the East and West by other properties lying between front lot lines in block 30 and the mean high water mark of the Atlantic Ocean, and on the South by the High water mark of the Atlantic Ocean. Reference is made to the map recorded in Plat Book 3, at Page 23, Records of Horry County, as a part of this description for further particulars.

And to undertake the performance of the acts and duties incident to the administration of the operation and management of said CONDOMINIUM 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 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

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ownership; and to own, operate, lease, sell, trade and otherwise necessary or convenient in the administration of said CONDOMINIUM. 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.
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 DWELLINGS and COMMON ELEMENTS in said CONDOMINIUM as said terms may be defined in said Master Deed to be which this Corporation is chartered.
 - b. To levy and collect assessments against members of the Corporation to defray the common expenses of the CONDOMINIUM as may be provided in said Master Deed and in the By-Laws of the Corporation which may be hereafter adopted, including the right to levy and collect assessments for the purposes of acquiring, operating, leasing, managing and otherwise trading and dealing with such property, whether real or personal, including DWELLINGS in said CONDOMINIUM, which may be necessary or convenient in the operation and management of the CONDOMINIUM and in accomplishing the purposes set forth in said Master Deed.
 - c. To maintain, repair, replace, operate and manage the CONDOMINIUM and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvements in the CONDOMINIUM property.
 - d. To contract for the management of the CONDOMINIUM and to delegate to such contractor all of the powers and duties of the ASSOCIATION except those which may be required by the

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Master Deed to have approval of the Board of Directors or Membership of the Corporation.

c. 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 CONDOMINIUM 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 DWELLINGS in the CONDOMINIUM shall be members of the Corporation, and no other persons or entities shall be entitled to membership, except as provided in Item (5) of this Article IV.

2. Membership shall be established by the acquisition of fee-simple title to a DWELLING in the CONDOMINIUM or by 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 DWELLING, except that nothing herein contained shall be construed as terminating the membership of any party who may own two or more DWELLINGS, or who may own a fee ownership interest in two or more DWELLINGS, so long as such party shall retain title to or a fee ownership interest in any DWELLING.

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 DWELLING. 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 DWELLING in the CONDOMINIUM, which vote may be exercised or cast by the owner or owners of each DWELLING in such manner as may be provided in the By-Laws hereafter adopted by the Corporation. Should any member own more than one DWELLING, such member shall be entitled to exercise or cast as many votes as he owns DWELLINGS, in the manner provided by said By-Laws.

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 said 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 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 2107 South Ocean Boulevard, North Myrtle Beach, South Carolina 29582.

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 directions of the Board

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of Directors. The Board of Directors, may employ a Managing Agent and/or such other managerial and supervisory personnel or entities to administer or assist in the administration of the operation and management of the CONDOMINIUM 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 five (5). 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 shall be members of the Corporation or shall be authorized representatives, officers or employees of a corporate member of the Corporation. Notwithstanding the foregoing, so long as Shoreham Associates, hereinafter referred to as "OWNER," is the owner of five (5) or more DWELLING in said CONDOMINIUM, 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 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 on the 31st day of December, 1983.

IX.

The Board of Directors shall elect a President, Secretary, and Treasurer, and as many Vice Presidents, Assistant Secretaries

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and Assistant Treasurers as the Board of Directors shall determine. 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 offices, the duties of which are not incompatible; provided, however, that the office of the President and Vice President shall not be held by the same person, nor shall the office of the 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 provisions 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:

<u>NAME</u>	<u>ADDRESS</u>
Robert P. Griffin	1301 48th Avenue North Myrtle Beach, S. C. 29577
Grover C. Cauthen	1301 48th Avenue North Myrtle Beach, S. C. 29577

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:

Robert P. Griffin	President
Grover C. Cauthen	Secretary-Treasurer

XIII.

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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 of indemnification, the indemnification herein shall only 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.

An 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 not later than sixty (60) days from the receipt by him of the proposed Amendment or Amendments 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) 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, and 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 of the total value of the property in the CONDOMINIUM 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.

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WHEREFORE, Your Petitioners pray that the Secretary of State does issue to the aforesaid Shoreham Towers Homeowners 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.

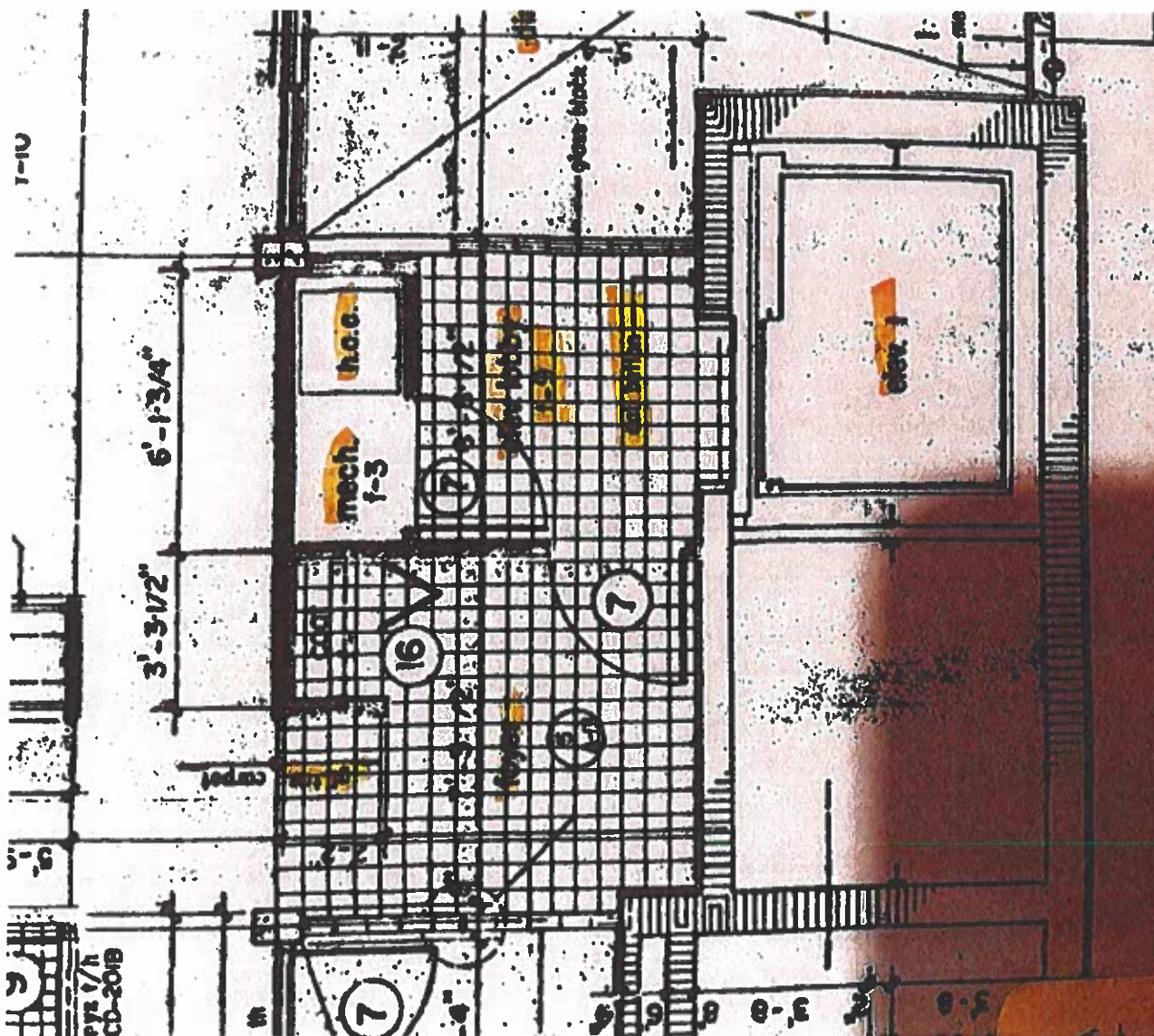

Robert P. Griffin

Grover C. Cauthen

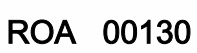
June 3, 1983
(Date)

and ① for cabinet elections

enlarged rooftop penthouse floor plan - 144' ± 1'-0"



A small, tilted rectangular label with a thick black border. The word "EXHIBIT" is printed in bold, uppercase letters at the top. Below it, the letter "P" is written in a large, stylized, handwritten font. A horizontal line is drawn below the letter "P". The word "tabbies" is written vertically in a small, sans-serif font along the left edge of the label.



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin,

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**SUMMONS
(Jury Trial Demanded)**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint on the subscriber, at the address shown below, within thirty (30) days after the service thereof, exclusive of this day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in said Complaint.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158

Rogers E. Harrell, III, Esquire, Bar #101532

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-

Marshall Griffin.

Plaintiff.

v.

Tony Giovano, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association.

Defendants.

**COMPLAINT
(Jury Trial Demanded)**

**TO: TONY GIOVANO, CARTER TACKETT, RICHARD AQUINO, BILL WEST,
AND SHOREHAM TOWERS HOMEOWNERS ASSOCIATION:**

The Plaintiff complains of the Defendants as follows:

1. The Plaintiff is a citizen and resident of Richland County, State of South Carolina.

2. The Plaintiff owns the 10th floor rooftop condo ("Rooftop Penthouse")

located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

3. In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop this property and signed the Master Deed for Shoreham Towers on June 17, 1983. The property has remained in the Griffin family since the property was conveyed on June 30, 1983.

4. Plaintiff is informed and believes that Defendant, Shoreham Towers Homeowners Association ("Shoreham Towers HOA"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the State of South Carolina through its agents, servants, and/or employees.

5. Defendant Shoreham Towers HOA manages properties at Shoreham Towers I.

2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina. Further, Shoreham Towers HOA regularly transacts business in Horry County, South Carolina through its agents, servants, and/or employees.

6. Defendants Giovano, Tackett, Aquino, West, and Plaintiff are members of the Shoreham Towers HOA Board of Directors.

4. The Court has jurisdiction over the parties in this matter. Venue is proper in Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust.

6. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime.

7. Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The **only** common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area.

8. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the

landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane.

9. The Defendants and their agents breached their obligation under the contract, among other things, by failing to honor the terms of the deed, and by exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff when they converted the area into a common area for all guests.

10. As a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered damages in the loss of his property interest in the area adjacent to his dwelling.

11. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' breach of contract.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

12. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

13. The Defendants, and their agents, committed various fraudulent acts which accompanied the breach, including, but not limited to, making various false statements to the Plaintiff.

14. The Defendants' conduct and misrepresentation amounts to a fraudulent act which accompanied the breach and constituted fraudulent intent relating to the breach.

15. As a direct and proximate result of the aforementioned breach of contract accompanied by Defendants' fraudulent acts, the Plaintiff has sustained damages as set forth above.

16. The Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages as a result of the Defendants' breach of contract accompanied by a fraudulent act or acts.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

17. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

18. As a result of the Defendants exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff, the Defendants received a non-gratuitous benefit.

19. The Defendants unjustly retained the property owned by the Plaintiff.

20. The Plaintiff is informed and believes it would not be equitable if the Defendants were to retain the benefits bestowed upon them as a result of their exercise of unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

21. The Defendants' conduct constitutes unjust enrichment.

22. As a result of the unjust enrichment, the Plaintiff has been harmed as alleged above.

23. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' unjust enrichment.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

24. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

25. Plaintiff owns the 10th floor rooftop penthouse located at 2307 S Ocean

Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

26. Defendant, by its conduct complained of herein has exercised unauthorized possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse when they converted the area into a common area for all guests.

27. The conduct complained of herein has been intentional on the part of the Defendants.

28. As a direct and proximate result of the aforementioned unfair and deceptive acts, the Plaintiff has sustained the damages set forth above and the Plaintiff is entitled to a judgment against the Defendants for actual damages.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy)

29. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

30. In the Spring of 2019 and at various other times thereafter, Defendants Giovano, Tackett, Aquino, and West met, joined together, planned, and conspired to convert Plaintiff's Rooftop Penthouse into a common area for other guests, appropriated homeowners association funds in secret and without Plaintiff's consent, and communicated with his tenants without his consent.

31. All of the named Defendants agreed or understood that the purpose of their meetings was to conspire to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned Plaintiff by converting the area into a common area for all guests. All of the named Defendants understood that both their purpose and their methods of achieving this purpose were unlawful and would result in injury to Plaintiff.

32. In furtherance of the conspiracy described herein, Defendants have exercised the unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

33. Defendants undertook the acts described in Paragraphs 30 and 31 with malice and intent to injure Plaintiff.

34. As a result of the acts described in Paragraphs 30 and 31, Plaintiff has suffered the loss of his property and loss of rental income as a direct result of the actions of Defendants Giovano, Tackett, Aquino, and West.

35. Unless prevented by appropriate injunctive measures, Defendants will continue to inflict injury upon Plaintiff by continuing to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, consequential damages, punitive damages, treble damages, and attorney's fees and costs and for such other relief as this Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
Rogers E. Harrell, III, Esquire, Bar #101532
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
October 14, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin

Plaintiff,

v.

**MOTION IN LIMINE TO EXCLUDE
QUALIFICATION AND TESTIMONY OF
ROGER ROY AS EXPERT**

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Marshall Griffin, hereby moves before the Presiding Trial Judge *in limine* for an Order or ruling excluding Roger Roy from being qualified as an expert or giving expert testimony and in support thereof states:

BACKGROUND

Roger Roy is an attorney with the law offices of Roy & Casper, LLC, in Myrtle Beach, South Carolina. Mr. Roy previously served as the attorney for Defendant Shoreham Towers Homeowner's Association. Defendants have proposed that they will use Mr. Roy as an expert witness in trial; however, Defendants have given no indication on what kind of expert testimony Mr. Roy is qualified to give. Defendants have only provided, "He may testify as to the communications he had with Plaintiff's counsel and his knowledge of the controversies between the parties." (Defs.' Second Suppl. Response to Pl.'s Interrog. No. 7.) Given Mr. Roy's background and the nature of the case, it is anticipated that Defendants will attempt to have Mr. Roy testify as an expert regarding the interpretation of the Master Deed.

ARGUMENT

I. Roger Roy's Qualification and Testimony as an Expert Should be Excluded Pursuant to Rule 702 of the South Carolina Rule of Evidence

a. Mr. Roy does not Qualify as an Expert under Rule 702

Rule 702 of the South Carolina Rules of Evidence provides in relevant part, “a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify.” Rule 702, SCRE. All expert testimony must meet the requirements of Rule 702, regardless of the nature of the testimony. Rule 702, SCRE; Graves v. CAS Med. Sys., Inc., 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). Whether a witness qualifies as an expert is within the discretion of the trial court, which has a gatekeeping role in regard to all evidence admitted under Rule 702. Risher v. S.C. Dep't of Health & Env't Control, 393 S.C. 198, 206, 712 S.E.2d 428, 432 (2011). In discharging this gatekeeping role, the trial court “must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact.” Id. (citing State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009)).

Apart from being a practicing attorney, Mr. Roy has no other qualifications that would qualify him as an expert. Defendants are attempting to qualify Mr. Roy as an expert merely because he is an attorney. To allow a practicing attorney to qualify as an expert on legal issues solely by nature of their admission to the bar would be antithetical to the gatekeeping role which the trial court must discharge. An attorney is not qualified to give opinions on issues of law simply because they are an attorney. Therefore, Mr. Roy fails to qualify as an expert under Rule 702.

b. Mr. Roy's Expert Testimony would be Inadmissible Because it Pertains to Issues of Law

Expert evidence is only permissible if “scientific, technical, or other specialized knowledge” would assist the jury to “understand the evidence or to determine a fact in issue.” Rule

702, SCRE. Consequently, South Carolina Courts have consistently held that expert testimony on issues of law is inadmissible. See Carter v. Bryant, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020); Dawkins v. Fields, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (finding trial court properly declined to consider an expert affidavit that mainly offered legal arguments concerning the reasons the trial court should deny summary judgment); see also State v. Commander, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011). Furthermore, the common law and the federal rules of evidence “forbid opinions on issues of law, except foreign law.” Carter v. Bryant, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020) (citing McCormick on Evidence § 12 (7th ed. 2016); Weinstein's Federal Evidence § 704.04[1] (2nd ed. 2019); United States v. Oti, 872 F. 3d 678, 691–92 (5th Cir. 2017) (holding expert is never permitted to testify as to conclusions of law)).

Regarding the case at hand, South Carolina courts have consistently held that the interpretation of a deed is an issue of law. Snow v. Smith, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) (the determination of whether language in a deed is ambiguous is a question of law); Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums, 318 S.C. 535, 539, 458 S.E.2d 561, 564 (Ct. App. 1995) (The interpretation of a deed is an equitable matter.) Any testimony related to the interpretation of the Master Deed is testimony on an issue of law, an area in which expert testimony is forbidden.

Furthermore, *any* “expert” testimony proffered by Mr. Roy can *solely* pertain to issues of law, as his “qualification” is based on his practice as an attorney—also known as the practice of **law**. Mr. Roy’s testimony would not help the jury understand the evidence or determine a factual issue, rather, such testimony would serve as legal argument. This form of testimony has been held inadmissible because it usurps the trial court’s role to determine issues of law and provides no aid

to jurors in deciding factual issues. See Dawkins v. Fields, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003). Therefore, any “expert” testimony of Roger Roy should be excluded.

II. **Roger Roy’s Expert Testimony Should be Excluded Pursuant to Rule 403 of the South Carolina Rules of Evidence**

Under the South Carolina Rules of Evidence, evidence must be excluded if the probative value is “substantially outweighed by the danger of **unfair prejudice, confusion of the issues, or misleading the jury**, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE (emphasis added).

For Mr. Roy to testify as an expert on the law would mislead the jury because the members would assume that such an expert’s role would be to help them understand the law, which is not the role of an expert. The role of an expert is to “assist the trier of fact to understand the evidence or to determine a fact in issue.” Rule 702, SCRE. As previously stated, to allow an expert on the law would usurp the trial court’s role in helping the jury understand and apply the law. A jury would give the opinion undue weight because they would believe that the expert had a better understanding *of the law* than they did. This is directly opposed to the normal function of an expert, who has a better understanding *of their area of expertise* than the jury. Therefore, such testimony is unfairly prejudicial, misleading to the jury, and is subject to exclusion under Rule 403.

CONCLUSION

Mr. Roy does not qualify as an expert under Rule 702, any testimony he offers as an expert is inadmissible under Rule 702, and the probative value of any testimony he offers would be substantially outweighed by the danger of unfair prejudice. Therefore, Plaintiff’s Motion *in Limine* should be granted and Mr. Roy’s qualification and testimony should be excluded.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire

SC Bar No.: 64158

4406-B Forest Drive (29206)

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Plaintiff Marshall Griffin

Columbia, South Carolina
January 24, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2019-CP-26-06550

Marshall Griffin

Plaintiff,

v.

**MOTION IN LIMINE TO EXCLUDE
EVIDENCE RELATED TO TAX ASSESSOR'S
DETERMINATION OF SQUARE FOOTAGE**

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Plaintiff, Marshall Griffin, hereby move before the Presiding Trial Judge *in limine* for an Order or ruling excluding any evidence related to the Horry County Assessor's determination of square footage. Prior to the inception of this case, the Horry County Assessor's office had the property incorrectly listed at a different square footage than the actual area of the property. Plaintiff was unaware of this discrepancy until recently. Any attempt by the Defendants to mention this mistake would be solely for the purpose of disparaging Plaintiff and would not be relevant to the issues at hand. Therefore, any such evidence is irrelevant and subject to exclusion. Rule 402, SCRE. Additionally, even if the evidence was relevant, the probative value would be substantially outweighed by the "danger of unfair prejudice, confusion of the issues, or misleading the jury" and would still be subject to exclusion. Rule 403, SCRE. Therefore, any such evidence should be excluded.

This Motion is made pursuant to Rules 402 and 403 of the South Carolina Rules of Evidence and will be supplemented and supported by such affidavits, depositions, discovery

responses, memoranda of law, and such other documents as appropriate.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire

SC Bar No.: 64158

4406-B Forest Drive (29206)

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Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Plaintiff Marshall Griffin

Columbia, South Carolina
January 24, 2023

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Marshall Griffin

Plaintiff,

v.

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2019-CP-26-06550

**MOTION TO AMEND PLAINTIFF'S
COMPLAINT TO CONFORM TO THE
EVIDENCE**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff, Marshall Griffin, hereby moves before the Presiding Trial Judge for an Order or ruling allowing Plaintiff to amend his Complaint to conform to the evidence pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure. Under Rule 15(b), a party may amend the pleadings as necessary to cause them to conform to the evidence when issues not raised by the pleadings are tried by the express or implied consent of the parties. Rule 15(b), SCRCP. Additionally, when ruling on the introduction of evidence and the amendment of pleadings at trial, "the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby." Id. In support of this motion, Plaintiff shows the following to the court:

1. The trial in the above-captioned case is scheduled for January 30, 2023.
2. At trial, the parties will raise the issues of Acquiescence and Adverse Possession.

These issues are implied by law based on the underlying facts of the case and the Complaint as written.

3. Plaintiff specifically requests that his Complaint be amended to add causes of action for Acquiescence, Adverse Possession, and Declaratory Judgment concerning the property rights of the parties. A proposed Amended Complaint is attached as Exhibit A.

4. Regardless of whether Plaintiff's Motion is granted, the issues should "be treated in all respects as if they had been raised in the pleadings." Rule 15(b), SCRCP.

WHEREFORE, Plaintiff moves the court that his motion to amend the pleadings to conform to the evidence be granted, and for such other and further relief in favor of Plaintiff as the court deems just and proper.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire

SC Bar No.: 64158

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(803) 782-4100

Attorney for Plaintiff Marshall Griffin

Columbia, South Carolina
January 24, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO.: 2019-CP-26-06550

Marshall Griffin,

Plaintiff,

v.

**AMENDED COMPLAINT
(Jury Trial Demanded)**

Tony Giovano, Carter Tackett, Richard
Aquino, Bill West, and Shoreham Towers
Homeowners Association,

Defendants.

**TO: HENRIETTA GOLDING, ATTORNEY FOR DEFENDANTS AND TO THE
DEFENDANTS ABOVE NAMED:**

The Plaintiff complains of the Defendants as follows:

1. The Plaintiff is a citizen and resident of Richland County, State of South Carolina.
2. The Plaintiff owns the 10th floor rooftop condo ("Rooftop Penthouse")

located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

3. In 1983, Plaintiff's uncle, Robert P. Griffin, helped develop this property and signed the Master Deed for Shoreham Towers on June 17, 1983. The property has remained in the Griffin family since the property was conveyed on June 30, 1983.

4. Plaintiff is informed and believes that Defendant, Shoreham Towers Homeowners Association ("Shoreham Towers HOA"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in the State of South Carolina through its agents, servants, and/or employees.

5. Defendant Shoreham Towers HOA manages properties at Shoreham Towers I,

2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina. Further, Shoreham Towers HOA regularly transacts business in Horry County, South Carolina through its agents, servants, and/or employees.

6. Defendants Giovano, Tackett, Aquino, West, and Plaintiff are members of the Shoreham Towers HOA Board of Directors.

4. The Court has jurisdiction over the parties in this matter. Venue is proper in Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. On or about January 21, 1994, Robert P. Griffin, Plaintiff's uncle, passed away leaving the Rooftop Penthouse to be placed in a Trust with Plaintiff as a beneficiary of said Trust.

6. On or about January 21, 1994, Plaintiff became the owner of the Rooftop Penthouse dwelling that is subject to the Master Deed for Shoreham Towers, A Horizontal Property Regime.

7. Pursuant to the deed, Plaintiff's Rooftop Penthouse is considered a dwelling, not a common element subject to a perpetual non-exclusive easement in favor of all of the owners of dwellings for their use and the use of their immediate families, guests, and invitees. As to each dwelling, the areas adjacent to each dwelling such as balconies are not common areas. The **only** common areas listed relating to the Rooftop Penthouse and the rooftop area are the elevator lobby, the stairwell to the rooftop area, and the planters on the rooftop area.

8. Throughout the duration of the deed's existence, the Plaintiff and his family have maintained the Rooftop Penthouse and the area adjacent to the penthouse as a dwelling. Plaintiff pays for the electricity for the planter lights; the plants located outside his dwelling, the landscaping, and the irrigation system. He has also paid for the turtle tile matting to protect the roof membrane.

9. The Defendants and their agents breached their obligation under the contract, among other things, by failing to honor the terms of the deed, and by exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff when they converted the area into a common area for all guests.

10. As a direct and proximate result of the Defendants' breach of contract, the Plaintiff has suffered damages in the loss of his property interest in the area adjacent to his dwelling.

11. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' breach of contract.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

12. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

13. The Defendants, and their agents, committed various fraudulent acts which accompanied the breach, including, but not limited to, making various false statements to the Plaintiff.

14. The Defendants' conduct and misrepresentation amounts to a fraudulent act which accompanied the breach and constituted fraudulent intent relating to the breach.

15. As a direct and proximate result of the aforementioned breach of contract accompanied by Defendants' fraudulent acts, the Plaintiff has sustained damages as set forth above.

16. The Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages as a result of the Defendants' breach of contract accompanied by a fraudulent act or acts.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

17. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

18. As a result of the Defendants exercising unauthorized possession, control, and/or ownership of the rooftop area adjacent to the Rooftop Penthouse by the Plaintiff, the Defendants received a non-gratuitous benefit.

19. The Defendants unjustly retained the property owned by the Plaintiff.

20. The Plaintiff is informed and believes it would not be equitable if the Defendants were to retain the benefits bestowed upon them as a result of their exercise of unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

21. The Defendants' conduct constitutes unjust enrichment.

22. As a result of the unjust enrichment, the Plaintiff has been harmed as alleged above.

23. The Plaintiff is entitled to actual and consequential damages as a result of the Defendants' unjust enrichment.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

24. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

25. Plaintiff owns the 10th floor rooftop penthouse located at 2307 S Ocean Boulevard, North Myrtle Beach, SC 29582 in Horry County, South Carolina.

26. Defendant, by its conduct complained of herein has exercised unauthorized possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse when they converted the area into a common area for all guests.

27. The conduct complained of herein has been intentional on the part of the Defendants.

28. As a direct and proximate result of the aforementioned unfair and deceptive acts, the Plaintiff has sustained the damages set forth above and the Plaintiff is entitled to a judgment against the Defendants for actual damages.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy)

29. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

30. In the Spring of 2019 and at various other times thereafter, Defendants Giovano, Tackett, Aquino, and West met, joined together, planned, and conspired to convert Plaintiff's Rooftop Penthouse into a common area for other guests, appropriated homeowners association funds in secret and without Plaintiff's consent, and communicated with his tenants without his consent.

31. All of the named Defendants agreed or understood that the purpose of their meetings was to conspire to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned Plaintiff by converting the area into a common area for all guests. All of the named Defendants understood that both their purpose and their methods of achieving this purpose were unlawful and would result in injury to Plaintiff.

32. In furtherance of the conspiracy described herein, Defendants have exercised the unauthorized possession, control, and/or ownership of the rooftop area owned by Plaintiff.

33. Defendants undertook the acts described in Paragraphs 30 and 31 with malice and intent to injure Plaintiff.

34. As a result of the acts described in Paragraphs 30 and 31, Plaintiff has suffered the loss of his property and loss of rental income as a direct result of the actions of Defendants Giovano, Tackett, Aquino, and West.

35. Unless prevented by appropriate injunctive measures, Defendants will continue to inflict injury upon Plaintiff by continuing to unlawfully exercise possession, control, and/or ownership of the area adjacent to the Rooftop Penthouse owned by Plaintiff.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment)

36. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

37. This an action for a declaratory judgment pursuant to §§ 15-53-10 through §§ 15-53-140 of the South Carolina and Rule 57 of the South Carolina Rules of Civil Procedure, for the purpose of construing and interpreting the terms of the Master Deed at issue in this case. An actual controversy exists regarding the terms and application of the Master Deed.

38. Plaintiff is entitled to a declaration that he has been the sole and rightful owner of the Rooftop Terrace since his acquisition of the property at issue.

FOR A SEVENTH CAUSE OF ACTION
(Adverse Possession)

39. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

40. The Plaintiff has satisfied the statutory period for presumption of possession under § 15-67-210 of the South Carolina Code.

41. The Plaintiff has also satisfied the twenty-year common-law period for a presumption of a grant.

42. Plaintiff's possession of the property at issue was continuous, hostile, open and notorious, actual, and exclusive.

43. Plaintiff has acquired title to the Rooftop Terrace through adverse possession.

FOR AN EIGHTH CAUSE OF ACTION
(Acquiescence)

44. The Plaintiff reasserts and re-alleges each and every allegation above as if set forth verbatim.

45. The Plaintiff has obtained title to the Rooftop Terrace through the legal doctrine of acquiescence.

46. The Defendants both recognized and accepted the Plaintiff's occupation and use of the rooftop terrace for over twenty years.

47. The Defendants both expressly and impliedly accepted the Plaintiff's property line as including the Rooftop Terrace and therefore that line has become the true one.

48. Based on the legal doctrine of acquiescence, Plaintiffs ownership of the rooftop terrace has become valid.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, consequential damages, punitive damages, treble damages, attorney's fees and costs, and for judgment in favor of the Plaintiff and against Defendant for a declaration that the Defendants be forever precluded from asserting any claim to the property, that Plaintiff is the sole owner of the property, and for such other relief as this Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

John M. Grantland, Esquire, Bar #64158
4406 B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260

Attorney for Plaintiff

Columbia, South Carolina
January 24, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2019-CP-26-06550

Marshall Griffin,)

Plaintiff,)

v.)

**DEFENDANTS' MOTION IN
LIMINE**

Tony Giovano, Carter Tackett, Richard)
Aquino, Bill West, and Shoreham Towers)
Homeowners Association,)

Defendants.)

Pursuant to Rules 401, 402, 403, and 404 of the South Carolina Rules of Evidence ("SCRE") and applicable authorities, the Defendants move for an Order limiting or excluding, from the trial of this case, any evidence, reference to, and/or argument by Plaintiff, his counsel, and/or any witnesses regarding the following matters, because such evidence is irrelevant and otherwise inadmissible as set forth below. Furthermore, such evidence is inadmissible pursuant to Rule 403, SCRE, because any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

1. Temporary Restraining Order/Preliminary Injunction Entered November 9, 2020. Any evidence or mention that Plaintiff previously filed a motion for injunctive relief, or that the Court entered a preliminary injunction, should be excluded as such evidence is irrelevant, likely to confuse the issues, likely to mislead the jury, and any probative value would be substantially outweighed by danger of unfair prejudice to Defendants.

2. **Testimony of Henry Beckham and his Report.** Plaintiff lists, as Exhibit 37, an appraisal report and also identifies Mr. Beckham as a witness. Written reports, findings, and “work files” of Plaintiff’s named expert, Henry Beckham, including testimony as to alleged loss in value, and Mr. Beckham’s report, should be excluded from evidence as expert reports constitute inadmissible hearsay, and Mr. Beckham’s testimony is irrelevant, likely to confuse the issues, and likely to mislead the jury.

3. **Turtle Tile Opinion.** Any evidence, or mention, that twenty years ago or any other time in the past, a roofing engineer made a statement that turtle tile is “good for the roof,” should be excluded from evidence as such a statement is inadmissible hearsay.

4. **Turtle Tile Quote.** Any evidence or mention of the replacement value of turtle tile should be excluded from evidence because such evidence is irrelevant, likely to confuse the issues, and likely to mislead the jury.

5. **Plaintiff’s Uncle.** Any evidence or mention of Plaintiff’s uncle’s intention for the roof terrace or the condominium regime as a whole should be excluded from evidence as such evidence is inadmissible hearsay, irrelevant, likely to confuse the issues, and likely to mislead the jury.

6. **Correspondence from Renters/Prospective Renters.** Any documents or testimony, including Plaintiff’s Exhibits 25, 26, 27, and 28, mentioning or otherwise evidencing Plaintiff’s renters’ or prospective renters’ correspondence regarding Plaintiff’s unit or the roof terrace, or any testimony or evidence otherwise related to Plaintiff’s renters or prospective renters seeing Defendant Bill West or any other named Defendant on the roof terrace, should be excluded as inadmissible hearsay, irrelevant, likely to confuse the issues, and likely to mislead the jury.

7. **Reference to the Roof Terrace as a “Balcony” or “Rooftop Penthouse Terrace.”** Any evidence, reference, or mention that the roof terrace is a “balcony” or the “Rooftop Penthouse Terrace” is inaccurate, likely to confuse the issues, and likely to mislead the jury, and the Court should require the parties to refer to the area as the Master Deed Building Plans do—the “Roof Terrace.”

8. **Statements within Board of Directors’ Meeting Minutes.** Defendant Association’s July 31, 1992 Board of Directors’ Meeting Minutes, marked Plaintiff’s Exhibit 7, contains statements which should be excluded as inadmissible hearsay within hearsay.

9. **Photographs of Plaintiff’s Furniture.** Plaintiff’s Exhibits 22, 23, and 41, which contain photographs of Plaintiff’s furniture within a storage unit and in the parking garage as well as a picture of furnishings on another unit’s balcony, should be excluded as those photographs are irrelevant, likely to confuse the issues, and likely to mislead the jury.

10. **Crossland Landscaping Summary.** Plaintiff’s Exhibit 34 should be excluded as inadmissible hearsay, irrelevant, likely to confuse the issues, and likely to mislead the jury.

11. **Invoices from Richard Jones.** Plaintiff’s Exhibits 35 and 36 should be excluded from evidence as inadmissible hearsay, irrelevant, likely to confuse the issues, and likely to mislead the jury.

The above Motion is based on the South Carolina Rules of Evidence and other applicable authority, including the case law and statutory law of the State of South Carolina, as well as the arguments of counsel and other documents and memoranda that may be submitted prior to or at the time of the hearing of this matter.

[Signature on Following Page]

BURR & FORMAN LLP

s/Henrietta U. Golding

Henrietta U. Golding, SC Bar #2173
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
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Fax: 843.443.9137
Email: hgolding@burr.com

*Attorney for the Defendants Tony Giovano,
Carter Tackett, Richard Aquino, Bill West,
and Shoreham Towers Homeowners
Association*

Myrtle Beach, South Carolina

January 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2019-CP-26-06550

Marshall Griffin,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' SUPPLEMENTAL
	)	MOTION IN LIMINE
Tony Giovano, Carter Tackett, Richard	)	
Aquino, Bill West, and Shoreham Towers	)	
Homeowners Association,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Rules 401, 402, and 403 of the South Carolina Rules of Evidence ("SCRE") and applicable authorities, the Defendants supplement their Motion in Limine filed January 25, 2023 as follows:

12. January 25, 2023 Letter from Henry Beckham. The Court should exclude any evidence, reference to, and/or argument by Plaintiff, his counsel, and/or any witnesses regarding a letter dated January 25, 2023 and the opinions stated therein, submitted by Plaintiff to the undersigned late in the afternoon of January 25, 2023. Attached to this Motion as Exhibit A is the email correspondence from Plaintiff's counsel submitting the letter. This letter, included herein as Exhibit B, is a new opinion from Plaintiff's expert, Henry Beckham.

Mr. Beckham should not be permitted to testify as to his opinions or statements set forth in the January 25, 2023 letter given the delay in providing this opinion and Defendants' inability to question Mr. Beckham about these opinions under oath prior to trial. Allowing such testimony or admission of the letter itself would be unfairly prejudicial to Defendants and would violate Rule 26(e), SCRPC and Rules 401, 402, 403, and 803(b)(6), SCRE.

BURR & FORMAN LLP

s/Henrietta U. Golding

Henrietta U. Golding, SC Bar #2173
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*Attorney for the Defendants Tony Giovano,
Carter Tackett, Richard Aquino, Bill West,
and Shoreham Towers Homeowners
Association*

Myrtle Beach, South Carolina

January 27, 2023

From: John M. Grantland <jgrantland@murphygrantland.com>
Sent: Wednesday, January 25, 2023 3:59 PM
To: Koerner, Carole; Golding, Henrietta
Subject: FW: January 25, 2023 Letter Regarding Shoreham Towers
Attachments: 22-C-36, Grantland Letter January 2023.pdf

[EXTERNAL EMAIL]

Henri,
I asked Mr. Beckham to look at the deed and the issue of whether Griffin pays his fair share for common elements and he sent me this letter.

I told him that if you wanted to speak to him about the letter, he had my permission to speak to you.

Thank you and take care
JG

From: Beckham Appraisal <beckhamappraisal@gmail.com>
Sent: Wednesday, January 25, 2023 3:39 PM
To: John M. Grantland <jgrantland@murphygrantland.com>
Subject: January 25, 2023 Letter Regarding Shoreham Towers

--
Beckham Appraisal Service, LLC
7700 N. Kings Hwy. Suite 101
Myrtle Beach, SC 29572
O: (843)-449-7418 C: (843)-340-7087

BECKHAM APPRAISAL SERVICE, LLC

Real Estate Appraisers & Consultants
7700 N. Kings Hwy. – Suite 101
Myrtle Beach, SC 29572

TELEPHONE: (843) 340-7087
EMAIL: Beckhamappraisal@gmail.com

HENRY H. BECKHAM, GAA
STATE CERTIFIED
GENERAL R.E. APPRAISER
SC LIC #CG102, NC LIC #A5997

VIRGINIA B. TRAYNHAM
STATE CERTIFIED
RESIDENTIAL APPRAISER
SC LIC #6871

January 25, 2023

Mr. John M. Grantland
Murphy and Grantland, PA
4406-B Forest Drive
Columbia, SC 29206

RE: My File No: 22-C-36, Shoreham Towers Rooftop Penthouse “Before and After”
Valuation Regarding Access and Use Changes

Dear Mr. Grantland:

At your request, I have reviewed Exhibit B of the Shoreham Towers Master Deed. This exhibit includes a schedule of the percentage of undivided interest in common elements of the Shoreham Towers condominium project. The exhibit lists all of the different units within Shoreham Towers, and has assigned each unit a value for statutory purposes. The exhibit then states the required percentage or responsibility of undivided interests in the common elements of Shoreham Towers.

The value for statutory purposes established by the Master Deed for the subject rooftop penthouse is \$150,000, or 3% of the total statutory value for the project. It should be noted that while the rooftop penthouse represents 3% of the statutory value, it is responsible for 4.3216% of the undivided interests in common elements. It is my understanding that this 4.3216% represents the percentage of the POA budget and expenses which have been paid by the rooftop penthouse.

For comparison purposes, those units identified as Penthouse 1 and 4 have a statutory value of \$135,000 or 2.72% of the total statutory value and are responsible for 3.18% of the POA budget. At 4.32%, the subject rooftop pays 35.8% premium over those payments found at P1 and P4. Penthouse Units 2 and 3 have a statutory value of \$130,000, representing 2.62% of the total statutory value for the project yet pay 2.79% of the POA expenses. The subject rooftop unit pays 4.32% of the POA expenses, 50% more than the amount paid by Penthouses 2 and 3.



ROA 00161

EXHIBIT B

ELECTRONICALLY FILED - 2023 Jan 27 12:33 PM - Horry - COMMON PLEAS - CASE#2019CP2606550

When compared to the other 31 units located on Floors 2 through 8 which are 3-bedroom / 2-bath units, their average statutory value is \$122,000 with an average percentage of undivided interests in common elements in the amount of 2.51% per unit. The subject penthouse unit has an expense of 4.32%, which is 72% greater than the typical condominium unit found on Floors 2 through 8 at Shoreham Towers.

The subject rooftop penthouse has historically paid a greater share of undivided interests than its assigned value for statutory purposes in relation to all of the other units in Shoreham Towers. The subject rooftop unit pays 35.8% more in POA fees than Penthouses 1 and 4, 41.8% more in POA fees than Penthouses 2 and 3, and 72% more in POA fees than the typical unit found on Floors 2 through 8.

Sincerely,

BECKHAM APPRAISAL SERVICE, LLC

A handwritten signature in black ink, appearing to read "H. H. Beckham", written over a horizontal line.

Henry H. Beckham, GAA

Real Estate Appraisal Section - National Association of Realtors

State Certified General Real Estate Appraiser, SC License #CG-102

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2019-CP-26-06550
 Marshall Griffin,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION FOR
	)	JUDGMENT NOTWITHSTANDING
v.	)	THE VERDICT, MOTION FOR
	)	NEW TRIAL NISI REMITTITUR,
Tony Giovino, Carter Tackett, Richard	)	MOTION FOR NEW TRIAL
Aquino, Bill West, and Shoreham Towers	)	ABSOLUTE, AND MOTION FOR
Homeowners Association,	)	NEW TRIAL
	)	
Defendants.	)	
	)	

The Defendants seek a Judgment Notwithstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, or alternatively, a New Trial. This matter was tried January 30, 2023 before a jury with the Honorable William H. Seals, Jr. presiding. At the conclusion of the weeklong trial, the jury returned a verdict for the Plaintiff in the amount of \$20,000.00 actual damages and \$200,000.00 punitive damages. Judge Seals reduced the punitive damage award to \$160,000.00. Judge Seals granted the parties ten days for the submittal of post-trial motions. The following are the grounds for the relief sought by the Defendants.

