

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA
CIVIL DIVISION**

JOHN W. SPRADLIN, JR., JANICE L. THOMPSON, FRANK G. BEDNAZ, and CHERYL A. O'DONNELL, individually and on behalf of all similarly situated persons,

Plaintiff,

CLASS REPRESENTATION

v.

Case No.: 25000728CA

VICTORIA ESTATES, LTD., et al.

Defendants,

**DEFENDANTS VICTORIA ESTATES, LTD. AND BENDERSON-VICTORIA, L.C.'S
ANSWER AND DEFENSES TO PLAINTIFFS' SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

Defendants, Victoria Estates, Ltd. ("Victoria Estates") and Benderson-Victoria, L.C. ("Benderson-Victoria") (collectively, "Defendants"), hereby file their Answer and Defenses to the Second Amended Class Action Complaint ("SAC") filed by Plaintiffs John W. Spradlin, Jr., Janice L. Thompson, Frank G. Bednaz, and Cheryl A. O'Donnell, individually and on behalf of all similarly situated persons (collectively, "Plaintiffs"), and state as follows:

FIRST DEFENSE AND ANSWER TO COMPLAINT

Jurisdiction, Parties, and Venue

1. This is a class action lawsuit for violations of the Homeowners' Association Act, chapter 720, Florida Statutes, seeking injunctive relief and damages that exceed Fifty Thousand Dollars (\$50,000), exclusive of interest, costs, and attorney's fees.

ANSWER: Admitted only that Plaintiffs purport to raise claims for declaratory and injunctive relief and damages for same. Otherwise, denied.

2. Plaintiffs reside in Charlotte County, Florida.

ANSWER: Defendants admit solely for jurisdictional purposes that Plaintiffs owned residential parcels within the Kings Gate community at the time of filing the SAC. Otherwise, Defendants are without knowledge, and therefore deny the same.

3. Defendant, Victoria Estates, Ltd. (“**Victoria Estates**”), a Florida limited partnership, with Defendant, Benderson-Victoria, L.C. (“**Benderson-Victoria**”), a Florida limited liability company, as its general partner. Benderson-Victoria, as the general partner of Victoria Estates, is jointly and severally liable for all obligations of Victoria Estates under Florida law.

ANSWER: Admitted that Victoria Estates, Ltd. is a Florida limited partnership and Benderson-Victoria, L.C. is a Florida limited liability company. Further answering, the remaining allegations call for a legal conclusion and are therefore denied.

4. Defendant, Kings Gate Homeowners Association, Inc. (“**Kings Gate HOA**” or “**HOA**”), is a Florida corporation.

ANSWER: Admitted.

5. Venue is proper in Charlotte County because the property at issue and the causes of action set forth below accrued in Charlotte County.

ANSWER: Admitted for venue purposes only that the property that is the subject of this litigation is located in Charlotte County. Otherwise, denied.

6. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been waived.

ANSWER: Denied.

Background Information

7. Victoria Estates is the developer of a residential community known as “**Kings Gate**,” which is an age 55 and older gated community located in Port Charlotte, Charlotte County, Florida.

ANSWER: Admitted.

8. Kings Gate is a “community” governed by the Homeowners’ Association Act, chapter 720, Florida Statutes and created by “Declaration of Restrictive Covenants — Kings Gate Subdivision,” which Victoria Estates recorded on January 20, 1998, in the Official Records of Charlotte County, Florida Book OR 1584, Pages 1060-1197, attached hereto as **Exhibit A** (the “**Master Declaration**”).

ANSWER: Admitted that a declaration was recorded in the Official Records of Charlotte County, Book 1584, Pages 1060-1197, which speaks for itself. Otherwise, denied.

9. Victoria Estates included in the Kings Gate community’s Master Declaration the “**Kings Gate Club**,” which includes a clubhouse, pool, and other amenities.

ANSWER: Admitted.

10. The Kings Gate Club is owned by Victoria Estates.

ANSWER: Admitted.

11. The Master Declaration is also the “governing” document of the Kings Gate Club under the Homeowners’ Association Act, section 720.301(8), Florida Statutes, because Victoria Estates included the Kings Gate Club in that declaration for the community.

ANSWER: Section 720.301(8), Florida Statutes, speaks for itself, and this allegation calls for a legal conclusion. Therefore, denied.

