

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA**

SSP TOPS'L PROPERTIES LLC,
a Wyoming limited liability company; and
TOPS'L CLUB OF NW FLORIDA, LLC,
a Florida limited liability company,

Plaintiffs,

vs.

Case No. 2026 CA

TOPS'L MASTER ASSOCIATION, INC.,
a Florida not for profit corporation

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs, SSP TOPS'L PROPERTIES LLC ("SSP") and TOPS'L CLUB OF NW FLORIDA, LLC ("TOPS'L Club") (collectively "Plaintiffs"), through the undersigned attorney, sue Defendant, TOPS'L MASTER ASSOCIATION, INC. ("Defendant" or "Master Association"); and allege as follows:

JURISDICTION AND VENUE

1. Plaintiff, SSP TOPS'L PROPERTIES LLC, is a Wyoming limited liability company whose principal place of business is located in Arizona ("SSP").
2. Plaintiff, TOPS'L CLUB OF NW FLORIDA, LLC, is a Florida limited liability company whose principal place of business is located in Arizona ("TOPS'L Club").
3. Defendant, TOPS'L MASTER ASSOCIATION, INC., is a Florida Not for Profit Corporation whose principal place of business located in Miramar Beach, Walton County, Florida.
4. The causes of action described below accrued in Walton County, Florida.
5. The real property that is the subject matter of this action is located in Walton County, Florida.

INTRODUCTION

6. TOPS'L Beach and Racquet Resort (the "Resort" or "TOPS'L") was developed as a mixed use residential-commercial-resort subdivision in Walton County, Florida. It currently contains approximately seven condominium developments with residential units, and approximately five commercial parcels that include a clubhouse, tennis center, tennis courts, restaurants, office and retail space, and other commercial uses.

7. As provided in the Declaration and other Governing Documents (both as hereinafter defined), the Resort was expressly designed for the commercial uses to operate in tandem with the residential uses, with management of certain Resort common areas by the Defendant Master Association via its Board of Directors (the "Board"). As stated in the Declaration and other Governing Documents, the Board was expressly intended to consist of representatives of both commercial properties and residential properties (one director for each owner of a commercial parcel, one director for each residential condominium/association). As also stated in the Governing Documents, all Members, commercial and residential, and their tenants and invitees were granted the equal and shared use and benefit of the Resort common areas and were entitled to uniform and equal application of rules and regulations enacted by the Board.

8. The Developer (as hereinafter defined), its affiliated entities, and their successors built and operated a tennis club, clubhouse, restaurant, sales center and other commercial uses on the Resort commercial property. For decades after the Resort was developed, the commercial parcels operated in harmony with the residential owners.

9. As will be described in more detail herein, beginning in approximately 2021, the residential directors of the Board began a systematic, concerted effort to diminish rights of the commercial property owners, interfere with their business operations, and create a de facto caste

system throughout the Resort that destroyed the general plan and scheme of development of the Resort as originally contemplated and to the express detriment of Plaintiffs.

10. **Structurally**, since 2021 the Defendant has upended and re-written the governance, management, and rights of owners within the Resort in direct contravention to the express terms of the Declaration and the Governing Documents:

A. In 2021, without approval by the owners to whom the fees would be charged, and despite the clear provisions of the Declaration that require uniform rates of assessment for owners, the Board improperly recorded an amendment to the Declaration which granted Defendant the authority to charge a “Rental Guest Registration” fee against the owners who rent their units (notably, owners that permit “guests” to use, but not “rent”, a unit are exempt). These fees have increased dramatically in a few short years and have resulted in a disproportionately charged additional de facto “assessment” to renting owners (estimated to be nearly \$550,000.00 in 2026 alone) to reduce the assessments due to non-renting owners. This de facto assessment violates the Declaration which requires that assessment are charged proportionately, and uniformly, to all members. Please also see Count IV herein.

B. In 2023, despite objection and opposition from the commercial property owners, the residential Board members unilaterally and improperly recorded an amendment to the Declaration and other Governing Documents to completely remove all commercial property owner seats on the Board, depriving them of the fundamental, and only, right to vote and be represented in the Resort. Please see Counts I and II herein.

C. In 2024, with the commercial owners eliminated from the Board, Defendant then recorded an amendment to the Declaration to prohibit certain guests and invitees of commercial property owners from using the Resort beach, despite the fact the Resort beach is a common area of the Resort and the Declaration expressly provides that common areas

are for the express use and benefit of all Members (commercial and residential) and their tenants and invitees. Please see Count III herein.

D. In the same 2024 Declaration amendment, Defendant also included an amendment increasing the requirements for any future amendments in an obvious attempt by the Board to make it more difficult to undo the damaging amendments previously made. Please see Count III herein.

E. In a short few years, Defendant fundamentally upended the structure of the Resort by eliminating commercial owners of their fundamental right to representation and the right to vote, stripping certain commercial owners of vested property rights, changed the way the Resort was financed by disproportionately charging renting owners hundreds of thousands of dollars not charged to non-renting owners, and altering the manner in which changes can be made going forward.

11. **Operationally**, Defendant has similarly engaged in a pattern and practice of overreach and non-uniform application of the TOPS'L Master Association Resort Rules/Policies (herein after later defined as the "Rules") and other unwritten "rules" to the detriment of Plaintiffs:

I. Defendant has claimed the self-granted and unilateral right to fine non-owner guests and invitees of TOPS'L Club up to \$1,000/day if they are found using the common area beach and have segregated portions of the beach for "owners-only". The Defendant claims such non-owner guests and invitees of TOPS'L Club do not have the right to use the beach despite the fact that the Declaration expressly provides that the common areas are for the use of all Members, their tenants and invitees, which includes the Plaintiffs' guests/invitees.

II. Defendant also asserts the right to terminate certain contractual rights between TOPS'L Club and its members by asserting it has the authority to cause a loss of

membership for accessing the common area beach. Defendant is not a party to any membership agreement between TOPS'L Club and its members, nor does Defendant have authority, express or implied, regarding TOPS'L Club's private business membership rights.

III. Defendant constructed a fence on Plaintiffs' property and has refused to remove the same, despite the fact Defendant had no right to construct the same, and despite objections to the construction thereof and subsequent demands to remove the same. Please see Count VI herein.

IV. Defendant, by and through its agent, Micah Priest, issued numerous threats to prevent entry to the Resort and trespass Plaintiffs' employees from the Resort for alleged failures to abide by unwritten "rules" regarding use of water (which is pumped from a well on Plaintiffs' property and delivered to Plaintiffs' property). For decades, such water was used to water the clay tennis courts on Plaintiffs' property, failure of which would cause substantial damage thereto. Please see Count VI herein.

V. On May 1, 2026, Defendant ceased providing trash services to Plaintiffs' two restaurants, despite the fact trash services are provided to all owners and despite the fact that Plaintiffs pay assessments for such services (and receive portions of such services on other properties owned by Plaintiffs). Plaintiffs were thereafter forced to purchase and contract for new trash services to avoid regulatory non-compliance issues and avoid closing the businesses, and Plaintiffs continue to pay full assessments to the Defendant and receives no deduction for the elimination of trash service.

VI. In May 2026, Defendant demanded that Plaintiffs terminate providing any and all transportation services in the Resort. This occurred after Plaintiffs' decision to reduce the scope of services it would provide to its own guests in the Resort (previously such

transportation services were provided as a courtesy to everyone in the Resort). Defendant thereafter threatened Plaintiffs and its employees with trespass and prevention of entry into the Resort if Plaintiffs continued to provide such transportation services, and demanding termination of such services just one day before a planned wedding at Plaintiffs' property. The only apparent justification for such a demand is that Defendant entered into a contract with a third-party shuttle service that purportedly granted such third party the "exclusive" right to provide transportation services in the Resort. The main road in the Resort is a common area for the equal use and benefit of all owners. Please see Count IX herein.

12. Through concerted and systematic actions, Defendant has in short order dismantled the Resort, stripped commercial owners of fundamental rights, engaged in arbitrary and non-uniform rulemaking and enforcement, and have breached the Declaration, the Governing Documents, the 1999 Settlement Agreement (as hereinafter defined), and Plaintiffs' rights, all to the detriment and damage to Plaintiffs.

13. As will be discussed, the actions taken by the Defendant since 2021 to upend and modify the Governing Documents and structural regime of the Resort were improper, unauthorized, invalid, void, and/or unenforceable as a matter of law. Defendant has further breached the 1999 Settlement Agreement and the Governing Documents, trespassed and damaged Plaintiffs' property, unlawfully attempted to strip Plaintiffs of their property rights, and tortiously interfered with Plaintiffs' business.

14. Based on these and many other similar actions by the Board, Plaintiffs are forced to seek their remedies via this lawsuit.

GENERAL BACKGROUND

15. Plaintiff TOPS'L Club has been a property owner and has operated a commercial business in the Resort since 1994. TOPS'L Club is presently engaged in the business of providing

vacation property management and hospitality services, owning and operating a private tennis and racquet club, owning and operating restaurants, and providing venue rental, catering and transportation services for group events such as weddings (the “Business”).

16. TOPS’L Club’s Business is primarily operated at TOPS’L Club’s racquet club located in the Resort at 338 TOPS’L Beach Blvd, Walton County, FL (the “Tennis Club”), at TOPS’L Club’s restaurant, Blue Dunes Grill, located at 742 W TOPS’L Beach Blvd, Walton County, FL (“Blue Dunes Grill”), and at the office facilities located at 9011 W US Hwy 98, Walton County, FL (the “Commercial Office Property”).

17. Plaintiff SSP is a property owner of a number of parcels in the Resort, including, but not limited to, the Tennis Club, the Blue Dunes Grill, the Commercial Office Property, and other parcels designated as commercial properties under the Declaration in the Resort. True and correct copies of Plaintiffs’ deeds are attached hereto as **Exhibit 1**.

18. Plaintiffs acquired the Tennis Club, Blue Dunes Grill, Commercial Office Property and other assets and operations from Vacasa, LLC, or its affiliates (“Vacasa”) in October 2025.

19. Defendant is the master association that governs certain portions of the Resort property as described in the Declaration of Covenants, Conditions and Restrictions for Tops’l Master Association, Inc. which is recorded in Official Records Book 275, page 695 of the public records of Okaloosa County, Florida (the “Declaration”). A true and correct copy of the Declaration is attached hereto as **Exhibit 2**.

20. The Defendant is operated through its Board of Directors (previously defined as the “Board”).

21. Defendant contracted with Virtuous Management Group, LLC (“Virtuous”) to provide certain community association management services associated therewith.

22. Micah Priest is an employee of Virtuous and is the community association manager for the Defendant.

23. The Declaration was recorded on or about September 26, 1983, by The Topsail, LTD. which was the original developer of the Resort and Declarant under the Declaration (the “Developer” or “Declarant”). The Defendant Master Association was formed by the Developer on or about January 18, 1984, and in conjunction therewith, the Developer created the Articles of Incorporation for the Defendant dated January 18, 1984 (“Articles”) and Bylaws (“Bylaws”). The original Articles are recorded on or about February 1, 1985, in Official Records Book 331, page 919, and the original Bylaws are recorded on the same date in Official Records Book 331, page 931, both in the public records of Walton County, Florida. A true and correct copy of the Articles are attached hereto as **Exhibit 3** and the Bylaws are attached as **Exhibit 4**.

