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IN THE CIRCUIT COURT OF THE  
TENTH JUDICIAL CIRCUIT IN AND  
FOR POLK COUNTY, FLORIDA

BONNIE RAY, BENNIE RAY,  
SHERRY MILLER, JERRY MILLER,  
MARILYN STEWART, DANNY  
STEWART, JERRY BUTCHER,  
ETTA BUTCHER, RONALD MAGILL,  
MARCIA MAGILL, DELORES  
VITTORINI, BRUCE VITTORINI,  
CHRISTINE DEABI, JOSEPH DEABI,  
LENNIE LYONS, JUDY LYONS, ROGER  
GARCHINSKY, KATHY GARCHINSKY,  
LEROY SAMPLES, GERI SAMPLES, BRUCE  
BARTL, SUSAN BARTL, ROBERT  
MCCLUSKY, SHERRY MCCLUSKY,  
DAVID STAINBACK, MYRA STAINBACK,  
MICHAEL PATRIX and LINDA PATRIX

CASE NO.: 53 2017 CA 000614

Plaintiffs,

v.

DEER CREEK RV GOLF & COUNTRY  
CLUB INC., RICHARD WALDROP  
JAMES LEE, JOAN LEAH, MICHAEL  
CARUSO, DAVID ESCH, RALPH TARANTO,  
OWEN O'NEIL, JOHN NEWSOME, JORETA  
SPECK, WALTER DORAZ, CHARLES MORLEY,  
GEORGE SHREMP, CURTIS DOERRER,  
RICHARD KETCHAM, SUSAN MILLER,  
JAMES CHANDLER, RICHARD EVANS,  
ALBERT RETTEW, JOE GOLDEN, DAVID SMITH  
and JOHN RILEY

Defendants,

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**SECOND AMENDED COMPLAINT**

COMES NOW, Plaintiffs, BONNIE RAY, BENNIE RAY, SHERRY MILLER, JERRY  
MILLER, MARILYN STEWART, DANNY STEWART, JERRY BUTCHER, ETTA

LAW OFFICES  
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BUTCHER, RONALD MAGILL, MARCIA MAGILL, DELORES VITTORINI, BRUCE VITTORINI, CHRISTINE DEABI, JOSEPH DEABI, LEONARD LYONS, JUDY LYONS, ROGER GARCHINSKY, KATHY GARCHINSKY, LEROY SAMPLES, GERI SAMPLES, BRUCE BARTL, SUSAN BARTL, ROBERT MCCLUSKY, SHERRY MCCLUSKY, DAVID STAINBACK, MYRA STAINBACK, MICHAEL PATRIX and LINDA PATRIX (hereinafter collectively referred to as the “Plaintiffs”), by and through their undersigned counsel, and sue, DEER CREEK RV GOLF & COUNTRY CLUB, INC. (hereinafter “Deer Creek”), RICHARD WALDROP, JAMES LEE, JOAN LEAH, MICHAEL CARUSO, DAVID ESCH, RALPH TARANTO, OWEN O’NEIL, JOHN NEWSOME, JORETA SPECK, WALTER DORAZ, CHARLES MORLEY, GEORGE SHREMP, CURTIS DOERRER, RICHARD KETCHAM, SUSAN MILLER, JAMES CHANDLER, RICHARD EVANS, ALBERT RETTEW, JOE GOLDEN, DAVID SMITH and JOHN RILEY , (hereinafter collectively referred to as “Board Member Defendants”), and state as follows:

**Jurisdiction, Parties and Venue**

1. The matter in controversy exceeds the sum or value of \$15,000, exclusive of interest, costs, and attorneys’ fees.
2. The real property that is the subject matter of this actions is a “Planned Unit Development” (“PUD”), as established by Polk County PUD 86-24, with a Master Plan of Platted Lots and/or Units, consisting of up to 2,238 Lots or Units, as a Multi-Phase Recreational Development known as Deer Creek Golf & Tennis RV Resort (the “Resort”).
3. The Plaintiff are all residents of two communities within the PUD, Regal Pointe and Osprey Pointe, and are bound by the Declaration of Restrictions and Covenants of Deer Creek Golf & Tennis RV Resort Phase III – C and D (Regal Pointe) or Declaration of

Restrictions and Covenants Relating to Deer Creek Golf and Tennis RV Resort Phase Three – A Deer Creek Golf and Tennis RV Resort Phase Three, respectively, as amended (hereinafter referred to as the Regal Pointe Declaration and Osprey Pointe Declaration, respectively, and together referred to as the “Declarations”). A copy of the Declarations, and all amendments thereto, are attached as **Composite Exhibit “A.”**

4. Deer Creek is a Florida not-for-profit corporation organized under the laws of the State of Florida and doing business in Polk County, Florida, and is organized for the operation and maintenance of certain amenities located in the Resort, including the roadways, clubhouse, tennis courts, golf course, and other recreational amenities.

5. The Board Member Defendants are all former or current members of the Board of Directors of Deer Creek.

6. Venue of this actions lies in Polk County because at the time this action was filed Deer Creek did business in Polk County and the actions of the Board Member Defendants giving rise to the claims asserted in this lawsuit occurred in Polk County, Florida, and the real property that is the subject of this action is located in Polk County.

**General Allegations Applicable to All Counts**

7. All conditions precedent to the filing of this action, if any, have been performed, have occurred, or have been waived.

8. The Plaintiffs have retained the undersigned counsel to represent them and have agreed to reasonably compensate the undersigned counsel for their services.