1. **Temporary Restraining Order ("TRO") dated November 9, 2020.** It was an error of law to permit the Plaintiff to introduce any evidence, or make any reference, regarding the TRO. The Defendants were unduly prejudiced by this error, and this error also created confusion of the issues and misled the jury. From the first witness on, each day, the jury was presented evidence about the TRO. By the testimony of at least five witnesses, Plaintiff's counsel placed the TRO front and center. Then, in his closing argument, he only drove the prejudicial sword further into the backs of the Defendants by acting incredulous as to the acts of the Defendants that led to

the TRO as well as to the fact that Plaintiff obtained a TRO against the Defendants. His TRO questions and the witnesses' responses were deliberate, time-consuming, and highlighted to the jury that a state court judge had issued an order which stopped the Defendants from directing/regulating activities on common elements. This highly prejudicial, cumulative, loud message to the jury was clear: a judge already ruled each Defendant, by trying to regulate activities, had engaged in wrongful conduct to the detriment of the Plaintiff. It is difficult to perceive anything more harmful to the Defendants than permitting evidence of the TRO in the trial. *See Allegro, Inc. v. Scully*, 409 S.C. 392, 408-09, 762 S.E.2d 54, 63 (Ct. App. 2014), *reversed on other grounds*, 418 S.C. 24, 791 S.E.2d 140 (2016) ("A temporary injunction is granted without prejudice to the rights of either party pending a hearing on the merits, and 'when other issues are brought to trial, they are determined *without reference* to the temporary injunction.'") (quoting *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)) (emphasis added); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). It is without dispute that the TRO, its existence, and its directives, were presented to the jury *at least twenty-five times*.

2. The Roof Terrace, elevator lobby, and planters. The legal issue as to whether the Roof Terrace, the tenth floor elevator lobby, and the planters, are common elements is a question of law for the Court and should not have been submitted to the jury. Because all of Plaintiff's causes of action are premised upon the characterization of these three separate parts of Shoreham Towers Horizontal Property Regime ("HPR"), the Court should have decided the causes of action and should not have submitted those issues to the jury. *See Heritage Fed. Sav. & Loan*

Ass'n v. Eagle Lake & Golf Condos., 318 S.C. 535, 542-43, 458 S.E.2d 561, 566 (Ct. App. 1995) (“Interpretation of a deed is an equitable matter.”); *Williams v. Gov’t Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 594, 762 S.E.2d 705, 710 (2014) (internal quotation marks and citations omitted) (“It is a question of law for the court whether the language of a contract is ambiguous . . . [and] [t]he construction of a clear and unambiguous contract is a question of law for the court to determine”); Pl.’s Ex. 5, Master Deed, Book 802, Page 334 (“Access to the ‘Rooftop Penthouse’ dwelling on the tenth floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also common. The rooftop area contains planters which are common.”).

The Court’s legal error in not deciding the classification of these three parts as being either a dwelling unit or a common element was exasperated by permitting into the trial the concept of ambiguity, despite the Plaintiff not alleging in the Complaint or his Amended Complaint the existence of any ambiguity. The Shoreham Towers Master Deed unambiguously states there are two components to the Shoreham Towers Horizontal Property Regime: “DWELLINGS AND COMMON ELEMENTS.” Pl.’s Ex. 5, Master Deed, Book 802, Page 309. Plaintiff testified that his “DWELLING” did not encompass the Roof Terrace, the elevator lobby, nor the planters; no evidence to the contrary was introduced. *At no time did the Court conclude that any part of the Master Deed was ambiguous. See Williams*, 409 S.C. at 594, 762 S.E.2d at 710 (internal quotation marks and citations omitted) (“It is a question of law for the court whether the language of a contract is ambiguous . . . [and] [t]he construction of a clear and unambiguous contract is a question of law for the court to determine”). The Master Deed, the contract on which Plaintiff sued, explicitly states that, “Access to the ‘Rooftop Penthouse’ dwelling on the tenth floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also

common. The rooftop area contains planters which are common.” Pl.’s Ex. 5, Master Deed, Book 802, Page 334.

3. **Balcony.** The Court erred when it permitted Plaintiff to testify that the Roof Terrace, elevator lobby, and planters constituted his balcony. Prior to trial, Defendants’ counsel requested that no evidence be permitted to the effect that Plaintiff has a balcony on the rooftop. This request was denied even though nowhere in the Master Deed, including the recorded Building Plans which are part of the Master Deed, does it provide for a balcony on the roof top of this condominium regime. *See Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 421, 321 S.E.2d 46, 49 (1984) (“The rights and authority of [a horizontal property regime] must be gleaned from the Horizontal Property Act and from the master deed.”); S.C. Code Ann. § 27-31-20(f)(3) (defining “general common elements” as “[t]he basements, *flat roofs*, *yards*, and *gardens*”) (emphasis added). Plaintiff misled this Court and the jury by referring to these three, separate parts of the Shoreham Towers HPR as constituting a balcony of the Rooftop Penthouse when he read to the jury the sentence in Exhibit A of the Master Deed, which states that balconies are a part of each dwelling and not common elements. This was clear legal error for the Building Plans, being an integral part of the Master Deed, show balconies existing only on floors two through nine, and none for the Tenth Floor Rooftop Penthouse. Even though it is evident from the Building Plans that the Rooftop Penthouse does not have a balcony, the Plaintiff testified that he paid neither any regime fees nor any county property taxes on anything outside the walls of his dwelling, unlike dwelling owners on floors two through nine who pay regime fees and property taxes on their respective balconies. Simply because the Roof Terrace was called a balcony by some persons does not create a question of fact since the plain reading of the Master Deed establishes that there is no balcony on the rooftop of Shoreham Towers.

4. **Master Deed and Breach of Contract.**¹ No reasonable jury could have reached the verdict of Breach of Contract, and the jury incorrectly applied the law, if in fact it applied any law due to the extreme prejudice of the TRO. See *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272-73 (Ct. App. 2015) (“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach. . . .’ However, one who seeks to recover damages for breach of a contract must demonstrate he has performed his part of the contract, ‘or at least that he was, at the appropriate time, able, ready, and willing to perform it.’”) (citations omitted).

The Plaintiff admitted that his acts in remodeling the elevator lobby were done without any permission from the Defendant Shoreham Towers Homeowners Association as required by the Master Deed; therefore, he should not have been permitted to claim any breach by the Defendant Association. Further, as discussed above, the Master Deed identifies these three parts as common elements—not part of any dwelling—and therefore, it is impossible for a breach of the Master Deed to exist. In fact, in Plaintiff’s closing statement to the jury, Plaintiff’s counsel stated the Defendant Association breached the Master Deed, by interfering with Plaintiff’s privacy—a term which does not appear anywhere in the Master Deed. Nothing in the Master Deed could ever be interpreted as a dwelling owner having a contractual right of privacy in the Roof Terrace, the elevator lobby, or the planters. It is evident that the jury was confused and misled as to which

¹ At the trial of this case, the Court held the only cause of action against the individual defendants was Plaintiff’s claim of Civil Conspiracy. All other causes of action, including Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and Acquiescence were against the Defendant Shoreham Towers Homeowners Association (“Defendant Association”). To the extent the Court disagrees, each argument is incorporated as to all Defendants.

issues were for its determination because there is not one provision in the Master Deed that the Defendant Association violated.

5. **Fraud.** This claim should never have been submitted to the jury. Its submission to the jury only meant that there was a dispute of fact, when none existed. There is no way the jury could have reached the verdict of Breach of Contract Accompanied by Fraudulent Act. *See Foxfire Vill., Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 375, 404 S.E.2d 912, 918 (Ct. App. 1991) (“In order to establish its claim form breach of contract accompanied by a fraudulent act, [Plaintiff] had to prove (1) a breach of contract; (2) fraudulent intent related to the breach; and (3) a fraudulent act directly connected to the breach. . . . The fraudulent act is an act characterized by dishonesty in fact, unfair dealing, or unlawful appropriation of another’s property by design.”); *id.* at 374, 404 S.E.2d at 917 (“Fraud cannot be presumed; it must be proved by clear, cogent, and convincing evidence.”) (citations omitted). Plaintiff did not establish any fraud by clear and convincing evidence, since all evidence pointed only to the Defendant Association’s attempts to abide by the Master Deed and follow the advice of legal counsel, a safety expert, and a roofing contractor.

6. **Conversion.** No reasonable jury could have reached the verdict of Conversion, and the jury incorrectly applied the law, if in fact, it applied any law. *See Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) (“It is well settled that a conversion action does not lie when alleging the exercise of dominion of control over real property.”); *id.* (defining “conversion” as the “unauthorized assumption and exercise of the right of *ownership* over goods and personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights”) (citation and internal quotation marks omitted) (emphasis added).

At no time did the Defendant Association claim ownership over any of Plaintiff’s property, and no argument can be made—nor was made—to the contrary. The Master Deed provides the

Defendant Association and its directors must govern Shoreham Towers HPR, they have the power and authority to implement rules and regulations, and they have the power to enforce the rules and regulations in accordance with the Master Deed. The Defendant Association only governed the Shoreham Towers common elements. Since Plaintiff's outdoor furniture was placed on the common elements, the Defendant Association had the furniture stored since the Plaintiff, despite many requests, refused to move the chairs and tables from the common elements. No evidence exists that the Defendant Association took actions contrary to its legal obligations under the Master Deed.

7. **Conspiracy.** It was a legal error to not dismiss the conspiracy claims. Further, no reasonable jury could have reached a conclusion that there existed a civil conspiracy, and the jury incorrectly applied the law, if in fact, it applied any law. The Supreme Court of South Carolina has held that "agents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021) (citing *Goble v. Am. Ry. Express Co., et. al.*, 124 S.C. 19, 26-27, 115 S.E. 900, 903 (1923)). As Justice Toal stated in *McMillan*, "it is well settled law that a corporation cannot conspire with itself." *Id.* at 564-65, 626 S.E.2d at 887 ("[N]o conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.") (citing 16 Am. Jur. 2d *Conspiracy* § 56 (2005) ("stating that a corporation cannot be a party to a conspiracy consisting of the corporation and the persons engaged in the management, direction, and control of the corporate affairs, where the individuals are acting only for the corporation and not for any personal purpose of their own"))).

While Plaintiff never articulated the supposed unlawful plan the Defendants put together, or any lawful plan implemented by unlawful means, all Defendants' acts were done in their capacity as directors and in accordance with their honest belief that the Roof Terrace was a common element. Further, there is no evidence that any actions were taken covertly. Plaintiff was provided a copy of the Safety Report and was informed several times, over several months, that his outside furnishings were located on the Roof Terrace, a common element. As to the Roof Terrace Rules and Regulations, the Plaintiff attended and participated in the formulation of the rooftop rules.² As previously argued and repeatedly demonstrated by the evidence, the Defendants only did what they had to do, what they were obligated to do, and what they were elected to do. The Defendants even sought legal advice for their actions, followed the legal advice, and now have a verdict that they unlawfully conspired against Plaintiff.

If corporate officers and directors are now exposed to conspiracy claims due to meeting, voting, and taking subsequent, corresponding actions, no person will ever serve as a board member—and certainly not at Shoreham Towers. This verdict has catastrophic and detrimental implications: now, every time any Association board members meet, they are engaging in conspiratorial conduct, and if there is one member of the Association, not a board member, who disagrees, then each board member is a conspirator, and every resolution is a conspiracy plan.

8. Acquiescence. Permitting a claim of acquiescence on the eve of trial was an error of law. Further, this claim was improper under the facts of this case, no reasonable jury could have reached the verdict of Acquiescence, and the jury incorrectly applied the law, if in fact it applied the law. The Plaintiff filed his complaint in October 2019. The first and only time he tried to amend

² Plaintiff attended Shoreham Towers Board meetings discussing rules and regulations regarding the Roof Terrace, and Plaintiff voted against proposed rules and regulations. Indeed, Plaintiff even proposed alternative rules and regulations.

was on January 24, 2023—less than a week before the start of trial. The Court and jury completely overlooked the fact that Shoreham Towers HPR is a condominium regime which cannot be subject to a claim of acquiescence. *See* S.C. Code Ann. § 27-31-70 (“The common elements, both general and limited, shall remain undivided and *shall not* be the object of an action for partition of division of the co-ownership. Any covenant to the contrary shall be void.”) (emphasis added); S.C. Code Ann. § 27-31-80 (“Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the co-owners.”).

The doctrine of acquiescence applies to boundary dispute cases, not HPRs, and Plaintiff did not provide the Court with a case applying this legal doctrine to horizontal property regimes. *Coker v. Cummings*, 381 S.C. 45, 53, 671 S.E.2d 383, 387 (Ct. App. 2008) (“A disputed *boundary line* can be established by acquiescence of the parties.”) (quoting *Kirkland v. Gross*, 286 S.C. 193, 197, 332 S.E.2d 546, 548–49 (Ct. App. 1985), *receded from on other grounds by Boyd v. Hyatt*, 294 S.C. 360, 364 S.E.2d 478 (Ct. App. 1988)) (internal quotation marks omitted) (emphasis added); *Knox v. Bogan*, 322 S.C. 64, 71-72, 472 S.E.2d 43, 48 (Ct. App. 1996) (“[I]f adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for a long period of time—usually the time prescribed by the statute of limitations—they are precluded from claiming that the *boundary line* thus recognized and acquiesced in is not the true one.”) (emphasis added); *S. Ry. Co. v. Day*, 140 S.C. 388, 138 S.E.2d 870, 875 (1926) (“[I]n such case [where boundary lines are disputed] the possession is knowingly hostile to the railroad company, and the principle of equitable estoppel is not applicable. ‘The estoppel may arise, even though the period of acquiescence is very short.’”) (citations omitted).

The issue in this case is not the location of a boundary line, but rather, the nature of use of a portion of the HPR.

Plaintiff's claim for acquiescence was a thinly-veiled attempt to claim estoppel despite the basic legal principle that estoppel cannot be used as a claim. *See Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992) ("While the doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims, they may not be asserted in a complaint as offensive weapons."); *Collins Enter., Inc. v. White*, 363 S.C. 546, 561-63, 611 S.E.2d 262, 270 (Ct. App. 2005), *cert. denied*, Aug. 15, 2006 (holding estoppel is an affirmative defense that cannot be "bootstrapped" onto another claim and holding trial court did not err in denying defendants' motion to amend their answer to allege estoppel even though the same "comments and assurances" formed the basis of the estoppel claim, when the issues were not tried by the consent of the parties and plaintiff prepared to defend a counterclaim of breach of contract accompanied by fraudulent act rather than estoppel and therefore, plaintiff "sufficiently demonstrated the prejudice envisioned by Rule 15, requiring the court to deny a motion to amend") (citations omitted).

At no time before the eve of trial did Plaintiff claim ownership of the planters, elevator lobby, and the Roof Terrace—but this all changed by permitting the additional claim of acquiescence to this legal action. Further, it should be noted that the Complaint—even the Amended Complaint—sought monetary damages, not any property ownership.

9. Immunity. The Court should have dismissed the individual defendants, or, at the very least, Defendants Bill West, Carter Tackett, and Tony Giovino, as Plaintiff presented no evidence they acted willfully or wantonly. *See* S.C. Code Ann. § 33-31-834(a) ("All directors . . . of the governing bodies of not-for-profit . . . associations . . . are immune from suit arising from

the conduct of the affairs of these . . . associations This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence.”); *Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000) (citations omitted) (“In ruling on a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence.”); *S.C. Dep’t of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (citations omitted) (“Arguments made by counsel are not evidence.”). Every act of the Defendants was to comply with the Master Deed, and each act was blessed by legal counsel, and therefore, it was legal error to not provide immunity pursuant to South Carolina Code Section 33-31-834.

10. No Damages. No reasonable jury could have found Plaintiff suffered actual damages. *White v. Whitney Mfg. Co.*, 60 S.C. 254, 38 S.E. 456, 461 (1901) (noting speculative damages would not constitute the element of damages); *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (“As a general rule, the evidence should allow the court or jury to determine the amount of damages with reasonable certainty or accuracy. . . . ‘Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation.’” (citations omitted)). Plaintiff testified he lost \$20,000.00 in rental income, but not one piece of paper showed that the Plaintiff suffered any losses. There was not even any foundation provided as to Plaintiff’s rental charges, any rentals that were lost, nor any time period when rentals were lost. Indeed, the reality is that Plaintiff suffered no losses.

11. Punitive Damages. No Defendant should have been subjected to even the consideration of punitive damages. The punitive damages award against the Defendants can only be attributed to the jury hearing daily the evidence of the TRO, the error of permitting Plaintiff to contend the Roof Terrace, elevator lobby, and the planters are part of a balcony even though he

had none, and the error of not directing that the Master Deed, including the HPR, required a finding that the three parts of Shoreham Towers are common elements.

No reasonable jury could have found punitive damages were warranted, the award of punitive damages was excessive and unconstitutional, and the jury incorrectly applied the law—if it applied any—and considered issues it should not have considered when awarding punitive damages. *Gamble v. Stevenson*, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991) (“[P]unitive damages may be awarded only upon a finding of actual damages.”) (citation omitted); *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164-66, 604 S.E.2d 385, 389-90 (2004) (“The policy behind awarding punitive damages must also remain consistent with the principle of penal theory that the ‘punishment should fit the crime.’ ‘In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the general damages recovered.’ Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.”) (citations omitted); *Kennedy v. Richland Cnty. Sch. Dist. Two*, 428 S.C. 98, 123, 833 S.E.2d 414, 427-28 (Ct. App. 2019) (noting three “guideposts” for determining whether an award of punitive damages was reasonable, including (1) “the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded to the jury and the civil penalties authorized or imposed in comparable cases.”) (citation omitted).

The jury’s punitive damage award was based only on its erroneous belief that Plaintiff should recover attorneys’ fees. The jury question asking if it could award damages by writing that Plaintiff is to recover “attorneys’ fees and costs,” or whether the jury must award an actual number,

shows without doubt that the \$200,000.00 punitive award was for attorneys' fees and costs. This blatant error must be reversed.

12. All dwelling unit owners should have been made defendants. Plaintiff failed to add indispensable parties, especially when the Court permitted the claim of acquiescence. *See* Rule 12(h)(2), SCRCPP (“[A] defense of failure to join a party indispensable under Rule 19 . . . may be made . . . at the trial on the merits.”); Rule 19(a), SCRCPP (“A person . . . shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.”); *BancOhio Nat’l Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (1993) (holding the South Carolina Department of Highways and Public Transportation and the Town of West Union were indispensable parties because those entities had a property interest—whether ownership, easement, right of way, etc. in the property at issue—and should have been added to the action regarding an action to close and abandon a road).

The end result of the verdict is that the Master Deed has now been changed. At no time did Plaintiff seek any reformation of the Master Deed nor any remedy that would result in a transfer of parts of the Shoreham Towers’ property to the Plaintiff. Only the Shoreham Towers unit owners have the right to amend or change the Master Deed, and therefore, failure to add all Shoreham Towers unit owners constituted a significant legal error.

CONCLUSION

This Honorable Court must apply and enforce state law as it is written. The jury verdict cannot be upheld for it contravenes the South Carolina Horizontal Property Regime Act and the Shoreham Towers Master Deed.

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Myrtle Beach, South Carolina

February 13, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2019-CP-26-06550
 Marshall Griffin,	)	
	)	
Plaintiff,	)	DEFENDANTS' SUPPLEMENTAL
	)	MOTION FOR JUDGMENT
v.	)	NOTWITHSTANDING THE
	)	VERDICT, MOTION FOR NEW
Tony Giovino, Carter Tackett, Richard	)	TRIAL NISI REMITTITUR,
Aquino, Bill West, and Shoreham Towers	)	MOTION FOR NEW TRIAL
Homeowners Association,	)	ABSOLUTE, AND MOTION FOR
	)	NEW TRIAL
Defendants.	)	
_____	)	

In addition to Defendants' Judgment Notwithstanding the Verdict, New Trial Nisi Remittitur, New Trial Absolute, or alternatively, a New Trial, Defendants supplement the grounds for the relief sought as follows:

13. Testimony of Henry Beckham. It was an error of law to permit Henry Beckham, Plaintiff's expert appraiser, to testify. The Defendants were unduly prejudiced by this error, and this error also created confusion of the issues and misled the jury. Rule 402, SCRE ("Evidence which is not relevant is not admissible."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

Mr. Beckham's testimony provided an evaluation of "damages" to Plaintiff's property by comparing the value of Plaintiff's dwelling with exclusive use of the Roof Terrace versus the value of the dwelling if the Roof Terrace were subject to the Rules and Regulations. This damages analysis was a legal fallacy. Plaintiff, who was successful as to the finding that the Roof Terrace

was not a common element, suffered no damage because he did not lose his exclusive use of that area. Even if Plaintiff had been unsuccessful and the Roof Terrace were held to be a common element—as is set forth in the Master Deed—Plaintiff would not have suffered damages because he would not be entitled to recover the value of something he never had the exclusive right to use. Mr. Beckham’s testimony only confused the issues and misled the jury so that when it heard Mr. Beckham testify to such a large, albeit false, number of potential damages in the amount of \$222,000.00, it felt it had to provide Plaintiff the relief he sought and/or award him a large amount of damages, as it erroneously and inequitably did. Allowance of Mr. Beckham’s testimony constituted legal error. *See White v. Whitney Mfg. Co.*, 60 S.C. 254, 38 S.E. 456, 461 (1901) (noting speculative damages would not constitute the element of damages); *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (“As a general rule, the evidence should allow the court or jury to determine the amount of damages with reasonable certainty or accuracy. . . . ‘Neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation.’” (citations omitted)).

[Signature on Following Page]

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Myrtle Beach, South Carolina

February 13, 2023

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) Case No.: 2019-CP-26-06550

3 **ORIGINAL**

4 -----
5 January 30, 2023

6 **BEFORE:** The Honorable William Seals

7 -----
8 MARSHALL GRIFFIN,

9 Plaintiff,

10 vs.

11 TONY GIOVINO, CARTER TACKETT, RICHARD AQUINO, BILL
12 WEST, and SHOREHAM TOWERS HOMEOWNERS ASSOCIATION,

13 Defendants.
14 -----

15
16 APPEARANCES:

17
18 John Grantland, Esq.
19 Thomas "Tommy" Brittain, Esq.
20 Appearing for the Plaintiff.

21 Henrietta Golding, Esq.
22 Taylor Voegel, Esq.
23 Appearing for the Defendants.

24 Official Court Reporter
25 Natalie Dahl, RPR

NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A Court
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Conway, SC 29526

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25

JURY SELECTION

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Ladies and gentlemen, up to this point in time you all have been determined that you could serve as jurors this week. I need to make sure you can serve as jurors in a particular case. In that regard, I'll ask you a series of questions, and if any of these question please respond.

The first case that we'll try is the case of Marshall Griffin, the plaintiff, the person bringing the lawsuit, versus Tony Giovino, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association, the defendants, the ones defending the lawsuit.

In this case, the plaintiff has alleged that the condo that he has owned since 1995 included a rooftop penthouse terrace. However, he alleges that in 2019 the homeowners association board determined that the rooftop penthouse terrace was not private to his condo, but, instead, was for all of the condos use.

The plaintiff alleges that this was a breach of the master deed, and that the breach has devalued his property substantially and seeks monetary damages.

In this regard, has anyone heard anything about this case, talked to anyone about this case, read anything about this case, know anything about this

JURY SELECTION

1 case; if so, please stand.

2 All right. And the plaintiff, Marshall
3 Griffin -- is that you? Could you stand and face the
4 jury panel?

5 Thank you.

6 Is any member of the jury panel related by blood
7 or marriage or has a close personal or social
8 relationship with the plaintiff, Mr. Marshall Griffin,
9 in this case; if so, please stand.

10 And the defendant, Tony Giovino, are you in the
11 courtroom? If you will, stand and turn. And Carter
12 Tackett, Richard Aquino, and Bill West.

13 All right. Thank you. You all may be seated.

14 Any member of the jury panel related by blood or
15 marriage or have a close personal or social
16 relationship with any of the defendants; if so, please
17 stand.

18 All right. Plaintiff's counsel, John Grantland
19 and Tommy Brittain; if you would, stand and introduce
20 yourselves.

21 MR. GRANTLAND: I'm John Grantland.

22 MR. BRITTAIN: Good morning, ladies and
23 gentlemen. I'm Tommy Brittain. I've been practicing
24 law for 44 years, most of it here in Horry County. I
25 practice law with my three children: Case, Preston,

JURY SELECTION

1 and Mary Madison, in Myrtle Beach.

2 THE COURT: Any member of the jury panel related
3 by blood or marriage or have a close personal or social
4 relationship with either of these lawyers or has been
5 represented by them at any point in time; if so, please
6 stand.

7 All right. And defense counsel.

8 MS. GOLDING: Thank you, Your Honor. Good
9 morning. My name is Henrietta Golding and my
10 associate, Taylor Voegel. We both practice with Burr
11 Forman, who has an office in Myrtle Beach. Taylor has
12 been practicing law for two years now, and I've been
13 practicing law for 40 plus. Thank you.

14 THE COURT: Any member of the jury panel related
15 by blood or marriage or have a close personal or social
16 relationship with any of these lawyers or have been
17 represented by them at any point in time; if so, please
18 stand.

19 All right. Thank you.

20 Other than the parties themselves, the
21 plaintiff's witnesses will be: William Crossland,
22 Richard Jones, Dr. Richard Minielly, Henry Beckham, Sue
23 Peck, Dave Young, and Wayne White. In this regard, is
24 any member of the jury panel related by blood or
25 marriage or have a close personal or social

JURY SELECTION

1 relationship with any of the plaintiff's witnesses; if
2 so, please stand.

3 Yes, ma'am. Your name and number?

4 JUROR: [REDACTED], Juror 130. You said Sue
5 Peck?

6 THE COURT: Sue Peck.

7 JUROR: Yes. I currently work at an
8 establishment where she owns properties.

9 THE COURT: Taking that into account, if you were
10 selected to serve on a jury in this case, could you be
11 fair and impartial?

12 JUROR: I don't know her personally. I just
13 clean her rooms.

14 THE COURT: Oh, okay. But could you be fair and
15 impartial to both sides?

16 JUROR: Yes, sir.

17 MS. GOLDING: Can we have that juror's name
18 again, Your Honor?

19 JUROR: [REDACTED].

20 THE COURT: Anybody else?

21 Other than the parties themselves, the defense
22 witnesses will be Sue Novastaski (phonetic), Roger Roy,
23 Ryan Jason Thompson, Brian Doland, Pat Clark, Tiffany
24 Allen, and Robbie Warder. In this regard, is any
25 member of the jury panel related by blood or marriage

JURY SELECTION

1 or have a close personal or social relationship with
2 any of the defense witnesses; if so, please stand.

3 All right. Has any member of the jury panel ever
4 been a plaintiff or a defendant before; plaintiff being
5 the person bringing the lawsuit, doing the suing, and
6 the defendant being the one being sued, defending the
7 lawsuit? If you've ever been a plaintiff or a
8 defendant in any kind of case, please stand.

9 All right. And your name and number?

10 JUROR: 197, [REDACTED].

11 THE COURT: Were you the plaintiff or the
12 defendant?

13 JUROR: Plaintiff.

14 THE COURT: And, just briefly, what kind of case?

15 JUROR: Car accident.

16 THE COURT: Taking that into account, if you were
17 selected to serve on the jury in this case, could you
18 be fair and impartial to the plaintiff and the
19 defendant?

20 JUROR: Yes, Your Honor.

21 THE COURT: Thank you.

22 Your name and number?

23 JUROR: [REDACTED], 11.

24 THE COURT: Were you a plaintiff or defendant?

25 JUROR: Plaintiff.

JURY SELECTION

1 THE COURT: What kind of case?

2 JUROR: Car accident.

3 THE COURT: Taking that into account, if you were
4 selected to serve on this jury, could you be fair and
5 impartial to the plaintiff and the defense.

6 JUROR: Yes.

7 THE COURT: Anyone else?

8 All right. Is any member of the jury panel or
9 their immediate family members ever been employed by
10 Shoreham Towers Homeowners Association, Thompson
11 Roofing, White Realty, Inc., McMillian Real Estate,
12 Inc., Roy and Casper, LLC; if so, please stand.

13 Your name and number?

14 JUROR: [REDACTED], 84.

15 THE COURT: Who are you employed by?

16 JUROR: It was my wife. Her former employer,
17 Pinnacle Real Estate Management, I think they managed
18 Shoreham Towers in the '90s, early 2000s, but [REDACTED]
19 worked for them at that time.

20 THE COURT: Taking that into account, could you
21 be fair and impartial to the plaintiff and the
22 defendant.

23 JUROR: Yes.

24 THE COURT: Thank you. I appreciate you
25 standing.

JURY SELECTION

1 Anyone else?

2 Has any member of the jury panel ever been to the
3 Shoreham Towers One condominium in North Myrtle Beach;
4 if so, please stand.

5 Has any member of the jury panel or any member of
6 your immediate family been in a dispute with a property
7 homeowners association or community association; if so,
8 please stand.

9 Anything further from the plaintiff?

10 MR. GRANTLAND: No, Your Honor.

11 THE COURT: Anything further from the defense?

12 MS. GOLDING: Nothing further, Your Honor.

13 THE COURT: All right. If you will give us a
14 jury of 12 and one alternate. We'll give the lawyers
15 time to look at the list.

16 MR. GRANTLAND: May we be excused to look at the
17 list?

18 THE COURT: Sure. Take your time. Let me know
19 when you are ready.

20 MS. GOLDING: Your Honor, may we approach the
21 bench, please?

22 THE COURT: Sure.

23 (Whereupon, a bench conference was had.)

24 THE COURT: Members of the jury, if you will just
25 relax. They are deciding who they do and don't want.

JURY SELECTION

1 We'll be back in five or ten minutes to pick a jury.

2 (A recess was taken.)

3 THE CLERK: We'll start with the plaintiff
4 striking from the numbers on the left.

5 MR. GRANTLAND: Plaintiff strikes No. 19.

6 THE CLERK: Plaintiff strikes No. 19.

7 MS. GOLDING: Defendant strikes No. 1.

8 THE CLERK: Defendant strikes No. 1.

9 MR. GRANTLAND: Plaintiff strikes No. 14.

10 MS. GOLDING: Defendant strikes No. 3.

11 MR. GRANTLAND: Plaintiff strikes No. 10.

12 THE CLERK: Plaintiff strikes No. 10.

13 MS. GOLDING: Defendant strikes No. 4.

14 THE CLERK: Defendant strikes No. 4.

15 MR. GRANTLAND: Plaintiff strikes No. 6.

16 THE CLERK: Plaintiff strikes No. 6.

17 MS. GOLDING: Defendant strikes No. 7.

18 THE CLERK: Defendant strikes No. 7.

19 Alternates are 21, 22, and 23.

20 MR. GRANTLAND: The plaintiff strikes 21.

21 THE CLERK: Plaintiff strikes 21.

22 MS. GOLDING: Defendant strikes 23.

23 THE CLERK: Defendant strikes 23.

24 May we review your strikes? Plaintiff strikes
25 Nos. 6, 10, 14, 19, and 21; is that correct?

JURY SELECTION

1 MR. GRANTLAND: Yes, ma'am.

2 THE CLERK: Defendant strikes Nos. 1, 3, 4, 7,
3 and 23; is that correct?

4 MS. GOLDING: Yes, it is.

5 THE COURT: All right.

6 THE CLERK: When I call your name, please have a
7 seat in the jury box.

8 No. 38, Emmett Broach; 184, Anthony Johnson; 294,
9 Nathan Phillips; 54, Susan Cameron; 404, Jennifer
10 Williams; 33, Lori Breth; 169, Scott Hobson; 197,
11 Norman Carsevar; 8, Kimberly Avery; 191, Dustin Jordan;
12 20, Zenobia Bellamy; 222, Jordan Lee; 83, Christine
13 Dalgarn.

14 THE COURT: Any objections to the jury?

15 MR. GRANTLAND: None from the plaintiff.

16 MS. GOLDING: None from the defense.

17 THE COURT: Come on up so I can talk to you real
18 quick.

19 (Whereupon, a bench conference was had.)

20 THE COURT: The remainder of the jury panel, you
21 are excused. If you would, call back in after 6:00 and
22 see if there are any further instructions for you.
23 Have a good day.

24 (The prospective jury panel was excused.)

25 THE COURT: Members of the jury, I'll excuse you

PRETRIAL MOTIONS

1 until 2 o'clock. I'll advise you not to research this
2 case. Don't Google anyone's name, don't look up
3 anything, don't talk about the case among yourselves or
4 to anyone. Get lunch, relax, and come back and you'll
5 get everything you need right here in this courtroom.
6 We'll do a little bit of work to get it streamlined for
7 you, so maybe it will proceed faster when you get back.

8 JUROR: Same spot?

9 THE COURT: Yes, sir. 2 o'clock.

10 (The jury exits at 12:19 p.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: Pretrial motions from the plaintiff?

13 MR. GRANTLAND: Your Honor, last week we filed a
14 motion to amend the pleadings to conform to the
15 evidence. We also filed two motions in limine, one
16 regarding Roger Roy as an expert witness, and one
17 regarding tax records with Horry County regarding
18 property taxes. I'm not sure which needs to be heard
19 first.

20 THE COURT: You want to do Roger Roy first?

21 MR. GRANTLAND: Sure. Your Honor, Roger Roy was
22 the HOA attorney. He was their attorney when they
23 created the rules for the rooftop penthouse terrace. I
24 took his deposition. He was first listed as a fact
25 witness. I took his deposition, and he said he was

PRETRIAL MOTIONS

1 hired by the HOA to deliver a legal opinion on what the
2 rooftop contained as far as common elements, and that
3 is the issue in this case.

4 Mr. Griffin owns a rooftop penthouse. He has an
5 outdoor space. Like everyone has a balcony, he has an
6 outdoor space, too. Since '83, it's been a private
7 outdoor space. And then in 2019, the board said, no,
8 it's common, and we're going to have rules for it.

9 Mr. Roy is of the opinion that if the deed
10 doesn't say the -- if the deed doesn't address it, then
11 it's common, and that is a legal opinion. You are the
12 judge of the law. I'm fine with him giving testimony
13 about the facts and what his involvement was with the
14 HOA, but for him to give a legal opinion violates Snow
15 versus Smith, and I believe that is improper. I mean,
16 he can testify about facts, but can't give his opinion
17 as a legal expert.

18 THE COURT: Any reply?

19 MS. GOLDING: Yes, sir. Mr. Roy has been the
20 attorney for the defendant, Shoreham Associates. He
21 was specifically consulted with respect to the issues
22 in this case. He is not listed as an expert witness.
23 He is only a fact witness in this case, Your Honor.

24 With respect to several causes of action, such as
25 breach of contract accompanied by fraudulent act, the

PRETRIAL MOTIONS

1 conversion claim, civil conspiracy claim, all of those
2 claims are seeking punitive damages; of course, that is
3 willful, intentional acts. Mr. Roy will testify --
4 well, he'll testify as to his advice to the association
5 and that they relied on his advice.

6 So that, in and of itself, is a defense to
7 certain claims for punitive damages, Your Honor, and a
8 defense to a conspiracy claim, as well as conversion.

9 THE COURT: Are you all seeking punitive damages?

10 MR. GRANTLAND: Yes, Your Honor. On October 17,
11 2022, I received the defendants' second supplemental to
12 interrogatories. It says to list the names of expert
13 witnesses, and Roger Roy was listed and Brian Doland,
14 who we deposed last year, was listed. So that's why --

15 MS. GOLDING: He's not an expert. He is not
16 going to tell the Court what the law is, Your Honor,
17 but he's going to tell the Court what he advised the
18 defendants.

19 THE COURT: Okay.

20 MR. GRANTLAND: My point is as long as he's not
21 giving legal opinions -- I mean, as long as he's -- he
22 was hired to give a legal opinion, but I don't think he
23 should give that legal opinion to the jury.

24 THE COURT: You're just saying that he's going to
25 say what he told them?

PRETRIAL MOTIONS

1 MS. GOLDING: Correct.

2 THE COURT: Are you okay with that?

3 MR. GRANTLAND: As long as it is not a legal
4 opinion. I mean, she listed him as an expert and that
5 is why --

6 THE COURT: I agree. I mean, if it is expert
7 testimony as to the law.

8 MS. GOLDING: He is going to testify, Your Honor,
9 that he provided to the defendant association and the
10 individual directors --

11 THE COURT: A legal opinion.

12 MS. GOLDING: Legal opinion. And he'll testify
13 what he advised the defendants. He's not going to say
14 what the law is that you need to make a ruling upon,
15 but he will testify as to his advice and what he
16 advised the defendants.

17 MR. GRANTLAND: I guess we'll have to see where
18 it goes. I mean, if he goes into "the realm of my
19 opinion," I'll object or Mr. Brittain will object, one
20 of us will object.

21 THE COURT: I tend to agree. We'll have to see
22 where it goes, I guess.

23 MS. GOLDING: Yes, sir, Your Honor.

24 MR. GRANTLAND: That is Mr. Roy.

25 THE COURT: All right.

PRETRIAL MOTIONS

1 MR. GRANTLAND: The second motion in limine is
2 regarding property taxes. Mr. Griffin inherited the
3 condo from his uncle. He gets a tax bill. He pays the
4 tax bill. During the course of the litigation, Mr.
5 Aquino found out that Horry County tax records are
6 assessing him at 1700 square feet when his condo is
7 actually 2600 feet.

8 So, for years, he's been paying property taxes
9 based on a number that is not accurate, and none of
10 that has anything to do with the case. My concern is
11 that if -- this has been brought up in every deposition
12 about Mr. Griffin not paying the right amount of
13 property tax, and it is not really relevant as to
14 whether this terrace penthouse balcony, whether it's
15 common or private. I would ask that the defendants are
16 not allowed to go into the fact that there was a
17 discrepancy with Horry County and that he's not been
18 paying the right amount of property tax. He gets the
19 bill and pays it. It doesn't say based on X number
20 square feet.

21 I think their introduction of it would simply be
22 just to try to prejudice him, make him look bad, and I
23 ask that they not be allowed to go into that.

24 THE COURT: Yes, ma'am?

25 MS. GOLDING: With respect to Mr. Griffin and his

PRETRIAL MOTIONS

1 wife's unit, it has a square footage of 22,634 square
2 feet that is set forth in the master deed in Exhibit A.
3 This square footage is important because it does not
4 encompass the roof terrace, and I will ask questions of
5 Mr. Griffin that he has never paid any taxes on any
6 part of the roof terrace, that his only taxes are
7 within the walls of his unit.

8 THE COURT: Sounds fair enough.

9 MR. GRANTLAND: I agree. As long as no one says
10 he's cheating the tax assessor; that was the
11 implication.

12 THE COURT: Got you. Any other motions?

13 MR. GRANTLAND: The last motion was to amend the
14 pleadings to conform to the evidence. I don't know if
15 we do this now or later, but the issue in this case is
16 this terrace outside of the -- outside of the Griffins'
17 rooftop penthouse. The board came up with rules in
18 2019 saying it is common. From '83 to '19, it was not
19 treated as common space. It was treated as private
20 space. Like everyone has a balcony, he had this
21 private space. His uncle had it, and then he inherited
22 it. He and his wife became owners in '95. There are
23 minutes from the prior boards that say that the outside
24 space is to be treated like the balconies. There are
25 minutes that say it is the penthouse balcony. So that

PRETRIAL MOTIONS

1 is an issue. What Mr. Griffin needs more than anything
2 is a declaration of is this terrace common and subject
3 to rules that they can come up with, or is it not
4 common and treated like a balcony, like everyone else
5 has. That is the crux of the case.

6 THE COURT: All right. Any reply?

7 MS. GOLDING: Yes, Your Honor. With respect to
8 this motion to amend, plaintiff is seeking to allege
9 three additional causes of action, which were never
10 served in this case. The first one is declaratory
11 judgment; that was not sought in this case.

12 The second one is adverse possession, and the
13 third one is entitled "acquiescence," even though that
14 doesn't really exist in the law.

15 With respect to the motion to amend, obviously we
16 have done our discovery on the previous -- on the five
17 causes of action, and none with respect to the asserted
18 causes of action. The declaratory judgment action,
19 Your Honor, and the declaratory state statute
20 specifically states that to be entitled to any
21 declaratory relief, all the affected parties must be
22 before the Court.

23 While this goes to the merits of the declaratory
24 judgment action, Your Honor, I do want to state that
25 they are seeking a declaration that this roof terrace

PRETRIAL MOTIONS

1 belongs to Mr. Griffin. Under the master deed, the
2 roof is a common element. Therefore, if the dispute,
3 in any way, relates to a common element, all of the
4 unit owners must be parties, because every unit owner
5 has an undivided ownership interest in each common
6 element.

7 So under the declaratory judgment action, Your
8 Honor, it would not be proper to consider that in light
9 of the fact that not all of the unit owners are
10 parties.