24. The Defendant has enacted certain rules and regulations governing use of the common areas of the Resort, which are stated in the TOPS’L Master Association Resort Rules/Policies (previously defined as the “Rules”). A true and correct copy of the current version of the Defendant’s Rules are attached hereto as **Exhibit 5**. The Declaration, Articles, Bylaws and Rules may be individually or collectively referred to as a “Governing Document” or the “Governing Documents” as the situation dictates.

25. The Developer also conveyed certain property within the Resort to the Defendant, including the main road used for ingress and egress from the Resort (the “Road”), the beachfront property within the Resort (the “Beach”) and other property and utilities that service the Resort, which properties collectively constitute common areas under the Declaration (“Common Areas”).

26. The Governing Documents were modified or amended numerous times, however the modifications or amendments that are relevant to this lawsuit as stated below.

27. On or about September 29, 1999, Defendant and TOPS'L Club, among other parties (including the associations for the residential neighborhoods within the Resort, Abbott and Andrews Realty, Inc. and Silk, Inc.), entered into a Settlement Agreement and Addendum to Settlement Agreement, generally related to the turnover of the Defendant Master Association and other operational and governance issues related to the Resort, which will be discussed in more detail later (collectively the "1999 Settlement Agreement").

28. On or about October 15, 1999, the Articles were amended (the "1999 Article Amendment") in connection with the 1999 Settlement Agreement. A true and correct copy of the 1999 Article Amendment which includes the 1999 Settlement Agreement with Addendum are attached hereto as **Exhibit 6**.

29. On or about October 15, 1999, the Declaration was amended by that certain Certificate of Amendment recorded in Official Records Book 2119, page 441 of the public records of Walton County, Florida (the "1999 Declaration Amendment") in connection with the 1999 Settlement Agreement. A true and correct copy of the 1999 Declaration Amendment is attached hereto as **Exhibit 7**. The 1999 Article Amendment and the 1999 Declaration Amendment are referred to herein as the "1999 Amendments").

30. On or about February 26, 2021, Defendant recorded that certain Amendment to the Declaration recorded in Official Records Book 3185, page 423 of the public records of Walton County, Florida (the "2021 Declaration Amendment"). A true and correct copy of the 2021 Declaration Amendment is attached hereto as **Exhibit 8**.

31. On or about October 18, 2023, Defendant recorded that certain Amendment to the Declaration in Official Records Book 3305, page 1844 of the public records of Walton County, Florida (the "2023 Declaration Amendment"). A true and correct copy of the 2023 Declaration Amendment is attached hereto as **Exhibit 9**.

32. On or about May 22, 2023, Defendant filed certain Articles of Amendment with the Florida Department of State (the “2023 Article Amendment”). A true and correct copy of the 2023 Article Amendment is attached hereto as **Exhibit 10**. The 2023 Declaration Amendment and the 2023 Article Amendment are referred to herein as the “2023 Amendments”.

33. On or about January 18, 2024, Defendant recorded that certain Amendment to the Declaration in Official Records Book 3313, page 808 of the public records of Walton County, Florida (the “2024 Declaration Amendment”). The 2024 Declaration Amendment was recorded as a composite document with the hereinafter defined 2024 Bylaw Amendment. A true and correct copy of the 2024 Declaration Amendment is attached hereto as **Exhibit 11**.

34. On or about January 11, 2024, Defendant adopted certain amendments to the Bylaws which were recorded on January 18, 2024 in Official Records Book 3313, page 815 of the public records of Walton County, Florida (the “2024 Bylaw Amendment”). A true and correct copy of the 2024 Bylaw Amendment is included in **Exhibit 11**. The 2024 Declaration Amendment and the 2024 Bylaw Amendment are referred to herein as the “2024 Amendments”.

COUNT I – DECLARATORY JUDGMENT
INVALIDATION OF 2023 AMENDMENTS

35. This is an action for a declaratory judgment under Chapter 86, Fla. Stat.

36. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

37. As more fully provided herein, the 2023 Amendments were improper, unauthorized, invalid, void, and/or unenforceable as a matter of law for at least four reasons: **First**, the 2023 Amendments violated the Articles, the Governing Documents, and the 1999 Settlement Agreement; **Second**, the Board did not receive the requisite approval to amend the Governing Documents pursuant to their express terms; **Third**, the 2023 Amendments stripped commercial owners of fundamental and vested rights despite their unequivocal and express

objection thereto; and **Fourth**, the 2023 Amendments destroyed the general plan or scheme of development of the Resort directly in contravention to the Governing Documents.

I. The 2023 Amendments Violated the Articles, the Governing Documents, and the 1999 Settlement Agreement

38. As provided in the Declaration and the Articles, following the period of Declarant control, the Board was required to be comprised of one member for each commercial parcel owner and one member from each residential association. **See Exhibit 2, pp. 14-15; see also Exhibit 3, p. 7.**

39. As a mixed-use community, the Board's composition of commercial owners, on the one hand, and representatives of each residential association, on the other hand, ensured that all Members were represented on the Board and had the right to participate in and vote on decisions made on behalf of the Resort as a whole, as Members/owners generally were not afforded any other rights to vote or participate in decision making. See Article IV, Section 4.5 of the Articles, which provides (emphasis added):

Members shall not be entitled to vote on any matter except for electing Directors as provided for herein. All voting authority is vested in the Association's Board of Directors.

Exhibit 3, p. 8.

40. While the Governing Documents did permit certain amendments to be made with the approval of a supermajority of the Board (80%), because each Member's sole right to vote and participate in the Defendant Master Association is limited to its ability to appoint and/or vote for its representatives on the Board, the Articles expressly required the ***unanimous approval*** of the entire Board before any change in qualifications for membership or voting rights was authorized. See Article IX, Section 9.3 of the Articles, which provides (emphasis added):

Notwithstanding the provisions of paragraph 9.1 and 9.2, no amendment shall make any changes in the qualifications for membership nor voting rights

without the approval in writing by all members of the Board of Directors of the Association.

Exhibit 3, p. 9.

41. Under Florida law, “voting rights” includes “not only the right of each voter to be able to cast a vote, but also to safeguard against vote dilution or diminution.” Avila v. Biscayne 21 Condo., Inc., 417 So.3d 434, 441 (Fla. 3d DCA 2025). “‘Voting rights’ encompass alterations to the relative voting power of a voting group as well as outright denial of the right to cast a vote.” Id.

42. Thus, any amendment that would change the composition of the Board is a “voting change” and requires the unanimous consent of the entire Board (the “Unanimous Requirement”).

43. In 1999, the period of Declarant control (and the Declarant’s associated right to unilaterally appoint the Board) ended, and the Defendant Master Association, TOPS’L Club, and others executed the 1999 Settlement Agreement, which set forth certain amendments to the Governing Documents be made to reflect the terms identified in Sections 6.A through 6.H of the 1999 Settlement Agreement. **Exhibit 6, p. 7-8.**

44. As a result of the 1999 Settlement Agreement, the 1999 Declaration Amendment amended Article V, Section (b) of the Declaration to provide in relevant part (emphasis added):

*...the Board of Directors shall thereafter be determined as follows: as of August 1, 1999, the Board shall consist of seven members who shall be: (1) **a member of the Board appointed by the Declarant on behalf of all commercial parcel owners** and (2) one member of the Board from each of the six residential associations...*

Should the Declarant sell one or more of the commercial tracts (tracts 608A-commercial center; tract 608B-sales center; tract 11-the maintenance facility; tract 4-the club facility; tract 13-the beach club facility; or tract 621-the hotel site) then each new owner of the aforesaid commercial tracts shall be entitled to a seat on the Board of Directors.

Exhibit 7, pp. 1-2.

45. Similarly, the 1999 Article Amendment amended Article V, Section 5.2 of the Articles to provide the same terms stated above. **Exhibit 6, pp. 2-3.**

46. In addition, the 1999 Article Amendment further amended the Articles to prohibit future amendments that would be contrary to the 1999 Settlement Agreement by amending Article IX, Section 9.1 to provide (emphasis added):

Except as otherwise provided herein or in the Declaration, a resolution adopting a proposed amendment shall require the approval of the majority of the members of the Board of Directors of the Association and any such amendment shall not be inconsistent with the Settlement Agreement between the Tops'l Master Association, Inc. and Declarant dated September 29, 1999...

Exhibit 6, p. 3.

47. Following the 1999 Settlement Agreement and the 1999 Amendments, the Governing Documents, read together, provided that: (i) the Unanimous Requirement remained in full force and effect, (ii) future amendments to the Articles were prohibited from being inconsistent with the terms of the 1999 Settlement Agreement, (iii) the composition of the Board was established to consist of the owners of specified commercial parcels, on the one hand, and representatives of residential associations, on the other hand, and (iv) the composition of the Board could not be modified without the unanimous approval of the Board, including the Board seats of the commercial parcel owners. Stated another way, the Board seats could not be modified without the consent of the Commercial owners. Association governing documents like declarations, articles of incorporation and bylaws are contracts and are interpreted as such. Whitley v. Royal Trails Prop. Owners' Ass'n, 910 So.2d 381, 383 (Fla. 5th DCA 2005); *see also* Avila, 417 So.3d at 438 (finding the same with respect to condominium governing documents). Association governing documents that reference and describe each other are to be read and construed together. Id. “An interpretation of a contract which gives a reasonable, lawful and effective meaning to all of the terms is preferred to an interpretation which leaves a part

unreasonable, unlawful or of no effect.” *Id. quoting Seabreeze Rest. v. Paumgardhen*, 639 So.2d 69, 71 (Fla. 2d DCA 1994));; see also Koplowitz v. Imperial Towers Condo., Inc., 478 So.2d 504, 505 (Fla. 4th DCA 1985) (“The declaration of condominium and the association’s articles of incorporation are interrelated documents.”).

48. Accordingly, in order to effectuate the 2023 Amendments, the Defendant was required to obtain the unanimous approval of the entire Board and could not rely on the general supermajority approval requirements for other amendments to the Governing Documents. See Island Manor Apartments, Inc. v. Div. of Fla. Land Sales, Condos. & Mobile Homes, 515 So.2d 1327, 1330 (Fla. 2d DCA 1987) (Discussing the “well-settled rule of contractual construction that a provision specifically dealing with a particular subject controls over another provision only generally dealing with that subject.”); see also Raines v. Palm Beach Leisureville Cmty. Assn., 317 So.2d 814, 817 (Fla. 4th DCA 1975) (“In construing this contract in favor of the plaintiffs condominium unit owners, we apply to the rule directing that a specific clause takes precedence over a general clause.”); see also Heron at Destin W. Beach & Bay Resort Condo. Ass’n v. Osprey at Destin W. Beach & Bay Resort Condo. Ass’n, 94 So.3d 623, 631 (Fla. 1st DCA 2012); and Ibis Lakes Homeowners Ass’n v. Ibis Isle Homeowners Ass’n, 102 So.3d 722, 728 (Fla. 4th DCA 2012).