12. Under Article 6, section 5, of the Master Declaration, Kings Gate homeowners are required to pay “**Club Charges**” for the Kings Gate Club as a condition of parcel ownership in the community.

ANSWER: The Declaration speaks for itself, and this allegation calls for a legal conclusion. Therefore, denied.

13. Failure to pay Club Charges results in a lien and foreclosure action against the parcel pursuant to Article 6, section 14 of the Master Declaration.

ANSWER: The Declaration speaks for itself, and this allegation calls for a legal conclusion. Therefore, denied.

14. Accordingly, Club Charges are “assessments” under the Homeowners’ Association Act, section 720.301(1), Florida Statutes (“Assessment’ or ‘amenity fee’ means a sum or sums of money payable to the *association* [or] to the *developer* . . . as authorized in the governing documents, which if not paid by the owner of a parcel, *can result in a lien against the parcel.*”) (Emphasis added).

ANSWER: This allegation states a legal conclusion. Therefore, denied.

15. Under Article 6, section 5, Club Charges include both “**Club Operating Costs**” and the “**Club Fee.**”

ANSWER: Admitted that the Declaration contains an Article 6, section 5, which speaks for itself. Otherwise, denied.

16. Under the Homeowners’ Association Act, any “assessment” is subject to the requirements of section 720.308, Florida Statutes, which limits an “assessment” to “a proportional share of expenses.”

ANSWER: Section 720.308, Florida Statutes, speaks for itself, and this allegation calls for a legal conclusion. Therefore, denied

17. In the Kings Gate Community, the assessments for Club Charges violate section 720.308 because it includes a “Club Fee” that the governing documents set as a fixed amount payable to Victoria Estates, which is not in the homeowner’s proportional share of Kings Gate Club’s expenses.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

18. Article 6, section 5(i), of the Master Declaration provides, in pertinent part: “Each Owner shall pay a monthly Club Fee, without setoff or deduction, to the Declarant [Victoria Estates], or its designee” That monthly Club Fee is a fixed amount that increases each year

and is paid in perpetuity by all Kings Gate homeowners to Victoria Estates. *See* First Amendment to the Master Declaration, providing for a Club Fee that increases each year at a fixed amount annually and is paid in perpetuity by all Kings Gate homeowners, recorded March 16, 2006 by Victoria Estates in the Official Records of Charlotte County, Florida, Book 2926, Pages 2108-2116, attached hereto as **Exhibit B**.

ANSWER: Admitted that there is a Declaration that speaks for itself. Further answering, admitted that an amendment was recorded in the Official Records of Charlotte County, Book 2926, Pages 2108-2116, which speaks for itself. Otherwise, denied.

19. In addition, Article 6, section 5(v), of the Master Declaration, mandates that “[t]he Owners shall collectively bear all expenses associated with the Club so that the Declarant [Victoria Estates] shall receive the Club Fee *without deduction of expenses or charges in respect of the Club.*” (Emphasis added).

ANSWER: Admitted to the extent the Declaration speaks for itself. Otherwise, denied.

20. Separate from the Club Fees paid to Victoria Estates, Article 6, section 5(ii) of the Master Declaration, provides: “In addition to the Club Fee, each Owner agrees and covenants to pay and discharge, in a timely fashion when due, *its pro rata portion . . of the Club Operating Costs.*” (Emphasis added).

ANSWER: Admitted to the extent the Declaration speaks for itself. Otherwise, denied.

21. Club Operating Costs are defined under the Master Declaration, Article 1, section 14, as: “All costs (as such term is used in its broadest sense) of owning (excluding Declarant’s [Victoria Estates’] debt service) operating, managing, maintaining, insured the Club, including, but not limited to trash collection, utility charges, maintenance, management fees, reserves, repairs, refurbishments, payroll and payroll costs, working capital, ad valorem or other taxes

(excluding income taxes of the Declarant), assessments, costs, expenses, levies and charges of any nature which may be levied, imposed or assessed against or in connection with the Club.”

ANSWER: Admitted to the extent the Declaration speaks for itself. Otherwise, denied.