9. The Resort was formed on March 2, 2005.

10. Deer Creek was formed on August 20, 2013.



11. Both Osprey Pointe and Regal Pointe were developed by Deer Creek, Ltd. (hereinafter the “Developer”), a nonparty to this action.

12. On or about December 5, 2013, Deer Creek purchased from the Developer assets, including a golf course, and received an Assignment of Declarant’s Rights (hereinafter “Assignment”) from the Developer. A copy of this Assignment is attached hereto as **Exhibit “B.”**

13. Deer Creek is the successor in interest to the Developer pursuant to the Assignment, and is thereby a “developer” pursuant to § 720.301(6), *Florida Statutes*.

14. Osprey Pointe and Regal Pointe turned over from Developer control pursuant to § 720.307, *Florida Statutes*, on June 1, 1998, and May 13, 2014, respectively.

15. Some Plaintiffs purchased their properties prior to December 5, 2013, and some purchased afterwards. Within the Deer Creek Communities of Regal Pointe and Osprey Pointe, Deer Creek, allegedly upon the authority granted to it by the Assignment, the Declaration of Restrictions and Covenants of Deer Creek Gold & Tennis RV Resort Phase III – C and D (Regal Pointe) (hereinafter “Regal Pointe Declaration”) and the Declaration of Restrictions and Covenants Relating to Deer Creek Golf and Tennis RV Resort Phase Three-A Deer Creek Golf and Tennis RV Resort Phase Three (hereinafter “Osprey Pointe Declaration”), began levying assessments on the Plaintiffs to pay expenses associated with the assets purchased from Deer Creek, Ltd.

16. However, a portion of these assessments levied were for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration.

17. To wit, the Section 4.8 of the Regal Pointe Declaration states as follows: “. . . The PRD and Boulevard Annual Maintenance Fees shall be imposed by the Declarant to meet the expenses of operating, managing and maintaining the PRD Property and Boulevard . . .” The PRD Property is defined in the Regal Pointe Declaration as the legal description described on Exhibit “C” to the same, and then this legal description was amended by the Third Amendment to the Regal Pointe Declaration to reduce the size of the PRD Property to only include a parcel of property containing 2.93 acres, none of which includes the golf course property. Furthermore, all owners in Regal Pointe have an easement over the roads and recreational amenities, but do not have an easement over the golf course.

18. Section 4.8 of the Osprey Pointe Declaration similarly states: “. . . The PRD and Boulevard Annual Maintenance Fee shall be imposed by the Declarant to meet the expenses of managing and maintaining the PRD Property and Boulevard . . .” The PRD Property is defined in the Osprey Pointe Declaration as the legal description described on Exhibit “A” to the same, and then this legal description was amended by the Second Amendment to the Osprey Pointe Declaration to reduce the size of the PRD Property to only include a parcel of property containing 2.93 acres, none of which includes the golf course property. Furthermore, all owners in Osprey Pointe have an easement over the roads and recreational amenities, but do not have an easement over the golf course.

19. To add insult to injury, Deer Creek began to give an assessment discount of \$15.00 per month to certain individuals that had purchased “certificates” from Deer Creek (hereinafter “Certificate Holders”), which violates Section 4.8 of the Regal Pointe Declaration and Section 4.8 of the Osprey Pointe Declaration, as well as Section 617.1301, *Florida Statutes*. Notably, all Defendant Board Members are also Certificate Holders, and thus all Defendant

Board Members received this discount. Furthermore, Certificate Holders are allowed to make use of the business center at Deer Creek, and are able to get scanning, faxing, and copy service free of charge, while the Plaintiffs are charged for these services. Finally, Certificate Holders are given a discount to play golf as the above-mentioned golf course that the Plaintiffs do not receive, even though the Plaintiffs are also charged for the upkeep and maintenance of the golf course.

20. Section 4.8 of the Regal Pointe Declaration provides that “. . .[t]he Lot Owners shall pay a pro rata share of the costs, as determined in the sole and absolute discretion of the Declarant, of operating, managing and maintaining the Boulevard and PRD Property (along with any improvements constructed thereon, which pro rata share shall be based on the following ratio: number of Lots in the Community over the number of total existing lots in Deer Creek Golf & Tennis RV Resort, Master Plan, including all current and future phases or units, as platted in the public records of Polk County, Florida . . .”

21. Section 4.8 of the Osprey Pointe Declaration similarly provides that “. . .[t]he Lot Owners shall pay a pro rata share of the costs, as determined in the sole and absolute discretion of the Declarant, of maintaining the Boulevard and any improvement constructed on the PRD Property, which pro rata share shall be based on the following ratio: number of Lots over the number of total existing lots in DEER CREEK GOLF AND TENNIS RV RESORT, Master Plan, including all current and future phases or units, as platted in the public records of Polk County, Florida...”

22. Section 617.1301, *Florida Statutes*, states as follows:

“Except as authorized in *Florida Statutes* 617.0505 and 617.1302, a corporation may not make any distributions to its members.”



23. Furthermore, a portion of the assessments levied against the Plaintiffs were for capital improvements and services completed and paid for without the owner vote required by the Regal Pointe Declaration and the Osprey Pointe Declaration. It is estimated that these improvements and services cost over \$250,000, and include, without limitation, the construction of a new tiki bar, a new patio, new gates at the Administration Building, a new roof on the Administration Building, two new restaurants, a new guardhouse, new security cameras, new entrance gates, new automatic tees at the driving range on the golf course, a new fence, and establishing a utility company.