49. Nevertheless, and notwithstanding the requirements and obligations described above, in 2023, without unanimous approval and despite the express objection of the representative of the commercial owners (as reflected in the Meeting Minutes for the Board meeting dated May 22, 2023, attached hereto as **Exhibit 12, pp. 3-4**), Defendant recorded the 2023 Declaration Amendment which purported to modify the composition of the Board to consist solely of representatives of the residential associations and removed all representatives of commercial owners from the Board, among other amendments. **Exhibit 9, pp. 3-4.**

50. The Defendant also filed the 2023 Article Amendment which similarly purported to modify the composition of the Board to consist solely of representatives of the residential associations and removed all representatives of commercial owners from the Board. **Exhibit 10, pp. 7-8.**

51. The 2023 Article Amendment also removed the condition and requirement established by the 1999 Amended Articles to Article IX, Section 9.1 that expressly states that any “amendment shall not be inconsistent with the Settlement Agreement between Tops’l Master Association, Inc. and Declarant dated September 29, 1999.” **Exhibit 10, p. 9.**

52. The 2023 Amendments, by removing all commercial parcel owner Board seats without unanimous approval (and in fact despite express objection by the commercial owners’ director), are inconsistent with and violate (i) the Unanimous Requirement, (ii) the unambiguous and express terms of Sections 6.A through 6.D of the 1999 Settlement Agreement, and (iii) Article IX, Section 9.1 of the Articles, as amended by the 1999 Article Amendment.

53. Thus, the 2023 Amendments are invalid, ultra vires, and void as a matter of law. S & T Anchorage, Inc. v. Lewis, 575 So.2d 696, 698 (Fla. 3d DCA 1991) (The association cannot act beyond the authority granted by its governing documents, and any ultra vires actions (actions beyond its authority) are invalid).

II. The Board Did Not Receive the Requisite Approval to Amend the Governing Documents

54. At the time of the 2023 Amendments, six (6) directors represented the residential associations. Pursuant to the 1999 Amendment, at the time of the 2023 Amendment, the commercial owners were entitled to, at minimum, three director seats on the Board: (i) one for Abbott & Andrews Realty LLC as owner of Tract 608B (Commercial Office Property), (ii) one

for Resortquest Northwest Florida LLC as owner Tract 11 (the Maintenance Facility), and (iii) at least one for TOPS'L Club and the owners of Tract 608A, Tract 4, and Tract 13¹.

55. As such, at the time of the 2023 Amendments, Section 9.3 of the Article required unanimous approval. However, even if we assume that a supermajority was the appropriate threshold, the Board did not obtain the necessary vote. To obtain a supermajority, the Board was required to obtain at least eight affirmative votes.

56. Because the 2023 Amendments were approved by only 6 directors, constituting 66.67% of the eligible representatives, and representatives of the commercial owners voted against the 2023 Amendments, such approval was insufficient to amend the Governing Documents according to their terms, such that the 2023 Amendments are invalid, void, and unenforceable. Koplowitz, 478 So. 2d at 505; Bramson v. Beau Monde, 415 So.2d 761, 763 (Fla. 2d DCA 1982); and Tower House Condo. v. Millman, 410 So.2d 926, 929 (Fla. 3d DCA 1981).

III. The 2023 Amendments Unlawfully Stripped Plaintiffs of Fundamental and Vested Rights Despite Their Unequivocal and Express Objection Thereto

57. The 2023 Amendments are additionally invalid because they purported to strip Plaintiffs, and commercial owners generally, of fundamental rights that are afforded extra protection under Florida law which cannot be removed without the express approval of the owner whose rights are affected. See Avila, 417 So.3d 439-442.

58. As an additional example of Florida's protection of fundamental voting rights, see Section 720.306(1)(c), Fla. Stat. provides (emphasis added):

Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.

¹ Due to certain conveyances, it is possible additional director seats would have been available for certain of these parcels.

59. Thus, because voting rights are a fundamental aspect of association governance and are protected in Florida, and because the Unanimous Requirement requires that any amendments which “make any changes in...voting rights” be unanimously approved, no amendment purporting to remove the commercial owners’ seats on the Board could be valid without such commercial owners’ express approval.

60. Because the 2023 Amendments were not unanimously approved, and because the commercial owners whose voting rights were being eliminated expressly objected to and rejected the 2023 Amendments, the 2023 Amendments are invalid, ultra vires, and void as a matter of law.

IV. The 2023 Amendments Destroyed the General Plan or Scheme of the Resort

61. The 2023 Amendments are further invalid because they destroyed the general plan or scheme of development by substantially impairing or eliminating the commercial parcel owners’ voting rights in the Defendant Master Association by removing all representation on the Board. Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc., 303 So.2d 665, 666 (Fla. 4th DCA 1974); Holiday Pines Prop. Owners Ass’n v. Wetherington, 596 So.2d 84, 87 (Fla. 4th DCA 1992); and Klinow v. Island Court at Boca W. Prop. Owners’ Ass’n, 64 So.3d 177, 180 (Fla. 4th DCA 2011).

62. As provided in the Declaration, the Articles, the 1999 Settlement Agreement, and the 1999 Amendments, the Resort’s general plan or scheme of development was clearly defined as a mixed-use, commercial-residential-resort community, overseen by the Association’s Board which required dual representation by commercial owners, on the one hand, and residential owners, on the other hand. Because the Governing Documents provided that Members do not personally have the right to vote on matters regarding the Association’s operations, the composition of the Board stated in the Governing Documents prior to the 2023 Amendments ensured that each category of owner in the Resort—commercial or residential—was represented.

63. While the Governing Documents provided that residential representatives would always have the majority vote, the general scheme afforded commercial owners protection from overreach: (i) the Declaration provides that rules must be implemented and enforced “uniformly and in good faith”; (ii) the general amendment procedure required 80% Board approval (which necessarily requires approval of at least some of the commercial representatives on the Board, since the commercial owners are entitled to 6 of the potential 15 director positions, and the residential directors alone could never reach the 80% supermajority); (iii) other amendments which change voting rights or qualifications for membership require unanimous approval of the entire Board; and (iv) the 1999 Settlement Agreement expressly provides for commercial owners to challenge new rules that unreasonably and adversely affect commercial businesses.

64. Combined, the Governing Documents provided an express, and intentional balance to ensure the mixed-use resort always required input, and approval by, all stakeholders.

65. The 2023 Amendments completely upended that scheme and balance by entirely removing all the commercial owners’ rights to participate in governance and are accordingly invalid. Flamingo Ranch Estates, 303 So.2d at 666; Holiday Pines, 596 So.2d at 87; and Klinow, 64 So.3d at 180.

V. Relief Requested

66. There is a bona fide, actual, present, practical need for a declaration that the 2023 Amendments are invalid.

67. The declaration sought in this Count deals with a present, ascertained, or ascertainable state of facts, or present controversy as to a state of facts because Defendant presently enforces the 2023 Amendments and does not recognize the commercial parcel owners’ Board seats or permit the commercial parcel owners’ Board representatives to participate or vote in Board activities.

68. Plaintiffs' rights are dependent upon the above-described facts, the Governing Documents and the law applicable to these facts and to the Governing Documents.

69. Defendant has an actual, present, adverse and antagonistic interest in the subject matter, in fact and law, because Defendant has taken a position adverse to Plaintiffs by enforcing the 2023 Amendments in violation of the Governing Documents and Plaintiffs' rights.

70. The antagonistic and adverse interests are all before the court by proper process because this Court has personal jurisdiction over the Plaintiffs and the Defendant.

71. The relief sought is not merely the giving of legal advice by the Courts or the answer to questions propounded from curiosity because Plaintiffs are seeking a ruling from the Court as to Plaintiffs' actual rights concerning the 2023 Amendments.

72. Florida Statutes § 86.111 provides, in part, that, "[...] The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [...]"

73. Based on the preceding allegations, Plaintiffs have a substantial likelihood of success on the merits.

74. Plaintiffs are "not required to show an inadequate remedy at law or irreparable harm because the case involved enforcement of a restrictive covenant governing real property." Park Crossing Homeowners Ass'n, Inc. v. Suarez, 415 So.3d 676, 693 (Fla. 4th DCA 2025) ("Chapter 720 specifically contemplates injunctive relief to redress violations of homeowner association covenants regarding behaviors that disturb other homeowners' quiet enjoyment of their property. By making injunctive relief available for rule violations under Chapter 720, the legislature has recognized that most such violations are not compensable by money damages, so no adequate remedy at law exists.")

75. The rights at issue in this Count are private rights and so the public interest would not be negatively affected by an injunction.

WHEREFORE, Plaintiffs respectfully demand: (a) a declaratory judgment against Defendant, that the 2023 Amendments relating to the removal of the commercial parcel owner Board seats were invalid and striking same; (b) declaring any other rights of Plaintiffs relating to these issues; (c) ordering a temporary and permanent injunction enjoining the Defendant from enforcing the 2023 Amendments; (d) a speedy hearing, and for this action to be advanced on the Court's calendar, pursuant to Florida Statutes § 86.111; (e) an award of reasonable attorneys' fees and costs; and (f) such other and further relief as the Court deems just and proper.

COUNT II – BREACH OF CONTRACT
BREACH OF THE 1999 SETTLEMENT AGREEMENT AND ARTICLES RELATED
TO INVALID 2023 AMENDMENT REMOVING COMMERCIAL BOARD SEATS

76. This is an action for a breach of contract, specifically breach of the 1999 Settlement Agreement and Articles by the Defendant.

77. Plaintiffs reallege paragraphs 1-34 and 37-65 above as if fully restated herein.

78. Article IX, Section 9.3 of the Articles states that “no amendment shall make any changes in the qualifications for membership nor voting rights without the approval in writing by all members of the Board of Directors of the Association.” **Exhibit 3, p. 9.**

79. Article IX, Section 9.1, following the 1991 Article Amendment, provides that amendments to the Articles “shall not be inconsistent with the [1999 Settlement Agreement]”.

Exhibit 6, p. 3.

80. The 1999 Settlement Agreement is between the Plaintiff, TOPS'L Club, and the Defendant, among other parties and remains enforceable at all times material to this action. The 1999 Settlement Agreement provides, among others, that commercial owners, including Plaintiffs, are each entitled to a seat on the Board. **Exhibit 6, p. 7.**

81. The 2023 Amendments removed all commercial owner Board seats without the consent or approval of the commercial owners are inconsistent with and in breach of the

unambiguous and express terms of Section 6 of the 1999 Settlement Agreement and Article IX, Sections 9.1 of the Articles, as amended by the 1999 Article Amendment.

82. The Board did not obtain unanimous approval of the Board members for the 2023 Amendments and therefore also breached Section 9.3 of the Articles.

83. The Plaintiffs have been damaged by the breach, including without limitations, by the amount of attorney fees and costs incurred by the Plaintiff seeking to invalidate the improper actions by the Defendant Board.

84. Plaintiffs are entitled to all remedies available at law or in equity resulting from Defendant's breaches. Coastal Comput. Corp. v. Team Mgmt. Sys., 624 So.2d 352, 353 (Fla. 2d DCA 1993) ("In the absence of an exclusive, stipulated remedy, a party may elect to pursue any remedy that the law affords.").