22. Victoria Estates recorded subsequent amendments to the Master Declaration in 2018 and 2024, copies of which are attached as **Exhibit C** (2018 Amendment) and **Exhibit D** (2024 Amendment), neither of which altered the Club Fee paid to Victoria Estates.

ANSWER: Denied that an amendment was recorded in 2018. The 2019 amendment was recorded in the Official Records of Charlotte County at Book 2926, Pages 2108-2116. Admitted that a 2024 amendment was recorded in the Official Records of Charlotte County, Instrument 3368679. The amendments speak for themselves.

23. Further, Victoria Estates currently delegates the collection of assessments for its Kings Gate Club, both Club Operating Costs and Club Fees, to the Defendant, Kings Gate HOA, pursuant to the Master Declaration.

ANSWER: Denied as framed.

24. Article 6, section 6 of the Master Declaration, provides that “[u]nless designated to the contrary by Declaration [Victoria Estates], the Association shall collect the Club Charges at the same time it collects Assessments from the Owners. Upon collection, the Association shall be deemed to hold the same in trust, *for the Declarant* and for payments as required. . . . During the period when the Association is operating as the Club Operating Entity¹ pursuant to the Club Covenants, then the Association is granted the conditional license to retain those portions of the Club Charges other than the Club Fee for the strict purpose of paying the expenses associated with the Club.” (Emphasis added).

¹ The Master Declaration, Article 1, section 13, defines “Club Operating Entity” as “[t]he entity operating and managing the Club, at any time, *which may be the Declarant or an entity employed or hired by Declarant . . .*” (Emphasis added).

ANSWER: Admitted to the extent the Declaration speaks for itself. Otherwise, denied.

25. Simply put, the Master Declaration requires the Kings Gate HOA to administratively collect all Club Charges — *first* collecting and paying all Club Fees to Victoria Estates, *then* collecting all Club Operating Costs, which are paid on a pro rata basis by each homeowner for all club operation and maintenance expenses — because Victoria Estates maintains the sole right to designate who administratively collects its Club Fees pursuant to the Master Declaration. Otherwise, each homeowner faces a lien and foreclosure action for nonpayment. *See* Ex. A, Master Declaration, Article 6, section 14. Creation of the Lien and Personal Obligation (“Each Owner . . . shall be deemed to have covenanted and agreed that the Club Charges, Club Fees, and/or other charges and fees set forth herein . . . shall be a charge and continuing lien in favor of the Declaration [Defendants] encumbering the Homesite Such lien may also be enforced by the Club Operating Entity, however, the claim of the Declarant [Defendants] for Club Fees is subject to the provisions of Section 15 below, paramount to all other claims. Further, the lien created by this Section is superior to the lien of the Association for Assessments.”).

ANSWER: The Declaration speaks for itself. Otherwise, denied.

26. Defendants, Victoria Estates and Benderson-Victoria, have disregarded the provisions of the Homeowners’ Association Act that protect residential parcel owners by prohibiting assessments for such Club Fees, which are not assessments levied in the residential parcel owner’s proportional share of expenses. Defendant, Kings Gate HOA, is simply the current designee being used by Victoria Estates and Benderson-Victoria and is being made a party to this lawsuit by virtue of the Court’s Order to include Kings Gate HOA in order to fully adjudicate the claims.

ANSWER: Admitted that Plaintiffs have made Kings Gate HOA a party. Otherwise, denied.

Class Action Allegations

27. This is a class action to permanently enjoin Victoria Estates from continuing to impose assessments for Club Fees and to recover the unlawful assessments for such Club Fees paid to Victoria Estates.

ANSWER: Admitted that Plaintiffs seek to bring a class action against Defendants. Otherwise, denied.

28. For Plaintiffs' claim for injunctive relief, the proposed class is defined as follows
("Kings Gate Injunctive Relief Class"):

All persons who currently own a home in Kings Gate and are obligated to pay Club Fees pursuant to the Kings Gate community's Master Declaration.

ANSWER: Admitted only that Plaintiffs have defined the putative class. Otherwise, denied.

29. For Plaintiffs' claim for damages, the proposed claim is defined as follows
("Kings Gate Damages Class"):

All persons who currently own, or previously owned a home in Kings Gate, beginning June 9, 2021 through the present, and have paid Club Fees pursuant to the Kings Gate community's Master Declaration.