24. Such action violates Section 4.6 of the Regal Pointe Declaration, which provides that such capital improvements may only be made “. . . upon a vote of two-thirds (2/3) of the Owners approving such additional facilities and/or services and commensurate charges therefore. . . .”

25. Such action also violates Section 4.6 of the Osprey Pointe Declaration, which provides that that such capital improvements may only be made “. . . upon a vote of two-thirds (2/3) of the Owners approving such additional facilities and/or services and commensurate charges therefore. . . .”

26. Also, the Plaintiffs are not allowed by Deer Creek to vote on any budgets, have previously been disallowed from reviewing any financial information related to Deer Creek, and are barred from voting for or running for the Board of Directors of Deer Creek. Further, while Deer Creek allows Certificate Holders and non-Certificate Holders to view budgets prior to meetings, only Certificate Holders are permitted to comment on the budget, and only Board Members can vote on budget issues.



27. With the demands from Deer Creek to pay assessments came the threat that liens would be placed on the property owned by the Plaintiffs, should the subject assessments not be paid, and further that these liens would be foreclosed and their properties sold to satisfy the past due assessments. In fact, liens were placed on the properties of “delinquent” owners. Further threats were made that the Plaintiffs would not be allowed to use the Deer Creek amenities, nor be allowed access to their properties via the private roadways throughout the community.

28. The Plaintiffs have been barred from attending all Deer Creek meetings to address their concerns. Deer Creek only allows Certificate Holders to attend Deer Creek meetings.

29. Further, on July 7, 2014, Deer Creek recorded a unilateral amendment to the Osprey Pointe Declaration and the Regal Pointe Declaration, which amendment is prohibited by § 720.3075(1)(a), *Florida Statutes*.

30. On July 21, 2016, counsel for the Plaintiffs sent Deer Creek correspondence outlining many of the above-referenced inappropriate actions that it had been taking. A copy of this correspondence is attached as **Exhibit “C.”** Despite acknowledging receipt of this letter, Deer Creek took no action to stop the offending actions or to make restitution to the Plaintiffs.

31. On September 15, 2016, January 12, 2017, and January 26, 2017, counsel for the Plaintiff sent the Board Member Defendants correspondence outlining how they had and have contributed to the wrongs being visited upon the Plaintiffs. Copies of this correspondence are attached as **Composite Exhibit “D.”** Despite acknowledging receipt of these letters, the Board Member Defendants took no action to stop the offending actions or to make restitution to the Plaintiffs.

32. In fact, not only did Deer Creek and the Board Member Defendants fail to cease the offending activities, they afterward took further malicious and negligent actions against the Plaintiffs, including, but not limited to:

- a) spreading word that the Plaintiffs should be treated like “pariah,” “bad eggs” and “bad apples” that should be shunned by all Board Member Defendants and Certificate Holders for “bringing legal action” against their “friends and neighbors,” all in an effort to harm and shame the Plaintiffs into foregoing a lawsuit to stop the illegal actions of Deer Creek;
- b) spreading the false rumor that “all” Certificate Holders were going to be individually sued by the Plaintiffs;
- c) conspiring with Certificate Holders, including but not limited to, John Smart, Carla Bakewell Waldrop, and Al Beaumont, to spread lies at meetings the Plaintiffs are barred from attending, through correspondence and on social media that the Plaintiffs are “fear-mongering,” “disgusting,” have “ulterior motives,” and want to “bankrupt Deer Creek,” “to take over the golf course and build condominiums and townhomes on the property” and make the community a “for profit community;”
- d) conspiring with Certificate Holders on the Board of Directors for Osprey Pointe and Regal Pointe to refrain from nominating any non-Certificate Holder for board positions, effectively making it impossible for the Plaintiffs to run for the Board of Directors of their communities;
- e) continuing to offer “certificates” for sale to new and existing homeowners with the promise that assessments will be reduced for Certificate Holders and that amenities unavailable to the Plaintiffs will be provided;

- f) Board Member Defendant Richard Waldrop conspired with Certificate Holder John Smart to distribute to the entire community the letter written by the attorney for the Plaintiff to Richard Waldrop, and afterwards Richard Waldrop told the Plaintiffs that he was going to sue the Plaintiffs individually for defamation of character, in an effort to harm, intimidate and silence the Plaintiffs, and cement the Plaintiffs' status as community outcasts;
- g) using hundreds of thousands of dollars in assessment money wrongfully obtained from the Plaintiffs to defend in Court a lawsuit similar to the lawsuit filed herein, filed by Deer Creek Golf and Tennis RV Resort, Phase Two, another Deer Creek community;
- h) "doubling down" on the unlawful benefits that Certificate Holders are offered by offering purchasers of two (2) certificates a "Premium" membership with even additional benefits not offered to the Plaintiffs, such as a \$30.00 per month discount on assessments;
- i) Board Member Defendant James Chandler published the address and telephone number of two of the Plaintiffs on social media, in an effort to harass, extort, and silence them; and
- j) Board Member Joe Golden, using the pseudonym "Tom Johnson" on social media, spread the lie that each Plaintiff will be sued for "\$100,000" for acting against Deer Creek.

**COUNT I – DECLARATORY JUDGMENT (DEER CREEK)**

33. This is an action against Deer Creek for Declaratory Judgment under Fla. Stat.

Ch. 86.

34. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.