WHEREFORE, Plaintiffs respectfully request judgment against the Defendant: (a) finding the Defendant in breach of the 1999 Settlement Agreement and Articles; (b) awarding damages to the Plaintiffs in an amount to be determined by the Court; (c) striking the 2023 Amendments which breach the 1999 Declaration and Articles, specifically as they relate to removal of the commercial owner Board seats; (d) an award of reasonable attorneys' fees and costs; and (e) such other and further relief as the Court deems just and proper.

COUNT III – DECLARATORY JUDGMENT **INVALIDATION OF THE 2024 AMENDMENTS**

85. This is an action for a declaratory judgment under Chapter 86, Fla. Stat.

86. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

87. The 2024 Amendments are void, invalid, and unenforceable, in whole and in part, because: (i) one, the Board executed the 2024 Amendments after the 2023 Amendments, which unlawfully deprived commercial owners of their rights to have representation on the Board, such that subsequent actions by the Board are void, *ab initio*, (ii) two, the Board did not receive the

requisite approval pursuant to the Governing Documents, (iii) three, the 2024 Amendments purport to deprive commercial owners, including Plaintiffs, of their fundamental rights provided in the Governing Documents without their approval, and (iv) four, the 2024 Amendments destroyed the general plan or scheme of the Resort.

I. The 2024 Amendments Are Void, *ab initio*

88. The 2023 Amendments are invalid, void, and unenforceable as a matter of law.

89. Following the 2023 Amendments, the Board deprived the commercial parcel owners' Board representatives of their rights to notice, of their rights to attend meetings, of their right to consider the amendments or other Board action, and of their rights to vote on Board actions subsequent to the 2023 Amendments. Because the actions taken by the Board after the 2023 Amendments did not comply with the Governing Documents and deprived the commercial parcel owners' of these rights, subsequent actions by the Board after the 2023 Amendments are invalid and void, *ab initio*. Koplowitz, 478 So.2d at 505; Bramson, 415 So.2d at 763; and Tower House Condo, 410 So.2d at 929.

90. Because the Board executed the 2024 Amendments subsequent to the 2023 Amendments, and without notice, participation, or approval by the commercial owners' representatives on the Board, the 2024 Amendments are invalid, void, and unenforceable in their entirety as a matter of law.

II. The 2024 Amendments Are Invalid Because the Board did not Obtain the Requisite Approval Under the Governing Documents

91. Even if the 2024 Amendments were not void, *ab initio*, because the Board did not receive the approval from the Board representatives that the commercial owners' were supposed to have but for the invalid 2023 Amendments, the 2024 Amendments were invalid because the Board did not have the requisite approval for amendments to the Governing Documents for amendments (either 80% or unanimous approval).

92. At the time of the 2024 Amendments, six (6) directors represented the residential associations. At the time of the 2024 Amendments, the commercial owners were entitled to, at minimum, 3 directors on the Board: (i) one for Abbott & Andrews Realty LLC as owner of Tract 608B (Commercial Office Property), (ii) one for Resortquest Northwest Florida LLC as owner Tract 11 (the Maintenance Facility), and (iii) at least one for TOPS'L Club and the owners of Tract 608A, Tract 4, and Tract 13².

93. Thus, at the time of the 2024 Amendments, in order to amend the Governing Documents, the Board was required to give appropriate notice to, allow participation by, and obtain approval from 8 directors (to meet the general amendment supermajority 80% threshold) or 9 directors (to meet unanimous approval for amendments that change "voting rights").

94. Because the 2024 Amendments were approved by only 6 directors, representing only 66.67% of the 9 total applicable votes, the 2024 Amendments did not achieve the requisite approval under the Governing Documents and the same are invalid, void, and unenforceable. Koplowitz, 478 So.2d at 505; Bramson, 415 So.2d at 763; and Tower House Condo, 410 So.2d at 929.

III. The 2024 Amendments Invalidly Stripped TOPS'L Club of Fundamental Rights Provided in the Governing Documents and Destroy the General Plan and Scheme of the Resort

95. In addition to the failure of the Board to obtain the requisite approval for any amendments to the Governing Documents generally, the 2024 Amendments are invalid because they purport to strip and deprive TOPS'L Club of fundamental rights provided in the Governing Documents without TOPS'L Club's express approval.

² Due to certain conveyances, it is possible additional director seats would have been available for certain of these parcels.

96. As provided in the Declaration, Common Areas are “for the common use and protection of property owners within TOPS’L and their families, guests and invitees.” **Exhibit 2, p. 7.**

97. As vested and express rights, Plaintiffs and their respective tenants, guests, and invitees, have the right to use the Beach, which is a Common Area within the Resort. Such right is both expressly granted by the Declaration and protected by Florida Law. See, e.g., Flamingo Ranch Estates, 303 So.2d at 666; Holiday Pines, 596 So.2d at 87; Klinow, 64 So.3d at 180; and Roth v. Springlake II Homeowners Ass’n, Inc., 533 So.2d 819, 820 (Fla. 4d. DCA 1988) (“a unit owner cannot be divested of his ownership without his consent”); see also Section 720.304(1), which provides (emphasis added):

(1) All common areas and recreational facilities serving any homeowners’ association shall be available to parcel owners in the homeowners’ association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities.

98. Nevertheless, in executing the 2024 Amendments, the Board attempted to strip and deprive TOPS’L Club of such right by purporting to amend the Declaration to specifically exclude some, but not all, guests and invitees of TOPS’L Club as follows:

(5) Club members who are not owners within the Tops’l Master Association community are not allowed access to the Tops’l Master Association owned beach.

Exhibit 11, p. 7.

99. The 2024 Amendments directly, and unlawfully, deprived TOPS’L Club of its vested rights under the Declaration and unreasonably destroys the general plan or scheme of development of the Resort.³

³ The 1999 Settlement Agreement also expressly confirms the fact the beach, a common area, is available for all guests of the Resort, and solidifies that such is an integral component to the general plan and scheme of the resort by prohibiting the Defendant from enacting rules that would deprive certain guests of access to common areas, including the beach, generally available to all guests (“The Master Association and the Residential Associations

100. The 2024 Amendments purports to amend the Declaration to prohibit the non-owner guests and invitees of the Plaintiffs from using the beach in contravention of the clear plan of development in the Resort that all owners and their “families, guests and invitees” would have the use of the Common Areas, including the beach. The 2024 Amendments purport to prohibit and deprive the Plaintiffs’ use of a significant benefit stated in the Declaration and did so without achieving the consent of the affected owner, such that the 2024 Amendments are invalid. Flamingo Ranch Estates, 303 So.2d at 666; Holiday Pines, 596 So.2d at 87; and Klinow, 64 So.3d at 180.

IV. The 2024 Amendments Violated the Governing Documents Regarding Voting Rights

101. As noted above, Article IV, Section 4.5 of the Articles provides (emphasis added):

Members shall not be entitled to vote on any matter except for electing Directors as provided for herein. All voting authority is vested in the Association’s Board of Directors.

Exhibit 3, p. 8.

102. The 2024 Amendments on their face purports to modify the “voting rights” of all owners/members within the Resort by requiring member approval of certain amendments to the Declaration. **Exhibit 11, pp. 3-4.**

103. Because the 2024 Amendments purport to change the “voting rights” of the members, including the Plaintiffs, by materially changing how the members and Board members vote on Association matters, a unanimous vote, including those of the invalidly removed commercial Board seats, was required.

cannot later restrict, in any way, hotel guests from use of the beach or other amenities which are available to all other guests of the resort”) and also expressly confirming that use of the beach by club members was also expressly contemplated (“Declarant shall reserve the right to make food and beverage service on the beach available exclusively to club members”).

104. Because the Board adopted the 2024 Amendments by a vote of 6 directors only, representing 66.67% of the eligible representatives, the 2024 Amendments were adopted in direct violation of the Governing Documents and are invalid, void, and unenforceable as a matter of law.

V. Relief Requested

105. There is a bona fide, actual, present, practical need for a declaration that the 2024 Amendments are invalid and subject to be stricken.

106. The declaration sought in this Count deals with a present, ascertained, or ascertainable state of facts, or present controversy as to a state of facts because Defendant continues to enforce the 2024 Amendments.

107. Plaintiffs' rights are dependent upon the above-described facts, the Governing Documents and the law applicable to these facts and to the Governing Documents.

108. Defendant has an actual, present, adverse and antagonistic interest in the subject matter, in fact and law, because Defendant has taken a position adverse to Plaintiffs by enforcing the 2024 Amendments in violation of the Governing Documents and Plaintiffs' rights.

109. The antagonistic and adverse interests are all before the court by proper process because this Court has personal jurisdiction over the Plaintiffs and the Defendant.

110. The relief sought is not merely the giving of legal advice by the Courts or the answer to questions propounded from curiosity because Plaintiffs are seeking a ruling from the Court as to Plaintiffs' actual rights concerning the 2024 Amendments.

111. Florida Statutes § 86.111 provides, in part, that, "[...] The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [...]"

112. Based on the preceding allegations, Plaintiffs have a substantial likelihood of success on the merits.

113. Plaintiffs are “not required to show an inadequate remedy at law or irreparable harm because the case involved enforcement of a restrictive covenant governing real property.” Park Crossing Homeowners Ass’n, 415 So.3d at 693.

114. The rights at issue in this Count are private rights and so the public interest would not be negatively affected by an injunction.

WHEREFORE, Plaintiffs respectfully demand: (a) a declaratory judgment against Defendant, finding that the 2024 Amendments are invalid and striking same, in whole or in part; (b) declaring any other rights of Plaintiffs relating to these issues; (c) ordering a temporary and permanent injunction enjoining the Defendant from enforcing the 2024 Amendments; (d) a speedy hearing, and for this action to be advanced on the Court’s calendar, pursuant to Florida Statutes § 86.111; (e) an award of reasonable attorneys’ fees and costs; and (f) such other and further relief as the Court deems just and proper.

COUNT IV – DECLARATORY JUDGMENT
INVALIDATION OF 2021 DECLARATION AMENDMENT REGARDING
REGISTRATION FEES

115. This is an action for a declaratory judgment under Chapter 86, Fla. Stat.

116. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

117. In 2021, Defendant adopted the 2021 Declaration Amendment which established de facto assessments to be disproportionately, and non-uniformly, assessed against some owners, but not others. The 2021 Declaration Amendment is invalid, void, and unenforceable because it violates the Governing Documents and Florida Law, and are unenforceable as-applied because the Board has implemented such guest fees unreasonably, arbitrarily, and capriciously.

118. In pertinent part, Article VI, Section (j), the Declaration states that (emphasis added):

*Uniform Rate of Assessment. **Both monthly and special assessments must be fixed at a uniform rate for all real property interests subject to this***

Declaration which each class thereof, i.e. Private Dwelling Units, hotel, tennis club and retail and/or commercial buildings.

Exhibit 2, p. 16-17, 20-22 and 23.