11 The next claim that the plaintiff is seeking to
12 assert is adverse possession. Your Honor, that is a
13 distinct different claim than ever has been asserted in
14 this lawsuit, and the elements are very distinct. We
15 do have a fundamental issue with adverse possession in
16 that the plaintiff already has an ownership interest in
17 the property. Since he's a unit owner, he has an
18 undivided interest in the common element. So that in
19 and of itself creates quite a legal issue with respect
20 to adverse possession.

21 Another issue is that adverse possession is
22 fighting over title to property. At this point in
23 time, Your Honor, there has never been an issue as to
24 whether or not Mr. Griffin owns the property. He's
25 never taken the position in any discovery I have done

PRETRIAL MOTIONS

1 that he owns the roof terrace. He's just -- his
2 position is he's entitled to use it, so adverse
3 possession is not appropriate for that claim either.

4 The final claim is acquiescence. Acquiescence --
5 I think they are trying to slide in a claim based on
6 waiver or estoppel. We all know the law in South
7 Carolina is very clear that waiver and estoppel are
8 only shields. They cannot be asserted as sorts. So
9 acquiescence in and of itself is the same thing in the
10 way they are presented.

11 So not only is this amended complaint seeking
12 three additional causes of action, before last week
13 that I never knew of and haven't conducted any
14 discovery, but fundamentally each of those claims are
15 flawed under South Carolina law.

16 Thank you, Your Honor.

17 THE COURT: I'll think on that one and let you
18 know as we proceed.

19 MR. GRANTLAND: Yes, Your Honor. This is
20 basically under 15(b). This is kind of how the case
21 has developed. What we're fighting over is this use of
22 this terrace.

23 THE COURT: Right.

24 MR. GRANTLAND: And they say the deed is clear.
25 We say it is ambiguous, and it certainly would have

PRETRIAL MOTIONS

1 been in the application.

2 MS. GOLDING: I need to alert the Court to the
3 fact that there has never been any ambiguity pled in
4 this case, so I would object to any type of testimony
5 or evidence attempting to assert any ambiguity.

6 MR. GRANTLAND: I don't think it has to be pled.
7 But I ask that under 15(b) the evidence -- we be
8 allowed to conform our pleadings to the evidence.

9 THE COURT: Let's see what the evidence holds,
10 and we'll go from there.

11 I'll hear your motions.

12 MS. GOLDING: Thank you, Your Honor. Our first
13 motion in limine relates to a temporary restraining
14 order, preliminary injunction, that was issued
15 November 2, 2020. The law in South Carolina states
16 that that is prejudicial. Justice Lockamy stated an
17 opinion of Allegro, Inc. versus Skulley: "It is hard
18 for this Court to determine an instance where
19 admissibility of a preliminary injunction order in a
20 trial record would not be highly prejudicial."

21 We also rely on, you know, Rule 401 of the Rules
22 of Evidence, that it's not relevant because -- and also
23 that it is highly prejudicial.

24 In conjunction with that, not permitting any
25 reference or information about the injunction, the

PRETRIAL MOTIONS

1 following plaintiff's exhibits would be inadmissible
2 because they relate to the injunction, and that would
3 be: Plaintiff's Exhibits 19, 21, 22, 23, 30, 31, 34,
4 42. All of those exhibits relate to matters regarding
5 the injunction.

6 What happened, Your Honor, is that there was
7 furniture placed on the roof terrace by Mr. Griffin.
8 In 2018, he changed that furniture to high-back
9 furniture. Subsequently, we received a safety
10 consultant's opinion that high-back furniture is -- can
11 be a danger. As a result, Your Honor, the high-back
12 furniture was removed by the association and
13 substituted for the type of furniture that they had
14 previously.

15 The injunction was obtained, and the judge
16 ordered that the high-back furniture be returned. So
17 we have these exhibits that I've identified that relate
18 to the high-back furniture, its removal, and its
19 storage. Your Honor, I believe all of those would be
20 inadmissible because it is basic South Carolina law
21 that anything related to the injunction, in the
22 temporary injunction, cannot be admissible in court.

23 Thank you, Your Honor.

24 MR. GRANTLAND: The reason the injunction is
25 relevant is because it shows their retaliatory conduct

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1 after we filed suit. We filed suit in October of 2019.
2 In December of 2019, they came up with a safety expert
3 who said the high-back chairs need to go. They removed
4 the high-back chairs that he had by his tables. Up
5 until -- you know, Mr. Griffin will testify he's been
6 the owner since '95, and he's had tables and chairs
7 throughout the years. It was nothing brand new. He's
8 replaced furniture and had new furniture.

9 But we sue in 2018, and they come up with a
10 safety expert, even maybe before they answered, but
11 around the time of the answer in 2019, they came up
12 with this safety expert who is saying these high-back
13 chairs are dangerous.

14 Then, in 2020, we have Covid. Things are shut
15 down. They send him a letter in May saying we're
16 removing all of your furniture, 23 pieces of furniture,
17 rocking chairs, a table, furniture both on the terrace
18 and in the outdoor kitchen. They said they are
19 removing it. They did that. They removed all of the
20 furniture in May of 2019.

21 They also disabled an elevator key that had a
22 private access to the tenth floor. They disabled that,
23 and that's been in existence since '83. So they
24 disabled that.

25 So these are -- and they took his Turtle tile he

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1 put down in 1995. The Turtle tile was taken away in
2 '19. The furniture was taken away in '20.

3 In June, I filed a motion for a restraining
4 order; I had no choice. In October, they sent him a
5 letter saying, hey, you haven't been paying rent or
6 storage fees for the furniture that we took. We're
7 going to have the storage company forfeit all of your
8 furniture that we took in May unless you pay the
9 storage fees or come get it.

10 They also said we're going to rip out your plants
11 in the planters. They are unsafe. This all happened
12 in October. They said we're -- come get your Turtle
13 tile. We're going to forfeit all of your furniture.
14 We're going to rip out all of your plants. This is
15 retaliatory conduct.

16 I understand why they don't want it to come in
17 evidence, and I understand it is prejudicial, but this
18 is after we filed suit to come to court to argue
19 whether we had a right to this private area or not. I
20 think it is very relevant.

21 I agree, I may not be able to read it to the
22 jury, but I certainly can talk about it because they
23 were acting in retaliation.

24 The only reason he has his furniture, and the
25 only reason he was able to rent with furniture in 2021

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1 and 2022, is because Judge McIntosh granted the
2 restraining order. They could have their elevator.
3 His plants wouldn't be ripped out, and the furniture
4 would remain the same. So it is very relevant.

5 I understand -- I certainly don't think I can
6 beat them over the head with it or read it or show it
7 as an exhibit, but I certainly can talk about it.

8 THE COURT: I agree. I'll deny the motion. I
9 think it is relevant.

10 Next one.

11 MS. GOLDING: The next one, Your Honor, relates
12 with the testimony of Henry Beckham. He'll testify
13 that he's making an appraisal on the roof, on Mr.
14 Griffin having the roof terrace, or not having the roof
15 terrace. But the roof terrace is not owned by the
16 plaintiff, nor is the plaintiff claiming ownership of
17 it, so that is number one.

18 Mr. Beckham is a real estate appraiser, and he
19 can only testify as to property owned by the entity or
20 the person that is seeking an appraisal. It is without
21 doubt that this roof terrace is not owned by Mr.
22 Griffin.

23 Then, Mr. Beckham testifies that there is a value
24 loss to the plaintiff of over \$200,000 if he is not
25 able to use the terrace. Well, number one, we never

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1 told him that he can't use the terrace. That is not an
2 issue.

3 Number two, Your Honor, the ruling of this Court
4 will be either the roof terrace is a common element, or
5 it's not a common element. If it's not a common
6 element, there is no loss to Mr. Griffin. If it is a
7 common element, there is no loss to Mr. Griffin because
8 common elements, he doesn't have a right to use.

9 So either way in this case, Your Honor, the real
10 estate appraiser's testimony is incompetent and not
11 admissible, and very confusing and prejudicial.
12 Because, again, Your Honor, if it is a common element,
13 the roof terrace, Mr. Griffin can't claim any loss. If
14 it is not a common element, Mr. Griffin hasn't lost
15 anything. So either way there is no basis for any
16 damage in this case with respect to the real estate
17 appraiser, Your Honor.

18 MR. GRANTLAND: Your Honor, may it please the
19 Court. Mr. Beckham is a licensed appraiser. I asked
20 him to look at the value of the condo. Since '83, and
21 then from 1995 until 2019, the Griffins treated that
22 outdoor terrace as their penthouse balcony.

23 Sure the Shoreham Towers owns the structure, but
24 that penthouse balcony was his private space, and up to
25 2019, no one ever called it common. I asked

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1 Mr. Beckham, Give me the value of this penthouse if
2 this terrace is private and not accessible to any other
3 homeowners during the course of the day. Then give me
4 a value if it's considered as common as the swimming
5 pool, and that is what he did.

6 He came up with if that area is common and no
7 privacy to the penthouse owner, an all glass
8 structure -- it is surrounded by the terrace. The
9 bedrooms are surrounded by this terrace. So if it's
10 common, it is drastically a different price than if it
11 is private, and he equated that to be \$222,000.

12 He also reviewed the master deed. There will be
13 allegations that Mr. Griffin doesn't pay his fair
14 share, that he doesn't pay his fair share of common
15 assessments, and he can address that as well. She
16 objects to that, but I believe he's qualified to give
17 an opinion on that as well.

18 THE COURT: I'm going to deny the motion.

19 MS. GOLDING: Your Honor, with the regard to the
20 second part that I did not address with respect to
21 Mr. Beckham -- on Friday, I was informed that
22 Mr. Beckham -- the scope of his testimony has been
23 enlarged and that additional -- he will now testify as
24 to matters that were outside that were not testified
25 and identified as part of his scope of testimony.

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1 I took his deposition, and he specifically
2 identified the scope and what he will testify about.
3 Friday, they identified a larger scope; I say that is
4 improper. This larger scope relates to assessments on
5 the property. I did not know that until this past
6 Friday -- might have been Thursday, but the end of the
7 week.

8 Obviously, Your Honor, that it is highly
9 prejudicial to enlarge the testimony of the expert at
10 this late date.

11 THE COURT: Any reply?

12 MR. GRANTLAND: Your Honor, it's impeachment
13 evidence, and it is certainly -- they are going to
14 allege -- I can either call him twice, because they are
15 going to say he doesn't pay his fair share, and I asked
16 him to address that. He sent the letter later than I
17 asked him to. He sent it on 25th, and I immediately
18 sent it to Ms. Golding.

19 She's used him as an expert, and I said call him
20 if you have any questions about this. It is a
21 two-page -- one-and-a-half page letter about his review
22 of the assessments; no more, no less. I will make him
23 available this evening if she wants to take a
24 deposition or speak to him. I mean, I don't have --
25 he's just an appraiser from Horry County and --

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1 THE COURT: Was that information in his
2 appraisal?

3 MR. GRANTLAND: No. No.

4 THE COURT: And he is an expert, so I don't think
5 it would be fair to take an expert in large what they
6 have to say right here at the eve of trial.

7 MR. GRANTLAND: Yes, sir. I wish he would have
8 sent the letter a month ago, but he sent it when he
9 sent it. At least -- if they testify that he doesn't
10 pay his fair share, I have evidence that can rebut
11 that.

12 THE COURT: We'll cross that bridge at that time,
13 but I think as far as his initial testimony, enlarging
14 it this late in the ball game is not fair.

15 MR. GRANTLAND: Yes, sorry. But if they open the
16 door and say he doesn't pay his fair share, I feel like
17 I have a right to ask him to come back.

18 MS. GOLDING: Thank you. Your Honor, with
19 respect to the Turtle tile, the Turtle tile was some
20 type of a covering on top of the roof itself, the roof
21 membrane. Mr. Griffin testified in his deposition that
22 20 years ago a roofing engineer made the statement to
23 him that Turtle tile is good for the roof. I would
24 like for him not to be permitted to testify to that as
25 being hearsay.

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1 MR. GRANTLAND: Your Honor, he's going to
2 testify, and I have -- this is the Turtle tile we're
3 talking about (indicates). He's going to testify that
4 he spent about \$20-, \$25,000 on the Turtle tile in '95
5 when he took over ownership of the penthouse. I'm not
6 going to let -- I'm not going to elicit hearsay, but
7 he'll say that he did this for the good of the terrace,
8 and they took it away and never returned it. So I
9 think his testimony --

10 MS. GOLDING: As long as he doesn't say an
11 engineer told him to do it.

12 THE COURT: That's right. Okay.

13 MS. GOLDING: The next thing is with respect to
14 the Turtle tile quote. Mr. Griffin can say how much he
15 paid for the Turtle tile, but he is also opining, and
16 will opine, what it cost to replace. Mr. Griffin, he
17 said he got that information from the manufacturer of
18 it. Obviously, Mr. Griffin is not qualified to say.
19 That's not within his expertise. And he cannot testify
20 to that. That also would be hearsay.

21 MR. GRANTLAND: I don't disagree. He'll testify
22 he owned it, and they took it away. He paid this much
23 for it, put it down to better the terrace, and they
24 took it away and never gave it back.

25 THE COURT: Fair enough.

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1 MS. GOLDING: The next item is plaintiff's uncle.
2 In the deposition of Mr. Griffin, he testified that it
3 was his uncle's intention for the roof terrace to be a
4 part of the unit, and that it was supposed to be
5 exclusively used by the occupants of the penthouse. I
6 believe that the uncle's intention -- there are
7 numerous grounds as to why that is not admissible;
8 number one, his uncle has passed away, and it would be
9 in violation of the Deadman's Statute.

10 Number two, it also would be violating of parol
11 evidence because it changes the language in the master
12 deed. And then, of course, it would be hearsay and
13 likely confusing. Any reference to the uncle and the
14 uncle's intention in use of the penthouse is
15 inadmissible, Your Honor.

16 THE COURT: Any reply?

17 MR. GRANTLAND: Your Honor, parol evidence is
18 admissible if there is ambiguity, and there's certainly
19 ambiguity in the application of the deed because the
20 deed doesn't address the terrace, but it does address
21 the dwelling to the balcony rail. He has a dwelling,
22 and he has a balcony rail. For over 25, 26 years, he's
23 treated that as his balcony, but I'm not going to ask
24 what did Uncle Bobby say about this.

25 THE COURT: Or what did Uncle Bobby intend. We

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1 don't know. He's not here.

2 MR. GRANTLAND: Right. But I can certainly bring
3 up the fact that Uncle Bobby developed it, that he has
4 personal knowledge of his experiences there when Uncle
5 Bobby lived there. And so Uncle Bobby, that evidence
6 can come in, but I'm not going to elicit what did Uncle
7 Bobby say about this.

8 THE COURT: Or what were his intentions. He can
9 say what he saw and did, but not Uncle Bobby.

10 MR. GRANTLAND: Right.

11 MS. GOLDING: The next, Your Honor, there are
12 several exhibits by the plaintiff listed, which is
13 correspondence from renters and perspective renters.
14 Those are Plaintiff's Exhibits 25, 26, 27, and 28. All
15 of these hearsay, Your Honor. Those are letters or
16 communications from third parties to the plaintiff, and
17 we ask that they be excluded from evidence.

18 MR. GRANTLAND: Your Honor, the letters from the
19 renters are relevant to his damages claim. In 2019,
20 they took away his Turtle tile, and the terrace was
21 very slippery. In 2020, they took away his furniture
22 while renters were there.

23 THE COURT: She's not saying it's not relevant.
24 She's saying it's hearsay.

25 MR. GRANTLAND: No. No. But he manages this

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1 condo through VRBO. These are business records. I
2 believe I can establish through foundation questions
3 that these are business records that he kept in the
4 regular course of business to -- I mean, they are just
5 like any other business record he has as an owner of a
6 condominium. He has received complaints from these
7 renters, and they have not come back. So it's relevant
8 on his damages, and I think it's admissible as a
9 business record, if I lay the proper foundation. It
10 impeaches their testimony. Two of the defendants said
11 no one had any complaints. We took the furniture away,
12 and no one had complaints about it, and that is
13 absolutely not true. He lost renters who were unhappy
14 in 2020 and have not returned. So if I lay the
15 foundation, I think it's relevant.

16 THE COURT: If you lay the foundation, I think it
17 is relevant.

18 MR. GRANTLAND: I think if I lay the foundation,
19 I think I can --

20 THE COURT: Right. Okay.

21 MS. GOLDING: The next, Your Honor, and we've
22 already heard Mr. Griffin -- excuse me, Mr. Grantland
23 say the roof terrace in the plans and master deed is a
24 roof terrace. We have the plans. We're going to show
25 the Court and introduce them. It is all identified as

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1 the roof terrace.

2 Mr. Grantland wants to say it is a balcony, and
3 the reason for that is that the master deed provides
4 that the balconies are a part of an individual's unit.
5 The 39 units below the roof, each has a balcony. The
6 plans will show that each of those 39 -- they have the
7 word "balcony," "balcony," "balcony." But the top of
8 the plans says "roof/roof terrace," and I think they
9 are trying to confuse the jury by using the word
10 "balcony." I think it is improper and not consistent
11 with the master deed, nor the building plans.

12 THE COURT: Any response?

13 MR. GRANTLAND: The penthouse is a unique piece
14 of property. There is only one rooftop penthouse, and
15 it has been referred to as a terrace, as a penthouse
16 balcony, as a deck. In the 1992 board minutes, the
17 board in 1992 said the outside of the rooftop penthouse
18 will be treated like the balconies. That is what the
19 maintenance man calls it. It is a penthouse -- can I
20 finish it.

21 THE COURT: I'm going to deny the motion anyway;
22 it's a question of fact for the jury.

23 MS. GOLDING: Your Honor, it is not -- well, I
24 respect the Court's ruling, but this 1992 minutes, it's
25 an individual saying that Jim Pike, an attorney,

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1 believes that the rooftop is a balcony. Obviously,
2 that is hearsay within hearsay. Mr. Pike was not
3 there. This is a verbal statement in a minute -- in
4 the minutes.

5 THE COURT: But if the plaintiff wants to call it
6 a balcony, he can.

7 MS. GOLDING: But it is confusing, Your Honor,
8 because there is nothing in the condominium documents
9 that refers to the rooftop terrace as a balcony.

10 THE COURT: You can cross-examine in that regard,
11 but that is the whole issue of this case, basically.
12 That jury will figure it out.

13 MS. GOLDING: Yes, sir. Yes, sir.

14 There again -- and the issue with the minutes --
15 the next one relates to the minutes of 1992, July 31,
16 1992 minutes, Your Honor. It is a board of directors
17 meeting, Plaintiff's Exhibit No. 7. In there it is
18 stated that Jim Pike, an attorney, says the rooftop is
19 a balcony. That is his supposed opinion. If that is a
20 legal opinion, of course that would be excluded from
21 that, but that is also hearsay within hearsay. I
22 believe that Plaintiff's Exhibit 7 should not be
23 admitted into evidence.

24 MR. GRANTLAND: Your Honor, I appreciate what
25 Ms. Golding is saying, but the minutes from the board

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1 tell a history of Shoreham Towers, the history of how
2 this -- in particular, how the history of the terrace,
3 the history of the planters has taken place. It is
4 consistent. The language in '92 is consistent with how
5 he has treated the terrace, like a balcony. They go
6 hand-in-hand. Right or wrong, other boards have
7 allowed Mr. Griffin to treat this terrace as his own
8 balcony.

9 Ms. Golding -- we're all submitting --
10 Ms. Golding wants to submit 14 board minutes from 1984
11 to 2018. So if we're going to submit any board
12 minutes, we can't cherry-pick out the ones that we
13 don't like. They don't like the '92 minutes because it
14 says the outside of the rooftop penthouse is to be
15 treated like a balcony. That is the crux of the case.
16 They can argue that they were wrong, and that is what
17 this board does, but if the 14 different minutes from
18 '84 to 2018 come into evidence, which also have
19 hearsay, then these should as well. I mean, they
20 clearly are business records, 803-6, and should -- all
21 of them should come in.

22 THE COURT: I agree.

23 MS. GOLDING: Your Honor, under the Rules of
24 Evidence, Rule 704, that statement in there with
25 respect to Mr. Pike is an opinion on the ultimate issue

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1 in this case. The minutes I'm introducing don't have
2 hearsay on top of hearsay. They are statements amongst
3 just the directors with regard to Mr. Griffin only, and
4 he was a director and he was there.

5 Mr. Griffin, you know, was not present at this
6 1992 meeting. So it is an opinion based on the
7 ultimate fact in violation of Rule 704 of the Rules of
8 Evidence, and it is hearsay within hearsay; therefore,
9 we would request that the Court not permit Plaintiff's
10 Exhibit No. 7.

11 THE COURT: If they are business records,
12 wouldn't it be an exception to the hearsay rule?

13 MS. GOLDING: No, sir. This is Rule 704. It is
14 not the hearsay rule.

15 THE COURT: Okay.

16 MR. GRANTLAND: Your Honor, they don't like what
17 they say, that is why they want to keep them out. The
18 Court can certainly instruct the jury on what they can
19 glean from the evidence.

20 THE COURT: Let's look at 704.

21 (A brief pause in the proceedings.)

22 THE COURT: What exactly does he say in the
23 minutes, exactly?

24 MR. GRANTLAND: It says -- this is the objection:
25 "Ken Allen reported that Jim Pike, the attorney

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1 responsible for the master deed, stated the area around
2 the top penthouse will be handled the same as other
3 balconies. Covering on the balcony will belong to the
4 owner, and beneath will be the responsibility of the
5 association."

6 704 says: "Testimony to form an opinion or
7 inference otherwise admissible is not objectionable
8 because it embraces an ultimate issue." I mean, it's
9 not objectionable and clearly is allowed as a business
10 record.

11 THE COURT: I tend to believe it comes in, but we
12 can instruct the jury, add to the charge at the end, if
13 you want to, about opinion statement.

14 MS. GOLDING: There is a real --

15 THE COURT: Read it to me one more time.

16 MR. GRANTLAND: Can I bring it to you?

17 THE COURT: Yeah.

18 MR. GRANTLAND: This is not the exhibit, but.

19 THE COURT: But that is what he is going to say,
20 what's in pink?

21 MR. GRANTLAND: Right.

22 THE COURT: It is: "The area around the top
23 penthouse will be handled the same as other balconies.
24 Covering on the balcony" -- but delete the part that
25 said "would belong to the owner" because that is the

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1 ultimate issue in this case, seems to me, and that is
2 an opinion from a lawyer.

3 MS. GOLDING: Yes, sir.

4 MR. GRANTLAND: But --

5 THE COURT: But you can get in the part that he
6 still handles it the same as other balconies, which
7 infers that it's a balcony, but they have to decide.

8 MR. GRANTLAND: My point is: If we're going to
9 have to go through every minute -- because other
10 minutes have legal opinions in there. I mean, I just
11 assumed -- there are other minutes that have comments
12 that I could find objectionable, but I said they are
13 business records. I won't nitpick. But if we're going
14 to nitpick --

15 THE COURT: That's up to you all if you want to
16 nitpick.

17 MS. GOLDING: Yes, sir. Under the business
18 record rule, Rule 803, the hearsay exception, Section
19 Six specifically states that the records of regularly
20 connected activity are admissible; however, subjective
21 opinions and judgments found in business records are
22 not admissible.

23 THE COURT: Right. That is an opinion, which is
24 the ultimate issue in this case.

25 MR. GRANTLAND: 704 is admissible as a business

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1 record, then it is not objectionable. 704 is not
2 objectionable.

3 MS. GOLDING: But 803-6 states: "However
4 subjective opinions and judgments found in business
5 records are not admissible." If you read the entire
6 section, Subsection Six, that is the same reason why
7 accident reports don't come in.

8 MR. GRANTLAND: Yes, sir. But, again, we're
9 going to need to go through whatever....

10 THE COURT: I mean, that's fine.

11 MR. GRANTLAND: So are we redacting it?

12 THE COURT: That is what I was doing, just taking
13 out the part about handled the same as other balconies,
14 but the fact that it says the balcony would belong to
15 the owner; that is the question at hand.

16 MS. GOLDING: And Jim Pike --

17 THE COURT: You can have this back. How about
18 the last sentence?

19 MR. GRANTLAND: Balcony would belong to the
20 owner, beneath --

21 THE COURT: That's right. That's what we're
22 arguing about all week.

23 MS. GOLDING: It would also have to be the first
24 sentence, Your Honor. Jim Pike, the attorney
25 responsible for the master deed, I think that needs to

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1 be removed.

2 THE COURT: It just says it would be handled the
3 same as a balcony. It doesn't say whose it is. That's
4 why I don't think that is an opinion. That is just the
5 way they are going to handle it.

6 MR. GRANTLAND: We'll make sure that is redacted,
7 Your Honor, the sentence beginning -- it's actually a
8 part of it: "Covering on the balcony would belong to
9 the owner, and beneath would be the responsibility of
10 the association," that's redacted?

11 THE COURT: That's right. I think so.

12 MS. GOLDING: I'm getting to the end, Your Honor.

13 Next, there is several documents that plaintiff
14 has proposed as exhibits. One is Crossland Landscaping
15 summary, Plaintiff's Exhibit 34. Then invoices for
16 Richard Jones, Plaintiff's Exhibits 35 and 36. These
17 are not invoices, Your Honor. These are -- both of
18 them are just opinions. They wrote on a document.
19 Like Mr. Jones, it has the document print form invoice,
20 but it's just an opinion as to where the electricity
21 flows from, and he's testifying.

22 The Crossland summary sets forth the years that
23 they had been working and what they did with each year.
24 They are testifying, and those would be inadmissible in
25 any respect. The witness can testify, but without the

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1 witness, those would be inadmissible, Your Honor.

2 MR. GRANTLAND: I intend to bring both witnesses.
3 Those are recorded recollections. They are summaries
4 of the work they did. So both Crossland and Jones will
5 be testifying.

6 MS. GOLDING: Those documents, Your Honor, just
7 like expert report, like Mr. Beckham's, they cannot be
8 admitted into evidence. They can only just testify
9 what is in there.

10 THE COURT: That's what he is saying.

11 MR. GRANTLAND: I mean, I guess if I lay the
12 foundation for the document, I mean certainly it can
13 come in.

14 THE COURT: That's right. If you lay the
15 foundation -- let's take a look at it at that time.
16 Let me hear it. Let me see it.

17 MS. GOLDING: Okay. Thank you, Your Honor.

18 We covered the exhibits. The exhibit, of course,
19 is Mr. Beckham's opinion. He has that listed, the
20 appraisal opinion, as an exhibit. Under 803, they are
21 not -- expert report findings are not admissible,
22 803(b)(6). That is the last one, Your Honor.

23 MR. GRANTLAND: He's going to testify, Your
24 Honor. If he needs his report to look at, but I don't
25 disagree. He'll testify.

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1 MS. GOLDING: Okay. Good.

2 THE COURT: All right.

3 MR. GRANTLAND: I have exhibits -- objections to
4 some of her exhibits. One is on the -- she wants to --
5 Exhibit 3 of the defendants' exhibits are the Horry
6 County tax records, which say that -- you know, lists
7 his square footage. Again, that allows them to go into
8 whether or not he pays property taxes, and I think we
9 shouldn't even go into that.

10 THE COURT: I think we talked about that.

11 MS. GOLDING: My position is that he hadn't paid
12 any taxes on the roof terrace.

13 THE COURT: You are not doing it just to say he
14 didn't pay taxes or --

15 MS. GOLDING: Exactly. Not that there is error
16 with what he's done with his unit.

17 MR. GRANTLAND: And then there is an Exhibit 15,
18 a letter from Donald Grubb, Pinnacle Real Estate. It
19 is not a record of the board. I think it's being
20 offered to imply that Marshall locked the doors or did
21 something that he claimed he didn't do. Unless
22 Mr. Grubb is coming to testify, I don't think that
23 Exhibit 15 would be admissible.

24 MS. GOLDING: This was attached to one of the
25 board meetings. I didn't have the board meeting as

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1 part of it, but I'll just have the board meeting added
2 to that exhibit.

3 MR. GRANTLAND: Again, it's a letter from -- if
4 this person -- I would need to see what board meetings.

5 MS. GOLDING: I will.

6 MR. GRANTLAND: And then Exhibits 23, 26, and 29
7 are all letters from Roger Roy. This is -- he gives
8 his legal opinions in 26 -- 23, 26, and 29. He gives
9 his opinion that the terrace is common, and those
10 should not be allowed into evidence.

11 MS. GOLDING: Only, again, Your Honor, because
12 all of the defendants relied on the advice. It is not
13 that the advice is accurate or giving the Court a legal
14 opinion. It is just the opinion he gave to the
15 defendants.

16 MR. GRANTLAND: But it's a legal opinion.

17 THE COURT: It's a legal opinion. There's no way
18 around it. That's the back door in. I tend to agree.

19 MS. GOLDING: Yes, sir.

20 MR. GRANTLAND: And then these e-mails from Wayne
21 White, I assume -- if he comes and testifies, but I
22 haven't been able to get him, but if he comes, that
23 comes into evidence. If he doesn't come, I assume --

24 MS. GOLDING: I agree.

25 THE COURT: All right. So I'll see you back at

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1 2 o'clock.

2 (Plaintiff's Exhibit 15 admitted.)

3 (A lunch recess was taken.)

4 THE COURT: Thank you. Everyone ready?

5 MR. GRANTLAND: Yes, sir.

6 MS. GOLDING: Yes, sir.

7 THE COURT: All right. Let's bring in the jury.

8 (The jury enters at 2:01 p.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: Mr. Jordan, I'll make you the foreman
11 of the jury. If you would, switch seats with the guy
12 in the first row, first seat.

13 All right. If you would, swear the jury.

14 THE CLERK: If you will stand and raise your
15 right hand.

16 (The jury was sworn.)

17 THE COURT: Members of the jury, we're getting
18 ready to start this case, but before we do, I want to
19 go over a couple of things with you to give you
20 knowledge to use as this trial progresses.

21 The first thing is what your role is, and what my
22 role is, and how they differ. You are the judges of
23 the facts. I, in turn, am the judge of the law. You
24 ask yourselves, What does that mean? That simply means
25 that you determine what the facts of this case are; not

PRETRIAL MOTIONS

1 me, not my clerk, no one in the audience, just you, the
2 jury.

3 You ask yourselves, How do you determine what the
4 facts are? Simple. You look at the evidence in the
5 case and that can be made up of the witnesses that take
6 that witness stand. They are sworn, and they testify.
7 It can be made up of any exhibits admitted into the
8 record as evidence; that could be, photographs,
9 documents, deeds, pictures, things of that nature.
10 That is where you determine what the facts of the case
11 are.

12 At the end of the trial, I'll read you the law
13 applicable to this case in great detail. You have to
14 accept the law as I give it to you.

15 Then, when I tell you to begin your
16 deliberations, and only when I tell you to begin your
17 deliberations, will you take the facts as you find them
18 to be, take the law as I give it to you, put the two
19 together and make a decision therefrom. There's a lot
20 of commonsense in that process.

21 Furthermore, I will instruct you that at no point
22 in time, if we take a break and you have to go back
23 into the jury room, or we do motions out here, or we go
24 home for lunch or at night, do not discuss the case
25 among yourselves at all. When you leave here, don't

OPENING STATEMENT - MR. GRANTLAND

1 get on the Internet and look it up. Do not research,
2 whatsoever. Everything you need to know you will get
3 right here in this courtroom.

4 Why do I tell you that? It is not proper to
5 discuss the case until you have heard everything the
6 plaintiff has to tell you and show you. You need to
7 hear everything that the defense has to show you and
8 tell you, and then you need to hear the law from me.
9 Then you will have everything you need to make a
10 decision, and I'll specifically tell you at that time
11 to begin your deliberations then, but that is at the
12 very end.

13 You ask yourselves, What do we talk about? Talk
14 about yourselves, football, weather, whatever, but not
15 this case.

16 Furthermore, if at any point in time you need
17 something to eat, restroom break, something to drink,
18 and we're moving along, wave your hand to me, catch my
19 attention, and I'll make sure you are taken care of.

20 Now, sit back and relax. I want you to listen to
21 the plaintiff as they give their opening statement.

22 MR. GRANTLAND: Thank you. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. GRANTLAND: I'm John Grantland. Good

OPENING STATEMENT - MR. GRANTLAND

1 afternoon, ladies and gentlemen. Me and Tommy Brittain
2 represent Mr. Griffin. Along with me is Crawford
3 Krebs, who is just in his first year as a lawyer. I
4 think we call them "baby lawyers," but he's helping us;
5 also is Colleen Fenny. She's a Clemson grad and an
6 intern in our office, and she is just watching to
7 watch, but that's who we are. We're privileged to
8 stand here to represent Mr. Marshall Griffin.

9 This is Marshall. I'll tell you about him and
10 why we are here. He is originally from Florence, born
11 and raised there. He went to USC. He's a proud
12 Gamecock. He met his wife there, and they live in
13 Columbia. Marshall worked in the galvanized steel
14 business for a number of years before he retired. They
15 have a daughter, Perrin. She's in her, hopefully, last
16 year of medical school, fingers crossed. Hopefully,
17 she'll graduate in May and be a doctor. So they have
18 one child.

19 Marshall is retired and now manages the rooftop
20 penthouse at the Shoreham Towers. He inherited the
21 penthouse from his uncle, Bobby. That is a
22 full-time -- I guess retired job for him managing this
23 penthouse through VRBO. That is who we are.

24 Why are we here? Well, Marshall has a dispute,
25 unfortunately, with these gentlemen over here, who have

OPENING STATEMENT - MR. GRANTLAND

1 been members of the homeowners association board at
2 Shoreham Towers. They made decisions in 2019 that
3 directly affected Marshall's use of the penthouse and
4 the value of the penthouse. They created rules for
5 Marshall telling him what furniture can be out on the
6 terrace, on the balcony of the penthouse, and what
7 can't be. When he can go outside, and when he has to
8 come inside. A number of rules that have affected both
9 the value of the penthouse and the use of the
10 penthouse. That's why we filed our lawsuit.

11 Ladies and gentlemen, unlike most cases you see
12 at the courthouse, this is not about an accident.
13 We're not looking at who ran a red light. We're not
14 looking at what medical bills are related or aren't,
15 how much pain and suffering should someone receive.
16 This is about privacy. This is about being neighborly.
17 This case is about Marshall's right to have the privacy
18 he has had since 1995. His uncle had it from '83 to
19 '94, '95, and then Marshall has had it from '95 until
20 it was taken away in 2019.

21 This is about privacy. It is about being a good
22 neighbor. With all due respect to these gentlemen over
23 here, we don't believe they have been good neighbors to
24 Marshall. They may say he hasn't been a good neighbor
25 to them. But, ultimately, ladies and gentlemen, that

OPENING STATEMENT - MR. GRANTLAND

1 is what this case is about.

2 We'll be asking you, more than anything else, to
3 make this board, ask this board, to leave him alone; to
4 give him the privacy he has had since he's owned the
5 condo; to not take his furniture away; don't threaten
6 to take his plants away; do not tell him when he can go
7 outside and when he has to come inside, rules like
8 that.

9 Our desire today, ladies and gentlemen, and our
10 desire in this case is to put the case before you and
11 for you to make the decision that Marshall's rooftop
12 penthouse terrace and balcony is not common, and it is
13 private to him. If you think he deserves damages, if
14 you think he deserves money damages for what he went
15 through with the board, that is up to you.

16 So how do we get here? Well, I'll show you a
17 little slide show because I think pictures are worth a
18 thousand words.

19 I need Crawford's help here. There we go. Baby
20 lawyers come in handy.

21 This is the Shoreham Towers, North Myrtle Beach.
22 Can you see it okay? I told you about Marshall's Uncle
23 Bobby. Uncle Bobby developed -- he went to the
24 Citadel. He was a world War II vet, POW. When he got
25 out of the war, he had a car dealership in Florence.

OPENING STATEMENT - MR. GRANTLAND

1 They had a beach house in North Myrtle Beach. They
2 moved the Griffin family beach house away, and he
3 developed this condominium. He owned the sand. He
4 made his private residency up here on the rooftop.
5 This is the only rooftop penthouse -- true rooftop
6 penthouse, that we know of, in North Myrtle Beach.

7 So it's 40 units. Everyone has private outdoor
8 space. It is called their balconies. Up here is
9 Marshall's rooftop penthouse. It also has private
10 outdoor space. You can call it a "terrace," call it a
11 "balcony," you can call it a "deck." This is an old
12 sketch of the building plans. The terrace -- and we're
13 fighting about the terrace and whether it is common or
14 whether it is private. The terrace wraps around the
15 whole rooftop penthouse. There are four bedrooms.
16 It's all glass. Sliding glass door for each bedroom.
17 The living room, it opens out onto this terrace.

18 This is a picture from Marshall's VROB ad. This
19 is how he has the terrace set up. He has nice
20 furniture. He has lounge chairs. He has a terrace to
21 sit and have lunch. He has plants. So since 1995 when
22 Marshall -- so uncle Bobby owned the place from '83 to
23 '94. He died in '94. The condo went into a trust, and
24 Marshall bought out a family member in '95, and he and
25 his wife became the owners in '95.

OPENING STATEMENT - MR. GRANTLAND

1 Since '95, he has been taking care of this
2 outside -- inside and outside, but the issue in this
3 case is the outside. Since '95, he has been taking
4 care of the outside of this condo. He has a landscaper
5 who has planted plants, removed plants, planted new
6 plants, irrigation. He pays for the lights around
7 these planters.

8 This is the setup on the outside. You know, this
9 terrace wraps around the whole condo. From the inside
10 looking out, you'll see the umbrella, the table again.
11 But since 1995, Marshall has been taking care of this.
12 He's been taking care of this because it is his
13 responsibility. It is his private outdoor space. Just
14 like everyone has a balcony, he has this terrace. He
15 had -- in '95, he put down Turtle tile, like this,
16 around the edges of the terrace for two reasons: To
17 protect the roof membrane, and also to make it easier
18 to walk.

19 Now, this is an example. The ninth floor below
20 has a balcony, and this is the penthouse balcony right
21 up here. So every floor of this place has private
22 space for people to use.

23 Mr. Aquino, one of the defendants, lives right
24 under the bunk out of the terrace, which is an issue
25 today.

OPENING STATEMENT - MR. GRANTLAND

1 This is from the inside. It's all glass.

2 Can you see okay? Okay.

3 So the glass doors open out onto the balcony.

4 This is from the bedrooms. Every bedroom is surrounded
5 by this terrace. Every bedroom has one or two sliding
6 glass doors. This is the children's bedroom that opens
7 out onto the terrace. Only a sliding glass door
8 separates the children's bedroom from the terrace.

9 This is the kitchen. This kitchen is looking out
10 onto the balcony and out into the ocean. He has had
11 the tenth floor since 1983. Uncle Bobby installed a
12 private elevator key that you have to have a key to get
13 to the tenth floor. Marshall remodeled this foyer when
14 he bought -- when he became owner. He pays for the
15 electricity and the HVAC in here. This is an area that
16 is in dispute. The defendants say this is common.

17 So how do we get to where we are? Flash back to
18 this one picture. Good fences make good neighbors;
19 good walls can sometimes make good neighbors. In
20 approximately 2018 -- again, Mr. Aquino lives here;
21 Marshall is up here.

22 In about 2018, Mr. Aquino noticed water coming
23 down on his balcony. Marshall has plants irrigated,
24 and the irrigation comes on and off as it's set on a
25 timer. Mr. Aquino says he called Marshall, told

OPENING STATEMENT - MR. GRANTLAND

1 Marshall I'm cutting your water off, and Marshall, I
2 think will say, I have renters there, let me get my
3 maintenance guy, we'll take care of it. Mr. Aquino
4 said, no, I'm cutting your water off. Marshall told
5 him, listen, you go up there without my permission,
6 I'll call the law, or something to that effect. But
7 that was the beginning of the end of their
8 relationship.

9 Mr. Aquino will tell you he didn't like the
10 furniture moving on the terrace. He didn't like people
11 playing corn hole. He didn't like people running
12 around. He didn't like furniture moving inside or
13 outside the penthouse.

14 So in 2018, Mr. Aquino sent an e-mail to the
15 other members of the board, and you'll see the e-mail.
16 It basically said Marshall is not paying his fair
17 share. He's taking advantage. He has turned -- this
18 is a roof, and he has turned this area into his own
19 common space, and he has done this for his advantage,
20 to our disadvantage.

21 He also said Marshall -- you know, the plants and
22 planters, he said Marshall was wrong for how he was
23 dealing with the planters. That is the gist of it. He
24 accused Marshall of using common space to the detriment
25 of all the homeowners, and they started meeting.

OPENING STATEMENT - MR. GRANTLAND

1 In 2019 -- and Marshall was on the board. In
2 2019, they say, you know, Mr. Aquino, we think you are
3 right. They got a lawyer, and they said, you know,
4 we're going to say this is common. Up until 2019, they
5 never came up with any rules for how Marshall was going
6 to live in his penthouse or how he uses it. In 2019,
7 they come up with rules.