The Kings Gate Injunctive Relief Class and the Kings Gate Damages Class is referred to collectively as the **"Class."**

ANSWER: Admitted only that Plaintiffs have defined the putative class. Otherwise, denied.

30. While the exact number of class members is unknown to Plaintiffs at this time, there are more than 900 homes in Kings Gate, and the identities of the current and former homeowners are within the knowledge of and can be easily ascertained from the records of Victoria Estates and the management company for the Kings Gate community.

ANSWER: Admitted only that there are more than 900 homes in Kings Gate. Otherwise, denied.

31. The Class is so numerous that joinder of all its members is impractical.

ANSWER: Denied.

32. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs, like all class members, purchased homes in Kings Gate and have paid and are obligated to pay Club Fees under the Master Declaration.

ANSWER: Denied.

33. This action poses numerous questions of law and fact that are common to Plaintiffs and the class members, and those common questions predominate over any questions affecting only individual members of the Class.

ANSWER: Denied.

34. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in handling class actions involving, among other things, community associations and consumer rights. As a result, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

ANSWER: Denied.

35. Plaintiffs bring this class action under Florida Rule of Civil Procedure 1.220(b)(2) and/or (c)(4) because Victoria Estates has acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final injunctive relief or declaratory relief concerning the Class as a whole appropriate.

ANSWER: Admitted only that Plaintiffs purport to bring this action under Rule 1.220(b)(2) and/or (c)(4) of the Florida Rules of Civil Procedure. Otherwise, denied.

36. Plaintiffs also bring this class action under Florida Rule of Civil Procedure 1.220(b)(3) because a class action is superior to other available methods for the fair and efficient

adjudication of this controversy. Because the amounts of the claims of each individual member of the Class are small relative to the cost and scope of this litigation, and due to the financial resources of Victoria Estates, none of the members of the Class could afford to seek legal redress individually for the misconduct alleged in this case. Absent a class action, that misconduct would go unremedied. Further, individual litigation would significantly increase the delay and cost to all parties and would burden the judicial system. There will be no manageability problems with prosecuting this case as a class action.

ANSWER: Admitted only that Plaintiffs purport to bring this action under Rule 1.220(b)(3) of the Florida Rules of Civil Procedure. Otherwise, denied.

Court I — Injunctive Relief
(Victoria Estates and Benderson-Victoria)

37. Plaintiffs, individually, and on behalf of all those similarly situated in the Kings Gate Injunctive Relief Class, reallege and incorporate the allegations in paragraphs 1 to 36 above.

ANSWER: Defendants reallege their responses to paragraphs 1-36.

38. This is an action by Plaintiffs and the proposed Kings Gate Injunctive Relief Class for injunctive relief to prohibit Victoria Estates from continuing to violate section 720.308, Florida Statutes, by imposing and mandating payment of Club Fees by Plaintiffs and other class members pursuant to the Master Declaration, which are not in a proportional share of the Kings Gate Club's expenses.

ANSWER: Admitted only that Plaintiffs seek injunctive relief. Defendants deny any violation of section 720.308, Florida Statutes, and that Plaintiffs are entitled to any relief, including injunctive relief.

39. Plaintiffs and other class members have a clear legal right under section 720.308, Florida Statutes, to prohibit such conduct.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

40. Victoria Estates' imposition and mandating payment of Club Fees by Plaintiffs and other class members under the Master Declaration is a direct violation of section 720.308, Florida Statutes, and is a violation that is continuing in nature.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

41. If Plaintiffs or other class members refuse to pay Club Fees imposed by Victoria Estates under the Master Declaration, then they risk losing not only their home in the foreclosure of a lien for unpaid assessments, but also "all personal property located thereon owned by the Owner." *See Ex. A, Master Declaration, Article 6, § 14.*

ANSWER: Denied.

42. In addition, the Master Declaration purports to make the payment of Club Fees a "personal obligation" of the Kings Gate homeowners, as well as their "heirs, devisers [sic], personal representatives, successors or assigns." *Id.*

ANSWER: The Declaration speaks for itself. Otherwise, denied.

43. Lastly, Victoria Estates' lien for unpaid Club Fees is purportedly "superior to the lien" of the Kings Gate Homeowners' Association for assessments, contrary to section 720.3085, Florida Statutes. *Id.*

ANSWER: The Declaration speaks for itself, and the allegation states a legal conclusion. Otherwise, denied.