119. Pursuant to Section 6.E of the 1999 Settlement Agreement, any changes in assessment formulas require the unanimous approval of the Board (“henceforth, there shall be no change in the assessment formula without unanimous approval of the Board.”). **Exhibit 6, p. 8.**

120. In 2021, the Defendant executed and recorded the 2021 Declaration Amendment which generally purports to charge “guest registration fees” to owners that rent their units, allows the Board to arbitrarily set the amount of the registration fees, and allows the Board to lien and foreclose the owners for unpaid registration fees in the same manner as assessments. In pertinent part, the 2021 Declaration Amendment provides (emphasis added):

All Rental Guests entering Tops’l shall be required to complete a Rental Guest Registration upon the Rental Guest’s entry for any period of time.... No Rental Guest shall be issued a parking pass or allowed entry to Tops’l unless and until the Rental Guest has completed the Rental Guest Registration process. The Association may charge a fee in such amount as may be determined by the Board of Directors from time to time in connection with each Rental Guest Registration, which fee . . . may be billed to the Owner who is identified and listed in the Rental Guest Registration as the Rental Guest’s sponsoring Owner and/or may be billed to the sponsoring Owner’s rental manager or rental management company.

The Rental Guest Registration fee charged and billed to any Owner and/or to the Owner’s rental manager or rental management company shall be due and payable to the Association within fifteen (15) days after being billed therefor and shall be delinquent if not timely paid.

Any delinquent Rental Guest Registration fee shall ... become and be a lien against the real property interest of the Owner subject to this Declaration, the amount of said lien to include interest as accrued, the Rental Guest Registration fee and all costs of collection, and enforcement of said lien, including reasonable attorneys’ fees.

The Association may at any time after such fee has become a lien record in the Public Records of Walton County, Florida, a Claim of Lien in the same manner as the recording of a lien for delinquent assessments and may foreclose the Claim of Lien in the same manner as foreclosure of a lien for delinquent assessments.

Exhibit 8, pp. 1-2.

121. Pursuant to section 720.301, Fla. Stat., an “assessment” or “amenity fee” is “**a sum or sums of money payable to the association**, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels **by the owners** of one or more parcels 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).

122. Under Florida law, assessments must be uniform and proportional in application. See Section 720.308(1)(a), Fla. Stat. (“Assessments levied pursuant to the annual budget or special assessment must be in the member’s proportional share of expenses as described in the governing document”); see also Valencia Reserve Homeowners Ass’n v. Boynton Beach Assocs., XIX, LLLP, 278 So.3d 714, 718 (Fla. 4th DCA 2019); Avatar Props. v. Gundel, 372 So.3d 715; 2023 Fla. App. LEXIS 4393; 48 Fla. L. Weekly D 1272; 2023 WL 4117336 (finding membership fees that owners were required to pay to the developer for use of amenity facilities owned by the developer were considered assessments and were deemed invalid under section 720.308, Fla. Stat.).

123. Additionally, Florida Law is clear that the nature of a property’s use is not transformed simply because the owner earns income from rentals of the unit. *See, e.g. Santa Monica Beach Property Owners Association, Inc. v. Acord*, 219 So.3d 111 (Fla. 1st DCA 2017) (“the nature of the property’s use is not transformed from residential to business simply because the owner earns income from the rentals”) *citing Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006) (“The owners’ receipt of rental income in no way detracts from the use of the properties as residences by the tenants.”).

124. Finally, in determining the enforceability of an amendment to restrictive covenants, the test is one of reasonableness.” Holiday Pines, 596 So.2d at 87. “Reasonable” means

“not arbitrary, capricious, or in bad faith.” Klinow, 64 So.3d at 180 quoting Hollywood Towers Condo. Ass’n v. Hampton, 40 So.3d 784, 787 (Fla. 4th DCA 2010).

125. Here, the “guest registration fees” established by the 2021 Declaration Amendment are assessments: they are (i) **sums of money**, (ii) **payable to the Association**, (iii) **by the owners**, (iv) **which if not paid result in a lien on an owner’s parcel**.

126. As assessments, the Governing Documents and applicable Florida Law require that, to be valid, these guest registration fees must: (i) be charged and levied uniformly and proportionally among all owners within a specified class (e.g. residential, private dwelling unit owners), (ii) be calculated by a formula unanimously approved by the Board, and (iii) be reasonable and not arbitrary, capricious, or adopted in bad faith. The Guest Registration Fees enacted by the Board fail each such requirement.

127. First, despite being assessments, these guest registration fees are charged only against owners that “rent” their units, but not owners that do not rent or that let guests or families “use” their units rent-free. Because unit owners that “rent” their private dwelling units are of the same class, and for the same use, as owners that permit guests to “use” their private dwelling units, the 2021 Declaration Amendment’s failure to treat owners in an equal class uniformly and proportionally renders the same invalid, void, and unenforceable.

128. Second, even if the 2021 Declaration Amendment could be validly enacted despite the fact it, on its face, fails the uniformity and proportionality requirement, the Board’s subsequent adoption of the amounts to be charged violated the Governing Documents and Florida Law. In particular, in November 2022, the Board began charging the Guest Registration Fees despite objection of the commercial director who voted against such implementation due to “lack of clarity on how the revenue will be spent.” See November 14, 2022 Meeting Minutes attached as **Exhibit 13**. As the calculation of the guest registration fee is, by its very nature, a change in the

formula in how assessments are charged, the same required unanimous approval of the Board, which it did not have, rendering the same invalid, void, and unenforceable.

129. Third, as noted in the November 14, 2022 Meeting Minutes, there was a lack of clarity and disagreement as to how the revenue was to be spent, and the justifications for the amount. Without such substantiation and clarity, the amount implemented by the Board to be charged was implemented arbitrarily, capriciously, and unreasonably, again rendering the same invalid, void, and unenforceable.

130. Fourth, after the initial guest fee amount was implemented, all other increases to such amount occurred after the 2023 Amendments that removed the commercial directors from the Board, such that any subsequent increases or alterations to the guest fees charged were done without the requisite unanimous vote and are invalid, void, and unenforceable. As such, even if the initial guest fee was found to be enforceable, any subsequent increases thereto would necessarily be invalidated due to the fact the commercial owners were deprived of their opportunity to receive notice, to participate, and to vote on any such increases thereafter.

131. Finally, the arbitrary and capricious nature of the guest fees to be charged is not merely hypothetical, Defendant's Board own meeting minutes from April 10, 2025 and August 21, 2025 demonstrate the improper motive and calculus used by the Board to set the registration fees as a mechanism to charge some owners (those that rent) to avoid assessments (which would be charged to all owners) (emphasis added):

Discussion of 2026 Guest Registration Fees – Mr. Raines states that he is concerned that that the number of rentals in the entire area keep dropping. ***He believes we will need to raise GR [guest registration] fees in 2026 to help absorb the cost of upkeep.***

Defendant Meeting Minutes, April 10, 2025.

D. Vote on Guest Registration fee for 2026 – The GR numbers for 2023-current were discussed. ***With large projects coming up next year and with unexpected and unforeseen maintenance and replacement such as turbine shafts and***

boardwalk, either assessments would get raised or another source of revenue is needed. Mr. Garey made a motion to move the current \$48 GR fee to \$73 beginning January 1, 2026, and Mr. Raines seconded the motion.

Defendant Meeting Minutes, August 21, 2025.

132. True and correct copies of the April 10, 2025 meeting minutes are attached hereto as **Exhibit 14** and the August 21, 2025 meeting minutes as **Exhibit 15**.

133. As reflected above, the Board expressly acknowledges that it is charging arbitrary fees to Resort owners and their guests that substantially and unreasonably exceed the actual costs incurred by the Defendant to register guests and issue parking passes, for the sole purpose of assessing a disproportionate amount of the Defendant's budget to owners that rent to reduce the assessments for owners that do not rent. Doing so is, on its face, unreasonable, arbitrary, capricious and in bad faith. Holiday Pines, 596 So.2d at 87; and Klinow, 64 So.3d at 180.

134. In short, despite the express provisions of the Declaration governing assessments (which were not amended), and despite the requirements of the 1999 Settlement Agreement requiring unanimous approval for modifications to the assessment formulas, the Board granted themselves the right to charge non-uniform, non-proportional assessments to some owners (those that rent) to save other owners (those that do not rent) in assessment costs for general maintenance and common area operations. In doing so, the Board in fact is intentionally levying a substantial and disproportional financial burden on the renting owners to reduce assessments paid by non-renting owners in direct violation of the Governing Documents and the legal authorities previously cited.

135. There is a bona fide, actual, present, practical need for a declaration that the 2021 Declaration Amendment is invalid and subject to be stricken or at least the manner in which it is being applied is invalid.

136. The declaration sought in this Count deals with a present, ascertained, or ascertainable state of facts, or present controversy as to a state of facts because Defendant continues to enforce the 2021 Declaration Amendment.

137. Plaintiffs' rights are dependent upon the above-described facts, the Governing Documents and the law applicable to these facts and to the Governing Documents.

138. Defendant has an actual, present, adverse and antagonistic interest in the subject matter, in fact and law, because Defendant has taken a position adverse to Plaintiffs by enforcing the 2021 Declaration Amendment in violation of the Governing Documents and Plaintiffs' rights.

139. The antagonistic and adverse interests are all before the court by proper process because this Court has personal jurisdiction over the Plaintiffs and the Defendant.

140. The relief sought is not merely the giving of legal advice by the Courts or the answer to questions propounded from curiosity because Plaintiffs are seeking a ruling from the Court as to Plaintiffs' actual rights concerning the 2021 Declaration Amendment.

141. Florida Statutes § 86.111 provides, in part, that, "[...] The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [...]"

142. Based on the preceding allegations, Plaintiffs have a substantial likelihood of success on the merits.

143. Plaintiffs are "not required to show an inadequate remedy at law or irreparable harm because the case involved enforcement of a restrictive covenant governing real property." Park Crossing Homeowners Ass'n, 415 So.3d at 693.

144. The rights at issue in this Count are private rights and so the public interest would not be negatively affected by an injunction.

WHEREFORE, Plaintiffs respectfully demand: (a) a declaratory judgment against Defendant, finding that the 2021 Declaration Amendment is invalid and striking same; (b) in the

alternative that the Board is improperly applying the 2021 Declaration Amendment by charging fees which the Defendant arbitrarily sets and which are not based on any specific costs incurred by the Defendant; (c) declaring any other rights of Plaintiffs relating to these issues including, to the extent permissible, disgorgement of Defendant's wrongfully obtained funds; (d) ordering a temporary and permanent injunction enjoining the Defendant from enforcing the 2021 Declaration Amendment; (e) a speedy hearing, and for this action to be advanced on the Court's calendar, pursuant to Florida Statutes § 86.111; (e) an award of reasonable attorneys' fees and costs; and (f) such other and further relief as the Court deems just and proper.

COUNT V – TORTIOUS INTERFERENCE AGAINST THE DEFENDANT

145. This is an action for tortious interference against the Defendant.

146. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

147. TOPS'L Club owns and operates the Tennis Club business, a private tennis and racquet club in the Resort, which includes a gym, swimming pool, tennis courts and on site restaurants. The TOPS'L Club has patrons and members to which it provides memberships, lessons, court access, and gym facilities.

148. TOPS'L Club operates a restaurant within the Resort, the Blue Dunes Grill, near the beach with a pool that members of the Tennis Club may access. The TOPS'L Club is also engaged in providing venue rental, catering, and transportation services for group events such as weddings.

149. TOPS'L Club also provides vacation property management and hospitality services, primarily providing such services to owners within the Resort. These services bring many rental guests to the Resort that utilize the services and amenities provided by the Plaintiff in the Resort, including the Beach, Tennis Club and Blue Dunes Grill.