8 They basically said -- just to show you. This is
9 from the inside looking out. They basically said in
10 2019, Marshall, you can't go -- you and your renters
11 can't go outside after 8:00 a.m. -- or, excuse me,
12 can't go outside before 8:00 a.m., and you have to come
13 inside after 10:00 p.m.

14 So the same rules for the pool, they put for
15 Marshall and the penthouse balcony and terrace around
16 his unit. Not only do they say you can't go out before
17 8:00 and come in after 10:00, they said this is all
18 common. This whole area, even the area outside of the
19 children's bedroom, the area all around this glass
20 condo, it is common. And they said any owner or any
21 owner's guests can be there from 8:00 a.m. to
22 10:00 p.m., and there is nothing you can do about it.
23 Totally took away his privacy.

24 I mean, I think I'm trying to show you not too
25 fast or slow, but it totally took away the Griffins'

OPENING STATEMENT - MR. GRANTLAND

1 privacy and use of his penthouse. So Marshall
2 objected. They redid the roof at the same time, and
3 they took -- he had Turtle tile down. They took that
4 away and refused to put it back down on the deck, on
5 the surface of the terrace, balcony.

6 So, at that point, when they refused to put the
7 Turtle tile down, we filed our lawsuit. That was in
8 2019.

9 Ladies and gentlemen, this is October --
10 January 2023, and we filed lawsuit in October of 2019.
11 I know this is probably not the first place you want to
12 be, but it is the first place we want you to be, and
13 we're glad you are here, because we've been waiting to
14 get to court since 2019.

15 Now, in 2020, things got worse after we filed
16 suit. They got -- hired a safety expert to say that
17 his high-back chairs were unsafe. These chairs under
18 the table, they said, oh, these chairs have to go.
19 People on the balcony have chairs, and the safety
20 expert didn't say anything about them, but these chairs
21 have to go, and they took them.

22 Then, in May of 2020, ladies and gentlemen,
23 during Covid, terrible time, they wrote Marshall and
24 said we're taking all of your furniture. This is
25 common, and we're taking it all, and they did. They

OPENING STATEMENT - MR. GRANTLAND

1 took it all, and they put it in storage. Not only did
2 they take his furniture and put it in storage, they
3 disabled the elevator key that has been in existence
4 since 1983, and that was in May.

5 Then, in October, they wrote him a letter and
6 said, hey, you are not paying storage. You haven't
7 paid for storage for your furniture. We are going to
8 have it forfeited, and we're going to have all of your
9 plants ripped up. This is a common element. If you
10 are not going to pay for storage on the furniture that
11 you had on the terrace since 1995, we're going to get
12 rid of it.

13 So we had to go to court and get a restraining
14 order to stop them from doing that, and we did. The
15 furniture was put back in 2020, November of 2020. They
16 didn't rip out his plants. They did put this furniture
17 down for a little while when they took away his old
18 furniture, but they were -- in 2020, they were able --
19 we were able to get his furniture back, elevator back,
20 and they were not able to mess with his plants.

21 So we've been waiting since then to be here
22 before you, 2021, 2022. We're thankful we're here now.
23 That is, basically, what our case is about.

24 Now, we sued these gentlemen for a number of
25 things, and I'll explain why. We sued them for breach

OPENING STATEMENT - MR. GRANTLAND

1 of contract. This is a master deed. Everyone who
2 lives at Shoreham Towers lives under the master deed.
3 They changed the rules in 2019 by saying, oh, it is
4 common, and we're going to put rules on how you can use
5 it. We'll put rules on you, rules we thought were
6 arbitrary and unfair and took away all of his privacy.

7 We sued them for conspiracy. Marshall was on the
8 board with these gentlemen. They met behind his back,
9 kicked him off phone calls when they were coming up
10 with rules about the penthouse terrace, which he owns.
11 So they met behind his back, came up with rules that
12 were only to his detriment and no one else. So that is
13 why we sued them for conspiracy.

14 We sued them for conversion, and that is a civil
15 version of taking someone's property away. In this
16 case, there are two reasons why we sued for conversion:
17 First, the basic one, they took his Turtle tile and
18 never put it back. Took his furniture for a period of
19 time while he had renters. Literally while he had
20 renters, they took the furniture and said we'll give
21 you the pool furniture. They did this in the summer of
22 2020.

23 So they took his furniture for a period of time,
24 and we got it back. They took his Turtle tile, and
25 they never brought it back. But we also sued them for

OPENING STATEMENT - MR. GRANTLAND

1 conversion from the standpoint that they are changing
2 the way that this -- changing the whole identity of
3 this penthouse by their rules. Instead of having
4 privacy, they want to make this the outside -- very
5 outside of the living area. They want to make it
6 common, and we think that they are wrong in that.

7 We sued them for fraud because we think they said
8 untrue things about Marshall. They accused him of not
9 paying his fair share and taking advantage of others,
10 and we think they were wrong in that. So that is what
11 we sued them for.

12 You'll hear from Marshall and a couple
13 maintenance men who have been taking care of that
14 outdoor terrace area for over 20 years, cleaning it,
15 taking care of the plants, irrigation, lighting. He
16 pays the electricity bill out there.

17 You'll hear from a couple of tenants -- excuse
18 me, renters who rented there. They'll tell you about
19 their bad experience when the board took the furniture
20 away and how that affected Marshall's future rentals.

21 You'll hear from an appraiser fellow named Henry
22 Beckham, who is an appraiser in Horry County. He will
23 tell you there is a big difference in price between
24 this all-roof glass condo with privacy and without
25 privacy. If it is with privacy since 1995, it is worth

OPENING STATEMENT - MR. GRANTLAND

1 this much; without privacy, it is significantly less,
2 and I'll explain that to you. I think he said it is
3 about a \$222,000 difference between making this a
4 common element versus leaving it the way it's been
5 since 1995.

6 You'll hear from some of the board members. I'll
7 call them in my case because I want them to explain to
8 you what they did to Marshall and why they did it. I
9 think you'll find all of the testimony very
10 interesting.

11 But at the end of it all, ladies and gentlemen,
12 Marshall simply is going to ask you to make this board
13 leave him alone. Our judge will charge you on the law.
14 There is law that if you allow someone use for over ten
15 years, you can't later come back and change the rules.
16 We think that -- it's over 25 years -- 26 years they've
17 allowed him -- even if they didn't like him or even if
18 they didn't like that the furniture was moved on the
19 penthouse, even if Mr. Aquino didn't like things the
20 renters were doing, they allowed it until 2019, and
21 then they changed the rules. They were wrong.

22 So those reasons, ladies and gentlemen, we'll ask
23 you to return a verdict for Marshall, return to him the
24 privacy that he has had since 1995, and if you think he
25 deserves a damages award, whatever you think is

OPENING STATEMENT - MS. GOLDING

1 appropriate. Thank you.

2 THE COURT: All right. Defense.

3 MS. GOLDING: May it please the Court. Thank
4 you, Your Honor.

5 Good afternoon, Mr. Foreman and ladies and
6 gentlemen of the jury. You earlier met the four
7 defendants. All of these gentlemen sitting here are
8 Mr. West, Mr. Tackett, Mr. Aquino, and Mr. Giovino.
9 Every one has been on the board of directors in 2018,
10 2019, and 2020, the board of directors of Shoreham
11 Towers Association. They were elected to be on the
12 board by the 40 units in Shoreham Towers. Do you know
13 how much they get for their service? Zero. They are
14 volunteers. They are there to protect Shoreham Towers,
15 but he sued them. He sued them personally, and they
16 have been sued personally since October 2019.

17 There is a lot of things that go on from
18 October 2019 until today that they had to look up and
19 say, yes, I got sued personally because I did my job.
20 You know what that job was as a director? That job is
21 to abide by the master deed.

22 Now, we are going to delve into a lot of
23 technicality that a lot of us never have anything to do
24 with, so it is going to be boring. Sorry. But it's
25 got to be boring. I can't say anything else, but it

OPENING STATEMENT - MS. GOLDING

1 will be boring.

2 When Mr. Griffin and his wife bought the unit,
3 and they bought the unit in 1994, they bought one unit
4 in Shoreham Towers. There are 39 other units in
5 Shoreham Towers. The 39 other units and Mr. Griffin's
6 unit, with his wife, consists of 40 units. Every deed
7 to every unit at Shoreham Towers says the same thing,
8 and this is what every deed at Shoreham Towers says.
9 It says, Mr. and Mrs. Griffin, you bought a dwelling
10 unit. That is significant, because the master deed and
11 state law will tell you what a dwelling unit is. A
12 dwelling unit is what is inside the walls. That is
13 what his deed says.

14 His deed also says by buying this unit, you agree
15 to abide by all the obligations in the master deed.
16 What is a master deed? A master deed is the master.
17 There is a real reason why it is called a "master." It
18 dictates and controls everything that goes on in that
19 condominium unit. It is not like you own a house and
20 farm on acreage. Because you live with everybody, you
21 have to have rules for everybody to abide by, and
22 that's the master deed. That man, when he took the
23 unit, says I'm going to abide by the master deed.
24 We're going to show you that he never did.

25 What happened in the master deed? The master

OPENING STATEMENT - MS. GOLDING

1 deed says there is two components to Shoreham Towers:
2 Dwelling units, common areas or common elements. We
3 know what a dwelling unit is; that is between the
4 walls, and that is what these 40 units have, between
5 the walls. Common elements are the corridors,
6 elevators, pipes, ductwork, stairwells. The master
7 deed and every deed in Shoreham Towers says these
8 common elements are owned by all of the unit owners
9 together. All 40 units own those together. It says
10 these common elements -- every unit owner has a
11 perpetual right to use the common elements.

12 Now, the common elements are governed by the
13 board of directors. In 2018, 2019, 2020, those four
14 gentlemen were the board of directors. These common
15 elements are not something you pull out of the air and
16 say one day this will be a common element, but not
17 today. They've been common elements since day one.

18 I'll show you the building plans that is part of
19 the master deed. These building plans will show you
20 that there are 39 units below the roof. These 39 units
21 below the roof, each have a balcony. These plans show
22 each has a balcony. The word "balcony" is right there
23 by the 39 units.

24 Then it has the roof. The word "balcony" is not
25 on that. Why? Because it's the roof. It's the roof

OPENING STATEMENT - MS. GOLDING

1 terrace. That roof terrace is a common element,
2 because the master deed says if it's not a dwelling,
3 it's a common element.

4 The association, every one of the owners, has to
5 make a contribution, an assessment, every year to
6 maintain the common elements. Whose maintained this
7 roof terrace? Certainly not him. All the 40 owners.
8 They pay an assessment. That assessment is for all of
9 the common elements.

10 Just in 2019, the first part of 2019, the board,
11 these four gentlemen, had to put a new roof on. A new
12 roof that this man says is his, but the association
13 paid almost \$150,000 for that roof. That means all the
14 40 members paid part of that roof.

15 When they did the roof -- it was Thompson Roofing
16 out of North Myrtle Beach. Thompson Roofing said that
17 this Turtle tile, it can't go. We'll show you pictures
18 of that Turtle tile. Mold underneath, grass coming
19 out, and the roofer said you cannot put it back, it's
20 not good for the roof. He says it's his; the roof is
21 his. Can you all believe that? There is a gentleman
22 in here that says a roof of this building belongs to
23 him -- a roof.

24 You are going to have drawings that show the roof
25 -- and it's not named "balcony," it is named "roof."

OPENING STATEMENT - MS. GOLDING

1 You will also see that these drawings had planters
2 around the roof. The master deed and these drawings
3 show these planters are common elements. The roof is a
4 common element.

5 Now, the elevator. Now, this is funny. These
6 plans, you'll see it, has elevator lobby on the tenth
7 floor. The master deed says the elevator lobby is a
8 common element. Lo and behold, Mr. Griffin got elected
9 to the board. He sat on the board of this association
10 for over 18 years. He was president of this
11 association for over 14 years. When he was the head
12 honcho, he took this elevator lobby, converted it to
13 his use of his penthouse and made it part of his
14 penthouse; even though it is a common element. He
15 didn't get anybody's permission. Didn't even tell
16 anyone about it.

17 Then, he took the elevator -- and the elevator
18 goes to the tenth floor -- and he locked it so you
19 couldn't go use that to go on the tenth floor. You
20 would have to use a button inside. He did that. Then,
21 while he was president, there is two stairwells that go
22 to the rooftop. He kept changing the locks. You'll
23 see the minutes. One time the board -- and these
24 gentlemen weren't on the board at that time -- said
25 we'll have to put cement into the locks so he won't

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 change it.

2 You know, you are going to hear a lot today, but
3 what you are not going to hear is that Mr. Griffin has
4 the sole right to use the rooftop. No one, not in a
5 master deed, not in the plans, not in state law does he
6 have that right. I'm confident your verdict will be in
7 accordance with that. Thank you.

8 THE COURT: Call your first witness.

9 MR. GRANTLAND: We call Thomas Griffin.

10 THE WITNESS: Marshall Griffin.

11 (MARSHALL GRIFFIN, having been duly sworn,
12 testified as follows:)

13 **DIRECT EXAMINATION**

14 **BY MR. GRANTLAND:**

15 **Q** One quick question: Do you think the roof
16 belongs to you?

17 **A** No, I do not.

18 **Q** Why is that?

19 **A** I don't believe I own the concrete roof or the
20 roof membrane.

21 **Q** Have you ever said you own the concrete roof or
22 roof membrane?

23 **A** No, I haven't.

24 **Q** So let's start at the beginning and introduce
25 yourself to the jury. Tell the jury where you are

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 from, where you were born and raised.

2 **A** Marshall Griffin, born and raised over in
3 Florence, South Carolina.

4 **Q** How old are you?

5 **A** 67 years old.

6 **Q** What do you do for a living?

7 **A** Right now I'm currently retired, but I use this
8 rooftop penthouse as rental income, so I manage the
9 rental of the rooftop penthouse.

10 **Q** What did you do before you retired?

11 **A** I've been in the steel business pretty much all
12 of my life, and got into galvanized steel.

13 **Q** Are you married, Marshall?

14 **A** Yes, I'm married.

15 **Q** Tell the jury about your wife, Caroline.

16 **A** She is from Atlanta, Georgia. She works for the
17 State of South Carolina, South Carolina Department of
18 Commerce.

19 **Q** How long have you been married?

20 **A** About 28 years.

21 **Q** And you all have a daughter?

22 **A** Yes; one daughter named Perrin.

23 **Q** Where is she now?

24 **A** She's in her fourth year at the Medical
25 University of South Carolina.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 Q Who was Robert Griffin?

2 A Robert Griffin was my uncle.

3 Q Tell the jury about your uncle.

4 A Well, he inherited a beach house from my
5 grandparents where Shoreham Towers One was constructed.
6 He bought two oceanfront lots, one on each side of his
7 original oceanfront lot. So he had the sand, and he
8 went in with some developers and they built Shoreham
9 Towers.

10 Q I'll start by showing you exhibits. I'll show
11 you Exhibits 1 A and B.

12 MR. GRANTLAND: Any objections to 1A and B?

13 MS. GOLDING: Let me pull those, please.

14 (A brief pause in the proceedings.)

15 MS. GOLDING: No objection, Your Honor.

16 (Plaintiff's Exhibits 1A and 1B admitted.)

17 Q (MR. GRANTLAND) What do these show?

18 A 1A shows the Shoreham Towers, a view from the
19 Ocean Boulevard side. Shows all of the 40 dwellings
20 that make up Shoreham Towers on the boulevard side of
21 the building with parking and conference room and so
22 forth.

23 Q And we have a lot of pictures, so let's move
24 quickly. What does 1B show?

25 A 1B shows a view of the building from the ocean

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1 side, shows all the glass walls on the very top with
2 the air conditioning units on the center roof of the
3 rooftop penthouse, and all of the glass walls. And
4 then it shows the rooftop penthouse -- the center
5 railing with the center portion of the balcony terrace
6 area, just like everyone else below has a balcony and
7 railing.

8 MS. GOLDING: Your Honor, I'm going to make an
9 objection. He's varying the terms of the master deed.
10 The master deed does not identify the roof as a
11 balcony.

12 THE COURT: I'll let you cross-examine him.

13 MS. GOLDING: Thank you, Your Honor.

14 Q (MR. GRANTLAND) So what does your terrace have
15 that every balcony has?

16 A A railing. I have a railing on the front and a
17 railing on the Ocean Boulevard side.

18 Q Okay. And a dwelling in between?

19 A And a dwelling adjacent.

20 Q Let me show you Exhibits 2A.

21 MR. GRANTLAND: We'll move 1A and B into
22 evidence.

23 THE COURT: 1A and B are in evidence.

24 Q (MR. GRANTLAND) Now, I'm showing you Plaintiff's
25 Exhibits 2A through 2G.

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1 MS. GOLDING: No objection.

2 THE COURT: Plaintiff's 2A through 2G are in
3 evidence without objection.

4 (State's Exhibits 2A-2G admitted.)

5 Q (MR. GRANTLAND) What does 2A show?

6 A It shows the main living area of the rooftop
7 penthouse overlooking the adjacent terrace, and my
8 outdoor furniture and the plants and the ocean.

9 Q 2B?

10 A 2B shows the master bedroom view from inside
11 overlooking the adjacent terrace and planters and then
12 the ocean.

13 Q How do you get out on the terrace from the master
14 bedroom?

15 A There is two sliding glass doors per bedroom and
16 the rooftop penthouse. Every bedroom has two sliding
17 glass doors adjacent to the outside space.

18 Q And does it open right out onto the terrace?

19 A That's correct.

20 Q And what is 2C?

21 A 2C is a view from inside the rooftop penthouse
22 looking through the glass walls onto the adjacent
23 outside space and overlooking the planters, and then
24 the ocean.

25 Q And 2D?

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1 **A** That is the north oceanfront bedroom, a view from
2 inside looking at the same, through the same window
3 walls, to the adjacent outside space, the planters and
4 then the ocean.

5 **Q** 2C?

6 **A** The north Ocean Boulevard bedroom, which is a
7 view looking through the window walls to the adjacent
8 outside space and the planters, and then the building
9 next door.

10 **Q** And 2F?

11 **A** 2F is what I call the children's bedroom, a view
12 looking through the window wall. It has two sliding
13 glass doors that open out onto the outdoor space or
14 terrace overlooking the planters.

15 2G is looking from the dining room area. To the
16 right of that is the kitchen, but that is a view from
17 the dining room looking towards the ocean through the
18 glass walls. Two sliding glass doors in that living
19 area, which is adjacent to the outside space where my
20 outdoor furniture is, and you'll also see the top rail
21 of the adjacent railing.

22 **Q** Then let's go to 3. We have 3A through I.

23 MR. GRANTLAND: Do you have any objection?

24 MS. GOLDING: No, I don't.

25 MR. GRANTLAND: So I move 3A through I be

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1 admitted, and 2A through G.

2 THE COURT: 2A through 2G admitted without
3 objection, and 3A through 3I.

4 (Plaintiff's Exhibits 2A-2G and 3A-3I
5 admitted.)

6 Q (MR. GRANTLAND) Let's go through 3. What do
7 they show?

8 A 3A is an outdoor view of the outdoor space, my
9 outdoor furniture, the rooftop penthouse window walls,
10 the plants, pretty much on the oceanfront side of the
11 rooftop penthouse.

12 Q And 3B?

13 A 3B is showing on the oceanfront side of the
14 rooftop penthouse window walls, showing the adjacent
15 outdoor space, planters, and my outdoor furniture
16 looking south.

17 Q And 3C?

18 A Is down on the south end of the rooftop
19 penthouse, window walls between the master bedroom on
20 the oceanfront, and the children's bedroom that is on
21 Ocean Boulevard. They have two sliding glass doors per
22 bedroom that are adjacent to the outdoor space next to
23 the planters.

24 Q And those planters have what kind of plants in
25 them?

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1 **A** These are arborvitae evergreen trees. They
2 protect -- kind of like a privacy, because the air
3 conditioning units are on the roof beside them, and
4 they cut down on the noise that the air conditioning
5 units of my neighbors make.

6 3D is looking from the same view, but from the
7 Boulevard towards the ocean. It shows the plants and
8 the window walls, outside space.

9 **Q** And then 3E?

10 **A** 3E is a view from the top roof looking down
11 towards my neighbors' outside space and their railings.

12 **Q** Who lives in this space below you?

13 **A** The unit closest to the center underneath my most
14 extenuating outside space where my railing is, is
15 Mr. Aquino. Mr. Tackett used to own the corner
16 penthouse, No. 1, that you see his furniture.

17 **Q** So where my clicker is pointed, who owns that
18 area?

19 **A** Well, Mr. Aquino.

20 **Q** And in 2018/2019 --

21 **A** Mr. Tackett owned that penthouse.

22 **Q** This is another view?

23 **A** 3F is another view of all of the dwellings,
24 outdoor spaces.

25 **Q** And 3G is another view of the penthouse?

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1 **A** That is a view from the building next door
2 looking at the top floor and the floor below me, which
3 is the ninth floor. It shows every dwelling's outdoor
4 space, the rooftop penthouse, and the penthouses below
5 me, their space and their railings.

6 **Q** And 3H?

7 **A** This is on the tenth floor, rooftop penthouse
8 floor. It's the stairwell, the south stairwell door on
9 the inside of the door. It shows -- it's a sign put up
10 saying: "In case of a fire, exit through the ground
11 floor."

12 **Q** Did you install this key lock?

13 **A** No. The homeowners association and -- installed
14 that combination key lock probably almost ten years
15 ago.

16 **Q** 3I shows another view of the door?

17 **A** Yeah, another version of the door where it has a
18 sign for roof access for maintenance purposes, you
19 contact the management company. At that time, it was
20 White Realty. I added those signs that says: "Danger.
21 Keep out. Authorized personnel only." I added those
22 signs because at one time somebody --

23 MS. GOLDING: I'll make an objection. He'll go
24 into hearsay.

25 MR. GRANTLAND: I'm not asking him to go into

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1 hearsay.

2 THE COURT: Don't say what someone else said.

3 Q (MR. GRANTLAND) Without saying what someone else
4 said, why did you put the sign up?

5 A Somebody called me and reported --

6 MS. GOLDING: Your Honor --

7 THE COURT: Sustained.

8 A I just put those signs up for safety and keep
9 people that weren't authorized to not try to go out on
10 the outside space on the other side of the door.

11 Q (MR. GRANTLAND) And then Exhibit 4?

12 MS. GOLDING: I have an objection. I don't know
13 if this is a matter you want to take up with the Court,
14 Your Honor?

15 THE COURT: Can you do it up here?

16 MS. GOLDING: Yes, sir.

17 (Whereupon, a bench conference was had and the
18 following was had out of the hearing of the jury:)

19 MS. GOLDING: We have the plans with the
20 building, and that is not consistent with the plans.
21 He can't testify to it.

22 MR. GRANTLAND: He's going to say it was around
23 since the '80s.

24 MS. GOLDING: He can't lay the foundation.

25 MR. GRANTLAND: She can certainly cross-examine

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1 him on that, Your Honor.

2 MS. GOLDING: I mean, if I don't know who did
3 it --

4 THE COURT: I don't either because we haven't
5 gotten that far yet.

6 MS. GOLDING: But he didn't do it, so he's not
7 competent to testify.

8 THE COURT: I don't know who did or didn't.

9 MR. GRANTLAND: But it's a layout of -- it's a
10 simple layout of his penthouse, Your Honor.

11 THE COURT: Where did he get it from?

12 MR. GRANTLAND: Yeah, I mean. I was going into
13 how long -- how old is this, and basically how does it
14 identify your outdoor space.

15 MS. GOLDING: That is not consistent with the
16 plans. That is not consistent with the plans.

17 THE COURT: Let him present his case as he sees
18 fit.

19 MS. GOLDING: They are trying to change the terms
20 of the master deed, and the plans are a part of the
21 master deed.

22 MR. GRANTLAND: Our point is that it's ambiguous
23 because the word "terrace" isn't in the master deed.

24 THE COURT: I understand what you are saying, and
25 you can present your case.

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1 MS. GOLDING: I mean, he can't legally go outside
2 of the plans; they are part of the master deed.

3 THE COURT: I understand. But, I mean, it's his
4 case. He can use it however he thinks it is relevant.

5 MS. GOLDING: But it's not his sketch.

6 THE COURT: I don't know whose sketch it is. Do
7 you know where he got it?

8 MR. GRANTLAND: It is the original documents that
9 he got with the penthouse, Your Honor. It is part of
10 the original documents he had since the '80s.

11 THE COURT: From his uncle?

12 MR. GRANTLAND: I believe so, but I wasn't even
13 going to ask where he got it, just if it shows the
14 layout and where is the terrace; that is all.

15 THE COURT: Demonstrative?

16 MR. GRANTLAND: Yes, sir. And I was planning to
17 admit it into evidence for the layout.

18 THE COURT: So just to supplement his testimony?

19 MR. GRANTLAND: Right.

20 MS. GOLDING: But it is inconsistent with the
21 master deed.

22 THE COURT: That is why we have this case. Thank
23 you.

24 (The following is had in open court:)

25 Q (MR. GRANTLAND) What does Exhibit 4 show?

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1 **A** It's one of the original building sketches done
2 from an appraisal --

3 MS. GOLDING: Your Honor, I want to make an
4 objection. This witness has not laid the foundation
5 that he was around when the building was built. He
6 can't testify to that.

7 THE COURT: Just back up and lay a foundation.

8 **Q** (MR. GRANTLAND) You inherited the condo in what
9 year?

10 **A** 1994 and into '95.

11 **Q** When you inherited the condo, did you obtain any
12 of the original plans and building documents?

13 **A** Yes, I did. This came from one of the original
14 appraisals that my uncle had done.

15 **Q** And as a manager of the Shoreham Towers
16 penthouse, have you maintained that document in the
17 course and scope of business?

18 **A** Yes. This is part of my file of the original
19 starting documents when I got it from my uncle and
20 bought the property.

21 **Q** Have you changed the document in any way?

22 **A** No, I haven't.

23 **Q** You maintained it since 1995?

24 **A** That's correct.

25 MR. GRANTLAND: Your Honor, at a minimum, it is a

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1 business record.

2 THE COURT: All right. Same objection?

3 MS. GOLDING: Yes, sir. Same objection.

4 THE COURT: I'll overrule it and allow it into
5 evidence.

6 (Plaintiff's Exhibit 4 admitted.)

7 Q (MR. GRANTLAND) They can't see it from the
8 screen anyway, but what is the sketch? What is
9 important to you? What does it show?

10 A It, basically, shows the floor plan of the
11 rooftop penthouse where you come off the elevator into
12 the foyer, where you come into the hallway, the
13 bedroom, the bedroom layout, dining room, living area,
14 kitchen, baths, the wrap-around outside space, called
15 the terrace, and with a little -- in the center where
16 the railing juts out, like a balcony, overlooking the
17 ocean.

18 Q What is the room -- the elevator goes to the
19 tenth floor?

20 A Yeah. It is labeled as a foyer.

21 Q Let me show you --

22 A Excuse me, it shows the laundry room, utility
23 room where the HVAC is.

24 Q I'll move on and show you Plaintiff's Exhibit 5
25 for identification.

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1 MR. GRANTLAND: That is the master deed; any
2 objections?

3 MS. GOLDING: No objection.

4 THE COURT: 5 is in evidence without objection.

5 (Plaintiff's Exhibit 5 admitted.)

6 Q (MR. GRANTLAND) Tell me about the master deed.
7 Who signed the master deed?

8 A My Uncle Bobby signed it as one of the
9 developers.

10 Q What language in the master deed do you believe
11 is important in this lawsuit?

12 A The language where it says that every dwelling
13 has a balcony adjacent, and the railing thereto is not
14 common. Outside space, everyone has outside space.

15 Q I don't know if the jury can see that from up
16 there, but does the master deed -- is the rooftop
17 penthouse a dwelling?

18 A I believe so, yes.

19 Q And what does the deed say about the area
20 adjacent to the dwelling?

21 A What page is that?

22 Q Looking at 334 and 335.

23 A Excuse me. Thank you.

24 (A brief pause in the proceedings.)

25 A It says: "As to each dwelling, all balconies

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1 adjacent to each dwelling, including the railing
2 attached thereto, are a part of that dwelling and not
3 common areas."

4 Q (MR. GRANTLAND) You have a dwelling?

5 A I have a dwelling.

6 Q You have a railing?

7 A I have two railings.

8 Q Do you consider the area between your dwelling
9 and railing private or common?

10 A Private outside space.

11 Q What is the deed -- is the word "terrace"
12 specifically mentioned in the master deed?

13 A No, it's not. I wish it would have been, but
14 it's not.

15 Q What does the master deed say about assessments?

16 A It says -- Exhibit A, Page 336, it says: "The
17 schedule of percentage of undivided interest in common
18 elements" -- I don't understand that word.

19 Q In lay terms, what are assessments?

20 A It's how we all contribute to the upkeep of the
21 common property of the building and pool.

22 Q Do you pay your assessment based on the formula
23 in the deed?

24 A Yes, I do. This was the formula that was created
25 and set forth when the developers developed the

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1 property, and I've been paying that according to this
2 formula ever since I inherited the property.

3 Q How does your percentage compare with -- as a
4 rooftop penthouse, how does it compare with the others?

5 A Of the smallest condo of the total of 40,
6 including mine, I almost pay close to twice as much.

7 Q How about the penthouses below you?

8 A I pay considerable more than they do.

9 Q And that is based on the size of your --

10 A I don't know what they use to make up the
11 formula. The management company uses this formula to
12 determine how much assessments we pay based on the
13 current budget they vote on on a yearly basis.

14 Q Let me ask you to move on from the master deed.
15 Did your uncle have any children or other family?

16 A No. He never married, so no children.

17 Q And he lived there from when to when?

18 A He moved in there in 1983 when the project was
19 completed, and then he had to leave probably five or
20 six years later. He was a prisoner of war in World War
21 II and had frostbite, so he lost one of his legs and
22 ended up having to spend the rest of his life at a
23 Veterans Administration nursing home in Columbia.

24 Q And, Marshall, I'm sorry to hear that.

25 While your uncle lived at the penthouse, how was

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1 the outdoor terrace, this area in Exhibit 3, how was
2 that treated?

3 **A** Well, when he lived there, he just had some
4 chairs out front behind the railing and some
5 indoor/outdoor carpet.

6 **Q** Did you visit him?

7 **A** Yes, I did.

8 **Q** How often?

9 **A** Oh, probably go see him once every six or eight
10 weeks.

11 **Q** And did the other guests or owners use the
12 penthouse terrace balcony like it was a common element?

13 **A** Not that I'm aware and not while I was there.

14 **Q** How much privacy did your uncle have?

15 **A** I think he cherished the privacy, especially
16 after being a prisoner of war.

17 **Q** When your uncle was there, how did the -- we
18 talked about the elevator. How did the elevator work
19 while your uncle owned it?

20 **A** I would call from the phone downstairs, and he
21 would send the elevator down to pick me up.

22 **Q** And so was the tenth floor elevator always
23 restricted?

24 **A** Yes, as long as I've been going there.

25 **Q** How did it work?

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1 **A** Well, he could send the elevator down. He had a
2 button at his bar, he could send the elevator down to
3 pick you up; or if he was with you, he used the key to
4 turn the key, and it would take you up to the tenth
5 floor.

6 **Q** That is the only way you could get to the tenth
7 floor?

8 **A** That's correct.

9 **Q** So after your uncle passed away, how did you and
10 your wife become owners of the penthouse?

11 **A** He left it to a trust at the bank between
12 myself -- he left me two-thirds, and he left my nephew
13 one-third. My nephew didn't want anything to do with
14 it at that time, so I bought his share out from him.

15 **Q** And now who owns the penthouse?

16 **A** My wife and I own it now.

17 **Q** And who manages the condo and the rental?

18 **A** I pretty much manage it 100 percent.

19 **Q** Once you became the owner, what improvements did
20 you make to the rooftop balcony and terrace?

21 **A** Well, we took that old indoor/outdoor carpet out
22 and we installed that material tile product.

23 **Q** Is this the Turtle tile?

24 **A** Yes. Because, at that time, they were putting a
25 new roof membrane over the center roof over my living

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1 room, and they put a new membrane on the outside space
2 part. I found out about Turtle tile, and I suggested
3 to the board that that is the kind of covering I would
4 like to use, and they --

5 Q Did the board have any objections to you putting
6 it down?

7 A No, they didn't.

8 Q How much did you spend on Turtle tile?

9 A Back then, it was about \$20,000 plus
10 installation.

11 Q And at night, did you do anything with the
12 lighting?

13 A They had lights in the planters, in the walls of
14 the lower planter wall just for, I guess, safety, which
15 goes to my breaker box.

16 Q Okay. 6A.

17 MS. GOLDING: So 6 is three photos?

18 MR. GRANTLAND: Yes.

19 MS. GOLDING: No problem. No objection.

20 THE COURT: 6 in evidence without objection.

21 (Plaintiff's Exhibit 6 admitted.)

22 Q What does Exhibit 6 show?

23 A It shows a photograph taken at night underneath
24 the rooftop terrace, which is highlighted with blue
25 outdoor lighting, shows the railing out front and the

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1 furniture.

2 Q Dark picture on a dark screen, so you can't see
3 it well, but who pays for the electricity for the
4 lights on the terrace at night?

5 A The lights on the terrace and electrical outlets
6 for cleaning are paid by me.

7 Q Since when?

8 A Since I've taken ownership in 1995.

9 Q What kind of maintenance has to be done on those
10 receptacles?

11 A Well --

12 Q Do you pay someone to get that maintained?

13 A Yeah. I privately have a maintenance person
14 that -- I pay privately, not through the association --
15 to take care of electrical, lightbulbs, outside --
16 cleans the outside, trims the bushes. I have another
17 person that works on the irrigation.

18 Q So the plants in the planters, what do you do
19 about those?

20 A I pay to have them planted originally, and then I
21 paid to have them maintained through trimming and
22 fertilizing, and I pay for the irrigation system,
23 maintenance of the system.

24 Q What other maintenance do you do on the balcony
25 terrace area?

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1 **A** Periodically, I clean the roof drains, make sure
2 that they are not stopped up.

3 **Q** Do you hire someone to do cleaning of the terrace
4 on a weekly basis?

5 **A** Yes. I have my maintenance person, Richard
6 Jones, do that.

7 **Q** How long has Richard been maintaining or doing
8 maintenance work on the terrace?

9 **A** Probably 15 plus years.

10 **Q** Did you have someone before him?

11 **A** I had someone. He retired, so he moved on.

12 **Q** It was mentioned in opening you were on the
13 board, that you were a big shot?

14 **A** I don't know about that, but....

15 **Q** When were you on the board?

16 **A** Probably close to 15, 16 years. Prior 2015,
17 around 1998, '99.

18 **Q** At any time while you were on the board, did any
19 board members complain how you were using your condo or
20 the terrace balcony area?

21 **A** No, they didn't.

22 **Q** You served with each of these men?

23 **A** I sure did.

24 **Q** How many years did you serve with them?

25 **A** Probably, on and off, about a total of about ten

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1 years.

2 Q Were you all friends?

3 A Yes.

4 Q At any time when you were on the board, was it
5 ever discussed you were taking advantage or violating
6 the rules --

7 A No.

8 Q -- about your use of the penthouse balcony and
9 terrace?

10 A Not until 2019 or 2018.

11 Q As a board member, have you reviewed minutes from
12 past boards?

13 A Yes. Uh-huh.

14 Q I'll show you Exhibit 7 that has been --
15 MR. GRANTLAND: This is 7.

16 (A brief pause in the proceedings.)

17 Q (MR. GRANTLAND) I'm handing you Exhibit 7, which
18 is board minutes of July 31, 1992; do you recognize
19 this?

20 A It looks familiar, yes.

21 Q Is the penthouse terrace/balcony mentioned in
22 those minutes from 1992?

23 A Yes; it is mentioned midway down.

24 Q What do the minutes specifically say, not reading
25 the redacted part obviously?

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1 MS. GOLDING: Your Honor, at this point in time
2 I'm going to object based upon hearsay and hearsay,
3 can't give an opinion, all of that kind of stuff we
4 talked about in the motion in limine, the entire
5 paragraph.

6 THE COURT: And we redacted?

7 MS. GOLDING: Yes, sir. But in addition, I
8 believe that more should have been redacted by the
9 Court.

10 THE COURT: I'll overrule that.

11 MS. GOLDING: Thank you, Your Honor.

12 Q (MR. GRANTLAND) If you could --

13 A The short part of that that is allowable, Ken,
14 that worked for the management company at the time,
15 also reported that Jim Pike, the attorney responsible
16 for the master deed, stated that the area around the
17 top penthouse would be handled the same as other
18 balconies.

19 MR. GRANTLAND: I move to admit this into
20 evidence.

21 THE COURT: Any objections as No. 7?

22 MS. GOLDING: Continuing objection.

23 THE COURT: Same ones?

24 MS. GOLDING: Yes, sir.

25 THE COURT: I'm going to overrule it. No. 7 is

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1 in evidence.

2 (Plaintiff's Exhibit 7 admitted.)

3 Q (MR. GRANTLAND) When you became an owner in
4 1995, did you treat this terrace the same as others
5 treat balconies?

6 MS. GOLDING: Your Honor, I'll make an objection.
7 He didn't have balconies, like he said, the 39 of them,
8 and he didn't own any of them.

9 THE COURT: Rephrase the question.

10 Q (MR. GRANTLAND) When you became an owner in
11 1995, how did you treat -- how did you treat your
12 penthouse terrace?

13 A As part of my outside private space.

14 Q Did you treat it the same way you would treat a
15 balcony?

16 MS. GOLDING: Your Honor, I'm going to make an
17 objection. He never had a balcony. I mean, that would
18 be improper. He can't testify as to how it is treated,
19 because he never had one.

20 THE COURT: What was your question?

21 MR. GRANTLAND: He just said he treated it as his
22 private outdoor space, and I said did you treat it like
23 a balcony, I mean, which is what we're getting at.

24 THE COURT: Would you treat it like a balcony? I
25 think that is fine.

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1 MS. GOLDING: Okay.

2 **A** Yeah, I treated it as outside space like a
3 balcony.

4 **Q** (MR. GRANTLAND) Moving on. A lot of this -- the
5 jury may not be able to see everything on the board, so
6 we'll move on.

7 This is in -- let's move on to some more history.
8 Let's talk about board minutes. I'll show you first
9 Exhibit 8, board minutes from January 1997.

10 MR. GRANTLAND: Any objection?

11 MS. GOLDING: Okay. No objection, Your Honor.

12 THE COURT: All right.

13 **Q** (MR. GRANTLAND) So in 1997, you had a dispute
14 about the planters.

15 (Plaintiff's Exhibit 8 admitted.)

16 **A** Yes, that's correct.

17 **Q** Tell the jury about the dispute of the planters.

18 **A** The current board decided that they wanted to put
19 a concrete cap over the planters, do away with the
20 plants and pour a concrete top on them.

21 **Q** Right. And what happened?

22 **A** I objected, because that is not the way the
23 building was originally designed. We filed a lawsuit
24 to stop them from doing that.

25 **Q** And did the lawsuit come to court? Resolved?

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1 What happened?

2 **A** It got resolved and settled prior to going to
3 court.

4 **Q** And what happened? How did the lawsuit resolve?

5 **A** There was no concrete top or cap put over the
6 planters. They remained the way they had been since
7 the building was built.

8 **Q** And so after the lawsuit was resolved and no cap
9 on the planters, what did you do in conjunction with
10 the board to maintain the planters?

11 **A** I would always agree to be responsible for the
12 dirt in the planters, plants in the planters, the
13 irrigation system, and not to -- or my employees on my
14 landscaping always took responsibility not to damage or
15 destroy the membrane or liner inside the planters that
16 access part of the roof system.

17 **Q** In 1997, do those minutes address an agreement
18 about how you would maintain the planters?

19 **A** Yes. They started some discussion about what I
20 just talked about, that I would be sharing some of that
21 responsibility for the cost of maintaining the planters
22 from an esthetic plant standpoint, and the HOA would
23 maintain them from a roofing standpoint.

24 **Q** What does the master deed say about the planters?

25 **A** They just say, in general terms, that they are

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1 common.

2 Q The master deed calls the planters common, but
3 what did you do? How much money did you spend?

4 A I spent money to take care of the aesthetic part
5 of the planters with maintaining the plants,
6 maintaining the irrigation system, paying for the
7 electricity to the irrigation system, to the lights in
8 the planters.

9 Q Do you have any idea how much money you spent on
10 taking care of the planters since 1997?

11 A Probably close to \$50,000 or more.

12 Q I'll show you Exhibit 9.

13 MS. GOLDING: No objection, Your Honor.

14 (Plaintiff's Exhibit 9 admitted.)

15 MR. GRANTLAND: I'll move this without objection,
16 Your Honor.

17 Q (MR. GRANTLAND) Marshall, what does Exhibit 9
18 show, or what -- first of all, what year was Exhibit 9?

19 A This was dated February 23 of 2001.

20 Q And are the -- what did you agree to do -- see if
21 we can pull it up. What did you agree to do in 2001?

22 A There was a leak in the planters, and I stated
23 that I would be responsible for having the dirt and the
24 vegetation removed from the planters.