35. Deer Creek's assessment of the Plaintiffs has made Plaintiffs uncertain as to their rights under the terms of the Declarations.

36. Deer Creek's unilateral change in the pro rata share of the maintenance costs has further made Plaintiff's uncertain as to their rights under the terms of the Declarations.

37. Also, the capital improvements completed and paid for without an owner vote has also made Plaintiff's uncertain as to their rights under the terms of the Declarations.

38. Finally, the unilateral amendments to the Declarations without an owner vote has further made Plaintiff's uncertain as to their rights under the terms of the Declarations.

39. The above set of facts and circumstances has created problems, uncertainty, doubt, questions, ambiguities, risks and potential liability to the Plaintiffs.

40. The Plaintiffs have justiciable questions as to the existence of their rights, duties and obligations under and with respect to the Declarations, including but not limited to, Articles 1, 2, 4, 7, 8, 9, and 11 of the Declarations and amendments thereto, which otherwise appear to prohibit the actions of Deer Creek as set forth in paragraphs 16 through 25, 27, and 29 above.

41. Section 1.14 of the Regal Point Declaration, as amended by the Third Amendment to the Regal Point Declaration, states as follows:

**"PRD Property"** means the property retained by Declarant which is more specifically described in **Exhibit "C"** hereto.

42. Section 2.4 of the Regal Point Declaration states as follows:

**Property Retained by Declarant and Boulevard.** Subject to the restrictions set forth herein, the PRD Property (as it may be improved with amenities and recreational facilities, if any) and Boulevard may be used by Owners, their guests, invitees, lessees, and renters. Such right shall be subject to the provisions of this Section 2.4 and so long as each Owner is current in all amounts due (charges, assessments or otherwise) to the Association and to the Declarant, as applicable. A perpetual non-exclusive easement over an across the PRD Property and Boulevard is hereby created and granted by Declarant to the Owners for the



purpose of pedestrian and vehicular ingress and egress over and across and to and from the PRD Property and Boulevard. The foregoing easement shall run with the land and shall be binding upon the successors and assigns of the Owners. Upon the platting of the Community, Declarant may (but shall not be obligated to) further designate and delineate on any such plat the easement created and granted in this Section 2.4. The easement created and granted in this Section 2.4 shall be effective whether or not shown on any plan of the Community. The use right set forth in this Section 2.4 is transferrable only to the extent of transfer of the ownership of a Lot. It is acknowledged and understood that the PRD Property and Boulevard will be used by others in addition to the Owners. The Declarant may, from time to time, reasonably limit the exercise of the right provided herein by, for example, limiting the hours of use of the right, seasonal use, and the number of people who may make use of the PRD Property at any one time. The PRD Property may only be used for its normal and intended use as determined by Declarant. The ownership of a Lot shall not create any ownership of an interest in the PRD Property or Boulevard other than the right of use as provided for herein. Use of improvements within the PRD Property shall be subject to the terms of this Declarant and any rules and regulations promulgated by Declarant, in Declarant's sole and absolute discretion. The Declarant shall have the unilateral right, privilege, and option (but not the obligation), from time to time to expand or reduce the PRD Property by improving or further improving all or party of the PRD Property with improvements or amenities designated by the Declarant as PRD Property usable by the Owners in the same manner as pre-existing PRD Property or by reducing such portions of the PRD Property as Declarant in its sole and absolute discretion chooses. Such expansion or reduction shall occur by Declarant filing in the public records of Polk County, Florida, an amendment to this Declaration describing the new description of the PRD Property and the improvements thereon located and extending or reducing the Owners' rights as provided for hereunder to use the PRD Property. Such amendment to this Declaration shall not require the vote of the Owners. Any such expansion or reduction primarily effecting the Owners shall be effective upon the filing for record of such amendment, unless otherwise provided herein. Such amendment may specify such specific use restrictions and other covenants, conditions, and restrictions to be applicable to the expanded or reduced PRD Property as Declarant may, in its own discretion, determine including but not limited to the responsibility of the Owners to pay for maintenance of the improved property. Declarant reserves the absolute and sole right to charge user fees for the use of the PRD Property to Owners irrespective of any maintenance obligation of the PRD Property inasmuch as maintenance obligations are primarily designed to maintain the PRD Property in conjunction with the Declarant and/or Association and/or other homeowners' associations, as applicable, as opposed to supporting recreational or retail uses of the PRD Property. Declarant reserves the absolute right to sell any part or all of the PRD Property and/or the Boulevard and assign its rights hereunder to any party.



43. Section 1.7 of the Osprey Pointe Declaration, as amended by the Second Amendment to the Osprey Pointe Declaration, states as follows:

**PRD PROPERTY** shall mean and refer to the Property Retained by Declarant which is more specifically described in Exhibit "A."