150. The relationships with TOPS'L Club patrons and members constitute business relationships under Florida law because they involve identifiable individuals who pay for services and have legal rights to the amenities and facilities promised.

151. TOPS'L Club and its predecessors have been providing these services to its patrons and members for decades and have established long-term relationships with specific, identifiable members who rely on access to the tennis facilities, gym facilities, food service and related amenities including access to the Beach.

152. The TOPS'L Club's business depends on providing members access to both tennis facilities and Resort amenities, including the Beach, which was expressly included as Common Area available to all owners, their tenants, and invitees under the Declaration.

153. Defendant is the master association governing the Resort and has actual knowledge of the commercial operations within its boundaries.

154. The Declaration expressly contemplates commercial uses including the tennis club and restaurants operating in tandem with residential uses.

155. For over thirty years, the commercial operations and residential owners coexisted harmoniously, with Defendant fully aware of the tennis club memberships, restaurant operations, rental management business, and event services provided by the Plaintiffs and its predecessors.

156. Since 2021, and described in more detail throughout this Complaint, the Board has been systematically taking concerted and intentional actions to interfere with the Plaintiffs' business operations and its substantial business relationships with its guests, patrons and members.

157. In particular, and among others, with concerted efforts to systematically deprive Plaintiffs of their rights and with direct and substantial impact on Plaintiffs' businesses, Defendant: (i) increased the costs associated incurred by guests utilizing Plaintiffs' business in order to offset amounts owners would otherwise be required to pay uniformly as assessments, (ii) stripped Plaintiffs

of their right to participate in any decision making in the Resort, (iii) eliminated TOPS'L Club's rights to have its non-owner guests use the Beach, (iv) asserts the right to both charge TOPS'L Club's guests and terminate contracts in effect between TOPS'L Club and its members, despite the fact the Board is neither a party to, nor granted any rights under, any such agreements, (v) threatened to prevent entry into the Resort by Plaintiffs and/or their employees resulting from use of community resources (water), (vi) threatened to prevent entry into the Resort by Plaintiffs and/or their employees resulting from providing transportation services to its own guests, including on the eve of a wedding that has been planned for nearly a year (which transportation services have been provided for decades), (vii) arbitrarily eliminated equal access and use rights of Common Areas by establishing certain "owners-only" sections at, among others, the Beach and the Road, and (viii) arbitrarily, and unlawfully, removed Plaintiffs' rights to equal use of services paid for by assessments and provided to all other owners in the resort.

158. As previously alleged, in 2021, the Board amended the Declaration to require the Plaintiffs' rental guests and owners that use the Plaintiffs' rental management services to pay arbitrary, capricious and disproportionate registration fees for the nominal task of obtaining a parking pass from the Defendant (which parking pass is also required to be obtained by other guests that "use", but do not "rent", residential units and who do not have to pay any such fees).

159. The registration fees increase substantially each year and now represent a substantial portion of Defendant's budget. These fees are not based on actual costs of registration but are arbitrarily set at amounts far exceeding Defendant's expenses. The result is a disproportionate financial burden on owners who rent, making rental operations less profitable, less sustainable, and discourages rental guests from choosing properties within the Resort. This fee structure interferes with Plaintiffs' rental management business by making properties within the Resort less competitive and with reduced profit margins, for the sole reason of reducing certain

assessments paid by owners who do not rent their unit. The fees are charged to Plaintiffs, rental guests and/or the owners of the underlying units, each of which damages Plaintiffs' business relationships with actual and prospective rental clients and guests.

160. In 2023, the Board amended the Declaration and other Governing Documents to completely remove all representation on the Board by the commercial parcel owners.

161. By eliminating Plaintiffs' representation and voting rights, Defendant ensured that commercial owners could not prevent or remedy the Board's anti-business actions, and deprived Plaintiffs' of their fundamental, and sole, right to participate in and vote on matters affecting the Resort at large. The removal of Board seats was intentional interference because it not only deprived Plaintiffs of the ability to protect their business interests through participation in Association governance, the Board also subsequently took numerous intentional and concerted actions that directly interfered with Plaintiffs operations. Moreover, as reflected in the Meeting Minutes wherein the 2023 Amendments were adopted (invalidly), despite opposition by many who saw the same as clear disenfranchisement of Plaintiffs, the Board nevertheless adopted such 2023 Amendments with supporting statements such as "this property [Plaintiffs'] belongs to the [residential] owners and it is their investment." See Meeting Minutes May 22, 2023.

162. Once commercial owners were excluded from the Board, Defendant then enacted the 2024 Amendments to prohibit TOPS'L Club's guests of their rights to access the beach, while also increasing the requirement of future amendments to require member approval of future amendments—locking in the commercial owners' disenfranchisement and making it more difficult to undo the damage.

163. Further still, the Board has flagrantly disavowed the uniformity requirement of the Governing Documents to adopt, and enforce, rules and regulations uniformly and in good faith, and

instead has utilized arbitrary rule-making as a mechanism to exert control over Plaintiffs. For example, the Board's Rules provide:

Non-owner TOPS'L Club Memberships do not include rights of access to or use of the TOPS'L Beach and are subject to removal from the beach and may be fined up to \$1000.00 and potential loss of TOPS'L Club membership.

Exhibit 5, p. 1.

164. The Board has also attempted to disproportionately impact Plaintiffs' operations by implementing arbitrary scheduling of water rights (discussed below), threatening to trespass and prevent entry of Plaintiffs' employees and guests for failure to abide by unwritten "rules", have created de-facto class systems within the Resort (with a beach that has "owners-only" sections only available to owners, a new "owners-only" entryway that prevents anybody but owners from using such Common Areas and was constructed in violation of the Board's own requirements for significant expenditures, and denying Plaintiffs of continued trash services that are paid for through assessments).

165. Further still, in 2026, the Board threatened Plaintiffs' employees with removal and denial of entry into the Resort if Plaintiffs continued to provide transportation services operated for decades by the Plaintiffs and its predecessors as a means to transport its guests, patrons and members to Plaintiffs' own properties around the Resort because of the Resort's size and lack of sufficient parking, and despite the fact that there is no provision in the Declaration authorizing the Association to prohibit property owners or their tenants, guests, or invitees from transporting their own guests and invitees on Common Area roadways. To the contrary, the roadways are expressly designated for "the common use and protection of property owners within Tops'l and their families, guests and invitees."

166. After attempting to strip Plaintiffs' rights to use the Road like any other owner, the Board then proceeded to contractually grant a third-party company the "exclusive right" to provide

transportation services within the Resort. Worse yet, while such services are “available” to everybody, owners are apparently not required to pay and instead only guests are charged for the services.

167. Given the ongoing issues with the Board and given the Board continued to assert Plaintiffs have no right to participate on the Board, Plaintiffs sent communications to the Resort community at large, voicing concerns, highlighting issues, and encouraging dialog about the direction of the Resort under the current Board. In response, in May 2026, the Board proposed a new rule which attempts to prevent the Plaintiffs from communicating with the other members of the Association and threatens “fines or suspending use rights for a violation of this Rule” ostensibly threatening loss of use of Resort common areas for non-compliance. See the rule proposed by the Board, entitled the Rule Regarding Mass Community Communications, Grievances, and Nuisance/Annoyance Conduct Recitals, a true and correct of which is attached hereto as **Exhibit 16⁴**. This rule was meant to stifle opposition to the Board’s actions and punish the Plaintiffs for exercising their rights. By threatening Common Area use rights, the Board is specifically targeting the Plaintiffs’ business as penalty for exercising their rights to communicate positions and opinions to other owners. See section 720.304(1) and (4), Fla. Stat. that protect association members’ rights to peaceably assemble and protect members against SLAPP suits from associations.

168. In short order, and with concerted efforts to systematically deprive Plaintiffs of their rights and with direct and substantial impact on Plaintiffs’ businesses, Defendant: (i) increased the costs associated incurred by guests utilizing Plaintiffs’ business in order to offset amounts owners would otherwise be required to pay uniformly as assessments, (ii) stripped Plaintiffs of their right to participate in any decision making in the Resort, (iii) substantially hindered TOPS’L Club’s rights to have its guests use the Beach, (iv) asserts the right to terminate a contract between TOPS’L Club

⁴ As of the date hereof, the Board appears to have not taken action on this proposed rule yet.

and its members despite the fact the Board is neither a party to, nor granted any rights under, any such agreements, (v) threatened to prevent entry into the Resort by Plaintiffs and/or their employees resulting from use of community resources (water), (vi) threatened to prevent entry into the Resort by Plaintiffs and/or their employees if Plaintiffs did not immediately terminate providing transportation services to its own guests, including on the eve of a wedding that has been planned for nearly a year, (vi) continuously implemented unwritten rules and procedures that disproportionately favored owners to the detriment of Plaintiffs' guests, and (vii) arbitrarily, and unlawfully, removed Plaintiffs' rights to equal use of services paid for by assessments and provided to all other owners in the resort.

169. Defendant had actual knowledge of Plaintiffs' relationships, acted with the purpose of harming Plaintiffs' business relationships and commercial operations, and cannot claim any privilege or justification for its conduct.

170. Plaintiffs have suffered and continue to suffer substantial damages from Defendant's tortious interference. The 2024 Beach Amendment damaged Plaintiffs' tennis club business by eliminating a key amenity that attracted members and patrons, reducing the value of memberships and deterring prospective members. The disproportionate registration fees reduced profit margins on rental operations and made Plaintiffs' properties less competitive. Additionally, Plaintiffs incurred substantial attorneys' fees and costs in challenging Defendant's unlawful actions and protecting their business interests. These damages flow directly from Defendant's interference with Plaintiffs' business relationships.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant: (a) for an award of compensatory damages in an amount to be determined at trial, including but not limited to, lost profits and lost business opportunities resulting from Defendant's tortious interference, damage to Plaintiffs' business reputation and goodwill; loss of existing and prospective business

relationships; and costs incurred in mitigating damages and attempting to preserve business relationships; (b) for an award of consequential and special damages, including but not limited to: attorneys' fees and costs incurred in connection with addressing Defendant's interference, lost rental income and management fees; diminution in property value resulting from Defendant's conduct; and any other special damages proven at trial; (c) entry of a temporary and permanent injunction enjoining Defendant from continuing to interfere with Plaintiffs' existing and prospective business relationships and requiring Defendant to cease and desist from conduct that interferes with Plaintiffs' lawful business operations within the Resort; (d) for an award of pre-judgment interest at the statutory rate on all sums found due from the date of accrual of each cause of action to the date of judgment, as provided by law; (e) for an award of post-judgment interest at the statutory rate on all sums found due from the date of judgment until paid in full, as provided by law; (f) for an award of reasonable attorneys' fees and costs incurred in bringing this action; (g) leave to amend the Complaint to assert a claim for punitive damages upon completion of discovery and a reasonable showing by evidence in the record or proffered by Plaintiffs which would provide a reasonable basis for recovery of such damages pursuant to section 768.72, Fla. Stat. and Florida Rule of Civil Procedure 1.190(f); and (h) such other and further relief as the Court deems just and proper.