25 Q And did you?

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **A** I did. All I did was ask the management company
2 to contact -- at that time, I had a rental agent. I
3 contacted the rental agent prior to any workers
4 entering the penthouse balcony area, is what it was
5 stated then.

6 **Q** So 2001, which is how many years ago?

7 **A** About 22 years ago.

8 **Q** What did you agree to do with the planters?

9 **A** To pay for removing the dirt and vegetation so
10 they could try to remedy a leak in the planter.

11 **Q** And what is the -- do the minutes also identify
12 your private space outside the penthouse, last
13 sentence?

14 **A** Just refers to me asking the management
15 company -- reminding them that they needed to contact
16 my rental agent prior to entering the penthouse balcony
17 area.

18 **Q** So the penthouse balcony area, this is what our
19 lawsuit is about?

20 **A** That's correct.

21 **Q** And these are minutes from what year?

22 **A** 2001.

23 MS. GOLDING: Objection; he's been leading the
24 witness, and he just needs to --

25 THE COURT: Sustained.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 MR. GRANTLAND: I'll move on, Your Honor.

2 Q (MR. GRANTLAND) If we could, go to -- make sure
3 there is no question. What was the last words -- last
4 three words on those minutes from 2001?

5 A "Penthouse balcony area."

6 Q Okay. Now, October 2001, I'll show you Exhibit
7 10.

8 MS. GOLDING: No objection, Your Honor.

9 MR. GRANTLAND: I'll move 10 into evidence.

10 THE COURT: Without objection, Plaintiff's 10.

11 (Plaintiff's Exhibit 10 admitted.)

12 Q (MR. GRANTLAND) Exhibit 10 shows -- first, what
13 was going on with the roof in 2001?

14 A Well, that was the prior minutes letter we just
15 talked about. There was work going on in the planters.

16 Q What did you agree to do in October of 2001 with
17 respect to the roof?

18 A I agreed to leave an open space for HVAC workers
19 to have easier access through the planters. I didn't
20 plant plants in two separate areas to give about 4 feet
21 so that the HVAC system could be replaced. Also, I let
22 them put steps on the other side of the planter to help
23 the HVAC workers have a safe access to the roof area
24 where the -- where my neighbors' air conditioning units
25 are located.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** What is the paragraph that has your name?

2 **A** "Mr. Griffin will work on having a metal platform
3 constructed that will be used to cross over to the roof
4 system."

5 **Q** Did you do that?

6 **A** Yes, we did, but we used wood instead of metal,
7 but same platform.

8 **Q** Did you pay for it?

9 **A** I really don't know who paid for that. I
10 certainly did not object to it.

11 **Q** And then in 2011 -- I'll show you Exhibit 11.

12 MS. GOLDING: No objection.

13 MR. GRANTLAND: I'll move Exhibit 11 into
14 evidence.

15 THE COURT: Without objection, Plaintiff's 11.

16 (Plaintiff's Exhibit 11 admitted.)

17 **A** I do remember paying for the landscaping, taking
18 out some of the plants to provide that access area.

19 **Q** (MR. GRANTLAND) In the October 2016 minutes,
20 Exhibit 11, what is discussed about the roof over the
21 rooftop penthouse and deck of the rooftop penthouse?

22 **A** It says that the roof over the rooftop penthouse
23 and deck of the rooftop penthouse, in discussing these
24 two areas of the roof, the board discussed to replace
25 the roof over the rooftop penthouse and look at the

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 roof area that also serves as the deck of the rooftop
2 penthouse.

3 Q So what was this terrace balcony area that we're
4 fighting about, what was it called in 2016?

5 MS. GOLDING: Your Honor, I'll make an objection.
6 The witness did not say any word about "balcony." The
7 word "balcony" is not in this, so it is improper it
8 make that implication.

9 THE COURT: Rephrase your question.

10 Q (MR. GRANTLAND) How was the area outside of your
11 penthouse called in 2016?

12 A Deck.

13 Q Were there any objections or discussions how you
14 used your deck or the terrace area in 2016?

15 A No.

16 Q So up until -- this is 2016. So up until 2018,
17 how was your relationship with the board?

18 A Very cordial, good neighbors.

19 Q What happened that led you to file the lawsuit in
20 2019?

21 A Well, I guess it was the time that Mr. Aquino
22 wanted to turn my irrigation off. He said water was
23 spraying onto his balcony.

24 Q What happened?

25 A I told him not to go -- not to turn the water off

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 to my plants because they would die. I would have my
2 maintenance person correct the problem, which he
3 actually helped me solve the problem after that. My
4 irrigation person had set the sprayer heads, that
5 happened to be behind his balcony and other balconies,
6 he had adjusted those and set those heads when the main
7 water booster pump was not on. When the main booster
8 pump came on, they were adjusted to a pressure without
9 that extra pressure.

10 So I asked Mr. Aquino -- we figured out that that
11 is what was going on. So when my irrigation
12 maintenance person came back to readjust the heads, Mr.
13 Aquino helped him to adjust them when the main booster
14 pumps were working. So we solved the mystery of why it
15 was spraying water onto his balcony at certain times,
16 not all the time. So he actually helped figure out
17 that.

18 **Q** Were you aware of Mr. Aquino's e-mail to the
19 board in September of 2018?

20 **A** Yes, because I was on the board at that time. I
21 was just a regular board member.

22 THE COURT: Wait one second.

23 JUROR: Are we anywhere near a recess?

24 THE COURT: Sure. Let's take a 15-minute break,
25 and we'll come back and resume. Thank you.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 (The jury exits at 3:25 p.m., and the
2 following is heard out of the presence of the jury.)

3 THE COURT: Mr. Griffin, you can take a break,
4 but you cannot talk to your lawyers or anyone. You can
5 use the restroom.

6 (A recess was taken.)

7 THE COURT: Apparently, we have one juror in the
8 bathroom. He's sick. It doesn't sound good at all.
9 Do you have any objection excusing that juror and
10 replacing him with an alternate?

11 MR. GRANTLAND: No.

12 THE COURT: I didn't think anyone would object.

13 (A recess was taken.)

14 THE COURT: We have a note from the jury that the
15 attorney is blocking the view of some jurors to the
16 screen, and lights are too bright to see the screen.

17 MR. GRANTLAND: Okay.

18 THE COURT: Bring in the jury.

19 (The jury enters at 3:53 p.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: All right. You can continue.

22 MR. GRANTLAND: Thank you, Your Honor. I believe
23 I asked Mr. Griffin about receiving an e-mail from
24 Mr. Aquino September 30, 2018, Exhibit 12. I'll hand
25 that to you.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 MS. GOLDING: No objection.

2 THE COURT: 12 is in evidence without objection.

3 (Plaintiff's Exhibit 12 admitted.)

4 Q Prior to this e-mail, what, if any, complaints
5 were made about your use of the terrace balcony,
6 Marshall?

7 A Nothing in particular, other than I asked my
8 neighbors on the floor below me if I ever had renters
9 that were --

10 MS. GOLDING: Your Honor, I'll make an objection;
11 it is hearsay with any communications with persons not
12 a party to this lawsuit.

13 MR. GRANTLAND: He's talking about what he said.

14 THE COURT: That's right. Overruled.

15 A Only that I asked my neighbors to let me know if
16 my renters made any excessive noise, and I would call
17 the renters and take care of it; other than that, I had
18 no issues.

19 Q So before 2018, other than the sprinkler, did you
20 have any disputes with Mr. Aquino that would make him
21 want to single you out about violating a deed?

22 A One time when I was on the board during the
23 summer, it was the July 4th weekend, he had gone out
24 of town, as he normally does in the summer, but I
25 believe his wife at the time had become sick, and he

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 had to come back to Shoreham Towers in his motor home.

2 He was parking the motor home in our overflow
3 parking lot, and that's right in the middle of the
4 summer season. That motor home takes up five parking
5 spaces, and it is usually not in there in the summer,
6 but when he came back, we had some renters complaining
7 about not having enough parking spaces.

8 Q Did you address that with him?

9 A The board did. The board asked him if he would
10 mind having another place to park the motor home during
11 June, July, and August.

12 Q Other than that issue with the motor home, did
13 you have any issues before 2018?

14 A No.

15 Q He made six points in his e-mail that I want to
16 go through. First is about the Turtle tile. Tell the
17 jury about that.

18 A He objected to me having the Turtle tile down,
19 after it had been down for probably 20 years. All the
20 sudden, he didn't like the Turtle tile being where it
21 was in my outside space. That was number one.

22 Q And you put the Turtle tile down when?

23 A I put the Turtle tile down probably in 1995 and
24 '96. I put it down in several different stages.

25 Q And he also -- what does he tell the board in his

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 e-mail? What does the last sentence of Paragraph One
2 say?

3 **A** "The area under the Turtle tile collects moisture
4 and dirt. Marshall installed this Turtle tile on a
5 common element of the HOA and is in violation of the
6 master deed and bylaws."

7 **Q** Before this e-mail, had anyone ever accused you
8 of violating the master deed or bylaws?

9 **A** No.

10 **Q** No. 2, what is Mr. Aquino saying?

11 **A** He is saying that on the plans, construction
12 plans --

13 **Q** No, what does he say in his e-mail?

14 **A** "There is a common element of the roof of the
15 penthouse floor that Marshall has converted to his
16 private atrium. I think that is what it would be
17 called. That is actually property of the HOA. He has
18 enhanced this area by installing Turtle tiles, a water
19 fountain feature, furniture, and what looks like an
20 arbor or trellis attached to the building structure. I
21 don't know if Marshall had a waiver or authorization to
22 convert this common element for his personal use, but
23 it is in violation of the master deed and bylaws."

24 **Q** I'll show you Exhibit 13.

25 MS. GOLDING: No objection.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 MR. GRANTLAND: I'll show you 13.

2 THE COURT: Without objection, Plaintiff's 13.

3 (Plaintiff's Exhibit 13 admitted.)

4 Q What does 13 show?

5 A This is right outside of my living room and
6 kitchen area. It is where I go to take my trash out to
7 the trash shoot. As you see, there is a sign on the
8 door. That is the trash shoot behind that door. There
9 is a railing on the outside space, my outdoor
10 furniture, and my lighting that is controlled by my
11 breaker box, and I pay for the electricity. It is the
12 outdoor space between my living room and Ocean
13 Boulevard.

14 Q How was this outdoor space used when Uncle Bobby
15 owned the penthouse?

16 A He used to access it to take his trash out.

17 Q And Mr. Aquino said you've converted a common
18 element for personal use in violation of the master
19 deed. What is your response to that allegation?

20 A It's just part of my outdoor space.

21 Q Is there anything in this paragraph to correct?

22 A Only thing that is correct is I installed Turtle
23 tile. I did put a water fountain and some outdoor
24 furniture out there, and I did have an arbor that had
25 some vegetation growing on it, but I removed that

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 because it was too much maintenance.

2 Q How did you get into this -- what is it called on
3 the plans?

4 A It's called a dining court on the plans.

5 Q How do you get to this dining court?

6 A Well, the only way you can get to the dining
7 court is through the sliding glass doors from inside
8 the rooftop penthouse.

9 Q The only way you can get there is through the
10 inside of your unit?

11 A Unless you jump off the center roof, and I
12 wouldn't advise doing that.

13 Q He goes on to say that in 2018 you added personal
14 furniture that created a nuisance to the owners of
15 Penthouse 2 and 3?

16 A Yes.

17 Q And who is owner of Penthouse 2?

18 A Mr. Aquino.

19 Q And the owner of Penthouse 3?

20 A Marshall Sullivan.

21 Q When did you first put furniture out on the
22 rooftop terrace and balcony?

23 A I put my own furniture out there. When I
24 inherited and purchased the unit out of the trust in
25 1995, I started putting my own furniture.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** How long have you been putting furniture out on
2 this rooftop terrace and --

3 **A** Probably since 1995.

4 **Q** And other than Mr. Aquino, have you received any
5 complaints from Mr. Sullivan?

6 **A** I remember one complaint from him.

7 **Q** Don't say what he said.

8 **A** I had one complaint.

9 **Q** How long has he lived below you?

10 **A** 20 plus years.

11 **Q** Okay.

12 **A** Long time.

13 **Q** Did Mr. Aquino ever tell you what your guests did
14 on the balcony terrace area?

15 **A** Yes.

16 **Q** What happened?

17 **A** I contacted my renters and told them to quit
18 doing whatever they were doing. It was a nuisance.

19 **Q** How often did he complain to you?

20 **A** It wasn't that often; probably two, three times a
21 year.

22 **Q** The jury has seen the furniture on the terrace.
23 No. 4, Mr. Aquino complained about you putting signs in
24 the stairwell. When did you put up the sign?

25 **A** I probably put those up close to 10, 12 years

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1 ago.

2 **Q** And did anyone object 10, 12 years ago when you
3 put up a sign?

4 **A** Nope.

5 **Q** No. 5, Mr. Aquino complained about you installing
6 keypad door locks?

7 **A** Yes. On the stairwell doors, originally there
8 was locks that you had to use a key. Back in 1983,
9 that is what they did. Over the years, we had issues
10 with heating and air maintenance people having access
11 to work on homeowners' air conditioning units, possibly
12 an emergency during the summertime, or on a Saturday or
13 Sunday night when some rental agencies might not be
14 open to bring over a key.

15 So the board and all of us put our heads together
16 and came up with this system that has an electronic
17 battery operated keypad system. You can use a regular
18 key, or if you don't have a regular key, like before,
19 you put in a four digit code, and that way service can
20 be provided to the HVAC units 24/7.

21 **Q** Did you change this by yourself?

22 **A** No, I didn't change it, and I didn't pay for it.
23 The management company took the approval from the board
24 and added it, installed it.

25 **Q** And No. 6, what does Mr. Aquino complain about?

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **A** He said that I had a tenth floor elevator button
2 changed to a keylock, which has caused the HOA problem
3 on numerous occasions. The south elevator should flow
4 freely to the elevator lobby on the tenth floor, which
5 is a common element of the HOA. The entry to the
6 rooftop penthouse is via a locked entry door just like
7 the rest of the units of Shoreham Towers. On his For
8 Rent by Owner website, Marshall had many references and
9 promotes "your private elevator access key to the
10 entire tenth top floor."

11 **Q** Okay. Let's look at some pictures first.

12 MR. GRANTLAND: 14 A, B, and C.

13 MS. GOLDING: No objection.

14 THE COURT: 14 A, B, and C in without objection.

15 (Plaintiff's Exhibits 14 A-C admitted.)

16 **Q** What does 14A show?

17 **A** That is a view from the hall of the rooftop
18 penthouse, and the half glass front door going into the
19 foyer to have access to the tenth floor elevator.

20 **Q** Who pays for the electricity in that room?

21 **A** I pay for the lights and the electrical outlets,
22 as you see here with the switches. I pay for that
23 electricity. Above this half glass door is a heating
24 and air vent that heating and air comes out of that,
25 and it comes from my unit.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** And 14B, what does that show?

2 **A** That is a picture of the elevator control panel
3 on the only elevator out of two; the number one
4 elevator that goes to the tenth -- top floor.

5 **Q** How long has it been this way?

6 **A** That's been that way since my uncle developed the
7 building in 1983.

8 **Q** Did you change anything about that?

9 **A** No, I didn't.

10 **Q** So when Mr. Aquino said you changed the elevator
11 lock, is that a true statement?

12 **A** No, that's not true.

13 **Q** What does Mr. Aquino say about how often he's
14 been up to the rooftop terrace balcony in the past? In
15 his e-mail, what does he tell the board? It is the
16 paragraph that says "my wife and I."

17 **A** Oh, he states: "My wife and I have uses (sic)
18 that common element many times in the past. My kids
19 have, and I should think my grandchildren have the
20 right to use that common area. We pay for it."

21 **Q** Marshall, is that true?

22 **A** I don't think that's true.

23 **Q** How often have you invited Mr. Aquino up to sit
24 on the terrace with you and have a drink?

25 **A** Never.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** Have you ever seen his kids or wife up there?

2 **A** No.

3 **Q** I'll show you Exhibit 15.

4 MS. GOLDING: You need to remove all of this,
5 because that is not part of the e-mail; so if you can
6 redact that.

7 MR. GRANTLAND: Can I cut it?

8 MS. GOLDING: If you want to. That should be
9 removed.

10 MR. GRANTLAND: Okay.

11 Do you have a pair of scissors?

12 (A brief pause in the proceedings.

13 Plaintiff's Exhibit 15 admitted.)

14 **Q** Oh, I'm sorry. What does 14C show?

15 **A** 14C shows --

16 MS. GOLDING: I don't have a 14C. You didn't
17 give me a 14C.

18 MR. GRANTLAND: It's the door.

19 MS. GOLDING: Oh, I don't have an objection to
20 that.

21 **Q** What does 14C show?

22 **A** 14C shows the formal front entrance to the
23 rooftop penthouse from the foyer -- from the foyer. It
24 shows the light switches, and it shows the heating and
25 air duct return above the front door where it gets the

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 conditioned air.

2 Q Who pays for all of those utilities?

3 A I do.

4 Q Is this the area they are claiming is common?

5 A That's correct.

6 Q Moving on, Marshall. Did Mr. Aquino complain to
7 the management company about your use of the penthouse
8 -- after that e-mail, did he follow up with an e-mail
9 to the management company?

10 A I'm not sure. I think he did send it again, but
11 the current board he sent it to, did not take any
12 action. He sent it to the management company.

13 Q Exhibit 15 that's redacted?

14 MR. GRANTLAND: And that hasn't been objected to.

15 MS. GOLDING: (No verbal response.)

16 A Yes. This is an e-mail he sent to Andrew over at
17 the management company.

18 Q So after the allegations were made, were you
19 still on the board?

20 A Yes.

21 Q Do you know if the board ever met to discuss you
22 and the terrace?

23 A The original board that he sent his points to,
24 accusing me of violations, that particular board took
25 no action. It is the next year when we had a change in

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 some board members that he sent the e-mail again to the
2 new board.

3 Q Were you ever invited to get on a conference call
4 about the rules and about a discussion about the
5 ruling?

6 A Yes. We were supposed -- the board was supposed
7 to have a conference call on a Saturday morning about
8 the rules and regulations and things that they were
9 trying to come up with and change. That morning, I got
10 a phone call from Bill West saying that Roger Roy, the
11 attorney for the board --

12 Q Don't say what he said.

13 A He told me that I couldn't participate in the
14 conference call.

15 Q Okay. I'll show you Exhibit 16.

16 MS. GOLDING: No objection.

17 MR. GRANTLAND: Exhibit 16 is without objection.

18 THE COURT: 16 is in.

19 (Plaintiff's Exhibit 16 admitted.)

20 Q Is that an e-mail you received from Mr. West?

21 A Yes, dated April 30, 2019.

22 Q And did you attempt to participate in the call
23 with Mr. West and the rest of the board?

24 A Yes. This is the one I just referred to on a
25 Saturday morning.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** What happened?

2 **A** I called into the conference call phone number
3 and the code they -- it didn't work, so Bill West
4 called me on my mobile phone and told me I can't
5 participate in the conference call.

6 **Q** One of the allegations you raised against
7 Mr. West, Mr. Aquino, Mr. Giovino and Mr. Tackett is
8 conspiracy. When you were on the board, did these
9 gentlemen meet without you to discuss the rooftop
10 terrace?

11 **A** Well, they met this particular morning without me
12 for sure.

13 **Q** Did they -- do you know how many times they met
14 without you?

15 **A** At least -- probably more than two times.

16 **Q** What involvement did you have in creating rules
17 for the rooftop terrace?

18 **A** No involvement. I didn't think they were
19 necessary.

20 **Q** And prior to 2019, what were the rules for the
21 penthouse balcony and terrace?

22 **A** There were none and never had been rules.

23 **Q** And then let's move on to May of 2019. I'll show
24 you Exhibit 17.

25 MS. GOLDING: This one is highlighted.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 (A brief pause in the proceedings while Mr.
2 Grantland and Ms. Golding confer.)

3 Q I'll hand you Exhibit 17.

4 MR. GRANTLAND: The first page is without
5 objection.

6 THE COURT: So admitted.

7 (Plaintiff's Exhibit 17 admitted.)

8 A Rooftop rules and regulations, final draft,
9 May 25, 2019?

10 Q Had you ever seen anything like this before
11 May 2019?

12 A No, I haven't.

13 Q Before 2019, did the board or anyone tell you
14 what you could do or not do on the terrace?

15 A No.

16 Q What do the rules say about -- first of all, who
17 enacted the rules, just to make sure we're clear?

18 A The four other board members.

19 Q Is that Mr. Aquino, Mr. Giovino, Mr. Tackett, and
20 Mr. West?

21 A Yes.

22 Q What did the board's rules say when you can go
23 outside your condo?

24 A From 8:00 a.m. until 10:00 p.m., seven days a
25 week.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** Can you go out -- under the rules, can you go out
2 before 8:00 a.m.?

3 **A** No.

4 **Q** Under the rules, can you go out after 10:00 p.m.?

5 **A** No. It says it's closed and off-limits to all,
6 including -- including occupants of the rooftop
7 penthouse from 10:00 p.m. until 8:00 a.m.

8 **Q** Have you ever seen the sunrise from the terrace?

9 **A** I have; it is quite beautiful.

10 **Q** Or the moon on the ocean?

11 **A** Yep.

12 **Q** Before 2019, did the board ever tell your Uncle
13 Bobby what he could or couldn't do out on the terrace,
14 to your knowledge?

15 **A** No, not to my knowledge.

16 **Q** What about rules for everyone else at Shoreham
17 Towers?

18 **A** They are general rules and regulations posted in
19 the elevators that always have been basic rules that we
20 all follow.

21 **Q** What about rules for people with balconies, is
22 there a restriction when you can go out on your
23 balcony?

24 **A** No.

25 **Q** Or when you have to come in?

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **A** No. Only rule I know about balconies is you are
2 not supposed to hang towels.

3 **Q** Can Mr. Aquino and Mr. Giovino, can they go out
4 on their balcony before 8:00 a.m.?

5 **A** I would imagine so.

6 **Q** So are you the only owner with these types of
7 rules, that you know of?

8 **A** Yes.

9 **Q** Under the rules, what did the board come up with
10 in 2019? What do they say about the elevator switch?

11 **A** They had it disconnected.

12 **Q** So it is no longer private?

13 **A** That's correct.

14 **Q** If the board is allowed to turn your --

15 MS. GOLDING: Your Honor, Mr. Grantland is
16 leading a lot.

17 THE COURT: Sustained.

18 **Q** How will these rules affect your privacy of you
19 and your guests, Marshall?

20 **A** It will, ultimately, destroy my privacy. I will
21 have none.

22 **Q** Why do you say that?

23 **A** Because there is no limit to how many people from
24 the building can come up onto the rooftop terrace.

25 **Q** Where are the bedrooms related to the terrace?

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **A** They have all exterior walls that are solid glass
2 or sliding glass doors that are adjacent to the
3 wrap-around terrace and outdoor space.

4 **Q** Under the rules, when can other folks be right
5 outside of these bedrooms?

6 **A** Not until 8:00 a.m. in the morning and 10:00 p.m.

7 **Q** From 8:00 a.m. until 10:00 p.m.?

8 **A** Yes.

9 **Q** And is there a restriction on how many people can
10 be out there?

11 **A** No.

12 **Q** Is there a restriction on alcohol or smoking?

13 **A** No.

14 **Q** When you open up the curtains, what kind of
15 privacy will you have if you have --

16 **A** None. No privacy.

17 **Q** What, if any, public bathrooms are up there on
18 the roof?

19 **A** There are none.

20 **Q** Marshall, you rent the unit?

21 **A** Yes, I do.

22 **Q** And how much rental income do you earn a year
23 renting it?

24 **A** On an average, around \$90,000 a year, gross.

25 **Q** Before 2019?

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **A** Yes.

2 **Q** And how will their rules affect how you can rent
3 this condo?

4 **A** I don't believe I could rent it to anyone without
5 privacy. People expect privacy when they go on
6 vacation and pay for a place to stay.

7 **Q** In 2019, what did the board do with your Turtle
8 tile?

9 **A** They had the roofing contractor remove and haul
10 it off.

11 **Q** I'll show you Exhibit 18.

12 MS. GOLDING: Without objection.

13 (Plantiff's Exhibit 18 admitted.)

14 **Q** What does Exhibit 18 show?

15 **A** That shows in the corner some of the Turtle tile
16 I had down.

17 **Q** What did you ask the board to do when they told
18 you they were taking up the Turtle tile?

19 **A** I had my maintenance person that I pay go up
20 there and split it up into 8-foot sections so it could
21 be taken up, stacked, and put aside so they could put
22 this coating down. It was to be put back down after
23 the coating dried. About three days later, it was
24 supposed to be put back down.

25 **Q** What was the board's explanation as to why they

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 decided not to put the Turtle tile down?

2 **A** After they removed it, they just told me that the
3 roofing contractor didn't want them out there.

4 **Q** That tile cost you about how much?

5 **A** Back when I first put it down, it was \$20,000
6 plus installation.

7 **Q** Did the board put you in contact with the roofing
8 contractor?

9 **A** No.

10 **Q** Have you ever talked to the roofing contractor?

11 **A** No.

12 **Q** Now, after your Turtle tile was taken away, what
13 did you do?

14 **A** That's when I called you.

15 **Q** Is that when the lawsuit was filed?

16 **A** That is correct.

17 **Q** So what year did you file this lawsuit?

18 **A** It was in -- I called you -- it was in May when I
19 called you.

20 **Q** When was the lawsuit filed?

21 **A** I think in the fall of that year, maybe October.

22 **Q** 2019?

23 **A** Yes.

24 **Q** And after you filed the lawsuit, Marshall, what
25 did the board do?

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1 **A** They had already removed the Turtle tile, then
2 they removed all of my furniture.

3 **Q** Before they removed all of your furniture, what
4 did they first do?

5 **A** They disconnected and did away with the key in
6 the elevator.

7 **Q** What about their safety inspection?

8 **A** Oh, yeah. They hired a safety expert to come up
9 and look at my furniture and determined that some of my
10 furniture wasn't safe.

11 **Q** Did the -- do you know how many other units the
12 safety expert went to?

13 **A** None.

14 **Q** Just your place?

15 **A** Just my unit.

16 **Q** I'll show you Exhibit 19.

17 MS. GOLDING: No objection.

18 (Plaintiff's Exhibit 19 admitted.)

19 **Q** I'll hand you Exhibit 19 without objection. What
20 is Exhibit 19?

21 **A** A letter dated January 7, 2020 from the
22 management company at that time.

23 **Q** What were they telling you to do?

24 **A** They say that the safety report's findings were
25 that a hazard may exist, that the Shoreham Towers Board

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1 of Directors has determined that you need to remove all
2 of your high-back furniture, 49-inches tall chairs,
3 from the common area of the rooftop no later than
4 January 10th, which is three days later.

5 In addition, all other furniture in any common
6 area needs to be removed no later than January 27,
7 2020. If, for some reason, the furniture is not
8 removed in a timely manner, the HOA will have any
9 furniture remaining removed at your expense, and then
10 will be disposed of. Please be careful in having your
11 personal property removed from the rooftop common area
12 for, as you know, the roof membrane cannot be harmed in
13 any fashion.

14 Also, based on the safety report, the board of
15 directors has determined the arborvitae shrubs that you
16 installed on the rooftop needs to be removed within the
17 next 60 days at your expense. As an alternative, you
18 have the option to request that the HOA remove and
19 dispose of the shrubbery at the HOA's expense.

20 That was from a letter written on behalf of the
21 Shoreham Towers Board of Directors.

22 **Q** Gee-whiz. I mean, how many accidents have you
23 had with your chairs since 1995, Marshall?

24 **A** None.

25 MS. GOLDING: Objection, Your Honor. The

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1 high-back chairs were not in there until 2018.

2 MR. GRANTLAND: I object to her speaking
3 objection.

4 THE COURT: I'll overrule both of you. You can
5 cross-examine when the time comes.

6 Q I mean, have you ever had any safety problems
7 with these high-back chairs?

8 A None, and with none of my outdoor furniture.

9 Q Any accidents?

10 A None.

11 Q Any claims?

12 A None.

13 Q Do any of your neighbors in other units have
14 high-back chairs?

15 A Yes.

16 MS. GOLDING: Your Honor, I'll make an objection;
17 that has no relevancy. Those balconies are owned
18 solely by the unit owners, so that is comparing apples
19 and oranges.

20 THE COURT: It appears relevant to me. I'll
21 overrule it.

22 MR. GRANTLAND: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 Q So I'll show you Exhibit 20.

25 MS. GOLDING: I would object to Exhibit No. 20.

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1 Do you want us to approach the bench?

2 THE COURT: Sure.

3 (Whereupon, the following bench conference was
4 had out of the hearing of the jury.)

5 MR. GRANTLAND: It is photos of furniture on the
6 balconies.

7 MS. GOLDING: Your Honor, none of those
8 photographs show anything on the roof. There is
9 nothing to do with the roof. This is what this lawsuit
10 is about: The roof terrace.

11 THE COURT: Yeah. But what he's getting at is
12 they tried to get him and here they have --

13 MS. GOLDING: Because this is not on the roof.

14 THE COURT: But it is the balcony.

15 MS. GOLDING: Yes, sir. And the balcony per the
16 master deed, specifically the plans, specifically show
17 the roof terrace is not a balcony.

18 THE COURT: It seems relevant to me. You can
19 cross-examine.

20 MS. GOLDING: I understand what you are saying.
21 Thank you.

22 The following was had in open court.)

23 Q (MR. GRANTLAND) I'll show you Exhibit 20.

24 THE COURT: 20 is in evidence.

25 (Plaintiff's Exhibit 20 admitted.)

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1 **A** That shows a neighbor's balcony, outside space,
2 with high-back chairs.

3 **Q** So this is a typical balcony?

4 **A** Yes. That's a typical corner balcony below me.

5 **Q** What are those blue chairs?

6 **A** Same size and type chairs that I have, but mine
7 are white, and those are blue.

8 **Q** What happened to your high-back chairs?

9 **A** They removed them.

10 **Q** Were they also critical about where you put your
11 chairs relative to the railing?

12 **A** Yes. They told me I had to put them a certain
13 distance behind the railing, and they put up a sign.

14 **Q** How far do you have to keep your chairs back from
15 the railing according to their rules?

16 **A** According to their rules, I can't remember
17 exactly, but it was like three, four feet.

18 **Q** But they put rules on you?

19 **A** On me, but nobody else. And it is the same size
20 railing, same height railing. We all have the same
21 height railing in the building.

22 **Q** When was the safety expert -- when did he come
23 about? How soon after the lawsuit did they announce
24 they had a safety expert?

25 **A** I think that was in the fall of 2019, I believe.

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1 Q After the lawsuit was filed?

2 A Yes, after it was filed.

3 Q Moving on. I'll show you an e-mail from Mr. West
4 about the furniture, Exhibit 21.

5 A It was actually in 2020.

6 (Mr. Grantland and Ms. Golding confer.)

7 Q I'll show you Exhibit 20 (sic), Marshall.

8 MR. GRANTLAND: No objection from Ms. Golding.

9 Q Sorry, that's 21.

10 (Plaintiff's Exhibit 21 admitted.)

11 Q (MR. GRANTLAND) So they told you to take out
12 your high-back chairs; then what happened?

13 A Then they told me to take all of my furniture off
14 by a certain deadline, by Friday, May 29th, right
15 before the summer season.

16 Q Read -- who wrote you this e-mail?

17 A This was from Bill West. He was president of the
18 board at that time. They wanted to put a 6-foot
19 setback behind my railing.

20 Q So you got this letter in May before the summer
21 season?

22 A That's correct, May 25th.

23 Q Did you call Mr. West and say what are you doing?

24 A I believe I called you.

25 Q At this point, in May of 2020, is this after we

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1 filed the lawsuit?

2 **A** That's correct.

3 **Q** Did they follow through and take your furniture?

4 **A** Yes, they did.

5 **Q** Can we go to the second page. Top of the page,
6 what does it say about how close up the furniture can
7 be to the railing?

8 **A** Six feet away from my railing.

9 **Q** In the last paragraph, what is Mr. West telling
10 you?

11 **A** The board will have signage placed in the area
12 between the ocean side railing and the windows of your
13 condo saying "No furniture is to be placed in this
14 6-foot setback," and if this is violated, appropriate
15 fines will be levied.

16 **Q** Fines?

17 **A** Yes, against me and my railing.

18 **Q** Have you ever been threatened with a fine before?

19 **A** Not for placing furniture in a certain place.

20 **Q** Did you ever have to pay any fines to these
21 folks?

22 **A** No.

23 **Q** So the board ultimately -- did they remove the
24 furniture?

25 **A** Yes, they did.

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1 **Q** I'll show you Exhibit 22.

2 MR. GRANTLAND: This was addressed in pretrial.

3 MS. GOLDING: These are the exhibits subject to
4 my objections, Your Honor. I should have -- with the
5 previous exhibit, it was also subject to the pretrial
6 conference objections; but aside from those, I don't
7 object. Does that make sense?

8 THE COURT: In other words, I already ruled on
9 it?

10 MS. GOLDING: Yes, sir.

11 THE COURT: Okay. Good enough. Thank you.

12 (Pleading's Exhibits 22 and 23 admitted.)

13 **Q** (MR. GRANTLAND) I'll show you 22; what does this
14 show?

15 **A** It looks like my 23 pieces of outdoor furniture.

16 **Q** This was taken away, when?

17 **A** That was taken away in the fall of 2020.

18 **Q** Or was it taken away in May?

19 **A** Well, yeah, May. Right before the summer season,
20 that's correct. That was the first time it was taken
21 away.

22 **Q** What does Exhibit 23 show?

23 **A** It was taken off of my outdoor space and put
24 underneath a building.

25 **Q** Are you sure those are your chairs?

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1 **A** Yes. Those are my white high-back chairs that I
2 had on my outside space.

3 **Q** In your years, have you ever taken any other
4 homeowner's furniture?

5 **A** No.

6 **Q** So you are renting in May of 2020?

7 **A** That's correct.

8 **Q** How many -- how busy was your schedule in May of
9 2020?

10 **A** I was booked up solid.

11 **Q** Week to week?

12 **A** Yes.

13 **Q** And how did the board taking your furniture
14 affect the folks who rented from you?

15 MS. GOLDING: I'll make an objection. That is
16 hearsay how it affected some third party.

17 THE COURT: What was your question again?

18 MR. GRANTLAND: How did the board taking your
19 furniture and Turtle tile affect the folks that rented
20 your unit?

21 THE COURT: Would he know?

22 MR. GRANTLAND: He would.

23 THE COURT: All right.

24 **A** I received complaints.

25 **Q** About how many people complained to you?

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1 **A** At least six different renters.

2 **Q** From what part of the country are they from?

3 **A** North Carolina, Midwest, Ohio, Pennsylvania.

4 **Q** Renting the penthouse is a business activity?

5 **A** Yes, it is.

6 **Q** Do you keep records of your renters as a
7 regularly conducted business activity?

8 **A** I do.

9 **Q** Do you keep any complaints that your renters make
10 as a regularly conducted business activity?

11 **A** I do via For Rent By Owner; also, if they e-mail
12 me directly or call me on the phone.

13 **Q** Do your renters have your e-mail?

14 **A** Yes, they do.

15 **Q** And if they have complaints, do they e-mail you?

16 **A** They can e-mail me, certainly.

17 **Q** And as the penthouse owner and manager of the
18 rentals, you are the custodian of the records you
19 receive from these renters?

20 **A** That's correct. I'm the only one that handles
21 those.

22 **Q** Do you keep these records in the regular course
23 of business?

24 **A** Yes, I do.

25 **Q** I'll first ask you about a renter named

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1 Ms. Mansion. Let me show you --

2 MS. GOLDING: Exhibit 25, Your Honor, again,
3 would be hearsay. Also, these are documents that are
4 exempted from the business record rules. In fact, the
5 documents contain opinions and judgments, which are not
6 admissible in the business -- under the business
7 records.

8 MR. GRANTLAND: May I?

9 THE COURT: Let's take a look at it.

10 MS. GOLDING: Additionally, these documents that
11 were prepared, we believe, are in anticipation -- well,
12 the lawsuit had already started and had been in
13 existence for over half a year, Your Honor.

14 MR. GRANTLAND: Your Honor --

15 MS. GOLDING: That is another exception under the
16 business judgment rule.

17 MR. GRANTLAND: Two things, Your Honor. These
18 are business records Mr. Griffin has. They also rebut
19 and are impeachment because the board members have
20 testified there was no complaints.

21 THE COURT: The board members haven't testified
22 yet.

23 MR. GRANTLAND: Right, Your Honor. I anticipate
24 that will be their testimony.

25 THE COURT: Seems to me it would come in under

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1 803-6, under the business exception.

2 MS. GOLDING: You might want to take a look at
3 the next documents while we're addressing that, and I
4 think the other documents, especially Exhibit No. 27
5 and Exhibit No. 28, I think those fall into those
6 objectionable categories that I listed, Your Honor.

7 MR. GRANTLAND: I respectfully disagree, Your
8 Honor.

9 THE COURT: Are you objecting to all three: 26,
10 27, and 28? Is she objecting to all three of them?

11 MR. GRANTLAND: Yes, sir.

12 THE COURT: 26 looks familiar to 25, same thing.

13 MS. GOLDING: No. 27, first paragraph, very last
14 statement falls within the exception.

15 (A brief pause in the proceedings.)

16 THE COURT: Do you want to show me specifically?

17 MS. GOLDING: Yes, Your Honor.

18 (Whereupon, the following bench conference was
19 had out of the hearing of the jury.)

20 MS. GOLDING: This is 27 (indicates). The
21 statements were solicited by Mr. Griffin; so,
22 therefore, they are not -- they are an exception under
23 the business record rule.

24 MR. GRANTLAND: I disagree, Your Honor.

25 THE COURT: I think I'll let it in under 803-6.

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1 MR. GRANTLAND: And 28?

2 THE COURT: Anything specific about 28, other
3 than the same --

4 MS. GOLDING: She says, "The recent changes have
5 devalued our experience" all within that.

6 THE COURT: I think that is relevant.

7 MR. GRANTLAND: Thank you.

8 (Plaintiff's Exhibits 25-28 admitted, and the
9 following was had in open court:)

10 MR. GRANTLAND: If I can continue?

11 Q (MR. GRANTLAND) Marshall, did you get complaints
12 from renters?

13 A Yes.

14 Q I'll show you first Ms. Mansion's Exhibit 25
15 that's been offered into evidence.

16 A Yes. This was one of the first renters that came
17 up there when the Turtle tile was removed and the
18 outside space, as she says, was as slick as an ice
19 rink. She had two kids that fell and one adult. There
20 was a bruised knee and a couple of sore bottoms, but
21 seriously there are no warnings on the doors of
22 potential slipping.

23 Q So this is after they removed your Turtle tile?

24 A That is correct.

25 Q And she complained about her kids falling?

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1 **A** And she says the outdoor space is what drew us to
2 your condo. We love spending time outside. Thank you
3 again.

4 **Q** Did she ever come back as it a renter?

5 **A** Not yet.

6 **Q** That was in 2019?

7 **A** That's correct.

8 **Q** You also heard from Kim Pearlmores (phonetic).
9 Exhibit 26 moved into evidence. What were her
10 complaints?

11 **A** She sent me a message that she checked out. We
12 enjoyed our time. I have to say, you are not kidding
13 about the rooftop. It is treacherous and actually
14 seemed worse after the guys put the gritty finish on.
15 There is no place for the water to go, so unfortunately
16 after some falls and slipping, that is with knowing
17 that the furniture is not in place, we weren't able to
18 take full advantage of the rooftop.

19 **Q** And have you heard from Ms. Pearlmores again?

20 **A** No, I have not.

21 **Q** That was in?

22 **A** July 6, 2019.

23 **Q** Then I'll show you Exhibit 27, an e-mail from
24 Ms. Perry.

25 First of all, had Mr. Mansion or Ms. Pearlmores

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1 been renters before, or was this their first time?

2 **A** That was their first visit.

3 **Q** Now, Ms. Perry, had she been to your place
4 before?

5 **A** That was her first visit as well.

6 **Q** What were Ms. Perry's complaints?

7 **A** She said prior to going for a walk on the beach,
8 I left the premise for a quick grocery run and returned
9 around 10:30 a.m. I received a call from Marshall's
10 maintenance man, Rich, stating he was a few minutes
11 away. He asked if he could come and take care of the
12 carpet sections that needed to be placed outside. I
13 stated it would be perfect timing.

14 Then it says: "Prior to him leaving, Rich saw
15 two long red tapes that were on the opposite sides of
16 the balcony railing on the ocean side. We had asked if
17 it was necessary for that, because our view was
18 interrupted while lounging on the white patio lounge
19 chairs or sitting at the white blue top table. We were
20 very aware of the rusted out bolts that were to be
21 replaced at some point during our stay. It was decided
22 to remove the tape, for our goal was not to be that
23 close to the rail while out on the balcony area.