44. Without the requested injunctive relief, Plaintiffs and other members of the Class will suffer irreparable harm from such continuing conduct by Victoria Estates under the Master Declaration.

ANSWER: Denied.

45. Plaintiffs have retained the undersigned counsel to prosecute this action and are entitled to the recovery of their reasonable attorneys' fees and costs pursuant to section 720.305,

Florida Statutes, and Article 6 of the Master Declaration, including section 13, and Section 57.105(7), Florida Statutes.

ANSWER: Denied.

Count II — Injunctive Relief
(Kings Gate HOA)

46. Plaintiffs, Individually and on behalf of those similarly situated in the King's Gate Injunctive Relief Class, reallege and incorporate the allegations in Paragraphs 1 to 36 above.

ANSWER: Defendants reallege their responses to paragraphs 1-36.

47. This is an action by Plaintiffs and the proposed Kings Gate Injunctive Relief Class for Injunctive relief to prohibit Kings Gate HOA from continuing to collect club fees as they are required to do by the Defendants, Victoria Estates, LTD and Benderson Victoria, which violates section 720.308 Florida Statutes.

ANSWER: Admitted only that Plaintiffs seek injunctive relief. Otherwise, denied.

48. Plaintiffs and other class members have clear legal right under section 720.308 Florida Statutes to prohibit such conduct.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

49. Victoria Estates' imposition and mandating payment of club fees by Plaintiffs (no matter who is designated to collect the club fees) and other class members under the master declaration is a direct violation of section 720.308, Florida Statutes and is a violation that is continuing in nature.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

50. If Plaintiffs or other class members refuse to pay Club Fees imposed by Victoria Estates under the Master Declaration, then they risk losing not only their home in the foreclosure

of a lien for unpaid assessments, but also “all personal property located thereon owned by the Owner.” *See* Ex. A, Master Declaration, Article 6, § 14.

ANSWER: Denied.

51. In addition, the Master Declaration purports to make the payment of Club Fees a “personal obligation” of the Kings Gate homeowners, as well as their “heirs, devisers [sic], personal representatives, successors or assigns.” *Id.*

ANSWER: The Declaration speaks for itself. Otherwise, denied.

52. Lastly, Victoria Estates’ lien for unpaid Club Fees is purportedly “superior to the lien” of the Kings Gate Homeowners’ Association for assessments, contrary to section 720.3085, Florida Statutes. *Id.*

ANSWER: The Declaration speaks for itself. Otherwise, denied.

53. Without the requested injunctive relief, Plaintiffs and other members of the Class will suffer irreparable harm from such continuing conduct by Victoria Estates which requires the Kings Gate HOA to collect the illegal fees under the Master Declaration.

ANSWER: Denied.

Count III — Damages Against Victoria Estates and Benderson-Victoria
(Violation of Section 720.308, Florida Statutes)

54. Plaintiffs, individually, and on behalf of all those similarly situated in the Kings Gate Damages Class, reallege and incorporate the allegations in paragraphs 1 to 36 above.

ANSWER: Defendants reallege their responses to paragraphs 1-36.

55. This is an action by Plaintiffs and the proposed Kings Gate Damages Class for damages against Defendants, Victoria Estates and Benderson-Victoria, from violating section 720.308, Florida Statutes.

ANSWER: Admitted only that Plaintiffs seek damages. Otherwise, denied.

56. Victoria Estates has imposed and mandated payment of Club Fees as an “assessment” under the Homeowners’ Association Act, which are not in each homeowner’s proportional share of expenses. By definition under the Master Declaration, Club Fees are amounts that exceed each homeowner’s proportional share of the King Gate Club’s expenses.

ANSWER: This allegation states a legal conclusion. Therefore, denied.

57. Plaintiffs and other class members have suffered damages as a result of having to pay assessments for Club Fees in violation of the Homeowners’ Association Act.

ANSWER: Denied.

58. Plaintiffs have retained the undersigned counsel to prosecute this action and are entitled to the recovery of their reasonable attorneys’ fees and costs pursuant to section 720.305, Florida Statutes, and Article 6 of the Master Declaration, including section 13, and Section 57.105(7), Florida Statutes.