44. Section 2.22 of the Osprey Declaration states as follows:

**Property Retained by Declarant and Boulevard.** Subject to the restrictions set forth herein, the PRD Property and Boulevard may be used by Owners, their guests, invitees, lessees, and renters. Such right shall be subject to the provisions of this Section and so long as each Owner is current in all amounts due to the Association and to the Declarant. Declarant reserves the right but shall not be obligated, to improve the PRD by addition of amenities or facilities as determined by the sole and absolute discretion of the Declarant. The right herein is transferrable only to the extent of transfer of a lot ownership. The PRD Property and Boulevard will be usable by others in addition to Owners. The Declarant may, from time to time, reasonably limit the exercise of the rights provided for herein by, for example, limiting the hours and use of the right, seasonal use, and the number of people who may make use of the PRD Property at any one time. The PRD Property may only be used for its normal intended use as determined by Declarant. The ownership of a lot shall not create ownership of an interest in the PRD Property or Boulevard other than the right of use as provided for herein. Use of improvements within the PRD Property shall be subject to the terms of these Declarations and the Declarant's rules and regulations as determined in Declarant's sole and absolute discretion. The Declarant shall have the unilateral right, privilege, and option (but not the obligation), from time to time to expand or reduce the PRD Property by improving all or any part of the PRD Property with improvements or amenities designated by the Declarant as PRD Property usable by the Owners in the same manner as pre-existing PRD Property or by reducing such portions of the PRD Property as Declarant in its sole and absolute discretion chooses. Such expansion or reduction shall occur by Declarant filing in the public records of Polk County, Florida, an amendment to this Declaration describing the new description of the PRD Property and the improvements thereon located and extending or reducing the Owners' rights as provided for hereunder to use the PRD Property. Such amendment to this Declaration shall not require the vote of the Owners. Any such expansion or reduction primarily effecting the Owners shall be effective upon the filing for record of such amendment, unless otherwise provided herein. Such amendment may specify such specific use restrictions and other covenants, conditions, and restrictions to be applicable to the expanded or reduced PRD Property as Declarant may, in its own discretion, determine including but not limited to the responsibility of the Owners to pay for maintenance of the improved property. Declarant reserves the absolute and sole right to charge user fees for the use of the PRD Property to Owners irrespective of

any maintenance obligation of designated PRD Property. This is so maintenance obligations are primarily designed to maintain the PRD Property in conjunction with the Declarant and other Association(s) as applicable as opposed to supporting recreational or retail uses of the PRD Property. Declarant reserves the absolute right to sell any part or all of the PRD Property and assign its rights hereunder to any party.

45. Section 4.2 of the Regal Pointe Declaration states as follows:

The Declarant shall provide each Owner the right to non-exclusively use certain of the facilities within the Community (or which facilities might be located in the master development of Deer Creek Golf & Tennis RV Resort), including without limitation, the PRD Property and the property identified as Tract B on the plat of the Community (which Tract B is contemplated to be improved by Declarant with a clubhouse and a swimming pool) in accordance with any and all rules and regulations established from time to time by Declarant in Declarant's sole and absolute discretion. The Declarant shall retain ownership of Tracts A and B as identified on the plat of the Community, the PRD Property and Boulevard and shall operate and maintain such areas owned by the Declarant for use by the Owners upon the terms and conditions set forth herein, and the rules and regulations as established by the Declarant from time to time in its sole and absolute discretion. A perpetual non-exclusive easement over and across Tract B is hereby created and granted by Declarant to the Owner for the purpose of pedestrian and vehicular ingress and egress over and to Tract B and for the use thereof as contemplated herein. The foregoing easement shall run with the land and shall be binding upon the successors and assigns of Declarant and said easement shall inure to the benefit of the heirs, successors and assigns of the Owners. The easement created and granted in this Section 4.2 shall be effective whether or not shown on any plat of the Community. The Declarant (or the Association to the extent Declarant transfers to the Association any or all of its maintenance, repair and replacement obligations hereunder) shall (or cause the provider to) maintain, repair, or replace, all storm water drainage, retention and detention facilities, water distribution lines, waste water collection lines, waste water distribution lines (e.g. gray water), and such other utilities located within the Community and not located within a Lot and shall have the right to modify same on the Subject Property or any Lot, in accordance with all applicable state and local requirements. The maintenance and improvement of streets are not included herein but are included in Section 7 of this Declaration. The Declarant shall cause the lawn on each Lot to be mowed on a schedule determine by Declarant, but Declarant shall have no responsibility for the replacement or maintenance of the landscaping on each Lot. The Declarant shall further maintain Tract A and B and any facilities constructed thereon by Declarant. Each Owner is responsible for the maintenance and repair of the storm water drainage area (Owners shall not in any way alter or change the storm water drainage, retention, or detention areas located on the Owner's Lot) and all utility lines within each Owner's Lot, that Lot's real and personal property taxes, the proper



trimming and maintenance of landscaping thereon, and the purchase of necessary insurance to cover all property owned by the Owner, his guests, agents, or invitees wherever located on the Subject Property.