24 Rich was really positive during his short visit,
25 and we thanked him. The time now is going on about

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1 11:45 in the morning, and so we all decided to take a
2 quick visit to the beach before lunch. Our time on the
3 bench was less than an hour. On our walk back to the
4 penthouse, we all stopped to rinse off our sand off our
5 feet. It was at this time that we saw a man standing
6 around like he was waiting for us to get out of the
7 way. I said "Happy Memorial Day" directly to him while
8 making eye contact. I think he replied. From there,
9 we took the elevator up to the rooftop penthouse to
10 begin our vacation.

11 We started setting up our lounge chairs with
12 towels, getting food and beverages out on the table,
13 taking pictures. Then, all of the sudden, the man at
14 the shower area was on the balcony walking straight to
15 our table, and then straight to the railing area. No
16 introduction. No announcing why he was there. We had
17 to ask the questions as to, Who are you? How did you
18 get here? Did Marshall send you? He acted as if he
19 could not hear us at first, then he stated the red tape
20 was to be in place. He did not apologize for his
21 presence. The statement I heard him say, It's up to
22 the attorneys.

23 He then walked away from the area to leave it. I
24 then walked through the home to see how he got to the
25 rooftop and stopped him on the back side stairway door

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1 as he was opening the door. I asked him, What is your
2 name? Who are you? He replied, My name is Richard. I
3 stated, I thought the other man's name is Richard. He
4 was here earlier. He replied, Oh, that's Rich; I'm
5 Richard. I was surprised to hear his name is the same,
6 and actually was unsure still of why he is on this
7 private property.

8 At this point, he did not state he would be back
9 in a certain amount of time, whatsoever. I asked him
10 another question as if he is to be here, and then he
11 said, I've got to go get a hammer --

12 Q We can -- let's move on. But let me ask you
13 this: Did Ms. Pearlmere return as a renter?

14 A No.

15 Q Excuse me, Ms. Perry.

16 A No, she did not.

17 Q And, then, let's go to Exhibit 28 that's been
18 offered into evidence, 28.

19 A This is from Sue Peck. She's probably the
20 longest term renter -- repeat renter I've had; probably
21 18 plus years.

22 Q And tell the jury what did Ms. Peck have to say
23 to you?

24 A She said, "The appeal of the deck space and
25 comfortable furnishings was one of the reasons we've

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1 returned year after year. You have made nice and
2 needed updates, and we've progressed to two weeks
3 rental each year. However, the removal of the sturdy
4 and first-class furniture on the deck is a deficit to
5 the condo's appeal. The unique feature of a key
6 required in the elevator to access the tenth floor was
7 a security feature that all of us have enjoyed and have
8 come to expect. Not having that requirement is a
9 drawback for the condo. None of us feel as safe, and
10 request that that feature be reinstalled into the
11 elevator.

12 There have been times that I've spent nights
13 there by myself and knowing that the elevator will not
14 come to the tenth floor carrying strangers is very
15 important and comforting to me. Because the rooftop
16 penthouse is at the top of the building, where many
17 mechanical components for the entire building are
18 located, we understand there are times when workmen are
19 required to be there. Gratefully, you have called us
20 ahead of time to let us know. I expect that to
21 continue as we will not have surprises when someone
22 decides they have a need to be there without your
23 permission or without us being notified ahead of time.
24 That has occurred a few times over the past few years,
25 and I appreciated your addressing that as needed.

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1 In summary, the recent changes have devalued our
2 experience. The deck furniture changes -- there is not
3 even a table there, and a lounge chair is not
4 comfortable. The lessened security of not having a
5 keyed entry to the tenth floor, and the lack of privacy
6 to the deck are concerns we will weigh in our decisions
7 for future rentals.

8 We have enjoyed our time here, and hope to return
9 if these issues can be rectified."

10 **Q** And I didn't ask you this: When was Ms. Peck's
11 letter sent to you?

12 **A** That was sent to me October of 2020.

13 **Q** Was this after the furniture was taken away?

14 **A** Yes.

15 **Q** Before the board was ordered to put the furniture
16 back?

17 **A** That's correct.

18 **Q** Again, do you know how many renters you've lost
19 because of the board's removal of the furniture and the
20 removal of the key?

21 **A** I've just noticed probably a half dozen that have
22 not come back, but could be more.

23 **Q** How much rental income is a half dozen to you?

24 **A** Probably close to \$20,000.

25 **Q** I'll shift gears. What did the board want to do

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1 with your shrubs on the terrace or in the planters?

2 **A** They wanted to take them out of the planters.

3 **Q** How long have you had plants or shrubs in these
4 planters?

5 **A** Ever since I've owned it since 1994, '95.

6 **Q** And how many hurricanes have they gone through?

7 **A** At least two or three substantial ones.

8 **Q** Have any of them blown off the roof?

9 **A** No.

10 **Q** How long have you been paying maintenance to the
11 planters?

12 **A** 20 plus years.

13 **Q** I'll show you --

14 **A** And the irrigation and the electricity to them.

15 **Q** What have you done to secure those plants? I
16 mean, they survived how many hurricanes?

17 **A** At least three major hurricanes.

18 **Q** What did you do?

19 **A** I was trying to get along with the board. They
20 had asked me to secure them with some metal cables, so
21 I talked to my landscaper. He didn't think it was
22 necessary, but I was trying to work with everybody, so
23 I said go ahead and put the cable up there. After
24 about three hurricanes, nothing moved.

25 **MS. GOLDING:** No objection.

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1 Q (MR. GRANTLAND) Okay. So I'll show you letters,
2 Exhibits 42 about the arborvitaes, and then Exhibits 30
3 and 31. So I'll offer 42, 30, and 31 without
4 objection.

5 THE COURT: In evidence.

6 (Plaintiff's Exhibits 30, 31, 42 admitted.)

7 Q (MR. GRANTLAND) We talked about Ms. Peck and,
8 kind of, chronologically going along in 2020.

9 So you have letters in 2020 from the management
10 company, correct?

11 A That's correct.

12 Q You first got -- I don't know what order they
13 came in, but look at the one about removal of the
14 arborvitaes. What do they tell you?

15 A They said: "The board is hereby notifying you
16 that we will be removing the arborvitaes from the
17 common area planters now that the season is over. The
18 determination was unanimously approved by the board as
19 in accordance with the December 7, 2019 safety loss
20 control consultant safety report that was provided to
21 you as outlined in the segment of, "vegetation located
22 in the penthouse common area."

23 Requests were made for you to have the plants
24 removed, and as of today's date, you have not removed
25 the plants. Not only are the high plants a safety

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1 issue, they are also a nuisance and shed foliage that
2 blocks the roof drains on A and E stacks, which
3 requires additional maintenance and cleaning."

4 Q Stop for a second. How many times have these
5 plants flown off the roof?

6 A None.

7 Q How many times have you had complaints from
8 homeowners about the leaves falling and creating a
9 nuisance?

10 A One homeowner.

11 Q Who is that?

12 A Mr. Aquino.

13 Q Mr. Aquino. Any other complaints that your
14 plants are a nuisance?

15 A No, I haven't.

16 Q Read on. If the plants are not removed?

17 A "If the plants are not removed by Wednesday,
18 October 14, 2020, the board will make arrangements to
19 have the plants removed."

20 Q Now, this is October 2020. When did you file a
21 lawsuit?

22 A Probably the month before.

23 Q No. This is October --

24 A Oh, 2020. So in 2019.

25 Q You filed the lawsuit in 2019?

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1 **A** Yeah. About a year before.

2 **Q** How long -- how many years had you been paying
3 for dirt and plants and irrigation for those planters?

4 **A** Since 1995.

5 **Q** And then look at -- has the board ever told you
6 to stop paying for the maintenance of the planters?

7 **A** No.

8 **Q** Look at Exhibit 30, "unauthorized stored
9 furniture."

10 **A** When they took my furniture away and put it in a
11 storage mini warehouse, they wanted me to start paying
12 for the storage.

13 **Q** Can you read --

14 **A** That was also in October of 2020.

15 **Q** What were you told in October 2020 about the
16 furniture? This is after they took it?

17 **A** That's correct.

18 **Q** They took it when?

19 **A** They took the furniture towards the end of May,
20 May 25th, I believe.

21 **Q** Did you tell them they could take it?

22 **A** No, I did not.

23 **Q** So what does Ms. Clark, on behalf of the board,
24 tell you in May of -- October of 2020?

25 **A** She said that I need to reimburse the board for

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 the storage fees.

2 Q What else did she say?

3 A And that the furniture will be forfeited if I
4 don't pay for it, pay for the storage fees.

5 Q My goodness.

6 MS. GOLDING: Your Honor, may I approach the
7 bench?

8 THE COURT: Sure.

9 MS. GOLDING: Thank you.

10 (Whereupon, the following bench conference was
11 heard out of the hearing of the jury.)

12 MS. GOLDING: He is making commentary saying "my
13 goodness," three or four times, and I don't think that
14 is proper.

15 THE COURT: Yeah, I agree.

16 MR. GRANTLAND: Okay.

17 (The following was had in open court.)

18 Q (MR. GRANTLAND) How many pieces of furniture did
19 the board take off the terrace?

20 A At that time, approximately 23 pieces.

21 Q Then you got this letter, Exhibit 31, which is
22 dealing with the Turtle tile?

23 A That's correct.

24 Q What was the gist of the Turtle tile letter?

25 A It says I've been advised several times that the

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 Turtle tile is stored at Thompson Roofing awaiting my
2 pickup.

3 Q Who advised you that the Turtle tile was stored?
4 Had anyone?

5 A No one advised me until this letter.

6 Q What did they go on to say about the Turtle tile?

7 A That if I don't come pick the Turtle tile up,
8 that they will dispose of it by October 31st, 2020,
9 and I need to pay them for storage.

10 Q So after you have the letter about the plants,
11 the furniture, and the Turtle tile, what did you have
12 to do?

13 A I called....

14 Q Well, what happened?

15 A I didn't do anything.

16 Q How did you get your furniture back?

17 A Yeah. You had to file a temporary restraining
18 order.

19 Q Okay. And when was the restraining order heard?

20 A Probably in October of 2020.

21 Q What were the results of the restraining order?

22 A My furniture came back. My plants remained where
23 they were. Only thing that didn't come back was the
24 Turtle tile.

25 Q That was my next question. We didn't talk about

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 this, but what happened with your elevator?

2 **A** And the elevator key was reinstalled.

3 **Q** Well, before the restraining order, what did --

4 **A** Oh, they had taken -- had the elevator company
5 remove the key.

6 **Q** Who was involved in having the elevator key
7 removed?

8 **A** Mr. Aquino.

9 **Q** How do you know?

10 **A** I was just told that he met the elevator company
11 there and had it removed.

12 **Q** From '83 to 2020, how did that elevator work?

13 **A** You had to have a key to access the penthouse
14 rooftop floor.

15 **Q** And once the order was issued, how does the
16 elevator work now?

17 **A** About like it did since 1983.

18 **Q** It was put back the way it was?

19 **A** Correct.

20 **Q** But you never got your Turtle tile back?

21 **A** That's correct.

22 **Q** We talked about the planters. We talked about
23 how long you paid for them. Who pays for the
24 electricity on the planters?

25 **A** I do.

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 **Q** How long have you been paying for the electricity
2 on the planters?

3 **A** Since 1995.

4 **Q** We talked about the tenth floor foyer,
5 Exhibit 14. Is this heated space?

6 **A** Yes, it comes from my heating and air
7 conditioning system.

8 **Q** And has the board ever said, Marshall, stop
9 paying the electricity for this elevator foyer?

10 **A** No.

11 **Q** The allegation that you remodeled it, tell the
12 jury quickly about that.

13 **A** Well, all I did was install cypress paneling on
14 top of the old existing sheetrock, just like putting
15 wallpaper on a wall.

16 **Q** What else did you do?

17 **A** I put in some ceramic tile on the floor; that's
18 about it.

19 **Q** What about the doors, did you have anything to do
20 with the door?

21 **A** I moved the door -- the front door used to be
22 when you get off the elevator to the left, but there
23 wasn't enough room to get luggage carts, so I moved the
24 front door to where it is now. Plus, that small area
25 was getting mold and mildew in there because it wasn't

MARSHALL GRIFFIN - DIRECT EXAMINATION

1 getting any heating or air conditioning.

2 Q Marshall, we talked about the conspiracy claim,
3 but you also sued these gentlemen for breach of
4 contract. What contract do you claim that they
5 breached?

6 A The master deed.

7 Q How was the master deed interpreted before they
8 had their rules in 2019?

9 A That I had privacy in my outdoor space.

10 Q You've read the master deed?

11 A Yes.

12 Q According to the master deed, what part of the
13 roof is common?

14 A The planters are common. Not the area adjacent
15 to the window walls and the railing; that specifically
16 says it's not common.

17 Q Is the word "terrace" anywhere in the deed?

18 A No.

19 Q Before the rules, how did the board treat your
20 balcony or terrace, and after the rules, how did they
21 treat it?

22 A Before, I had outside space, privacy like anyone
23 else's outside space in the building.

24 Q And then after, what did they do?

25 A They took my privacy away.

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1 **Q** What else did they take?

2 **A** My furniture, wanted to take my plants, and my
3 irrigation system, and my Turtle tile.

4 **Q** And you also sued Mr. West and Mr. Tackett,
5 Mr. Giovino and Mr. West for breach with fraudulent
6 intent. What do you believe the board did that you
7 thought was fraudulent?

8 **A** They said I didn't pay enough.

9 **Q** What is your response to that?

10 **A** I pay exactly according to the formula that
11 they -- the developers -- established in 1983. They
12 said that I put the key into the elevator system, which
13 I did not do.

14 **Q** Anything else? What about the claim you are a
15 nuisance to Mr. --

16 MS. GOLDING: He's not supposed to lead this
17 witness.

18 MR. GRANTLAND: I'm asking him an open --

19 THE COURT: Just rephrase.

20 **Q** (MR. GRANTLAND) Anything else?

21 **A** Just said that my furniture and my outdoor space
22 had become a nuisance.

23 **Q** You also sued the board for conversion. Why did
24 you sue them for conversion?

25 **A** Because they wanted to change my outdoor space

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1 from being a private space for me or my renters'
2 enjoyment, to a common area just like around the
3 swimming pool.

4 Q Any other things you think they converted?

5 A The time that I could go out onto my outdoor
6 space, they changed that from -- there weren't any
7 limits when I could go outside my space, and then it
8 goes from 8:00 a.m. until 10:00 p.m.

9 Q How long were you without your furniture?

10 A About four months during the summer, prime time
11 rental season.

12 Q If the rules and regulations remain in effect,
13 how would these rules affect your rentals?

14 A They would be nonexistent. Go out of business.

15 Q How would it affect the value of your property?

16 A It would devalue it substantially.

17 Q You also sued this board for fraud. Why did you
18 do that?

19 A Because they accused me of not paying my fair
20 share, accused me of changing the elevator key access,
21 accused me of my furniture creating a nuisance, and
22 that is not true.

23 Q What is it that you want this jury to ultimately
24 do, Marshall?

25 A I just want my privacy back, my outside space. I

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1 just want my privacy back.

2 MR. GRANTLAND: Please answer any questions
3 Ms. Golding may have.

4 THE COURT: Would you like to resume in the
5 morning?

6 MS. GOLDING: Please, Your Honor.

7 THE COURT: Members of the jury, please don't
8 discuss the case or research the case. See you at 9:30
9 in the morning.

10 Mr. Griffin, you cannot discuss the case with
11 your lawyers or anyone else. Consider yourself still
12 on the stand, just in a different place. Come back in
13 the morning, and come right back to that chair.

14 MR. GRANTLAND: What time?

15 THE COURT: 9:30. See you in the morning.

16 (WHEREUPON, THE PROCEEDINGS FOR JANUARY 30, 2023
17 CONCLUDED AT 5:16 P.M.

18 THE FOLLOWING WAS HAD ON JANUARY 31, 2023 OUT OF
19 THE PRESENCE OF THE JURY.)

20 THE COURT: Good morning. Everyone have a seat.
21 Is everyone ready to go?

22 MS. GOLDING: One moment, Your Honor. Taylor
23 would like to ask you a question, if you don't mind.

24 MS. VOEGEL: We'll be using the TV for some
25 exhibits, and I need to connect to my computer in order

MARSHALL GRIFFIN - CROSS EXAMINATION

1 to display. Is it all right if I sit outside of the
2 jury box, of course, but --

3 THE COURT: Do anything you want to do.

4 MS. GOLDING: That is not what you tell me
5 (laughing).

6 THE COURT: You asked the hard questions
7 (laughing).

8 MS. GOLDING: Defendants' Exhibits 1 and 2 have
9 been agreed to by the plaintiff. No. 1 are the plans;
10 2 is the deed, Griffin deed.

11 THE COURT: All right. Exhibit 1 and 2 are in
12 evidence.

13 (Defendants' Exhibits 1-2 admitted.)

14 (The jury enters at 9:48 a.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: Defense is ready?

17 MS. GOLDING: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MS. GOLDING:

20 Q Good morning, Mr. Griffin.

21 A Good morning.

22 Q Mr. Griffin, I know this TV -- well, I don't want
23 to get too close to the jury. Can you see?

24 A Yes, ma'am.

25 Q You and your wife bought this penthouse obtaining

MARSHALL GRIFFIN - CROSS EXAMINATION

1 a deed; is that correct?

2 A That's correct.

3 Q And the deed -- I'm introducing this as
4 Defendants' Exhibit 2 -- is this your deed for your
5 unit?

6 A Yes, it is. This is the deed when it was
7 transferred over to the trust at the bank before we
8 purchased it. We purchased it from the trust.

9 Q Look at the second paragraph. Doesn't it say
10 that -- in the first paragraph, you are paying
11 \$233,500, and it says by Robert Marshall Griffin and
12 Carolyn Sherman Griffin; that is your wife?

13 A That's correct.

14 Q And it states in the second paragraph that Robert
15 Marshall Griffin and Carolyn, the heirs, and then it
16 identifies the property that you are getting; is that
17 right?

18 A That's correct.

19 Q This deed, your lawyer didn't introduce it when
20 you did direct examination, did he?

21 A I don't believe so.

22 Q And this deed, what does it give you to Shoreham
23 Towers? It gives you a unit; is that correct? A
24 rooftop penthouse unit in the horizontal property
25 regime; is that correct?

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1 **A** I would say a dwelling, yes.

2 **Q** It gives you a dwelling. And this deed is the
3 only document that you and your wife have that provides
4 your ownership of this unit at Shoreham; is that
5 correct?

6 **A** That's correct.

7 **Q** This deed doesn't say one word about you having
8 any exclusive right to the rooftop terrace, does it?

9 **A** It doesn't describe any outside space; that is
10 correct.

11 **Q** And this deed defines that you are getting a
12 dwelling; is that correct?

13 **A** That's correct.

14 **Q** And this deed doesn't say you have any exclusive
15 right to any elevator, does it?

16 **A** Doesn't say anything about an elevator.

17 **Q** And this deed doesn't say anything that you have
18 an exclusive right to lock the stairwell doors, does
19 it?

20 **A** No, it doesn't.

21 **Q** And this deed doesn't say anything about you
22 having the exclusive right to use the planters on the
23 roof, does it?

24 **A** No, it doesn't.

25 **Q** In fact, this deed gives you a dwelling unit; is

MARSHALL GRIFFIN - CROSS EXAMINATION

1 that right?

2 **A** Yes, a dwelling; heated and cooled square
3 footage.

4 **Q** Now, this deed also refers to a master deed?

5 THE COURT: Hold on one second.

6 DEPUTY: Your Honor, there is a beeping or a
7 buzzing noise, and it's distracting the jury.

8 THE COURT: All right. Let's see if we can fix
9 that.

10 (A brief pause in the proceedings.)

11 **Q** (MS. GOLDING) As you can see in your deed, it
12 refers to a master deed; is that correct?

13 **A** Yes.

14 **Q** And in the next paragraph, it says that the
15 grantees, and that is you and your wife -- you are the
16 grantees in this deed?

17 **A** Okay.

18 **Q** And it says as the grantees, you assume and agree
19 to observe and perform the obligations under the master
20 deed and exhibits; is that correct?

21 **A** Yes.

22 **Q** And that obligation to perform under the master
23 deed and its exhibits exists today, and is just as
24 binding on you as it was at the time you bought this
25 unit in 1995; is that correct?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** Yes.

2 **Q** Now, let's look at the master deed. I think you
3 earlier told the jury that the master deed is the
4 contract which you are suing upon; is that right?

5 **A** Yes. Breach of contract.

6 **Q** And this is the only contract that you are suing
7 upon is this master deed; is that correct?

8 **A** That's correct.

9 **Q** In this master deed, it refers to floor plans,
10 construction plans; is that correct?

11 **A** That's correct.

12 **Q** These construction plans are an exhibit to the
13 master deed; are they not?

14 **A** I assume so.

15 **Q** And these construction plans -- you've had a copy
16 of these in your personal possession since you bought
17 this unit; is that correct?

18 **A** That's correct.

19 **Q** With respect to the master deed, look at
20 Article 3. It has dwelling and common elements. The
21 first paragraph states: "The condominium consists of
22 dwellings and common elements"; is that correct?

23 **A** That's correct.

24 **Q** And so if a condominium part is not a dwelling,
25 it must be a common element; is that correct?

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1 MR. GRANTLAND: Objection; she's asking for a
2 legal question.

3 THE COURT: Sustained. Rephrase it.

4 MS. GOLDING: Okay.

5 Q (MS. GOLDING) Isn't it a fact that your dwelling
6 unit is your penthouse and what's within the walls of
7 your penthouse; isn't that correct?

8 A That's what you -- that's what you have a deed
9 to, the heating and living area, heated and cooled
10 space, but you still have outdoor space.

11 Q This outdoor space, it is not in your deed, is
12 it?

13 A It's in the master deed.

14 Q You have the master deed. You are familiar with
15 it. Show me where in the master deed it says that you
16 have outdoor space; you, personally.

17 A Might want to look on Page 334 in the master
18 deed.

19 Q I have 334. Let's pull it up.

20 THE WITNESS: John, can you hand me my Page 334
21 so I can have it front of me?

22 MR. GRANTLAND: May he have the exhibit?

23 A I have that page separate.

24 Q (MS. GOLDING) Here is Exhibit 5.

25 A Yeah, that's fine.

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1 Q Okay.

2 (A brief pause in the proceedings.)

3 Q (MS. GOLDING) Now, Page 334 in the master deed
4 is entitled "Exhibit A"; is that correct?

5 A That's correct. I'm referring to the next page,
6 335.

7 Q 335 is the continuation of Exhibit A?

8 A That's correct.

9 Q Where does it say in -- on Page 335 of the master
10 deed that you have ownership of the outside space?

11 A The next-to-the-last paragraph. It says: "All
12 balconies adjacent to each dwelling, including the
13 railing attached thereto, are a part of that dwelling
14 and not common area."

15 Q That is referring to the balconies specifically;
16 is that right?

17 A That's what they are referring to.

18 Q And nothing in this master deed uses the word
19 "outdoor space," does it?

20 A I'm not sure. I haven't read every word.

21 Q Do you recall anything in this master deed that
22 says anything about you having outdoor space?

23 A No; not specifically.

24 Q Since we're at this part, we're going to jump
25 ahead a little bit on what I was planning to do.

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1 We are going to show you in the plans -- we're
2 going to refer to "balconies" in these plans.

3 MS. GOLDING: Your Honor, we're referring to
4 Defendants' Exhibit No. 1, and for the Court's
5 information, Your Honor, Defendants' Exhibit No. 1 that
6 I provided to the Court is a certified copy from the
7 Clerk of Court's Office -- I mean the Register of Deeds
8 Conveyance Office.

9 Q (MS. GOLDING) It is a smaller version of the
10 plans, but it is an exact copy of the plans, okay.

11 Now, this is Page 9 of these plans. These are
12 Shoreham Towers' plans. On Page 9, the bottom of the
13 page, it says: "Enlarged rooftop penthouse floor
14 plan"; does it not?

15 A That's correct.

16 Q And this plan is part of the master deed; is it
17 not?

18 A That's correct.

19 Q So that means when you got your condominium in
20 1994, 1995, you agreed to these plans; is that not
21 correct?

22 A I didn't specifically agree to them.

23 Q Well, they are a part of the master deed, right,
24 Mr. Griffin?

25 A You say so. I don't know whether these are part

MARSHALL GRIFFIN - CROSS EXAMINATION

1 of the master deed or not.

2 Q We'll jump to that then. Let's jump to that.

3 Okay. Exhibit A, the same on Page 334 of the
4 master deed.

5 A Okay.

6 Q The very first paragraph. I'll read it out loud
7 to the jury, and ask you if I read it correctly.
8 "Exhibit A consists of a plat or survey showing the
9 location of the buildings and other improvements,
10 including the location of common elements. Said Plat B
11 recorded in Plat Book 76, at Page 179, Horry County
12 records. A set of floor plans of the building, which
13 show graphically the dimension area and location of
14 each dwelling therein, and affording access to each
15 dwelling. Said plans being recorded in the Condominium
16 Plat Book 2, Page 5, Horry County records. If any
17 variation exists between the plat and the plans, the
18 plat shall control."

19 So this Exhibit A, it says "consists of the plat
20 and the plans," does it not?

21 A That's correct.

22 Q Okay. So Exhibit A tells you that these plans
23 are part of the master deed; does it not?

24 A That's right.

25 Q So go to Page 9 of the plans. Page 9 is the

MARSHALL GRIFFIN - CROSS EXAMINATION

1 enlarged rooftop penthouse?

2 **A** That's correct.

3 **Q** And it has -- at the top, surrounding your
4 penthouse, it has "roof terrace"; is that correct?

5 **A** That's correct.

6 **Q** And there is no notation on this page of the
7 penthouse that you had a balcony?

8 **A** That's correct.

9 **Q** Now, let's go to the next page, Page 13 of the
10 plans. Do you see Page 13 of the plans?

11 **A** Yes.

12 **Q** Now, Page 13 has the word "balcony" starting with
13 the second floor, going to the nine floor, "exterior
14 balcony"; does it not?

15 **A** That's correct.

16 **Q** On the top, the tenth floor, it has "roof
17 terrace": does it not?

18 **A** That's correct.

19 **Q** Nowhere does it show that the roof or your
20 penthouse has a balcony; is that correct?

21 **A** That's correct.

22 **Q** So when you pointed to this master deed and said
23 that balconies are common elements, there is nothing in
24 the plans that show you ever got a balcony; isn't that
25 correct?

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1 **A** No. They call it a "roof terrace."

2 **Q** So the word "balcony" is not in any of the plans,
3 in any of these plans, is that you or your unit has a
4 balcony?

5 **A** That's correct.

6 **Q** Going back to the master deed, the master deed,
7 which is Exhibit 5 -- do you have that in front of you?

8 **A** Yes.

9 **Q** This master deed is responsible for all the 40
10 units at Shoreham Towers. It governs all the 40 units;
11 is that correct?

12 **A** That's correct.

13 **Q** This master deed has never been amended since it
14 was filed in 1983, has it?

15 **A** That's correct.

16 **Q** This master deed has never been changed in any
17 way since it was filed in 1983 to the present; is that
18 correct?

19 **A** That's correct.

20 **Q** With respect to this master deed, it states that
21 for your penthouse unit you received 2,630 square feet,
22 or thereabouts?

23 **A** That's correct.

24 **Q** It doesn't say you received any other square
25 footage but the square footage within the walls of your

MARSHALL GRIFFIN - CROSS EXAMINATION

1 penthouse?

2 **A** That's correct.

3 **Q** And that number, 2,630 square feet, within the
4 walls of your dwelling, is the number used to determine
5 regime fees; is that correct?

6 **A** No; that is not correct.

7 **Q** Let's get your deposition out.

8 MS. GOLDING: Would you give him a copy of his
9 deposition?

10 Does the Court want me to give him the original?

11 THE COURT: Yes. There you go.

12 MS. GOLDING: Thank you.

13 **Q** (MS. GOLDING) Look at Page 17 in your
14 deposition.

15 First of all, I apologize, Mr. Griffin. Your
16 deposition was taken July 28, 2021; is that right?

17 **A** That's correct.

18 **Q** And at the time of taking your deposition, you
19 were put under oath and swore to tell the truth; is
20 that correct?

21 **A** That's correct.

22 **Q** Go to Page 17.

23 **A** Okay.

24 **Q** I'll ask the question, and you read your answer
25 to the jury.

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1 Question: "As a result of that, how is the
2 2,630 square feet utilized by the homeowners
3 association with respect to assessments or even special
4 assessments?"

5 Read your answer to the jury.

6 **A** "That's the square footage that is used to
7 determine the regime fee for that rooftop penthouse
8 unit."

9 **Q** So today you are changing your testimony, and
10 that square footage has nothing to do with the regime
11 fee that you have to pay?

12 **A** That is correct. I made a mistake.

13 **Q** Now, since you bought the unit -- you and your
14 wife bought the unit?

15 **A** Yes.

16 **Q** The square footage of your unit has never
17 changed, has it?

18 **A** Not to my knowledge.

19 **Q** So, today, your square footage that you and your
20 wife own, is still 2,630 square feet?

21 **A** Approximately.

22 **Q** And that 2,630 square feet does not include any
23 part of the roof terrace, does it?

24 **A** That's correct.

25 **Q** And that 2,630 square feet does not include any

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1 part of the planters, does it?

2 A That's correct.

3 Q And that 2,630 square feet does not include any
4 part of the elevator lobby that you converted, does it?

5 A I believe it does include that.

6 Q We'll go back to Page 9. Do you see Page 9 of
7 the plans?

8 A Yes.

9 Q And Page 9 of the plans, at the bottom, it has
10 "Elevator 1"; is that correct?

11 A That's correct.

12 Q Out of Elevator 1, it goes into an area called
13 "elevator lobby"?

14 A That's correct.

15 Q With a door; the plans show a door?

16 A That's correct.

17 Q And this elevator lobby is not part of the square
18 footage in your -- for 2,630 square feet, is it?

19 A I am not sure. I don't think it is.

20 Q Okay. And this is the elevator lobby you took
21 away the wall, you took away the door, and you made
22 this elevator lobby your private foyer; isn't that what
23 you did?

24 A No. I just moved the door to where it is now,
25 next to the hallway beside the closet.

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1 **Q** You didn't take the wall away?

2 **A** I moved the door.

3 **Q** And you put ceramic tile down?

4 **A** That's correct.

5 **Q** And in doing that, you never got permission from
6 the association or the board of directors?

7 **A** That's correct.

8 **Q** And that is -- even though that square footage in
9 that elevator lobby is a common element, you never got
10 permission to convert it to your own personal use, did
11 you?

12 **A** I don't know whether it is -- I paid for the
13 electricity in that square footage, so I'm not sure if
14 it is common or not. I pay for the electricity and
15 electrical outlets in that section that is called the
16 "elevator lobby."

17 **Q** The power to that comes out of your penthouse;
18 does it not?

19 **A** That's correct.

20 **Q** And the heating and air comes off the penthouse;
21 does it not?

22 **A** That's correct.

23 **Q** And when you opened up and converted that
24 elevator lobby, you used your penthouse power and
25 heating and air; did you not?

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1 **A** It was already there.

2 **Q** So you are saying there was heating and air in
3 that lobby before you made the conversion?

4 **A** There was -- my heating and air unit is right
5 behind it. Mechanical F3 is my air conditioning unit
6 behind the elevator lobby.

7 **Q** Well, this elevator lobby that is on the plans,
8 that doesn't go right into your unit, does it?

9 **A** No. It comes right off the elevator about 4 feet
10 wide about 6 feet long, four-by-six foot.

11 **Q** Nothing in the master deed says this elevator
12 lobby belongs to you or that penthouse owned, does it?

13 **A** It doesn't refer to that, nor does it refer to
14 the foyer.

15 **Q** And nothing in the master deed says this elevator
16 lobby is exclusive to your penthouse, is it?

17 **A** Not specifically. It doesn't go anywhere else.

18 **Q** The square footage in this elevator lobby is not
19 encompassed in the square footage of your penthouse, is
20 it?

21 **A** I don't know what they used to calculate the
22 2,630 square feet.

23 **Q** We'll go to Page 26 of your deposition.

24 JUROR: Is it possible to move -- yes, ma'am. I
25 couldn't see that. Thank you.

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1 MS. GOLDING: Okay.

2 Q (MS. GOLDING) I'll read Line 6.

3 Question: "Well, the foyer that is shown on this
4 plan, that square footage in the foyer is not
5 encompassed within your penthouse unit, is it?"

6 What is your answer?

7 A "I'm not aware of that."

8 Q Now, you never paid for any type of elevator
9 maintenance, have you?

10 A No, I have not.

11 Q And the reason you made this remodel, you
12 converted this elevator lobby into your own is because
13 you found it more aesthetically pleasing to help your
14 renters; is that correct?

15 A It gave more room to get luggage carts off of the
16 elevator, because it was rather small and cumbersome.

17 Q Go to Page 64 of your deposition, Line 10. I
18 said: "Show me what you had done."

19 Read your answer starting with 11.

20 A "Okay. You see the number seven is where the
21 door, there's a seven in front of the mechanical F3,
22 which was a door that gave access to the interior HVAC
23 air handler. There was a door there, which I removed
24 that door and put up a panel that you can remove, make
25 it more aesthetically pleasing. And then I moved this

MARSHALL GRIFFIN - CROSS EXAMINATION

1 door."

2 Q So you wanted to remove the door in the panel
3 because it was more aesthetically pleasing; is that not
4 correct?

5 A Because there was a door to the HVAC, that's
6 correct.

7 Q Okay. Now, you did not submit a request as the
8 master deed requires to get approval of the board for
9 your remodeling of this elevator lobby, did you?

10 A No, I did not.

11 Q You did not inform -- even inform the board that
12 you were making this remodeling of the elevator lobby;
13 is that correct?

14 A That's correct.

15 Q And you did not get any approval from the board
16 for this remodeling of the elevator lobby?

17 A That's correct.

18 Q And at this time, when you remodeled this
19 elevator lobby, you were the president of the
20 association; isn't that correct?

21 A That's correct.

22 Q You were the president of the association for
23 some 15 years?

24 A That's correct.

25 Q And you served on the board some 18 to 20 years?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** That's correct.

2 **Q** And you will agree that as president, you had the
3 authority to make and enforce rules provided for the
4 master deed; is that correct?

5 **A** That's correct.

6 **Q** And so if that is the authority of the board, the
7 board can make different rules and regulations
8 governing the rooftop terrace; can it not?

9 MR. GRANTLAND: Objection to the form. She's
10 asking for a legal conclusion, Your Honor.

11 MS. GOLDING: He was president, Your Honor.

12 THE COURT: She's asking what his role was.

13 MR. GRANTLAND: She's asking if the subsequent
14 board can change the rules, and I think she's asking a
15 legal question there.

16 THE COURT: Rephrase.

17 MS. GOLDING: Thank you.

18 **Q** (MS. GOLDING) As president, you know that you
19 and the board, the officers of the board, can make
20 rules and regulations affecting Shoreham Towers?

21 **A** That's correct.

22 **Q** And those rules and regulations over the time
23 period as president, you know, can be changed, can be
24 altered, can be enlarged, can be made different; is
25 that not correct?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** That's correct.

2 **Q** Now, on your direct examination, you said the
3 word "privacy" probably 20, 25 times, didn't you?

4 **A** Probably.

5 **Q** With Plaintiff's Exhibit No. 1, the photograph
6 that your attorney showed --

7 MS. GOLDING: Do you think you can put that up,
8 Taylor?

9 (A brief pause in the proceedings.)

10 **Q** (MS. GOLDING) Immediately to the north of
11 Shoreham Towers is a 14-story condominium project known
12 as Seaside?

13 **A** That's correct.

14 **Q** This 14-story condominium has been in existence
15 since 2005; is that correct?

16 **A** That's correct.

17 **Q** And there are, at least, eight to ten units in
18 Seaside that can look right onto the rooftop at
19 Shoreham; is that correct?

20 **A** Probably.

21 **Q** And you never have gone to Seaside and said, I
22 have a right of privacy, you can't build those 14
23 stories, did you?

24 **A** No, I didn't.

25 **Q** And you never have gone to Seaside and said,

MARSHALL GRIFFIN - CROSS EXAMINATION

1 Close this up because you are -- you're looking into my
2 rooftop penthouse, did you?

3 A No, I didn't.

4 Q And you will agree there's nothing in the master
5 deed that creates any right of privacy in the common
6 elements?

7 A I wouldn't say that.

8 Q Let's go to Page 55 of your deposition. I'll
9 read the question, Line 5.

10 "Tell me where in the master deed does it say
11 that you have any rights of privacy in a common
12 element?"

13 What's your answer?

14 A "I don't think it says that for any homeowner."

15 Q In fact, the common area, common elements, in
16 Shoreham Towers is owned by you and the 39 other unit
17 owners; is that right?

18 A That's correct.

19 Q You, along with the 39 other unit owners, have an
20 undivided ownership interest in all of the common area,
21 is that correct, or common elements?

22 A Common elements, yes.

23 Q And, so, if you are -- if you take a common
24 element to use it yourself, what you are doing is
25 taking the property rights of the 39 other unit owners;

MARSHALL GRIFFIN - CROSS EXAMINATION

1 are you not?

2 MR. GRANTLAND: Object to the form. She's asking
3 another legal question, Your Honor.

4 A I'm not taking anyone's other private space.

5 Q (MS. GOLDING) I thought we just got finished
6 with that, Mr. Griffin. Where in the master deed does
7 it say that there is private space for the penthouse
8 unit?

9 A On the balconies outside of railings.

10 Q But the plans show you had no balcony; isn't that
11 correct?

12 A But it is still outside space. "Balcony,"
13 "terrace," "deck," it is all the same, "front porch."

14 Q But it's not in the plans?

15 A That's correct, it's not written in the plan.

16 Q And it is not stated in the master deed?

17 A And it doesn't say that the terrace is common
18 either.

19 Q Are you sure about that?

20 A I would like for you to show me.

21 Q I would be glad to. Let's go check. Let's go to
22 the master deed.

23 First of all, you will agree that the master
24 deed, since there is two components to Shoreham, one,
25 dwelling unit; two, common elements?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** That's correct.

2 **Q** You have a dwelling unit, which is the 2,630
3 square feet, within the walls of your penthouse; is
4 that right?

5 **A** That's correct.

6 **Q** If it's not within the walls of your penthouse,
7 then it is a common element; isn't that correct?

8 MR. GRANTLAND: Objection.

9 **A** No, that's not correct. Outside space with a
10 railing is not common per the master deed, Page 335.

11 **Q** (MS. GOLDING) You are talking about the word
12 "balcony" again?

13 **A** That's correct.

14 **Q** Even though balcony in the plans only refer to
15 the two through nine floors?

16 **A** It says every dwelling -- every dwelling that has
17 a railing --

18 **Q** It says every dwelling --

19 **A** -- is not common, and I have two railings.

20 **Q** It says every railing that has a balcony; isn't
21 that right?

22 **A** That is what it says.

23 **Q** The plans do not show any balcony on the rooftop,
24 does it?

25 **A** It doesn't label it as a balcony.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **Q** Okay. Now, let's go to the master deed and go to
2 Page 330.

3 **A** What page is that on?

4 **Q** 330.

5 **A** I'm on Page 330.

6 **Q** Article 34; are you there?

7 **A** Yes.

8 MR. GRANTLAND: Your Honor, can we approach?

9 (Whereupon, the following bench conference was
10 had out of the hearing of the jury.)

11 MR. GRANTLAND: With all due respect to
12 Ms. Golding, she's going to question Mr. Griffin about
13 the Horizontal Property Regime Act, and I think she's
14 going -- I think that is improper to question the
15 witness about a statute.

16 MS. GOLDING: No, sir. It says in this article
17 that the Horizontal Property Regime Act is explicitly
18 adopted and made a part of the master deed.

19 MR. GRANTLAND: But she can't question about what
20 it means.

21 THE COURT: What it means and all of that.

22 MS. GOLDING: I'm not going to ask what it means,
23 but I can say that the horizontal Property Regime Act
24 specifically states that rooftops and roofs are common
25 elements.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 THE COURT: Has he identified what that is?

2 MR. GRANTLAND: This is part of the deed. I
3 don't think she can question him on the law.

4 MS. GOLDING: It's not the law. It is part of
5 the master deed.

6 MR. GRANTLAND: But you are questioning on the
7 statute.

8 MS. GOLDING: But if -- because it is
9 incorporated into the master deed.

10 MR. GRANTLAND: The act is incorporated into the
11 deed.

12 MS. GOLDING: I'm going to ask does that not
13 specifically state --

14 THE COURT: I guess that's just a yes or no,
15 right? I mean....

16 MR. GRANTLAND: Thank you.

17 (The following was had in open court.)

18 Q (BY MS. GOLDING) Mr. Griffin, Article 34, Page
19 330, I'll read it to the jury: "The provisions of the
20 master deed shall be liberally construed to effectuate
21 its purpose of creating a uniformed plan of condominium
22 ownership. The South Carolina Horizontal Property
23 Regime Act, 1976, Code of Laws, as they may be amended
24 from time to time; thereafter, is hereby adopted and
25 expressly made a part hereof."