ANSWER: Denied.

Request For Relief

Defendants deny that Plaintiffs are entitled to any of the relief requested, including entitlement to attorneys’ fees.

FIRST DEFENSE

Plaintiffs have not and cannot state a cause of action against Benderson-Victoria. Benderson-Victoria was not the developer of Kings Gate and is not a party to the Declaration, or any other documents pertinent to this matter. Plaintiffs have not pled any theory that would make Benderson-Victoria liable for the actions of Victoria-Estates. As a result, Plaintiffs have not and cannot state any cause of action against Benderson-Victoria.

SECOND DEFENSE

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations. The limitations period to bring a cause of action for a statutory violation is four years. Thus, any alleged damages sought for payments made more than four years from the date of filing the initial Complaint are barred and not recoverable.

THIRD DEFENSE

The Declaration provides that the "Owners shall collectively bear all expenses associated with the Club." *See* Second Am. Compl. Ex. A, Art. 6, § 5(v). Assuming *arguendo* that the HOA Act applies to this case (which it does not), and Plaintiffs are not held to their burden of proof to establish that Defendants earned a profit as a result of levying fees, Defendants are entitled to setoff/recoupment of all expenses related to the ownership and operation of the Club as set forth in the Declaration and as provided for under the HOA Act. Additionally, Plaintiffs waived any claims or the right to challenge expenses incurred in operating and owning the Club. *Id.* Ex. A, Art. 11, § 8(g).

FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part under the doctrine of waiver or estoppel. Under the HOA Act, "'Association'" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of **parcel owners** or their agents...." Section 720.301(9), Fla. Stat. (emphasis added). The parcel owners through their own Association—not Victoria Estates or Benderson-Victoria—not only prepared and adopted the budget but collected the Club Fees they now claim violate Florida law from the members, *i.e.* themselves. *See* Second Am. Compl. Ex. A, Art. 6, §§ 6 and 11. Thus,

Plaintiffs are estopped or have waived their right to challenge any alleged violations that they themselves perpetrated.

FIFTH DEFENSE

Article 15, Section 11 of the Declaration provides in relevant part:

Section 11. Non-Liability. Neither Association or Declarant shall in any way or manner be held liable or responsible for any violation of this Declaration by any other person or entity....

Accordingly, Plaintiffs have waived, ratified, and are estopped from bringing any cause of action relative to the Declaration given the broad language of Article 15, Section 11.

SIXTH DEFENSE

To the extent that they have been a party to a foreclosure or other court action involving Defendants and the Club Fees at issue, Plaintiffs are estopped from asserting these causes of action against Defendants. Plaintiff cannot now raise claims asserting the illegality of the Club Fees when such claims constitute compulsory counterclaims, and these claims were not raised in an earlier action. The claims existed at the time of the earlier action, and successful prosecution of this action would nullify judgment or impair rights established in the initial action.

SEVENTH DEFENSE

Plaintiffs have failed to state any cause of action in Counts I-III because the term “assessment” as used in the HOA Act does not apply to the Club Fees at issue in this case, which are specifically exempted by the HOA Act because the Club is a commercial property intended for commercial use. The Club is part of a for-profit commercial enterprise and is owned by a for-profit commercial entity. More specifically, section 720.302(3)(b), Fla. Stat., explicitly states that the HOA Act does not apply to “commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use,” such as the Club

at issue in this case. The Declaration clearly states that the Club is private. Furthermore, the Club Fees are charged pursuant to the Declaration and not by the Association under the HOA Act.²

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs the relief they seek, dismiss the claims asserted against Defendants, grant Defendants their attorneys' fees and costs, and for such further and additional relief as this Court deems appropriate.

Dated: December 5, 2025.

Respectfully,

/s/ Kevin McCoy

Kevin P. McCoy (FBN 36225)
Steven C. Dupré (FBN 471860)
D. Matthew Allen (FBN 866326)
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Counsel for Defendants

² Defendants acknowledge the ruling in *Avatar Properties, Inc. v. Gundel*, 372 So. 2d 715 (Fla. 6th DCA 2023). This defense is raised for preservation purposes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal, which will send an electronic notice to all counsel/parties of record.

/s/ Kevin McCoy
Attorney