46. Section 4.2 of the Osprey Pointe Declaration states as follows:

The Manager shall provide the Lot Owner the right to non-exclusively use certain of the facilities within the Subdivision in accordance with rules and regulations established from time to time by the Manager in Manager's sole and absolute discretion. The Manager shall maintain the areas of the Subdivision owned by the Manager for use by the Owners upon the terms and conditions, and the rules and regulations as established by the Manager from time to time in its sole and absolute discretion. The Manager shall (or cause the provider to) maintain, repair, or replace, all storm water drainage, retention and detention facilities, water distribution lines, waste water collection lines, waste water distribution lines (e.g. gray water), and such other utilities located within the Subdivision and not located within a Lot and shall have the right to modify same on the Subject Property or any Lot, in accordance with all applicable state and local requirements. The maintenance and improvement of streets are not included herein but are included in Section 9 of these Declarations. The Manager shall cause the lawn on each Lot to be mowed on a schedule determine by Manager, but Manager shall have no responsibility for the replacement or maintenance of the landscaping on each Lot The Manager will maintain Tract A Landscape, Tract B Retention Area, and Tract C Retention Area as described on the Plat and any facilities constructed thereon by Manager. The charges for the services provided in this Paragraph 4.2 by the Manager are included with charges described in Paragraphs 4.3, 4.4, and 4.5 hereof. Each Lot Owner is responsible for the maintenance and repair of the storm water drainage area (Lot Owners shall not in any way alter or change the storm water drainage, retention, or detention areas located on the Lot Owner's Lot) and all utility lines within each Lot Owner's Lot, that Lot's real and personal property taxes, the proper trimming and maintenance of landscaping thereon, and the purchase of necessary insurance to cover all property owned by the Lot Owner, his guests, agents, or invitees wherever located on the Subject Property. The Lot Owner shall be responsible for all damages or loss to any property owned by such Owner, his agents, guests or invitees located on the Subject Property none of which shall be deemed to be in the care, custody, and control of the Manager and the Lot Owner shall hold the Manager harmless and indemnify Manager from any such damages or loss.

47. Section 4.3 of the Regal Pointe Declaration, as Amended by the First

Amendment, states as follows:

Each Owner hereby covenants agrees to pay a monthly assessment or charge against each Lot for the services set forth in Paragraph 4.2 above, in the initial



amount of \$107.00 per month, subject to increases in such rate as set forth in Paragraphs 4.4, 4.5, 4.6 and 4.8 below. Notwithstanding the foregoing, the Declarant with respect to any Lots owned by Declarant not be required to pay the assessments, charges or increases set forth herein. As set forth below, until the Turnover Date, Declarant covenants to subsidize the general operating expenses of the Association, by contributing the difference, if any, between net operating expenses and all income of the Association including but not limited to assessment income from Members other than Declarant, interest income and income from ancillary operations. The foregoing assessment or charge does not include charges for electricity, garbage, water, sewer (waste water), cable television charges, or other utility charges, which shall be paid in accordance with Paragraph 4.1 to the Declarant or other provider. In the event any Owner transfers, assigns, devises or in any manner conveys his interest in and to the Lot and/or improvements thereon, or any Motor Home located thereon, the new Owner of such Lot shall be obligated to immediately begin paying the monthly charge that is then in force and effect for an Owner then purchasing a previously unsold Lot in the Community, and if no such unsold Lots are then available, at the highest monthly charge then in effect on any Lot in the Community. Included within the charge or assessment described herein shall be the operation and maintenance the PRD Property, Boulevard and Tract A and Tract B and/or any other property described as a "Tract" or other word(s) of similar import on a plat of the Community and the operation, maintenance and upkeep of any facilities erected thereon by the Declarant in the Community, all as described in Paragraph 4.2. The Declarant reserves the right to charge additional fees, assessments and access fees to Owners for their use of recreational or other facilities not physically located within the Community, including rights to use any golf course, storage areas and any additional type of recreational facility or service that may be available at the time of the recording of this Declaration or may become available in the future. Declarant shall not be liable or responsible to any Owner for Owner's or Owner's agent's, guest's or invitee's use or damages or losses arising from such use of such facilities or services and each Owner agrees to indemnify and hold Declarant harmless from such damages or losses.

48. Section 4.3 of the Osprey Pointe Declaration states as follows:

Each Lot Owner hereby agrees to pay a monthly assessment or charge against each Lot for the services set forth in Paragraph 4.2 above, in the initial amount of \$65.00 per month, subject to increases in such rate as set forth in Paragraphs 4.4, 4.5, and 4.6 below. Notwithstanding the foregoing, the Manager with respect to any Lots owned by Manager shall be required to pay only that portion of the monthly assessments or increases allocable to maintenance of drainage structures. The Manager shall not be required to pay the monthly assessment or increases for any other services described in this paragraph. The foregoing assessment or charge does not include charges for electricity, garbage, water, sewer (waste water), cable

television charges, or other utility charges, which shall be paid in accordance with Paragraph 4.1 to the Manager or other provider. In the event any Owner transfers, assigns, devises or in any manner conveys his interest in and to the Lot and/or improvements thereon, or any permitted Recreational Vehicles thereon, the new Owner of such Lot shall be obligated to immediately begin paying the monthly charge that is then in force and effect for an Owner then purchasing a previously unsold Lot in the Subdivision, and if no such unsold Lots are then available, at the highest monthly charge then in effect on any Lot in the Subdivision. Included within the charge or assessment described herein shall be the maintenance of Tract A Landscape, Tract B Retention Area, and Tract C Recreation Area and the maintenance and upkeep of the facilities erected thereon by the Manager in the Subdivision, all as described in Paragraph 4.2. The Manager reserves the right to charge additional fees, assessments and access fees to Owners for their use of recreational or other facilities not physically located within the Subdivision, including rights to use any golf course, storage areas and any additional type of recreational facility or service that may become available in the future. Manager shall not be liable or responsible to the Lot Owner for Lot Owner's agent's, guest's or invitee's use or damages or losses arising from such use of such facilities or services and Lot Owner agrees to indemnify and hold Manager harmless from such damages or losses.