MARSHALL GRIFFIN - CROSS EXAMINATION

1 Did I read that correctly?

2 **A** Yes, you did.

3 **Q** Under the Horizontal Property Regime Act, it
4 specifically states that roofs, flat roofs are a common
5 element; does it not?

6 **A** You didn't read that part.

7 **Q** I don't have the -- but I'm asking you --

8 **A** Well, you need to read that part if you are
9 referring to it. I don't see anything what you read
10 pertaining to a flat roof.

11 **Q** Okay. I'll get a copy of the Act. I thought I
12 had it here, but I'll get a copy of the Act where it
13 specifically says.

14 But you are not familiar, then, that the
15 horizontal -- that state law is incorporated in this
16 master deed. Isn't that what Article 34 states?

17 THE COURT: That is either a yes or no question.

18 **A** That's what it says, yes.

19 **Q** (MS. GOLDING) And you can't tell this jury that
20 the Horizontal Property Regime Act does not say that
21 roofs and flat roofs are common elements?

22 **A** I haven't seen that part. I haven't read that
23 part.

24 **Q** We'll get that to you.

25 Let's talk about the roof terrace. None of the

MARSHALL GRIFFIN - CROSS EXAMINATION

1 nine other floors have a roof terrace; is that correct?

2 A That's correct.

3 Q And with this roof terrace, you never paid your
4 assessments on this roof terrace; isn't that correct?

5 A That's correct.

6 Q There is no doubt that this roof terrace is the
7 roof of the building?

8 A It's two things: It is a roof, and it is a
9 terrace.

10 Q So if it's a roof, you'll agree it is a common
11 element; is that right?

12 A The roof portion, that is correct.

13 Q And the roof terrace is part of the roof? It is
14 not anywhere but the roof?

15 A The terrace is on top of the roof, just like
16 outdoor carpet on the balconies is on top of the
17 concrete slab. It is a covering.

18 Q And with respect to this roof, this roof has been
19 replaced a number of times over the years by the
20 homeowners association?

21 A That's correct.

22 Q And the last time it was replaced was in early of
23 2019?

24 A That is not correct.

25 Q When was it replaced?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** Approximately, 20-some years ago. Which roof are
2 you referring to? There are about seven different
3 roofs on the building.

4 **Q** Top roof.

5 **A** Top roof.

6 **Q** Yes, sir. Your roof.

7 **A** That is the center roof over the penthouse, over
8 my heated and square foot dwelling. That roof was
9 replaced, but that is not the roof that is below the
10 terrace.

11 **Q** The roof that serves as a terrace, that roof has
12 been repaired and replaced a number of times?

13 **A** I think it's been replaced one time.

14 **Q** And there was significant repair work that was
15 done on that roof, which is also known as a roof
16 terrace, in 2019?

17 **A** That is not correct. There was just a coating
18 applied to it. There was no damage. There was no
19 repairs to that roof of any significance.

20 **Q** So there were repairs done to the roof?

21 **A** There were no repairs done. There was just a
22 coating applied to it.

23 **Q** You weren't present during this roofing job, were
24 you?

25 **A** Not physically there.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **Q** And this roofing job was done by Thompson Roofing
2 out of the North Myrtle Beach?

3 **A** That's correct.

4 **Q** And the association paid close to \$150,000 for
5 this roofing repair job; is that correct?

6 **A** Over the center roof, that is correct.

7 **Q** And you never personally paid for that roofing
8 repair job. You just paid the portion from your
9 assessments, just as the other 39 units; isn't that
10 right?

11 **A** That's correct.

12 **Q** And your payment for that roofing work that was
13 done in 2019 was based on the percentage on the 2,630
14 square feet; is that correct?

15 **A** That is not correct.

16 **Q** Let's go to your deposition, Page 70.

17 **A** I've already told you, I made a mistake with
18 that.

19 **Q** Now, on these roofs when these repairs were done
20 in 2019, your Turtle tile was removed; is that correct?

21 **A** That's correct.

22 **Q** With respect to this Turtle tile, isn't it a fact
23 that it was never voted on and approved by the
24 association?

25 **A** Not as a vote. It was discussed with the board

MARSHALL GRIFFIN - CROSS EXAMINATION

1 at that time, and with the roofing consultant at that
2 time.

3 Q So you didn't get any approval from the board for
4 the Turtle tile?

5 A That's correct.

6 Q And the Turtle tile was picked up by your
7 maintenance man; is that correct?

8 A Can you explain --

9 Q Your maintenance man in 2019 picked up all of the
10 Turtle tile?

11 A No, that is not correct. My maintenance person
12 did not pick up the Turtle tile.

13 Q And he didn't stack it in a corner?

14 A No. He took it and made it into sections where
15 it could be stacked, but instead of being stack and put
16 back down, it was removed from the property by the
17 roofer.

18 Q This Turtle tile, it was located -- it was
19 removed from the property; is that right?

20 A That's right.

21 Q And you were told several times to come and get
22 it, weren't you?

23 A That's correct.

24 Q But you never went and took possession of the
25 Turtle tile, did you?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** That's correct.

2 **Q** And the Turtle tile was at Thompson Roofing?

3 **A** That is my understanding.

4 **Q** And you never contacted Thompson Roofing saying
5 I'm going to get your Turtle tile?

6 **A** That's correct.

7 **Q** You were a member of the board in 2019 when
8 Mr. Thompson, with Thompson Roofing, presented a letter
9 to the board saying do not put the Turtle tile back?

10 **A** I was on the board. I don't recall the letter.

11 **Q** Okay. Let me show it to you. Exhibit 30.

12 MR. GRANTLAND: Can I see it?

13 MS. GOLDING: Sure. You have it. That's what
14 you have.

15 MR. GRANTLAND: Okay. No objection.

16 (Defendants' Exhibit 30 admitted.)

17 **Q** (MS. GOLDING) I'll give you Exhibit 30, a letter
18 on Thompson Roofing stationary, dated May 13, 2019, to
19 Shoreham Towers Board of Directors.

20 **A** (Witness examines document.) What's the
21 question?

22 **Q** You were on the board when this letter was sent
23 to the board about not putting the Turtle tile back on
24 the roof; is that correct?

25 **A** I was on the board, but I never saw this letter

MARSHALL GRIFFIN - CROSS EXAMINATION

1 before. It was not e-mailed. I don't know how they
2 sent it.

3 Q You are not telling this jury you never saw this
4 letter before, are you?

5 A I don't recall seeing this letter.

6 Q So today is the first time you have ever seen
7 this letter?

8 A That's correct.

9 Q With respect to that letter, are you familiar
10 with Thompson Roofing?

11 A I am.

12 Q You have known of his existence for many, many
13 years; is that correct?

14 A Several years. They've done work on the
15 building.

16 Q And they did work on the building while you were
17 president?

18 A That's correct.

19 Q And they are a qualified roofing company; is that
20 correct?

21 A I would say so.

22 Q And, here, the roofing company tells you not to
23 put Turtle tile back on. It would be reasonable that
24 the board of directors would follow that direction;
25 would it not?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** Well, it wasn't in their scope of work when they
2 quoted the job. And I didn't see this letter. It
3 didn't get to me.

4 **Q** My question was: Wouldn't it be reasonable when
5 a roofing contractor says don't put the Turtle tile
6 down to the board, isn't it reasonable that the board
7 listens to the roofing contractor and follows the
8 roofing contractor's direction?

9 MR. GRANTLAND: Objection, Your Honor.

10 THE COURT: Sustained. Sustained. You don't
11 have to answer that.

12 **A** It may be more reasonable --

13 THE COURT: You don't have to answer that.

14 **Q** (MS. GOLDING) As a member of the board of
15 directors for 20 years, you would listen to what the
16 recommendations are from the roofing contractor; would
17 you not?

18 **A** I always would listen, but might not agree with
19 them.

20 **Q** As a member of the board of directors in May of
21 2019, you were one of five board members?

22 **A** Correct.

23 **Q** And on occasion there would be votes four to one;
24 would there not?

25 **A** That's correct.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **Q** In fact, you voted against the rules, and it was
2 four to one; is that correct?

3 **A** That's correct.

4 **Q** And the majority rules on the board of directors;
5 does it not?

6 **A** As a general rule, that is correct.

7 **Q** Let me give you what is put together as
8 Defendants' Exhibit No. 33.

9 MS. GOLDING: Any objection?

10 MR. GRANTLAND: No objection.

11 MS. GOLDING: Your Honor, we offer Exhibits 33,
12 the photographs, into evidence.

13 THE COURT: 33 is in evidence without objection.

14 (Defendants' Exhibit 33 admitted.)

15 **Q** (MS. GOLDING) It has several pictures. The
16 first picture in Exhibit 33 shows a drain; is that
17 correct?

18 **A** That's correct.

19 **Q** And there is rust all around that drain?

20 **A** It is a rust coloration.

21 **Q** And rust coloration comes from rust; does it not?

22 **A** Well, I think it comes from the French drain from
23 the planters, from the soil.

24 **Q** Well, this picture showings a common element, a
25 common element at Shoreham Towers; does it not?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** It shows a roof.

2 **Q** And this shows a roof that is a common element of
3 Shoreham Towers?

4 MR. GRANTLAND: Objection. She's asking him a
5 legal question; that is the whole issue of the case.

6 THE COURT: Rephrase the question.

7 **Q** (MS. GOLDING) With respect to the first picture
8 in Exhibit 33, is this part of the property that you
9 claim is exclusively yours?

10 **A** No.

11 **Q** But this picture on 33 is a portion of the roof
12 of Shoreham Towers?

13 **A** It is a section of the roof where the HVAC units
14 are located.

15 **Q** Then the second picture in Exhibit 33, this is a
16 picture of your Turtle tile?

17 **A** That's correct.

18 **Q** What is that growing out of your Turtle tile?

19 **A** Small weeds.

20 **Q** That's not supposed to be there, is it?

21 **A** It's not planned on being there, but that happens
22 when things float around in the air. They tend to grow
23 different places you don't want them to grow.

24 **Q** Let's take the third picture of Exhibit 33. This
25 third picture shows that the Turtle tile is picked up,

MARSHALL GRIFFIN - CROSS EXAMINATION

1 and underneath is the roof; is that not correct?

2 **A** Yes, roof membrane; that's correct.

3 **Q** It shows mold, does it not, black mold?

4 **A** Well, not really. The membrane is black. It
5 shows some decayed leaves. I don't see any mold.

6 **Q** Isn't it a fact that you had mold under the
7 Turtle tile on the rooftop?

8 **A** Not that I'm aware of.

9 **Q** Have you talked to Mr. Thompson about what was
10 under the Turtle tile on the roof?

11 **A** No.

12 **Q** Next picture in Exhibit 33. This is the
13 planters; is that right?

14 **A** That's correct.

15 **Q** And you agree that the planters are common
16 elements?

17 **A** That's correct.

18 **Q** And these planters show weeds; does it not?

19 **A** That's correct.

20 **Q** And it also shows a -- I have a hard time
21 pronouncing them -- arbro --

22 **A** Arborvitae.

23 **Q** It shows arborvitae?

24 **A** Correct.

25 **Q** And this arborvitae is pretty tall, isn't it?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** Probably 6 feet tall. I can't tell by the
2 pictures.

3 **Q** It is much taller than the parapet to the roof?

4 **A** That's correct. Because it is designed to be
5 taller because it is privacy from the air conditioning
6 units and the noise that they are trying to suppress on
7 that side of the roof; not the ocean side. That is why
8 they are not planted on the oceanfront side of the
9 planters. They are trying to hide the air conditioning
10 units and reduce the noise from the air conditioning
11 units.

12 **Q** You still have that same set of the plans?

13 **A** Yes.

14 **Q** I'll direct your attention to Page 3.

15 **A** Okay.

16 **Q** Page 3 shows the planting, an amenity area, plant
17 list, planting at the front and side, and the planting
18 at the parking lot; does it not?

19 **A** That's correct.

20 **Q** Page 3 of Exhibit No. 1, the plans, it doesn't
21 show anything about the planting on the balcony?

22 **A** Not on No. 3.

23 **Q** I'll give you Page 4.

24 **A** That is correct.

25 **Q** It doesn't show any planting plans for any

MARSHALL GRIFFIN - CROSS EXAMINATION

1 balcony. It's the rooftop, is that right?

2 **A** The planters on the rooftop.

3 **Q** And if you look at Page 3 and 4 together, there's
4 a plant list of what goes in these planters on the
5 rooftop?

6 **A** That's correct.

7 **Q** And that plant list of what goes on the rooftop
8 doesn't incorporate or doesn't include any arborvitaes,
9 does it?

10 **A** It did not in 1983, that's correct.

11 **Q** And the plant list that is on Page 3 of the plans
12 specifically identified what plants would go in the
13 planters on the roof; did it not?

14 **A** It did in 1983, that's correct.

15 **Q** And, again, these plans are part of the master
16 deed; are they not?

17 **A** That's correct.

18 **Q** Going back to Exhibit 33 -- am I going too fast
19 for you?

20 The next photograph on Exhibit 33 has a Bates
21 stamp 142. That shows a lot of weeds in the planter
22 boxes; isn't that correct?

23 **A** There's arborvitaes and also some plants -- I'm
24 trying to think of the name of them. They are low
25 plants, but there are some weeds in there, but we have

MARSHALL GRIFFIN - CROSS EXAMINATION

1 to do weed control quite often up there.

2 Q And the next page, last page of 33, shows more
3 weeds; is that correct?

4 A There's some weeds in there. I'm trying to
5 remember the name of the plant that is almost like a
6 vine with a blossom. It doesn't have blossoms at this
7 time, but that is in between -- planted in between the
8 arborvitaes. I'll have to look up the name of that
9 plant.

10 Q I think you've told the jury on direct that you
11 agree that the planters are common elements?

12 A That's correct.

13 Q And with respect to the roof, I think you just
14 said that the roof terrace is a common element; did you
15 not?

16 A The roof is a common element. The terrace is not
17 a common element.

18 Q So the roof terrace you are saying is not a
19 common element?

20 A The roof portion is a common element, and the
21 terrace portion is not common. It is outdoor space for
22 the rooftop penthouse with two railings.

23 Q So what are you telling this jury, that the roof
24 terrace is a common element and it is not a common
25 element?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 MR. GRANTLAND: Objection to form.

2 A That's correct. It is two things: It is a roof,
3 and it is outdoor space.

4 Q (MS. GOLDING) And with respect to -- so the
5 roof, you are saying to this jury, is a common element;
6 is that right?

7 A The roof portion is a common element.

8 Q And the roof terrace is also a common area?

9 MR. GRANTLAND: Objection.

10 THE COURT: Sustained.

11 MR. GRANTLAND: She's asked this three times.

12 A The terrace is not common. The roof is common.

13 Q (MS. GOLDING) So you are telling this jury that
14 the terrace is separate from the roof?

15 A That's correct.

16 Q Let's go to your deposition, Page 141. I'll read
17 the question, and you read the answer.

18 Question: "When you're saying it's two
19 things, you're referring to the roof terrace as being
20 both a common element and not a common element?"

21 A "That's correct."

22 Q So, on one hand -- in your deposition, you said
23 the roof terrace is a common element, and today you're
24 telling me it's not?

25 A No. I'm saying the exact same thing. I'm saying

MARSHALL GRIFFIN - CROSS EXAMINATION

1 it is two things. It is a roof, and it is a terrace.

2 Q Now, when we read it at the beginning of this
3 cross-examination, we read your deed. We read the
4 master deed. The master deed says there is two things
5 at Shoreham Towers: Dwelling units and common
6 elements, right?

7 A That's correct.

8 Q So the roof terrace is not part of your dwelling
9 unit, is it?

10 MR. GRANTLAND: Objection.

11 THE COURT: Sustained.

12 A It's outside space.

13 Q (MS. GOLDING) So it's outside your dwelling
14 unit?

15 A That's right. It is not heated, and it's not
16 cooled.

17 Q So if it's outside your heating unit, it must be
18 a common element?

19 MR. GRANTLAND: Objection.

20 THE COURT: Sustained.

21 A Not if it has a railing.

22 MR. GRANTLAND: You don't have to answer.

23 A Okay.

24 Q (MS. GOLDING) So are you telling the jury it has
25 two components?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** That's correct; since 1983.

2 **Q** The roof terrace has two components?

3 **A** Two words.

4 **Q** Roof terrace has two components; is that what you
5 are saying?

6 **A** Correct.

7 MR. GRANTLAND: Objection, Your Honor.

8 THE COURT: Sustained.

9 **Q** (MS. GOLDING) Now, the roof terrace, there is
10 nothing in the master deed that says this roof terrace
11 can only be used by the occupants of the penthouse;
12 isn't that correct?

13 **A** Not specifically.

14 **Q** So that is correct?

15 **A** Yes.

16 **Q** Going back to the elevator lobby, there is
17 nothing in the master deed that says that the elevator
18 lobby is exclusive to your penthouse, is there?

19 **A** Not specifically.

20 MS. GOLDING: Now, while we go to Exhibit 34 --
21 excuse me, 35.

22 **A** Excuse me, the name of the plant is Lantana.

23 MR. GRANTLAND: No objection.

24 MS. GOLDING: We offer Exhibits 35 and 36 with no
25 objection.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 THE COURT: 35 and 36 in without objection.

2 (Defendants' Exhibits 35 and 36 admitted.)

3 Q (MS. GOLDING) I'm giving you 35 and 36. Exhibit
4 35, the first photograph in Exhibit 35, shows an
5 individual sitting on the parapet on the roof; does it
6 not?

7 A That's correct.

8 Q And shows several people by the rail?

9 A That's correct.

10 Q Now, the association tried to put up some signs
11 against the roof wall saying don't sit on the roof,
12 don't play with anything on the roof, is that not
13 correct, on the roof parapet?

14 A Uh-huh.

15 Q Do you recall that?

16 A They put up some signs trying to say stay 6 feet
17 away from the railing.

18 Q And you put those signs down or had them taken
19 down?

20 A As part of the restraining order, court
21 restraining order.

22 Q So you didn't want those signs saying stay away
23 from the roof parapet, did you?

24 A It didn't say roof parapet. It said railing.

25 Q And you didn't want though signs there, did you?

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** No. No one else had signs saying that about
2 their railing.

3 **Q** And the next picture in Defendants' Exhibit 35
4 shows, again, individuals on the roof; is that correct?

5 **A** That's correct.

6 **Q** And then the next picture again shows individuals
7 on the roof?

8 **A** That's correct.

9 **Q** And then the next picture shows someone
10 straddling the roof wall?

11 **A** That's the planter wall, exterior planter wall.

12 **Q** Well, it is the exterior roof wall, too, isn't
13 it?

14 **A** If you want to call it that, that's fine.

15 **Q** Well, the planter wall and roof wall, that's the
16 common element, right?

17 **A** That's correct.

18 **Q** It shows someone straddling that wall?

19 **A** Shows someone sitting on it, yes.

20 **Q** And the final picture to Exhibit 35 again shows
21 people on the rooftop?

22 **A** On the rooftop terrace, that's correct.

23 **Q** Look at Exhibit 36. Exhibit 36 shows the
24 high-back chairs you bought in 2018?

25 **A** That's correct.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **Q** Before 2018, your furniture, your chairs, were
2 standard size just like they had around the pool deck
3 at Shoreham Towers?

4 **A** Pool furniture, that is correct, around the pool.

5 **Q** And the pool furniture you had on the roof
6 terrace, that was like the pool furniture on the ground
7 floor, that furniture you had there for many years; did
8 you not?

9 **A** The pool-type lounge chairs, that's correct.

10 **Q** Then you brought in some high-back chairs in
11 2018?

12 **A** That's correct.

13 **Q** When you brought in the high-back chairs, you
14 didn't ask the board or the association for approval to
15 change the chairs from what were at the pool level, did
16 you?

17 **A** I didn't have any control over the pool.

18 **Q** Did you get approval of the homeowners
19 association to put high-back chairs on the roof?

20 **A** I never got approval from the board to put up any
21 of my outdoor furniture since 1985.

22 **Q** So when you made the change in 2018 to high-back
23 chairs, you didn't get approval?

24 **A** That's correct.

25 **Q** The next photograph shows the high-back chairs

MARSHALL GRIFFIN - CROSS EXAMINATION

1 near the railing, and a lady sitting in the high-back
2 chair?

3 A That's correct.

4 Q The next paragraph shows a couple more high-back
5 chairs and a tall table?

6 A Yes, along with an umbrella.

7 Q And, then, the next picture again shows the
8 high-back chairs by the railing?

9 A That's correct.

10 Q The last picture shows the high-back chairs by
11 the railing?

12 A And several lounge chairs, that's correct.

13 Q We go to the stairs that go to the tenth floor.
14 There is two stairwells that go to the tenth floor; is
15 that right?

16 A That's correct.

17 Q And both of them are common elements?

18 A That's correct.

19 Q The signs that you put up restricting access -- I
20 think you testified on direct examination that you put
21 up signs restricting access using the stairs to the
22 tenth floor; did you not?

23 A That's correct.

24 Q You didn't get permission or approval from the
25 homeowners association to put those signs up to

MARSHALL GRIFFIN - CROSS EXAMINATION

1 restrict access to the roof?

2 **A** That's correct.

3 **Q** You said something about damages on direct
4 examination. You said you lost rental of approximately
5 \$20,000?

6 **A** Yes, loss of rental income.

7 **Q** And in 2019, furniture or furnishings were on the
8 roof, isn't that right, during the summer of 2019?

9 **A** That's correct.

10 **Q** 2020, Covid. Complete shutdown. Remember, no
11 one came here. No one came to the beach in 2020; isn't
12 that right?

13 **A** Not exactly. They didn't come until about May of
14 2020.

15 **Q** You don't recall in your deposition where you
16 said 2020 was a wash because of Covid, nothing
17 happened?

18 **A** Not the whole year. The first part of the year
19 was.

20 **Q** And, then, in 2021 and 2022, you had all of your
21 furniture on the deck; is that right?

22 **A** Except when it was removed.

23 **Q** And it was for only a short period of time, and
24 you got it back; isn't that right?

25 **A** It was approximately three months: June, July

MARSHALL GRIFFIN - CROSS EXAMINATION

1 and August; during prime time of the season.

2 Q And you had furniture on your deck in June, July,
3 and August of 2021?

4 A Of 2021 I did.

5 Q And 2022?

6 A That's correct.

7 Q So every summer that you rented this condominium,
8 you had furniture on the roof?

9 A Not in 2020. The association removed my
10 furniture.

11 Q But it put up furniture. There was pool
12 furniture there, wasn't there? Like you had from 2018
13 to 2000, the same type of furniture was on the terrace,
14 on the roof terrace in 2020.

15 A It was only pool lounge chairs. There were no
16 tables, chairs, rocking chairs like I've had.

17 Q Now, you sued the association and the four
18 individuals. You sued them for breach of contract, and
19 the contract we've already testified is the master
20 deed, right?

21 A That's correct.

22 Q I want you to tell the jury, specifically, where
23 in the master deed that the contract -- that this
24 contract was breached by the defendants; specifically
25 point to the language.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **A** They tried to change and add language with these
2 rules and regulations.

3 **Q** Mr. Griffin, question was -- look at the master
4 deed --

5 MR. GRANTLAND: Your Honor, he's trying to answer
6 the question.

7 THE COURT: Let him finish.

8 **Q** (MS. GOLDING) I would like for you to point to
9 the provision in the master deed that the defendant
10 association, and the individual defendants, breached;
11 point to that section.

12 **A** They never were able to add what they wanted to
13 add to the master deed.

14 **Q** So point --

15 **A** It's not in there. It never made it into the
16 master deed, what they wanted to do.

17 **Q** Next, you said there was a breach of contract
18 accompanied by fraud by the defendants -- fraud; isn't
19 that right?

20 **A** Yes.

21 **Q** Now, you will agree Richard Aquino and every
22 defendant has a right to ask questions?

23 **A** That's correct.

24 **Q** Every defendant -- Richard Aquino and every
25 defendant has a right to communicate their concerns

MARSHALL GRIFFIN - CROSS EXAMINATION

1 about Shoreham Towers to the board; isn't that right?

2 A That's correct.

3 Q Every individual defendant has a right to an
4 opinion about Shoreham Towers?

5 A Everyone has a right to an opinion; that is
6 right.

7 Q About Shoreham Towers?

8 A About anything.

9 Q In that e-mail that you pointed out that Richard
10 Aquino -- that you were saying fraudulent, is fraud;
11 Mr. Aquino was expressing his concerns as one of the 39
12 other unit owners; isn't that what he was doing?

13 MR. GRANTLAND: Objection. He doesn't know what
14 Mr. Aquino --

15 THE COURT: Sustained. You don't have to answer
16 that.

17 Q (MS. GOLDING) Mr. Aquino's e-mail identified,
18 what, five or six points about the common elements at
19 Shoreham Towers?

20 MR. GRANTLAND: Objection. She's
21 mischaracterizing the e-mail.

22 THE COURT: Rephrase your question.

23 MS. GOLDING: Yes, sir. I'll give him the
24 e-mail.

25 Q (MS. GOLDING) Here is Exhibit 12. Exhibit 12 is

MARSHALL GRIFFIN - CROSS EXAMINATION

1 an e-mail.

2 **A** It looks likes it was only sent to one board
3 member, Carter Tackett.

4 **Q** Look at the third page of Exhibit 12.

5 **A** Okay.

6 **Q** There shows -- this third page shows an e-mail
7 dated October 1, 2018 to a number of people, including
8 yourself?

9 **A** That's correct.

10 **Q** So you received this?

11 **A** That's correct.

12 **Q** In this e-mail there are several items
13 identified; is that correct?

14 **A** Six items.

15 **Q** Mr. Aquino, at this time, and continues to be
16 today, a member of the board; is that correct?

17 **A** That's correct.

18 **Q** He also is a unit number at Shoreham Towers?

19 **A** That's correct.

20 **Q** With respect to the items in his e-mail, he was
21 sending those to the board because of his concern with
22 respect to the common elements, how they were being
23 used?

24 MR. GRANTLAND: Objection.

25 THE COURT: Sustained. You don't have to answer

MARSHALL GRIFFIN - CROSS EXAMINATION

1 that.

2 Q (MS. GOLDING) The items, one through six,
3 identify items referring to common elements; is that
4 right?

5 A I'm not sure what he's referring to.

6 Q I'm not asking what he is referring to, but the
7 e-mail. The e-mail states -- reference to Turtle tile
8 on common areas in No. 1, right?

9 A That's what he said.

10 Q And we already determined that Turtle tile is not
11 identified for the plans in the building, nor the
12 master deed, right?

13 A Not specifically.

14 Q No. 2 talks about a privacy atriums?

15 A I don't know what he's talking about. I don't
16 have a private atrium.

17 Q Did you contact Mr. Aquino and say, What are you
18 talking about when you say private atrium?

19 A No, because he sent this to the board of
20 directors.

21 Q He sent it to you, because you were on the board,
22 right?

23 A He didn't just sent it to me. If he would have
24 sent it to me, myself, we could have talked about it
25 one-on-one. He sent it to a lot of people.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 **Q** Nothing stopped you from picking up the phone and
2 talking to Mr. Aquino, did it?

3 **A** No. And he didn't call me before he sent it to
4 like ten people either.

5 **Q** With respect to Mr. Aquino, he was on board
6 meetings with you in the early part -- all through 2019
7 when all of these items in his e-mail were mentioned;
8 isn't that correct?

9 **A** He was not on the board at this time. In 2018,
10 he was not on the board.

11 **Q** A number of these items in this e-mail were
12 mentioned in many board meetings in 2019; were they
13 not?

14 **A** I think he brought them back up in 2019.

15 **Q** When you say "he brought them back up," so the
16 board discussed these items before 2019; had they not?

17 **A** Then didn't act on any of these items.

18 **Q** I didn't ask that. These item in the e-mail was
19 brought up to the board before 2019; were they not?

20 **A** This e-mail was received in 2018, that is
21 correct.

22 **Q** Then in 2018, the board discussed a -- many of
23 these items?

24 **A** That's correct.

25 **Q** And the board, after the e-mail in October of

MARSHALL GRIFFIN - CROSS EXAMINATION

1 2018, asked you to respond to these items; did they
2 not?

3 **A** They did.

4 **Q** You never made a response to the board on these
5 items raised in Richard Aquino's e-mail?

6 **A** I consulted with my lawyer.

7 **Q** That's yes or no. Is it not a fact that you
8 never responded to the board as the board requested you
9 to do?

10 **A** That's correct.

11 MS. GOLDING: I'll indulge the Court for a
12 minute. I think I'm finished.

13 (A brief pause in the proceedings.)

14 **Q** (MS. GOLDING) Now, since you live in Horry
15 County, it is your obligation that if you own real
16 estate, like your unit, you pay properties taxes --

17 MR. GRANTLAND: Objection, Your Honor. He lives
18 in Richland County.

19 MS. GOLDING: I'm sorry. I apologize.

20 **Q** (MS. GOLDING) Since you have this penthouse unit
21 in Horry County, you pay real estate taxes or property
22 taxes on that unit; is that right?

23 **A** That's correct.

24 **Q** None of the taxes you pay to Horry County are
25 based on the roof terrace or the balcony or the

MARSHALL GRIFFIN - CROSS EXAMINATION

1 elevator lobby?

2 **A** I'm not sure about the elevator lobby. It is
3 based on heating and cooled living area, interior
4 space.

5 **Q** The roof terrace, do you pay any property tax for
6 that?

7 **A** That is outside. Nobody pays property taxes for
8 outside space.

9 **Q** So you didn't pay any property tax for the roof
10 terrace?

11 **A** That's correct.

12 **Q** And you don't pay any property taxes for the
13 planters?

14 **A** That's correct.

15 **Q** And with respect to the balconies that are on the
16 nine floors below you, each of those balconies, their
17 square footage is part of each unit; is that correct?

18 **A** That is not correct.

19 **Q** So each unit owner, floors two through nine, have
20 a balcony?

21 **A** That's correct.

22 **Q** Those balconies and the square footage of those
23 balconies are part of the unit for assessment purposes?

24 **A** For assessments, that's correct -- well, I don't
25 know that that is part of the formula for assessments.

MARSHALL GRIFFIN - CROSS EXAMINATION

1 I don't know for a fact.

2 Q But you are not going to deny that to the jury
3 that the 39 unit owners at Shoreham Towers, below the
4 tenth floor, all pay assessments on the square footage
5 for their balcony?

6 MR. GRANTLAND: He just said he didn't know.

7 A I don't know if that is part of the formula or
8 not.

9 Q (MS. GOLDING) You wouldn't deny it?

10 MR. GRANTLAND: Same question, Your Honor.

11 THE COURT: Sustained.

12 MS. GOLDING: He was president, Your Honor.

13 THE COURT: Well, you asked, and he answered that
14 five times already.

15 MS. GOLDING: Okay. Thank you.

16 Q (MS. GOLDING) Finally, the railing that is --
17 that we're talking about, the railing has been
18 maintained -- this railing that is around the tenth
19 floor on the roof, that's been maintained by the
20 homeowners association; isn't that right?

21 A That's correct; just like all exterior railings
22 are maintained and painted a uniform color by the HOA.

23 MS. GOLDING: Your Honor, I have no further
24 questions. Thank you.

25 THE COURT: Let's take a quick break. Take a 15

MARSHALL GRIFFIN - REDIRECT EXAMINATION

minutes. Do not discuss the case.

(The jury exits at 11:25 a.m., and the following is heard out of the presence of the jury.)

(A recess was taken.)

THE COURT: Thank you. Everyone have a seat.

Bring out the jury.

(The jury enters at 11:53 a.m., and the following is heard in the presence of the jury.)

THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MR. GRANTLAND:

Q I have few questions, but no exhibits. Let's go backwards on this, on Ms. Golding's cross-examination. Mr. Aquino's e-mail, when you received that e-mail, how did that make you feel?

MS. GOLDING: I'll make an objection, Your Honor. Number one, that is not a new matter. He introduced the e-mail into evidence, and how he feels is not an issue.

MR. GRANTLAND: I feel like I'm allowed to clean up loose ends that were made in her cross-examination.

THE COURT: How is that relevant?

MR. GRANTLAND: Well, she asked him a question about the e-mail, and I wanted him -- he didn't get to give his full response.

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 THE COURT: How he feels, how is that relevant?
2 He can respond to the e-mail.

3 MR. GRANTLAND: I'll skip that question, Your
4 Honor.

5 Q (MR. GRANTLAND) Regarding the e-mail, did any of
6 the board members reach out to discuss it with you?

7 A Not originally; not in the first time it was sent
8 out to the board.

9 Q And you were asked about how long --

10 MS. GOLDING: I'll make an objection to the
11 leading.

12 THE COURT: Sustained.

13 Q (MR. GRANTLAND) How long have you had your own
14 furniture out on the terrace?

15 A My own furniture, since 1995 when I purchased it
16 from the trust.

17 Q What furniture did you have out there?

18 A I started with some lounge chairs, glass top
19 table, four chairs, and a couple of small tables.

20 Q And for how long have you had tables and chairs
21 out on this deck out of the penthouse balcony?

22 A Since 1995, in some form or fashion. Some of
23 them didn't last as long as I wanted them to, so they
24 were replaced for different reasons.

25 Q You mentioned rocking chairs. How long did you

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 have rocking chairs out there?

2 **A** Rocking chairs, I've had some form of a rocking
3 chair since 1995.

4 **Q** The Thompson removal of the Turtle tile, who with
5 Thompson -- you were shown a memo that Thompson wrote.
6 Who from Thompson contacted you about removing the
7 Turtle tile?

8 **A** No one contacted me directly from Thompson.

9 **Q** What did Mr. Aquino tell Mr. Thompson about the
10 removal of the Turtle tile?

11 **A** I'm not sure. I wasn't privy to that
12 conversation. I don't know what he told him. It
13 wasn't in the original quote of the scope of the work
14 for the center roof replacement.

15 **Q** What did Mr. Aquino tell Thompson about your
16 Turtle tile being a nuisance?

17 MS. GOLDING: Your Honor, he just testified he
18 wasn't party to that; he doesn't know.

19 **A** I don't know. I can't see how Turtle tile would
20 bother anyone.

21 **Q** (MR. GRANTLAND) You were questioned about some
22 of your deposition testimony, so I want you to give
23 your complete answer.

24 You were asked about privacy. Turn to Page 55 of
25 your deposition.

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 MS. GOLDING: Your Honor, this is not new matter.
2 He said "privacy" 25 times. This certainly is not new
3 at all.

4 MR. GRANTLAND: Your Honor, she questioned him on
5 the deposition, and I think he's entitled to tell the
6 jury the full testimony.

7 THE COURT: Did she question him on privacy?

8 MR. GRANTLAND: She did, but she left out
9 portions of his -- portions of her questions and
10 answers on the issue that I think are relevant.

11 THE COURT: Come up and tell me what they are.

12 (Whereupon, the following bench conference was
13 had out of the hearing of the jury.)

14 MR. GRANTLAND: So on Page 55 she asked him: "Do
15 you have any right to privacy?" And he said: "I don't
16 think it says." And then she asked a question, and I
17 want to elicit her question and his response.

18 MS. GOLDING: This is -- he's only supposed to go
19 on new matter. He talked about privacy 25 times, at
20 least.

21 THE COURT: But you brought it up.

22 MS. GOLDING: Yes. But I brought it up because
23 he testified --

24 THE COURT: He's replying to it. You brought it
25 up.

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 MS. GOLDING: Okay. Thank you.

2 (Whereupon, the following was had in open
3 court:)

4 Q (MR. GRANTLAND) Turn to Page 55 of your
5 deposition.

6 A Okay.

7 Q You were asked about privacy from Ms. Golding.
8 I'll read Question 15 -- her question on Line 15, and
9 you read your response on Line 20.

10 Question: "I think the master deed is marked
11 Exhibit 1, and please show me where it is established
12 that the owner of the rooftop penthouse on the tenth
13 floor has a right of privacy to the rooftop terrace."

14 What was your response?

15 A "Okay. All I will say is that Bates stamp
16 No. 93, the next-to-the-last paragraph, where it says:
17 'All balconies adjacent to each dwelling, including the
18 railing attached thereto, are part of that dwelling,
19 and not common areas.'"

20 Q Next question: "Do you contend that there exists
21 a balcony on the tenth floor rooftop?"

22 And your answer on Page 56, Line 2?

23 A "I contend that in the master deed that they are
24 referring to balconies, and that would also include
25 roof terrace, terrace, balconies, porches, all similar

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 outdoor areas."

2 Q You were also questioned about the tenth floor
3 foyer where the elevator is?

4 A Correct.

5 Q If you could, turn to Page 26 of the deposition.

6 A Okay.

7 Q I'll read her question at Line 15, and you read
8 your response at Line 19.

9 "Okay. What is your belief? Is your belief that
10 the rooftop, the foyer, that's on Page 9 is part of --
11 part of the square footage of the penthouse unit, or is
12 it not?"

13 What was your answer?

14 A "I would believe that it's part of it since it's
15 heat and cooled, and I pay for the electricity. All
16 the light fixtures and receptacles in that area that
17 you pay -- or that I pay is hooked up to my breaker box
18 electricity. I pay for the utilities to that area."

19 Q Ms. Golding questioned you a lot about terrace
20 balcony, remember that?

21 A Yes.

22 Q Is there a difference between the two in your --
23 from your perspective?

24 A In my perspective, they are both areas of outdoor
25 space adjacent to dwellings.

MARSHALL GRIFFIN - REDIRECT EXAMINATION

1 **Q** Do you know if there is a difference in the
2 dictionary between "terrace" and "balcony"?

3 **A** I looked them up several times, and it is a
4 synonym for each one that can be called the other.

5 **Q** How have you always treated this terrace?

6 **A** As my private outdoor space.

7 **Q** And you've owned it for how long?

8 **A** I've owned it since -- my wife and I have owned
9 it since 1995.

10 **Q** How many years have you paid to maintain these
11 planters?

12 **A** Since 1995.

13 **Q** How often do you pay someone to clean and
14 maintain the terrace?

15 **A** When I have renters, every Saturday.

16 **Q** How many years have you paid for maintenance on
17 the terrace in some form or fashion?

18 **A** Since 1995.

19 **Q** When did the board take your furniture?

20 **A** In 2019 or '20.

21 **Q** And when did they disable the elevator?

22 **A** About the same time.

23 **Q** How much rental -- you talked about rental income
24 and Covid. How much rental income do you believe you
25 lost as a result of the board's actions?

HENRY BECKHAM - DIRECT EXAMINATION

1 **A** Oh, for renters that haven't come back that I can
2 basically determine, approximately \$20,000.

3 **Q** Why do you blame the board for this and not Covid
4 or some other reason?

5 **A** Because they took action to change my outdoor
6 space use. They took my furniture. They took the
7 Turtle tile, which was a part of the covering over the
8 roof, and they basically took my privacy.

9 **Q** What is the only reason you were able to get it
10 back?

11 **A** We had to file a temporary restraining order.

12 **Q** Marshall, what is it you want from this jury that
13 the board took away from you in 2019?

14 **A** I just want it put back like it was since 1995:
15 The furniture, privacy, the same things I've had since
16 then.

17 MR. GRANTLAND: Thank you. No further questions.

18 THE COURT: Any follow-up?

19 MS. GOLDING: Nothing, Your Honor.

20 THE COURT: Do you have another witness before
21 lunch?

22 MR. GRANTLAND: I have two, but we can do how
23 many you want..

24 THE COURT: Okay.

25 MR. GRANTLAND: We call Henry Beckham.

HENRY BECKHAM - DIRECT EXAMINATION

1 (HENRY BECKHAM, having been duly sworn,
2 testified as follows:)

3 MS. GOLDING: May we approach the bench?

4 THE WITNESS: Henry Beckham.

5 (Whereupon, the following bench conference was
6 had out of the hearing of the jury.)

7 MS. GOLDING: I don't believe his testimony is
8 proper. He's basing it upon the ownership of the
9 property, the roof terrace, and he testified he doesn't
10 own it.

11 THE COURT: I think it's going to the value of
12 the condo.

13 MS. GOLDING: No. He's going to the value of the
14 whole --

15 MR. GRANTLAND: We've had this motion in limine.
16 He's going into the value of the condo.

17 THE COURT: We're just not going to get into what
18 she just got this past week.

19 MS. GOLDING: Right, Your Honor. But as I
20 said -- does court reporter take this -- as I said --

21 MR. GRANTLAND: Do we need the jury leave?

22 THE COURT: I don't think we need to. We've
23 already talked about it.

24 I think it's going to damages.

25 MS. GOLDING: We've talked about it --

HENRY BECKHAM - DIRECT EXAMINATION

1 THE COURT: It's going to damages.

2 MS. GOLDING: Yes, sir.

3 (Whereupon, the following was had in open
4 court:)

DIRECT EXAMINATION

5
6 **BY MR. GRANTLAND:**

7 **Q** Tell us about yourself, where you're from, what
8 do you do for a living.