COUNT VI – DECLARATORY JUDGMENT
PLAINTIFFS' RIGHTS AS TO THE IRRIGATION WELL AND PUMP ON THE
COMMERCIAL OFFICE PROPERTY

171. This is an action for a declaratory judgment under Chapter 86, Fla. Stat.

172. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

173. An irrigation well and pump facilities (the "Pump Facilities") are located entirely on the Plaintiff, SSP's Commercial Office Property. Upon information and belief, the Pump Facilities were installed by the Declarant SSP's predecessor in title.

174. Upon information and belief, the Pump Facilities provide irrigation water for the Tennis Club, the Resort Common Areas and for the residential developments within the Resort.

175. In addition to providing water for landscape irrigation, the Pump Facilities provide water that is crucial for maintaining the tennis courts on the Tennis Club property.

176. The following provisions in the Declaration are relevant to this Count. Article I, Section 4 includes within the definition of Common Area certain “wells and irrigation equipment.” **Exhibit 2, p. 4.**

177. Article IV, Section (a) provides the Defendant with a blanket easement for “installing and maintaining utilities upon, across, over and under all property subject to this Declaration for ingress, egress, instillation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, telephones and electricity, and community antenna or cable television system.” **Exhibit 2, pp. 9-10.**

178. Article VII, Section (I) 1. States that “No water well shall be sunk or drilled on any lot. However, Declarant reserves the right to locate wells, pumping stations and tanks within Tops’l or on any lot designated for use by the Declarant.” **Exhibit 2, p. 29.**

179. Based on the language in the Declaration, the Defendant arguably has an easement to use the Pump Facilities located on the Commercial Office Property.

180. If the Declaration does provide easement rights to the Defendant, the Declaration does not state that the Defendant has an exclusive easement to use the Pump Facilities. “The general rule of law in Florida is that an instrument creating an easement must be construed as creating a nonexclusive easement unless the instrument clearly shows an intention that the easement is to be exclusive.” Stephens v. Dobbins, 511 So.2d 652, 652-53 (Fla. 2d DCA 1987); Wiggins v. Lykes Bros., Inc., 97 So.2d 273, 276-77 (Fla. 1957) (“no intention to convey an exclusive easement in the property can be imputed to the grantor of the easement in the absence

of a clear indication of such intention...”); and Gelfand v. Mortg. Inv’rs of Wash., 453 So.2d 897, 898 (Fla. 4th DCA 1984).

181. “An exclusive easement is one for the sole benefit of the easement holder and excludes use thereof by the grantor servient owner.” Gelfand, 453 So.2d at 898. “A non-exclusive easement, on the other hand, permits use by the servient owner.” Id. In the case of a non-exclusive easement, the owner of the land “may make use of the land subject to the easement so long as he doesn’t interfere with the use thereof” by the easement holder. Id.

182. “The easement holder possesses the dominant tenement, while the owner of the land against which the easement exists possesses the servient tenement.” Wingate v. Wingate, 84 So.3d 427, 429 (Fla. 1st DCA 2012). “The servient estate owner enjoys all rights to the property, except as limited by the easement, and may use the land burdened by the easement in any manner that does not unreasonably interfere with the lawful dominant use.” Id.

183. “To determine the scope of the easement, the court must attempt to ascertain the intent of the parties in light of the surrounding circumstances at the time the easement was created.” Hillsborough Cty. v. Kortum, 585 So.2d 1029 (Fla. 2d DCA 1991). “When determining whether an easement conveys a particular right, the rules of contract interpretation apply, giving effect to the plain meaning of the terms as stated.” Buie v. Bluebird Landing Owner’s Ass’n, 172 So.3d 519, 521 (Fla. 1st DCA 2015). “[T]he burden created by an easement may not be increased beyond that reasonably contemplated by the parties at the time of its creation.” Easton v. Appler, 548 So.2d 691, 695 (Fla. 3d DCA 1989); Tice v. Herring, 717 So.2d 181, 182 (Fla. 1st DCA 1998); and Perlini v. Seminole Woods Cmty. Ass’n, 582 So.2d 1221, 1224 (Fla. 5th DCA 1991).

184. For over thirty years, the Defendant, the Declarant and its successors, including the Plaintiffs, have jointly used the Pump Facilities. The Defendant used them to irrigate the

common areas and the residential properties, and the Declarant and Plaintiffs used them to irrigate their own landscaping and tennis courts.

185. The Defendant has recently attempted to exert exclusive control over the Pump Facilities in violation of the Plaintiffs' rights as owners of the Pump Facilities. Further, the Defendant has, without the consent of the Plaintiffs, constructed a fence on the Plaintiff's property around the Pump Facilities and locked the fence to the exclusion of the Plaintiffs.

186. The Declaration does not clearly state an intention that the Pump Facilities would be exclusive to the Defendant. The Declarant specifically reserved unto itself the right in Article VII, Section (I) to dig and operate its own wells.

187. As the owner and tenant of the Commercial Office Property on which the Pump Facilities are located, the Plaintiffs have the right to use Pump Facilities for any purpose which does not materially interfere with the easement rights of the Defendant, including the right to pump water from the Pump Facilities.

188. The Defendant's claim of exclusive possession and use of the Pump Facilities, and installation of fencing which excludes the Plaintiffs from its own property, violates the Plaintiffs' property rights, violates any easement rights which may have been granted to the Defendant in the Declaration, and impermissibly attempts to increase the burden of any easement rights which may have been granted to the Defendant beyond those rights reasonably contemplated at the time of creation of the Declaration. Easton, 548 So.2d at 695 and Tice, 717 So.2d at 182. "Civil trespass to real property occurs when there is an injury to or use of the land of another by one having no right or authority." Gunning v. Equestleader.com, Inc., 253 So.3d 646, 648 (Fla. 2d DCA 2017). In addition to violating the Plaintiffs' property rights and breaching the Declaration, the Defendant's improper construction of a locked fence on the Commercial Office Property

constitutes a trespass by the Defendant. The Plaintiffs have been damaged by the trespass by the loss of use and enjoyment of the Pump Facilities and the property enclosed within the fence.

189. There is a bona fide, actual, present, practical need for a declaration regarding the parties rights in the Pump Facilities and with regard to the fencing installed by the Defendant.

190. The declaration sought in this Court deals with a present, ascertained, or ascertainable state of facts, or present controversy as to a state of facts.

191. Plaintiffs' rights are dependent upon the above-described facts, the Governing Documents and the law applicable to these facts and to the Governing Documents.

192. Defendant has an actual, present, adverse and antagonistic interest in the subject matter, in fact and law, because Defendant has taken a position adverse to Plaintiffs by attempting to excerpt exclusive control over the Pump Facilities and constructing the fence on the Commercial Office Property.

193. The antagonistic and adverse interests are all before the court by proper process because this Court has personal jurisdiction over the Plaintiffs and the Defendant.

194. The relief sought is not merely the giving of legal advice by the Courts or the answer to questions propounded from curiosity because Plaintiffs are seeking a ruling from the Court as to Plaintiffs' actual rights concerning the Pump Facilities and fence installed by Defendant.

195. Florida Statutes § 86.111 provides, in part, that, "[...] The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [...]"

196. Based on the preceding allegations, Plaintiffs have a substantial likelihood of success on the merits.

197. Plaintiffs are “not required to show an inadequate remedy at law or irreparable harm because the case involved enforcement of a restrictive covenant governing real property.” Park Crossing Homeowners Ass’n, 415 So.3d at 693.

198. The rights at issue in this Count are private rights and so the public interest would not be negatively affected by an injunction.

WHEREFORE, Plaintiffs respectfully demand: (a) a declaratory judgment against Defendant, determining the rights of the Plaintiffs and Defendant in the Pump Facilities; (b) finding that the Defendant does not have exclusive rights with respect to the Pump Facilities; (c) finding that the Plaintiffs, as owners, may use the Pump Facilities for any purpose that does not materially interfere with any rights found in favor of the Defendant; (d) finding that the Defendant violated the Plaintiffs’ property rights by exercising exclusive control of the Pump Facilities and constructing a fence on the Commercial Office Property without consent; (e) finding that the Defendants breached the Declaration by exercising exclusive control over the Pump Facilities and constructing the fence; (f) entering a temporary and permanent mandatory injunction requiring the Defendant to remove the fencing around the Pump Facilities; (g) finding that the Defendant trespassed on the Commercial Office Property to install the fence and by maintaining the locked fence to the exclusion of the Plaintiffs; (h) finding and determining any damages to which the Plaintiffs are entitled based on the Defendant’s breach of the Declaration, trespass and improper use of the Pump Facilities; (i) declaring any other rights of Plaintiffs relating to these issues; (j) ordering a temporary and permanent injunction requiring the Defendant to act in accordance with any easement rights determined by the Court; (k) a speedy hearing, and for this action to be advanced on the Court’s calendar, pursuant to Florida Statutes § 86.111; (l) an award of reasonable attorneys’ fees and costs; and (m) such other and further relief as the Court deems just and proper.

**COUNT VII - BREACH OF THE DECLARATION RELATING TO THE PUMP
FACILITIES AND CONSTRUCTING A FENCE ON COMMERCIAL OFFICE
PROPERTY**

199. This is an action for breach of contract.

200. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

201. The Defendant is subject to the Declaration.

202. The Declaration provides the Defendant, at most, with non-exclusive easement rights to use the Pump Facilities.

203. The Plaintiffs, as owner and tenant of the Commercial Office Property, have the right to use the Pump Facilities in any manner that does not materially interfere with the Defendant's easement rights.

204. The Defendant breached the Declaration by exercising exclusive control over the Pump Facilities to the detriment of the Plaintiffs.

205. The Defendant breached the Declaration by constructing a fence around the Pump Facilities on the Commercial Office Property without the consent of the Plaintiffs.

206. The Defendant breached the Declaration by trespassing on the Commercial Office Property.

207. The Plaintiffs were damaged by the breach of the Declaration by the Defendant.

208. The damages were related to the loss of use of the Pump Facilities that resulted from the Defendant's breach.

WHEREFORE, Plaintiffs respectfully demand: (a) judgment against Defendant for all damages determined by the Court, including pre-judgment and post-judgment interest; (b) an award of reasonable attorneys' fees and costs; and (c) such other and further relief as the Court deems just and proper.

**COUNT VIII - EJECTMENT OF DEFENDANT'S FENCE FROM COMMERCIAL
OFFICE PROPERTY**

209. This is an action for ejectment under Chapter 66, Fla. Stat.

210. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

211. The real property that is the subject of this action is the Commercial Office Property that is located in Walton County, Florida, and is legally described in the Warranty Deed attached hereto as **Exhibit 17** (the "Legal Description").

212. Plaintiff, SSP, has title to the Commercial Office Property, and Plaintiff TOPS'L Club is SSP's tenant with the present right to possession. Silva v. De La Noval, 307 So.3d 131 (Fla. Dist. Ct. App. 2020).

213. As required by section 66.021, Fla. Stat., Plaintiff's chain of title upon which Plaintiff will rely at trial is set forth chronologically below, including the names of grantors and grantees, and the recording information for each recorded instrument recorded in the public records of Walton County, Florida, and true and correct copies of each instrument identified below are attached to this Complaint.