49. Section 4.4 of the Regal Pointe Declaration, as amended by the First Amendment, states as follows:

The monthly assessment and charge set forth in Paragraph 4.3 above shall begin as to all Lots on the first day of the month following the recording of the plat of the Community. The first monthly assessment and charge set forth in Section 4.3 above shall be adjusted according to the number of months remaining in the calendar year. The monthly assessment or charge set forth in Section 4.3 above shall be based on all costs and expenses to the Declarant to deliver such services, including without limitation, taxes, debt service, repair, and for replacement (including reserves therefor but excluding street repair or improvements) of any of the facilities including utility lines (including without limitation, water distribution lines and waste water collection or distribution lines), and any of the improvements within the Community excluding those on any Lot which are the Owner's responsibility, maintenance, office expenses, legal and accounting fees, employee salaries and benefits and contract expenses, reserves in ad valorem taxes and other taxes and assessments upon any properties within the Community owned by Declarant, capital improvements required by any governmental authority or otherwise or required in Declarant's sole and absolute discretion, rebuilding, reserving for future capital expenditures, repairs or extra maintenance required by natural or man-made calamities, increased charges by vendors and suppliers of any services to Declarant, increases in costs and expenses with respect to the delivery of utility and other



services, and such other costs as determined in Declarant's sole and absolute discretion, plus a management fee which shall be \$15.00 per month or twelve percent (12%) of the monthly assessment charged at the time, whichever amount is greater (which management fee shall be part of the monthly assessment/charge). There shall be an adjustment and increase in the monthly assessment or charge on January 1, 2006, and on January 1st of each and every year thereafter of which Declarant shall give written notice thereof before January 1st of each year, however, if Declarant provides such notice after January 1st ("Late Notice"), such adjustment shall take effect the first day of the following month. The adjustment and increase shall be equal to the increase to Declarant in its costs to deliver services, together with any increase in the management fee as described above. Each adjustment shall be in effect for the subsequent one (1) year period or if Late Notice, through December 31 of that year. Declarant will prepare and provide to the Lot Owners prior to January 1st of each year a statement reflecting the costs, adjustments, and increased costs.

50. Section 4.4 of the Osprey Pointe Declaration states as follows:

The monthly assessment and charge set forth in Paragraph 4.3 shall begin on June 1, 1996, be based on all costs and expenses to the Manager to deliver such services, including without limitation, taxes, debt service, repair, and for replacement (including reserves therefor but excluding street repair or improvements) of any of the facilities including utility lines (including without limitation, water distribution lines and waste water collection or distribution lines), and any of the improvements within the Subdivision excluding those on any Lot which are the Lot Owner's responsibility, maintenance, office expenses, legal and accounting fees, employee salaries and benefits and contract expenses, reserves in ad valorem taxes and other taxes and assessments upon any properties within the Subdivision owned by Manager, capital improvements required by any governmental authority or otherwise or required in Manager's sole and absolute discretion, rebuilding, reserving for future capital expenditures, repairs or extra maintenance required by natural or man-made calamities, increased charges by vendors and suppliers of any services to Manager, increases in costs and expenses with respect to the delivery of utility and other services, and such other costs as determined in Manager's sole and absolute discretion, plus a management fee which shall be \$15.00 per month or 12% of the monthly assessment charged at the time, whichever amount is greater. Notwithstanding the foregoing, the initial \$65.00 shall be deemed to be equivalent to Manager's initial costs and management fees. There shall be an adjustment and increase in the monthly assessment or charge on January 1, 1997, and on January 1st of each and every year thereafter of which Manager shall give written notice thereof before January 1st of each year, however, if Manager provides such notice after January 1st ("Late Notice"), such adjustment shall take effect the first day of the following month. The adjustment and increase shall be equal to the increase to Manager in its costs to deliver services, together with any increase in the management fee as described above. Each adjustment shall be in effect for the subsequent one (1) year period or if Late Notice, through December 31 of that year. Manager will prepare and provide to the Lot Owners prior to January 1st of each year a statement reflecting the costs, adjustments, and increased costs.

51. Section 4.5 of the Regal Pointe Declaration states as follows:

Notwithstanding Section 4.4 above, increased expenses incurred by the Declarant to deliver the services described in Paragraphs 4.2 and 4.8, during any year, may be passed through to the Owners by the Declarant at any time upon written notice by way of an increase in the monthly assessments to the Owners.

52. Section 4.5 of the Osprey Point Declaration states as follows:

Notwithstanding Paragraph 4.4 above, increased expenses incurred by the Manager to deliver the services described in Paragraphs 4.2 and 4.8, during any year, may be passed through to the Lot Owners by the Manager at any time upon written notice by way of an increase in the monthly assessments to the Lot Owners.

53. Section 4.6 of the Regal Pointe Declaration states as follows:

Each Owner agrees that as additional facilities and/or services are requested by the Owners, or as are provided by the Declarant, and the erection of such additional facilities and/or implementation of such additional services are agreed to by the Declarant in its sole and absolute discretion, that upon a vote of two-thirds (2/3) of the Owners approving such additional facilities and/or services and commensurate charges therefor, that the monthly assessment provided by Paragraph 4.3 shall be increased in order to pay the cost thereof plus a management fee equal to 12% of such cost.

54. Section 4.6 of the Osprey Pointe Declaration states as follows:

Each Owner agrees that as additional facilities and/or services are requested by the Owners, or as are provided by the Manager, and the erection of such additional facilities and/or implementation of such additional services are agreed to by the Manager in its sole and absolute discretion, that upon a vote of two-thirds (2/3) of the Owners approving such additional facilities and/or services and commensurate charges therefor, that the monthly assessment provided for by Paragraph 4.3 shall be increased in order to pay the cost thereof plus a management fee equal to 12% of such cost. For the purposes of all votes, the Manager shall be entitled to one (1) vote for each Lot owned by the Manager.