9 **A** I've lived in Myrtle Beach for nearly 40 years
10 now. I'm a real estate appraiser and work for a
11 variety of banks, individuals, law firms, utilities,
12 the state, just different clients who need appraisal
13 services.

14 **Q** How long have you been a real estate appraiser --
15 no offense on your age or anything?

16 **A** A long time. I've been appraising over 45 years.
17 Like I've said, I've been in Myrtle Beach and Horry
18 County for, at least, 40 years.

19 **Q** Briefly, your educational background and work
20 experience?

21 **A** I have BA degree from Presbyterian College in
22 1973. Like I say, basically my work experience has
23 been real estate for the last 45 years, real estate
24 appraisal.

25 **Q** What certifications or designations do you have?

HENRY BECKHAM - DIRECT EXAMINATION

1 **A** I'm a South Carolina Certified General Real
2 Estate Appraiser, which we're allowed by license to
3 appraise any and all types of real estate without
4 limitations of value.

5 I'm a member of the National Association of
6 Realtors. I'm a general accredited appraiser
7 designated by that particular organization.

8 **Q** Dumb question: Have you ever appraised a condo
9 at Myrtle Beach?

10 **A** Several times, yes.

11 **Q** Have you ever appraised at Shoreham Towers?

12 **A** I think years ago I probably did. I don't
13 remember exactly.

14 **Q** Do you know how many condos over the years you've
15 appraised?

16 **A** Thousands.

17 **Q** Not just a few, but thousands?

18 **A** Thousands.

19 **Q** Have you ever been qualified as an expert witness
20 in court?

21 **A** Yes.

22 **Q** How often?

23 **A** Not thousands, but many times.

24 **Q** In this courtroom?

25 **A** In this courtroom.

HENRY BECKHAM - DIRECT EXAMINATION

1 **Q** Yes, sir. What were you qualified as an expert
2 in?

3 **A** Cases like this where you have disputes about
4 property values, condemnation cases with the County
5 where they are maybe acquiring property for a
6 right-of-way or South Carolina DOT. I have worked for
7 landowners against the DOT, various forms of
8 litigation.

9 MR. GRANTLAND: At this time the plaintiff moves
10 that Mr. Beckham be qualified as an expert witness.

11 THE COURT: Any objections?

12 MS. GOLDING: No objection.

13 THE COURT: Motion granted.

14 **Q** (MR. GRANTLAND) Let's start with the basics.
15 What is an appraisal?

16 **A** An appraisal is the process of gathering
17 information so that you can form an opinion of value.

18 **Q** What does an appraiser do?

19 **A** Well, that process to form an opinion of value,
20 you have to identify the appraisal problem, determine
21 what would be the best way to approach that problem or
22 the analysis you would want to use. You look at the
23 property type. If it is a condominium, you will
24 compare it to other condominiums. If it is in a North
25 Myrtle Beach oceanfront condominium, you'll compare it

HENRY BECKHAM - DIRECT EXAMINATION

1 to a North Myrtle Beach oceanfront condominium. You
2 are not going to consider houses or land or anything
3 else. You will consider marketed information for that
4 particular type of property.

5 Q What did I ask you to do in this case?

6 A I was asked to appraise the Shoreham Towers
7 penthouse unit under a before and after scenario,
8 meaning looking at it before that this condominium had
9 full and exclusive use of the rooftop terrace and
10 balconies. That is the before condition. What is the
11 property worth with that assumption?

12 Then the second scenario you look at is what is
13 the after value? What is it worth if I don't have full
14 exclusive use of this rooftop balcony?

15 Q Have I ever hired you to be an appraiser for me
16 before?

17 A No.

18 Q Have you ever done any work for Ms. Golding, who
19 represents the defense?

20 A Yes.

21 Q How much do you charge for your work?

22 A Typically, bill on the hour, about \$175.

23 Q How much have you charged to date working on this
24 case?

25 A I think \$1,500 to actually do the report and time

HENRY BECKHAM - DIRECT EXAMINATION

1 spent pretrial and trial.

2 Q Including today?

3 A Yes.

4 Q Let's talk about the rooftop penthouse at
5 Shoreham Towers. Tell us exactly, what is a penthouse?

6 A The penthouse is typically defined as the unit
7 that would be located on the upper-most floor.

8 Now, the subject unit is very unusual. To my
9 knowledge, it's the only true rooftop penthouse in
10 Myrtle Beach. Most of the time you go to a condominium
11 project and the developer will identify floors on the
12 top level as "penthouse units," but they are just like
13 the other units underneath that in a stack, typically.

14 This particular unit, it is a rooftop
15 condominium, and it is very unusual. Again, I do not
16 know -- and I have spoke to different real estate
17 agents and property management groups, and I do not
18 know of another rooftop penthouse like this Shoreham
19 Towers penthouse unit.

20 Q How is the rooftop penthouse different from other
21 penthouses at Shoreham Towers?

22 A The -- it is there by itself.

23 Q And what is the outside space connected to the
24 other condos and penthouses at Shoreham Towers?

25 A They have -- typically, you will have a unit --

HENRY BECKHAM - DIRECT EXAMINATION

1 the other Shoreham Towers units, you will have a
2 balcony, small balcony, usually 8 feet deep, and it
3 will be -- you'll have a balcony in front of a living
4 area overlooking the ocean, and then you might have a
5 balcony if there is a bedroom on the oceanfront, you
6 might have a balcony there.

7 The subject rooftop tower, the balcony extends
8 all the way around the unit itself. The subject has
9 glass walls. I mean, it was designed to be by itself.

10 Q Have you inspected the penthouse?

11 A Yes, I have.

12 Q When did you inspect it?

13 A I think I was there in May.

14 Q And you mentioned the walls. If the curtains are
15 open, how much of the ocean can you see?

16 A About as far as you can see.

17 Q And from the balcony terrace outside of the
18 condo, what view do you have of the ocean?

19 A A panoramic view. I mean, you are sitting there
20 on the top level, and you have nothing else around you;
21 just a wide open space. I think I've been told that if
22 you look across -- if you are on boat and looking out
23 on the horizon, that you could typically see 10 to
24 12 miles, I mean. What you are looking at is just a
25 beautiful view, unobstructed view, of the ocean.

HENRY BECKHAM - DIRECT EXAMINATION

1 **Q** And after your inspection, did you prepare a
2 report?

3 **A** I did.

4 **Q** I'll show you your report marked Plaintiff's
5 Exhibit 37 for identification only.

6 Is this the report you prepared in this case,
7 Henry?

8 **A** Yes.

9 **Q** What is your understanding of when the Shoreham
10 Towers condominium was built?

11 **A** I think it was built in the '80s.

12 **Q** Who first owned the rooftop condo?

13 **A** As I have been told, and I don't do the title
14 work, but my understanding is it was Mr. Griffin's
15 uncle.

16 **Q** And when did Mr. Griffin -- do you know when he
17 and his wife became the owners?

18 **A** As part of the appraisal process, we check the
19 history of the property, and we go back five years. If
20 it is over five years ownership, it is a continuous
21 ownership, and we don't make a notation of it.

22 **Q** So you know he's been the owner over five years?

23 **A** Yes.

24 **Q** Are you aware of the HOA, the defendant board,
25 put together rules for the penthouse in 2019?

HENRY BECKHAM - DIRECT EXAMINATION

1 **A** I've been told that.

2 **Q** How did the rules affect the use of the
3 terrace -- the balcony terrace around the penthouse?

4 **A** Well, it is my understanding that the rules now
5 allow other residents and guests of Shoreham Towers to
6 use the penthouse balcony areas. Like I said, the
7 penthouse rooftop penthouse was designed to be used as
8 the only unit on the roof. I mean, you look at it and
9 it is designed -- it has glass walls, so they didn't
10 intend for everyone coming and going and sitting
11 outside of your bedroom door on your balcony.

12 The elevator was set up -- there are two
13 elevators in the building: One runs to the ninth
14 floor, the other runs to the tenth floor, but you have
15 to have a key to get to the tenth floor, because that
16 is the rooftop penthouse. It is designed to be
17 private. It is designed to be exclusive.

18 **Q** So what did you do in your appraisal?

19 **A** Again, we considered -- the first appraisal that
20 we did was the "before value." What is the value of
21 this exclusive use and access rooftop penthouse? What
22 is the value of the property if you have that balcony
23 or rooftop area devoted totally to that particular
24 property, in terms of privacy and recreation, for your
25 guests or residents?

HENRY BECKHAM - DIRECT EXAMINATION

1 **Q** What, in your opinion, is the estimated value of
2 the penthouse having exclusive access to the balconies
3 and terrace?

4 **A** \$882,000.

5 **Q** Is that number to a reasonable degree of
6 certainty?

7 **A** It is as certain as you can be with an appraisal,
8 yes.

9 **Q** And then the "after condition," explain the
10 "after condition."

11 **A** The "after condition" is now the rooftop unit is
12 actually like any other unit in Shoreham Towers. It
13 doesn't have this exclusive view. It doesn't have use
14 of this deck area, this private area. So in the "after
15 value," I merely calculated the value of the subject
16 unit in comparison to a typical Shoreham Towers unit.
17 The "before value" we were making comparisons with
18 other penthouse units in North Myrtle Beach that had
19 some degree of exclusivity or view that matched that.
20 The "after value" is it just reverts to be just another
21 unit at Shoreham Towers.

22 **Q** What is that number?

23 **A** That number is \$660,000.

24 **Q** So what is the difference between the "before
25 number" and the "after number"?

HENRY BECKHAM - DIRECT EXAMINATION

1 **A** The difference is....

2 **Q** \$222,000? You are the appraiser, I'm not.

3 **A** Well, that is Kershaw County math now.

4 \$222,000, and that represents the change in the
5 value of that property when you take away that
6 exclusive use and access.

7 **Q** Why is there such a degree of difference when you
8 take away the exclusive --

9 **A** Well, again, when you consider the fact that
10 there is nothing else like this in the "before," nobody
11 else has an exclusive rooftop unit where you are
12 literally the only thing on the roof -- like I said,
13 there are other penthouses around North Myrtle Beach
14 that are units located on the top floor of the project.
15 I think the ninth floor of Shoreham Towers, they list
16 four units across that has Penthouse 1, 2, 3 and 4, but
17 they are not rooftop penthouses.

18 **Q** And how do the HOA rules and changing the
19 penthouse, how does it affect privacy of users or
20 guests of the penthouse?

21 **A** Well, if you take away the privacy, it takes away
22 the desirability or the appeal of that property. You
23 would not want to rent a four-bedroom unit with glass
24 walls if you are going to wake up in the morning and
25 the Shoreham Towers' residents or guests are sitting on

HENRY BECKHAM - CROSS EXAMINATION

1 your balcony.

2 Q Do you have any other opinions, Henry, about the
3 HOA's actions and how it affects the value or use of
4 the rooftop penthouse?

5 A All I can do is speak to the difference in the
6 before and after. If you take away the exclusive use
7 and access from the rooftop penthouse, you diminish the
8 value by \$222,000.

9 MR. GRANTLAND: Thank you. Answer any questions
10 Ms. Golding may have.

11 THE COURT: Cross?

12 MS. GOLDING: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. GOLDING:

15 Q Mr. Beckham, you never did look at the plans, the
16 building plans for this condo, did you?

17 A No.

18 Q And you know as an appraiser for so many years
19 that these building plans are incorporated into the
20 master deed; is that correct?

21 A I'm not an expert on master deeds, but I assume
22 so.

23 Q You didn't look at the master deed?

24 A I was not asked to look at the master deed.

25 Q And you did not look at the plans?

HENRY BECKHAM - CROSS EXAMINATION

1 **A** The plans were not made available.

2 **Q** And you didn't look at Mr. Griffin's deed to the
3 unit, did you?

4 **A** No.

5 **Q** Now, you said that the condo was designed to be
6 exclusive. Did you know that there is not one word in
7 the master deed that says this condo is exclusive? You
8 can't deny that, can you?

9 **A** I can't deny it because I have not read it, but I
10 can look at this property and look at the way it is set
11 up, and it was designed to be exclusive.

12 **Q** You said it was designed to be exclusive. In
13 these plans, there is not one word at any time used as
14 "exclusive," is there?

15 **A** I don't know.

16 **Q** Okay. You also said that the rooftop was the
17 balcony?

18 **A** The rooftop is actually two or three different
19 components, from what I saw. You have the unit itself,
20 which I think sits on the roof. You have the four
21 bedroom structure that sits on the roof. Around that
22 you have a balcony or terrace, whatever you want to
23 call it, and then you have planters that go around
24 that. And then outside of the planters, you've got
25 open exposed roof where all the air conditioning units

HENRY BECKHAM - CROSS EXAMINATION

1 for the different units are located.

2 Q You said the word "balcony, or whatever you want
3 to call it," do you know that these plans only show a
4 balcony from floors nine through two? There is no
5 balcony shown for the rooftop?

6 A I don't --

7 Q Let me show you. I believe that was Page 9. In
8 fact, I'll give you this one. I'll show you what is
9 marked as Defendants' Exhibit 1. It is part of the
10 master deed. No, Page 13. Look at Page 13. The words
11 "balcony" is on every unit below the rooftop; is it
12 not. Do you see that?

13 A I do.

14 Q I don't see the word "balcony" on the rooftop, do
15 you?

16 A No.

17 Q What you see on the rooftop, it says "roof
18 terrace"?

19 A Roof terrace, yes.

20 Q Go back to Page No. 9. That's "rooftop"?

21 A Yes.

22 Q And it refers to what is surrounding the unit as
23 the "roof terrace," does it not?

24 A Yes.

25 Q Doesn't say the word "balcony," does it?

HENRY BECKHAM - CROSS EXAMINATION

1 **A** No.

2 **Q** Go to Page 7. On one-half of 7, it says
3 "tenth floor plan: Rooftop penthouse and garden;" do
4 you see that?

5 **A** I've never seen this before, so if you will point
6 that out for me.

7 **Q** Sure. I'll be glad to. Right here, rooftop
8 plan.

9 **A** Penthouse and garden.

10 **Q** Right. And you'll see beside where it has the
11 rooftop, it has balconies below?

12 **A** Yes.

13 **Q** In fact, it says on two different places
14 balconies below that, below the tenth floor; does it
15 not?

16 **A** That is what it says, but the plan merely is
17 letting you know that the area under that section of
18 the roof is the balcony of the unit below that.

19 **Q** And you will agree that owning a condominium
20 means you have to abide by the master deed, right?

21 **A** Yes.

22 **Q** And before you were engaged early last year, you
23 were not aware of this property, were you?

24 **A** No, not aware of this particular issue or unit.

25 **Q** You will agree that after all the many years of

HENRY BECKHAM - CROSS EXAMINATION

1 experience you have, common elements exist in
2 horizontal property regimes, right?

3 A Yes.

4 Q And there are condominium units, and there are
5 common elements, right?

6 A Yes.

7 Q That is two different things: Units and common
8 elements?

9 A And limited common elements.

10 Q And you will agree there are no limited common
11 elements in Shoreham Towers?

12 A I don't know.

13 Q Let's look at the master deed. Let's see if
14 there are any.

15 MR. GRANTLAND: Your Honor, may we approach?

16 (Whereupon, the following bench conference was
17 had out of the hearing of the jury.)

18 MR. GRANTLAND: If my friend, Ms. Golding, is
19 going to question him about the master deed, I think
20 she's opening the door to question about the master
21 deed that I gave her notice of last week. I feel she's
22 getting into the master deed and she --

23 MS. GOLDING: Your Honor, he said there were
24 limited common elements. There are none. I mean, I
25 have to get that straightened out.

HENRY BECKHAM - CROSS EXAMINATION

1 MR. GRANTLAND: My point is, if she's getting
2 into the master deed, I should be able to get into the
3 master deed, too.

4 THE COURT: If he knows.

5 (Whereupon, the following was had in open
6 court:)

7 Q (MS. GOLDING) Mr. Beckham, you don't know that
8 there are limited common elements in Shoreham Towers,
9 do you?

10 A I don't know.

11 Q About common elements, I believe in your
12 deposition you said that elevators are common elements,
13 right? Stairwells are common elements?

14 A Yes.

15 Q And one aspect can be elevator lobbies are common
16 elements, right?

17 A Yes.

18 Q Mr. Griffin didn't tell you that he converted an
19 elevator lobby to a private foyer?

20 MR. GRANTLAND: Objection; mischaracterizing his
21 testimony.

22 THE COURT: Overrule. You can answer.

23 A I was not told the history of the property or any
24 changes made. I merely appraised the property as I
25 found it.

HENRY BECKHAM - CROSS EXAMINATION

1 Q (MS. GOLDING) And when you appraise properties,
2 you don't appraise, normally, values for common
3 elements, do you?

4 A The basis of the comparison when you look at an
5 appraisal, you are looking at the unit's finished area.
6 Everyone has -- as she says, most oceanfront
7 condominiums, you will have common areas of elevators
8 and swimming pools, and whatnot. So your comparison is
9 1600-square-foot unit compared to an 1800-square-foot
10 unit, and what is the quality of the difference?

11 Q So I think you said -- the question is correct.
12 You do not put valuation on common elements, do you?

13 A If common elements include an extraordinary
14 amenity package, like an endless river pool,
15 waterfalls, and another project doesn't have it, you
16 may make an adjustment for some common elements.

17 Q I'm going to hand you a deposition, Mr. Beckham.
18 Do you have that with you, Page 7 of the last page?

19 A My deposition?

20 Q Yes, sir. Go to Page 7. I'll read the question,
21 and you answer it on the next page.

22 My question is: "When appraising horizontal
23 property regimes -- or you're not appraising the regime
24 itself, excuse me, but when appraising the units in
25 horizontal property regimes, do you ever inspect the

HENRY BECKHAM - CROSS EXAMINATION

1 common elements in this regime?"

2 **A** And I said: "Typically not. But, typically, you
3 would appraise a condominium unit with a certain
4 boundary size, room count, et cetera."

5 **Q** When you initially were introduced, you said that
6 you were hired to be a witness when there are disputes
7 about property values, like this case. Who told you
8 there is a dispute about property values, like this
9 case?

10 **A** I think I was answering a question about times I
11 had testified and in what sort of cases.

12 **Q** Maybe I misunderstood you. But you'll agree
13 that, in this case, there is no dispute about property
14 value, is there, to your knowledge?

15 **A** To my knowledge, it is a question of what this
16 owner had when he operated the property with full and
17 exclusive use of the rooftop terrace.

18 **Q** Please answer my question. To your knowledge, is
19 this case about a dispute about property values?

20 **A** The actions that were taken to make the changes
21 in those circumstances result in a property --

22 MS. GOLDING: Your Honor, can I get a yes or no?

23 THE COURT: You didn't ask for a yes or no. You
24 asked a question, and he's answering it.

25 **Q** (MS. GOLDING) Once again, Mr. Beckham, to your

HENRY BECKHAM - REDIRECT EXAMINATION

1 knowledge, is this case about a dispute about property
2 values?

3 MR. GRANTLAND: Object to the question. I mean,
4 the jury knows what the case is about, and he's an
5 expert on appraising.

6 THE COURT: Overrule. He can answer and explain
7 it.

8 A I think it comes down to a question of values
9 because of the changes and the status of the property.

10 Q (MS. GOLDING) I guess you are just not going to
11 answer the question, are you, Mr. Beckham?

12 Thank you.

13 REDIRECT EXAMINATION

14 BY MR. GRANTLAND:

15 Q Have you ever appraised a condo that did not
16 include a porch, a balcony, a terrace as part of the
17 value?

18 A No.

19 Q You've been doing this for how long?

20 A 40 years.

21 Q You have gray hair and lost some hair
22 (laughing) --

23 A Come on now (laughing).

24 Q So would it make any sense to build an exclusive
25 rooftop penthouse with no privacy?

HENRY BECKHAM - REDIRECT EXAMINATION

1 **A** No.

2 **Q** As an appraiser, with gray hair and no hair, is
3 there any difference to you between a balcony or
4 terrace?

5 **A** Again, this is whether you call it a balcony or a
6 terrace, it is the same. It is the outdoor space
7 around this unit. You want to get out of the unit and
8 sit in a lounge chair and look at the ocean, this is
9 the rooftop balcony or rooftop terrace. It goes with
10 that unit.

11 Again, I take it with this 45 years of
12 experience, we go and look at a unit, and you see what
13 you see. It is quite obvious the man built a glass
14 house, and it is the only unit on the roof. It was not
15 intended to be shared. It operated, from my
16 understanding, for years with exclusive access and use.

17 MR. GRANTLAND: Thank you. No further questions.

18 MS. GOLDING: Nothing further.

19 THE COURT: You have a good day.

20 Do you have another short witness?

21 MR. GRANTLAND: I have another short.

22 THE WITNESS: Oh, now you're calling me short.

23 (laughing).

24 (Laughing in courtroom.)

25 MR. GRANTLAND: Plaintiff calls Wayne White.

WAYNE WHITE - DIRECT EXAMINATION

1 THE WITNESS: Wayne White.

2 (WAYNE WHITE, having been duly sworn, testified
3 as follows:)

4 DIRECT EXAMINATION

5 BY MR. GRANTLAND:

6 Q Tell the jury about yourself, where you live,
7 where are you from, what do you do for a living.

8 A Born and raised in North Myrtle Beach, lived here
9 for 54 years. Grandfather started a real estate
10 business in 1964. I worked in college athletics for
11 about 15 years and made the switch over to the family
12 business in 2002, taking over the homeowners
13 association management, which at the time had seven
14 properties that we managed and grew that to 22
15 properties. Then, Mom and Dad retired and I decided I
16 didn't want to be the end-all-be-all, so we closed the
17 business at the end of 2020.

18 Q What do you do now?

19 A Starting a business doing the opposite end. I
20 got a property maintenance service, so I clean
21 trashcans and lobbies and pools -- a lot less stress.

22 Q And you do something with Coastal Carolina?

23 A That is where I worked as an assistant athletic
24 director, and I've worked there part-time ever since
25 leaving full time in 2002.

WAYNE WHITE - DIRECT EXAMINATION

1 **Q** Did you ever work for the Shoreham Towers
2 Homeowners Association?

3 **A** I did. We served as their property manager from
4 2005 to '18.

5 **Q** Why did you leave in 2018?

6 **A** We resigned from several properties at the time.
7 We were a small company. I didn't want to take on more
8 employees. One of my faults is I try to take on too
9 much myself, and I don't delegate well, so my way of
10 delegating was to downsize.

11 **Q** What was your job with the Shoreham Towers HOA
12 between '05 and '18?

13 **A** Served as the association's property management
14 company. Obviously, handled -- on the backside handled
15 all of the books, accounts receivable, accounts
16 payable. I worked with the board of directors or at
17 the direction of the board of directors for maintenance
18 of common areas, maintenance of the grounds, building,
19 building insurance.

20 **Q** When you worked for Shoreham Towers, who owned
21 the rooftop penthouse?

22 **A** Marshall Griffin.

23 **Q** Do you know him?

24 **A** I do.

25 **Q** Do you know the defendants?

WAYNE WHITE - DIRECT EXAMINATION

1 **A** I do.

2 **Q** What did Marshall use the rooftop penthouse for?

3 **A** Personal use and as a rental property.

4 **Q** When you worked for Shoreham Towers, who owned
5 the balcony and terrace adjacent to the penthouse?

6 **A** From everything I was -- when we came onboard,
7 you know, I was under the assumption that Marshall
8 Griffin owned it. I mean, that is how it was
9 maintained and how it operated prior to us coming
10 onboard and then the whole time we were property
11 managers.

12 **Q** Who cleaned and maintained the balcony and
13 terrace out of the rooftop penthouse?

14 **A** Marshall Griffin or someone employed by him.

15 **Q** Who took care of the plants in the planters?

16 **A** Marshall.

17 **Q** Now, who provided electricity for the lights on
18 the balcony and terrace?

19 **A** That was Marshall Griffin.

20 **Q** How did it work if HVAC technicians needed to do
21 work on the roof?

22 **A** As long as we tried to at first reach out to
23 either Mr. Griffin himself or his rental agent, and if
24 we couldn't reach one of them, just not to make the
25 HVAC person wait around, I would try to contact, if

WAYNE WHITE - DIRECT EXAMINATION

1 there was anyone, in the unit. We would try to contact
2 them.

3 As the gentleman, the appraiser, said, this is a
4 very unique property. The other 21 HOAs at the time
5 had nothing like this. You actually have -- like, we
6 considered it four roof areas. You had the two areas
7 on the sides, which were over Penthouse 1 and Penthouse
8 4. They had the air conditioning units for the A stack
9 and E stack. Then the area that is in question, I
10 guess whether it is a balcony or roof, that was a
11 separate roofing area. And then on top of Marshall's
12 unit, all of the air conditioning for the B, C, and D
13 units were up there.

14 Q How was Marshall as far as being responsive to
15 you if you needed something from him?

16 A Very.

17 Q What, if any, instances or claims occurred in the
18 balcony area while you were property manager?

19 A I don't know of any. I know we had an ongoing
20 leak with Penthouse 4 that we ultimately found out it
21 was like something in the bottom of the planters.
22 Marshall hired people to take all of the dirt and
23 everything out, and then we had a roofing company come
24 in to address issues in both of the planters.

25 Q I'll show you Plaintiff's Exhibit 40, which has

WAYNE WHITE - DIRECT EXAMINATION

1 an e-mail from you, if you can look at it.

2 MS. GOLDING: What number, I'm sorry?

3 MR. GRANTLAND: 40. You gave it to me last
4 weekend.

5 MS. GOLDING: When you just listed him as a
6 witness?

7 MR. GRANTLAND: He's listed in discovery.

8 Q (MR. GRANTLAND) Do you remember any issues with
9 the plants and the planters?

10 A One of the issues we discussed, that I discussed
11 with the roofers, was -- and they were old bushes --
12 older bushes in there and, you know, a possibility --
13 and I don't think anyone could really determine, but
14 the possibility that deep growing roots could have
15 eventually caused the problem with a planters. I do
16 know that that was brought up. I think Billy Crossland
17 with Crossland Landscaping out of Columbia, he did most
18 of the work, or all of the work, for Marshall, in those
19 planters. You know, we worked with him quite a bit
20 over the years. But that was discussed about, you
21 know, I guess not being -- the plants not being as
22 high.

23 Q Was Marshall responsive to any requests you made
24 of him?

25 A Yes.

WAYNE WHITE - CROSS EXAMINATION

1 **Q** And how about his landscaper?

2 **A** Yes.

3 MS. GOLDING: Are you going to introduce No. 40?

4 MR. GRANTLAND: I'll move 40.

5 MS. GOLDING: No objection.

6 THE COURT: 40 is in.

7 (Plaintiff's Exhibit 40 admitted.)

8 **Q** (MR. GRANTLAND) While you were the property
9 manager from 2005 to 2018, how did the board treat the
10 rooftop terrace area?

11 **A** It was also treated as a, quote, balcony or
12 terrace. I never had any questions if it was any
13 different than a balcony to the other 39 units.

14 MR. GRANTLAND: Thank you. Answer any questions
15 that Ms. Golding may have.

16 **CROSS EXAMINATION**

17 **BY MS. GOLDING:**

18 **Q** You made a smart move getting out of condo
19 management.

20 **A** Yes, ma'am.

21 **Q** You understand since those years you were in
22 condo management, from 2005 to 2018, most of the years
23 Marshall Griffin was president of the Shoreham
24 Association?

25 **A** Yes, ma'am.

WAYNE WHITE - CROSS EXAMINATION

1 **Q** If you had questions about the condominium or
2 association, the first person you would call would be
3 the president of the association?

4 **A** Yes, ma'am.

5 **Q** And it would be the president that would give you
6 direction as to what you do and don't do; is that
7 correct?

8 **A** Yeah, for the most part.

9 **Q** When you were the property manager and
10 Mr. Griffin was the president, this was a master deed,
11 right, and it is like the Bible?

12 **A** Yes, ma'am.

13 **Q** Your job is not to change what is in the master
14 deed, is it?

15 **A** Right.

16 **Q** And Mr. Griffin didn't try to change what was in
17 the master deed, right?

18 **A** No.

19 **Q** There is no amendments to that master deed,
20 right?

21 **A** Right.

22 **Q** At Shoreham.

23 And in the master deed, it says there is two
24 components: There is a dwelling, and then common
25 elements, right?

WAYNE WHITE - CROSS EXAMINATION

1 **A** Yes, ma'am.

2 **Q** And the dwelling is inside the walls of
3 Mr. Griffin's unit; is that right?

4 **A** I believe that is what -- yes, I believe that is
5 what it is.

6 **Q** And what is outside of the walls of the dwelling
7 is not part of the dwelling, is it?

8 **A** I don't believe so. I will add that in this case
9 I never had the -- a reason to go look. My description
10 about a master deed -- and I hate to say this with all
11 the attorneys here, but attorneys write master deeds
12 for a reason: So they can argue it later. But that is
13 one of the -- so I had 22 HOAs that we managed, and
14 most master deeds are relatively the same. But to say
15 that I read 22 master deeds cover-to-cover, I did not.
16 Normally, you go and look at a master deed when there
17 is an issue.

18 **Q** And, normally, you get guidance from the
19 president of the association?

20 **A** At times. If there is a real question with the
21 master deed, I would seek the assistance of an
22 attorney.

23 **Q** And Mr. Griffin didn't tell you to read the
24 master deed, did he?

25 **A** No.

WAYNE WHITE - CROSS EXAMINATION

1 **Q** And with respect to the master deed, it provides
2 that the board of directors can make rules and
3 regulations?

4 **A** Yes. As long as they don't supersede anything in
5 the master deed.

6 **Q** While Mr. Griffin was president, if he made rules
7 and regulations, you made assumptions that that was
8 within his power; is that correct?

9 **A** That is within the power of the board as a whole.

10 **Q** While you were at Shoreham, you knew some of the
11 defendants?

12 **A** Yes.

13 **Q** And you know Mr. West, and you know Mr. Tackett,
14 and Richard Aquino, and Tony Giovino?

15 **A** Right.

16 **Q** You knew them because they are unit owners?

17 **A** Unit owners and through the years on the board of
18 directors.

19 **Q** And each of these four individuals, do they get
20 pay for being on the board of directors?

21 **A** No, ma'am.

22 **Q** That is volunteer work, isn't it?

23 **A** Yes, ma'am. And for some reason, they do it.

24 **Q** Did you know they got sued individually in this
25 case?

WAYNE WHITE - REDIRECT EXAMINATION

1 **A** I did hear that, yes, ma'am.

2 **Q** And they got sued for fraud. Did you know that
3 that? Mr. Griffin sued them.

4 MR. GRANTLAND: Objection; this is outside the --

5 THE COURT: Rephrase or move on, if you would.

6 **Q** (MS. GOLDING) In dealing with these four
7 gentlemen and their responsibilities on the board, did
8 you always have cordial dealings them?

9 **A** Yes, ma'am.

10 **Q** And it is a fact that none of these four
11 gentlemen ever misled you, that you know of?

12 **A** No, ma'am.

13 **Q** And you felt -- and during your dealings as a
14 property manager, these four gentlemen were working in
15 the best interest of Shoreham Towers Association and
16 the 40 unit owners, weren't they?

17 **A** Yes, ma'am.

18 **Q** And it's why you dealt with them all of these
19 years, they were reasonable and fair in their dealings;
20 were they not?

21 **A** Yes, sir.

22 MS. GOLDING: No more questions.

23 **REDIRECT EXAMINATION**

24 **BY MR. GRANTLAND:**

25 **Q** Same for Marshall; did Marshall ever mislead you?

DR. RICHARD MINIELLY - DIRECT EXAMINATION

1 **A** No, sir.

2 **Q** Was he fair and reasonable in your dealings?

3 **A** Yes, sir.

4 MR. GRANTLAND: Thank you. I have one more short
5 witness, relative speaking.

6 THE COURT: Is the jury okay with one more short
7 witness? All right?

8 MR. GRANTLAND: We call Dr. Minielly.

9 (RICHARD MINIELLY, having been duly sworn,
10 testified as follows:)

11 THE WITNESS: Dr. Richard Minielly,
12 M-I-N-I-E-L-L-Y.

13 **DIRECT EXAMINATION**

14 **BY MR. GRANTLAND:**

15 **Q** May I call you Doctor?

16 **A** Yeah, that is fine.

17 **Q** Where are you from, Doctor?

18 **A** Originally?

19 **Q** Yes.

20 **A** Ontario, Canada.

21 **Q** How long have you been lived in America?

22 **A** Since 1980.

23 **Q** And what do you do for a living?

24 **A** Deliver babies. I'm a board registered OB/GYN.

25 **Q** Are you currently delivering babies, or retired?

DR. RICHARD MINIELLY - DIRECT EXAMINATION

1 **A** No, I retired. I'll be 80 in a couple of months.

2 **Q** And how many years were you an OB/GYN?

3 **A** 41.

4 **Q** And from when to when?

5 **A** Well, I graduated medicine from University of
6 West Ontario, London, Canada in 1974. I did a year
7 internship and four years of OB/GYN residency, and
8 passed my Royal College Fellowship in OB/GYN in
9 November of 1979. I waited for my immigration papers,
10 and my family and I came to the States in February of
11 1980.

12 **Q** Where did you practice?

13 **A** I practiced with Guthery Healthcare in
14 Pennsylvania until, I believe it was, 1989, and then
15 moved to Binghamton, New York, which was maybe 45
16 minutes to the east, and practiced there for three
17 years, and then moved to Roanoke Rapids in 1994, I
18 believe.

19 **Q** How many babies do you think you've delivered?

20 **A** 6,000, at least.

21 **Q** Do you own a unit in Shoreham Towers in North
22 Myrtle Beach?

23 **A** Yes, sir.

24 **Q** What unit do you own?

25 **A** At the present time, my wife and I own Penthouse

DR. RICHARD MINIELLY - DIRECT EXAMINATION

1 4, but the first one we bought was 25 years ago, Unit
2 2D, and then we added 2A, and through the years we sold
3 those other two units and just have the penthouse now.

4 Q So your unit is on the ninth floor below the
5 tenth floor?

6 A Yes, sir; south end of the building.

7 Q And you've owned other units over the years. How
8 long have you been associated with Shoreham Towers?

9 A Probably -- well, we bought the penthouse 18
10 years ago, so probably 25 years.

11 Q Are you a member of the homeowners association?

12 A Yes, sir.

13 Q Have you ever served on the board?

14 A Yes, sir, I did.

15 Q When did you -- do you remember when?

16 A I don't, but it was this two-year period, I
17 believe.

18 Q Do you know all of these gentlemen in the
19 courtroom?

20 A I do.

21 Q Do you know both sides? You know Mr. Griffin and
22 Mr. Tackett and Mr. West --

23 A Yes, sir.

24 Q For as long as you've been associated of Shoreham
25 Towers for 25 years, how did access to the roof work,

DR. RICHARD MINIALLY - DIRECT EXAMINATION

1 for you as a homeowner?

2 **A** I have been to the roof twice, and that is
3 because when I went up there -- both Marshall and I
4 changed our air conditioning units at the same time,
5 and that was organized for us because we needed a
6 crane, so we shared the crane. That was maybe three,
7 four years ago we replaced the units.

8 **Q** If you need to get on the roof to check your HVAC
9 unit, what do you do?

10 **A** We have to walk up the stairs. There is a code
11 that is not available unless you call someone on the
12 board and get the elevator code, and you can get there.

13 **Q** How about the balcony terrace outside of the
14 penthouse?

15 **A** How about it?

16 **Q** Yeah. Do you ever go up there?

17 **A** No, sir. I was only there on Sunday night when I
18 asked Marshall if I could see what was going on.

19 **Q** Why have you not been up to the balcony terrace?

20 **A** Because it is entirely private.

21 **Q** Now, you've been associated with the Shoreham
22 Towers for how long?

23 **A** 25 years.

24 **Q** You were on the board for how many years?

25 **A** Two.

DR. RICHARD MINIELLY - DIRECT EXAMINATION

1 **Q** And have you ever considered the terrace, the
2 balcony terrace outside of the penthouse, to be common?

3 **A** No.

4 **Q** Why not?

5 **A** Because it's not a common area. I would have to
6 go up, have the code, go up through the stairs. I've
7 only been there twice when we changed the air
8 conditioner.

9 **Q** Do you know who maintains the balcony terrace
10 outside of the penthouse?

11 **A** Outside the penthouse? Marshall Griffin.

12 **Q** How long has he been maintaining the --

13 **A** How long? As long as he's been there. I've been
14 there for 25 years. Since I have been there, but
15 Marshall has been there longer than that.

16 **Q** Do you know how the elevator to the tenth floor
17 works?

18 **A** Yes, sir.

19 **Q** How does it work?

20 **A** With a key, special key.

21 **Q** Doctor, do you know Mr. Richard Aquino?

22 **A** Yes, sir.

23 **Q** Has he been to your unit without your permission?

24 **A** Yes, sir.

25 **Q** Do you understand what this dispute is about

DR. RICHARD MINIALLY - DIRECT EXAMINATION

1 today?

2 **A** Basically, yes.

3 **Q** And in 2019, what, if anything, did the board
4 tell the homeowners about the dispute with Marshall or
5 Marshall's lawsuit against the board?

6 **A** I wasn't at that meeting -- well, maybe the '19
7 one, but there was one, I believe in '20, and nothing
8 was said.

9 **Q** What, if anything, did the board tell the owners
10 about taking up Marshall's Turtle tile?

11 **A** Nothing, that I'm aware of.

12 **Q** What did the board say about taking Marshall's
13 furniture in 2020?

14 **A** Nothing was said about it.

15 **Q** Was that disclosed to the homeowners?

16 **A** I wasn't aware of that until it got mentioned.

17 **Q** What did the board say to the homeowners about
18 wanting to remove the plants from the planters?

19 **A** Nothing.

20 **Q** What, if anything, did the board tell you and the
21 homeowners about rules they came up with for the
22 balcony terrace?

23 **A** Nothing was said on that. In fact, at the last
24 meeting I asked the president to mention it because
25 there isn't probably 10 percent of the owners that

DR. RICHARD MINIELLY - CROSS EXAMINATION

1 understand what is really going on.

2 Q Do you know if the board shared the rules with
3 any homeowners?

4 A Not that I'm aware of. They didn't share it with
5 me.

6 Q Do you support the rules that the board came up
7 with regarding the balcony terrace?

8 A No.

9 Q Why is that?

10 A Because it's Marshall's. Marshall has been
11 paying for that for beyond when I -- for the whole 25
12 years I've been there. All you have to do is look at
13 what he pays a year. This year he pays \$4,000 more
14 than I do for my penthouse. There has been assessments
15 over the years. There's never been a question.
16 Marshall has always paid for those. It's a no-brainer,
17 as far as I'm concerned. He pays for it. The fees
18 that he's charged for his unit, and for -- you can call
19 it whatever, but it is a balcony. It is private. What
20 he pays is twice what the units are that are listed as
21 B, C, and D. He pays his fees. They are twice what
22 those are, so over the years he's paid a ton of money
23 to the HOA. He served, and his wife served, as
24 presidents on the board and things.

25 MR. GRANTLAND: Thank you. Answer any questions

DR. RICHARD MINIALLY - CROSS EXAMINATION

1 that Ms. Golding may have.

2 **CROSS EXAMINATION**

3 **BY MS. GOLDING:**

4 **Q** You were just identified as a witness to me in
5 December. Is that when you were contacted, this past
6 December, that you were going to be a witness?

7 **A** Yes, ma'am. I don't know if it was December or
8 whenever, but we had a deposition.

9 **Q** Just last month, right?

10 **A** Okay.

11 **Q** And then because you were identified just last
12 month as a witness, I took your deposition, right?

13 **A** Yes, ma'am.

14 **Q** And do you recall that was December 15, 2022?

15 **A** I guess that is the date.

16 **Q** At that time, when I took your deposition, you
17 said in your deposition that you didn't know what this
18 lawsuit was about; do you recall that?

19 **A** Yes, ma'am.

20 **Q** And then I asked you about the defendants and
21 what they did wrong, and you said you had no idea?

22 **A** That's right. I'm the same as the rest of the
23 members of the homeowners association. Many of us have
24 no idea what the lawsuit is about because nothing was
25 said at the annual meeting.

DR. RICHARD MINIALLY - CROSS EXAMINATION

1 **Q** I think you just said you met with Mr. Griffin
2 Sunday night this week?

3 **A** Yes.

4 **Q** And that was over at his unit at Shoreham?

5 **A** Yes, ma'am. In 25 years, I've never been there,
6 and I asked Marshall if I could go up and see his unit.

7 **Q** Good. And his unit is much larger than any units
8 you had?

9 **A** That's correct.

10 **Q** So the --

11 **A** Much larger than anyone's unit.

12 **Q** So he has more square footage?

13 **A** Yes.

14 **Q** And you will agree that the terms of the master
15 deed for Shoreham Towers governs what is or is not a
16 common element; won't you agree with that?

17 **A** Yes, there are common elements.

18 **Q** But it is the master deed that controls it; isn't
19 that right?

20 **A** I guess.

21 **Q** Isn't that what you said in your deposition? You
22 said the master deed controls what is or isn't a common
23 element?

24 **A** Okay.

25 **Q** Do you agree?