A. Instrument 1: Grantor: TOPS'L Management; Grantee: Brown as Commissioner; Date recorded: April 29, 1992; Official Records Book 873, Page 247 (attached as **Exhibit "18"**)

B. Instrument 2: Grantor: Brown as Commissioner; Grantee: K-T Florida Partners; Date recorded: July 21, 1994; Official Records Book 1162, Page 293 (attached as **Exhibit "19"**).

C. Instrument 3: Grantor: K-T Florida Partners; Grantee: Abbott & Andrews Realty Inc.; Date recorded: April 2, 1996; Official Records Book 1425, Page 318 (attached as **Exhibit "20"**).

D. Instrument 3: Grantor: Abbott and Andrews Realty LLC; Grantee: SSP TOPS'L Properties LLC; Date recorded: October 14, 2025; Official Records Book 3374, Page 835 (attached as **Exhibit "17"**).

214. Defendant is in possession of a portion of the Commercial Office Property within the locked fence constructed by the Defendant on the Commercial Office Property and withholds possession from Plaintiffs.

215. Defendant's possession is wrongful and constitutes a dispossession or ouster of Plaintiffs.

216. Plaintiffs have suffered damages as a result of Defendant's wrongful possession, including loss of use and enjoyment of the Commercial Office Property.

217. Plaintiffs are entitled to judgment awarding possession of the Commercial Office Property and a writ of possession. Section 66.021, Fla. Stat.

218. Plaintiffs are also entitled to recover damages and costs, and may obtain a writ for possession and for damages and costs (or separate writs) as permitted in ejectment. Section 66.021, Fla. Stat.

WHEREFORE, Plaintiffs request that the Court enter judgment in Plaintiffs' favor and against Defendant as follows: (a) awarding Plaintiffs possession of the Commercial Office Property described above; (b) issuing a writ of possession placing Plaintiff in possession of the Commercial Office Property; (c) awarding Plaintiff damages caused by Defendant's wrongful possession; (d) awarding Plaintiff attorney fees and costs; and (e) such other relief as the Court deems just and proper).

COUNT IX - DECLARATORY JUDGMENT
RELATING TO USE OF SUBDIVISION ROADS

219. This is an action for a declaratory judgment under Chapter 86, Fla. Stat.

220. Plaintiffs reallege paragraphs 1-34 above as if fully restated herein.

221. For decades, Plaintiffs and their predecessors engaged in substantially similar businesses to those engaged by Plaintiffs now, including providing transportation services on the common roadways within the Resort for many years to assist guests, members, and invitees to travel within the Resort and to attend events hosted within the Resort.

222. The transportation services are necessary or beneficial because of the size of the Resort, the lack of alternative transportation means in the Resort and the lack of parking.

223. Following the transaction with Vacasa, TOPS'L Club continued to provide transportation services using the very same equipment and in substantially identical manner of operations as those previously provided within the Resort to its guests, members, and invitees to travel to owned and operated properties and to attend events hosted within the Resort, including weddings and other similar events.

224. Plaintiffs, and their predecessors-in-interest, operated the transportation services throughout the Resort for many years without incident, which have, and continue to be, operated by the Plaintiffs professionally, responsibly, and in accordance with all applicable laws.

225. Plaintiffs' transportation services have not resulted in any damage, injury, or other issue whatsoever on community roadways within the Resort, nor do Plaintiffs have any basis to believe any risk of any harm or damage whatsoever is likely to occur by the continuance of the same.

226. On information and belief, on or about May 1, 2026, Defendant entered into a contract with Sunshine Shuttle LLC to provide shuttle and transportation services within the Resort, which agreement purports to provide a third party, private entity, Sunshine Shuttle LLC, with the "exclusive right to provide transportation" within the Resort.

227. On May 5, 2026, Defendant delivered a letter titled "Immediate Cease and Desist – Tram Operations on Tops'l Master Association Property" (the "**May 5 Cease and Desist**"), pursuant to which the Defendant threatened the removal and trespass from, and elimination of future access

to, the Resort and use of the Resort roads by Plaintiffs' employees and invitees unless Plaintiffs terminated providing any "transportation services" in the Resort by no later than May 15, 2026 (one day before a wedding on May 16, 2026, that TOPS'L Club was hosting for a patron). A true and correct copy of the May 5 Cease and Desist is attached hereto as **Exhibit 21**.

228. The May 5 Cease and Desist followed repeated and express threats by the Defendant and/or Virtuous to trespass Plaintiffs' employees for failure to abide by unwritten rules and unsupportable demands.

229. On May 6, 2026, at the entrance to the Resort, the Resort's security guards threatened TOPS'L Club's tennis instructor, Joe D'Aleo, with a trespass notice and warned that any further failure to adhere to Micah Priest's demands regarding watering of Tennis Club tennis courts would result in Mr. D'Aleo being prohibited access to the Resort. Upon information and belief, the security guards acted upon the instruction of Defendant.

230. On or about May 8, 2026, Defendant, through its attorney, delivered a second letter (the "**May 8 Cease and Desist**") to Plaintiffs, pursuant to which Defendant claimed that Defendant has authority under the Declaration to prevent Plaintiffs from operating a tram service within the Resort, and to trespass Plaintiffs' employees from using the roads within the Resort. A true and correct copy of the May 8 Cease and Desist is attached hereto as **Exhibit 22**.

231. The May 5 and May 8 Cease and Desist letters demand that Plaintiffs cease providing any and all transportation services by no later than May 15, 2026, one day before the May 16 Wedding that was being hosted by TOPS'L Club and which required TOPS'L Club to provide transportation services to the wedding party and guests. See **Exhibits 21 and 22**.

232. Plaintiffs have, just as each and every other owner and tenant of real property in the Resort has, express rights to access their property. The Declaration provides in pertinent part, as follows:

a. Article I section 4 of the Declaration defines “Common Area” to include the roadways through the Resort, of which there is only one road in and out of the Resort, and provides that Common Areas are for “the common use and protection of the property owners within Tops’l and their families, guests and invitees.”

b. Under Article II, section (e), the “Common Area shall be held by the Association for the use and benefit of the Members, their tenants and invitees.”

c. Under Article V, section (a), every owner of a real property interest subject to the Declaration, which includes the commercial owners like Plaintiffs, is a member of the Association and is entitled to the rights and privileges of membership, which includes the use of the Common Area.

d. Under Article V, section (b), any rules governing the use of Common Areas must be formally adopted by Defendant and must be uniformly applicable and adopted in good faith.

30. There is no provision in the Declaration that allows the Defendant to arbitrarily or discriminatorily restrict a commercial operator’s access to or use of the roads for purposes consistent with the rights of any other owner or tenant, such as transporting guests or other invitees in their own vehicles throughout the Resort.

234. The Plaintiffs are aware of no properly enacted restrictions or rules that the Plaintiffs or their employees have violated with respect to the use of the roads, but in any event, any restriction or rule, even if one existed, that purported to prevent the Plaintiffs from transporting third parties to locations within the Resort using Plaintiffs’ own vehicles, voluntarily and for free would be invalid and unenforceable on its face.

235. Florida law is clear that easements for ingress and egress over subdivision roads may not be impaired or interfered with. For example, in addressing that associations may suspend use of common areas for non-payment of assessment, section 720.305(3), Fla. Stat. specifically provides, “suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. In Sweetwater Oaks Condo. Asso v. Creative Concepts of Tampa, 432 So.2d 654, 656 (Fla. 2d DCA 1983), the court held that common easement owners may collectively decide on certain actions, such decisions

cannot derogate the rights of other easement holders. The court found that a majority of easement holders could not erect a wall that would eliminate another owner's means of ingress and egress, as this would substantially impair their rights. Florida courts consistently hold that easement rights and access rights cannot be unreasonably interfered with. Bhb Dev. v. Bonefish Yacht Club Homeowners Ass'n, 691 So.2d 1174, 1176 (Fla. 3d DCA 1997); see also Wingate v. Wingate, 84 So.3d 427, 430 (Fla. 1st DCA 2012) (discussing that interference with an easement must not be substantial or unreasonable).

236. "The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents." Section 720.303, Fla. Stat. The association cannot act beyond the authority granted by its governing documents, and any ultra vires actions are invalid. S & T Anchorage, 575 So.2d at 698.

237. There is a bona fide, actual, present, practical need for a declaration of Plaintiffs' rights to access the roads within the Resort.

238. The declaration sought deals with a present, ascertained, or ascertainable state of facts, or present controversy as to a state of facts because Defendant has demanded that Plaintiffs discontinue its transportation service, and has threatened to prevent Plaintiffs, and its guests and invitees, from accessing the roads within the Resort.

239. Plaintiffs' rights are dependent upon the above-described facts, and the law applicable to these facts, because the law protects Plaintiffs' access rights under these circumstances.

240. Defendant has an actual, present, adverse and antagonistic interest in the subject matter, in fact and law, because Defendant has taken a position adverse to Plaintiffs by demanding that Plaintiffs discontinue providing transportation to its guests, and by threatening to prevent

Plaintiffs, and its guests and invitees, from accessing the roads within the Resort, in violation of the Declaration and Plaintiffs' rights.

241. The antagonistic and adverse interests are all before the court by proper process because this Court has personal jurisdiction over the Plaintiffs and the Defendant.

242. The relief sought is not merely the giving of legal advice by the Courts or the answer to questions propounded from curiosity because Plaintiffs are seeking a ruling from the Court as to Plaintiffs' actual rights concerning access to the roads within the Resort, and as to Plaintiffs' right to provide transportation to guests within the Resort, as well as temporary and permanent injunctive relief related to such rights.

243. Florida Statutes § 86.111 provides, in part, that, "[...] The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. [...]."

244. Based on the preceding allegations, Plaintiffs have a substantial likelihood of success on the merits.

245. Plaintiffs are "not required to show an inadequate remedy at law or irreparable harm because the case involved enforcement of a restrictive covenant governing real property." Park Crossing Homeowners Ass'n, 415 So.3d at 693.

246. The rights at issue in this Court are private rights and so the public interest would not be negatively affected by an injunction.

WHEREFORE, Plaintiffs demand: (a) a declaratory judgment against Defendant, declaring what rights Plaintiffs have concerning access to the roads within the Resort, as well as Plaintiffs' right to provide transportation to guests within the Resort; (b) the entry of a temporary injunction against Defendant, prohibiting Defendant from interfering with Plaintiffs right to provide transportation services to guests within the Resort, or with Plaintiffs, and their guests and invitees, access to the roads within the Resort; (c) after trial, the entry of a permanent injunction

prohibiting same; (d) a speedy hearing, and for this action to be advanced on the Court's calendar, pursuant to Florida Statutes § 86.111; (e) an award of reasonable attorneys' fees and costs; and (f) such other and further relief as the Court deems just and proper.

Respectfully submitted on the _____ day of _____, 2026.

/s/ Scott M. Work
Scott M. Work (FL Bar No. 12822)
Charles J. Comella, Jr. (FL Bar No. 71645)
Work Law Firm, P.A.
4458 Legendary Drive, Suite 350
Destin, Florida 32541
(850) 239-9940
scott@worklawfirmfl.com
ccomella@worklawfirmfl.com
shascall@worklawfirmfl.com
Counsel for Plaintiffs