55. Section 4.8 of the Regal Pointe Declaration states as follows:

**PRD and Boulevard Annual Maintenance Fee.** Each Owner, by acceptance of conveyance of a Lot through a deed thereto or otherwise, covenants and agrees to pay an annual maintenance fee for use of the PRD Property and Boulevard ("PRD and Boulevard Annual Maintenance Fee"). Notwithstanding the foregoing, the



Declarant with respect to any Lots owned by Declarant shall not be required to pay the PRD and Boulevard Annual Maintenance Fee. The PRD and Boulevard Annual Maintenance Fee shall be imposed by the Declarant to meet the expenses of managing and maintaining the PRD Property and Boulevard. The PRD and Boulevard Annual Maintenance Fee shall be established by Declarant in its sole and absolute discretion on an annual basis and be payable by each Owner monthly, semi-annually, or annually, at Declarant's option and if paid annually, may be discounted at Declarant's option. The PRD and Boulevard Annual Maintenance fee imposed by Declarant may be increased, on an annual basis, by the Declarant. Each such PRD and Boulevard Annual Maintenance Fee not paid when due shall incur a late fee of Ten and No/100 Dollars (\$10.00) or ten (10%) percent of the amount due, whichever is greater. Each such assessment and late fee if not paid when due, and interest at the highest legal rate as permitted by Florida law, together with costs of collection, including reasonable attorneys' fees shall be the personal obligation of the Owner against whom such were assessed. The sale or transfer of any Lot shall not affect the lien set forth in this Paragraph and any grantee shall be jointly and severally liable for the portion of any PRD and Boulevard Annual Maintenance Fee or charge assessed against such Lot as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. If any delinquent PRD and Boulevard Annual Maintenance Fee or portion thereof is not paid to Declarant within ten (10) days after written notice is given to the Owner to make such payment, the Declarant may prevent Owner from utilizing the PRD Property and the Boulevard. The Lot Owners shall pay a pro rata share of the costs, as determined in the sole and absolute discretion of the Declarant, of operating, managing and maintaining the Boulevard and the PRD Property (along with any improvements constructed thereon), which pro rata share shall be based on the following ratio; number of Lots in the Community over the number of total existing lots in Deer Creek Golf & Tennis RV Resort, Master Plan including all current and future phases or units, as platted in the public records of Polk County, Florida. The PRD and Boulevard Annual Maintenance Fee will be in the initial amount of \$18.00 per month per Lot (which shall be part of the monthly assessment/charge) beginning as to all Lots on the first day of the month following the recording of the plat of the Community and will be revised each year on or before January 1, 1996, in the sole and absolute discretion of the Declarant.

56. Section 4.8 of the Osprey Pointe Declaration states as follows:

**PRD and Boulevard Annual Maintenance Fee.** Each owner, by acceptance of conveyance of a Lot through a deed thereto, covenants and agrees to pay an annual maintenance fee for use of the PRD Property and Boulevard ("PRD and Boulevard Annual Maintenance Fee"). Notwithstanding the foregoing, the Manager with respect to any Lots owned by Manager shall not be required to pay

the PRD and Boulevard Annual Maintenance Fee. The PRD and Boulevard Annual Maintenance Fee shall be imposed by the Declarant to meet the expenses of managing and maintaining the PRD Property and Boulevard. The PRD and Boulevard Annual Maintenance Fee shall be established by Declarant in its sole and absolute discretion on an annual basis and be payable by each Owner monthly, semi-annually, or annually, at Declarant's option and if paid annually, may be discounted at Declarant's option. The PRD and Boulevard Annual Maintenance fee imposed by Declarant may be increased, on an annual basis, by the Declarant. Each such PRD and Boulevard Annual Maintenance Fee not paid when due shall incur a late fee of ten (\$10.00) dollars or ten (10%) percent of the amount due, whichever is greater. Each such assessment and late fee if not paid when due, and interest at the highest legal rate as permitted by Florida law, together with costs of collection, including reasonable attorneys' fees shall be the personal obligation of the Owner against whom such were assessed. The sale or transfer of any Lot shall not affect the lien set forth in this Paragraph and any grantee shall be jointly and severally liable for the portion of any PRD and Boulevard Annual Maintenance Fee or charge assessed against such Lot as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. If any delinquent PRD and Boulevard Annual Maintenance Fee or portion thereof is not paid to Declarant within ten (10) days after written notice is given to the Owner to make such payment, the Declarant may prevent Owner from utilizing the PRD Property and the Boulevard. The PRD and Boulevard Annual Maintenance Fee is in addition to the monthly charged assessment set out in Paragraph 4.3. The Lot Owners shall pay a pro rata share of the costs, as determined in the sole and absolute discretion of the Declarant, of maintaining the Boulevard and any Improvements constructed on the PRD Property, which pro rata share shall be based on the following ratio; number of Lots over the number of total existing lots in the DEER CREEK GOLF AND TENN IS RV RESORT, Master Plan including all current and future phases or units, as platted in the public records of Polk County, Florida. The PRD and Boulevard Annual Maintenance Fee will be in the initial amount of \$18 per Lot beginning June 1, 1996, and will be revised each year on or before January 1 in the sole and absolute discretion of the Declarant.

57. Section 4.9 of the Regal Pointe Declaration, as amended by the Sixth

Amendment, states as follows:

If any Owner fails to pay any charge or assessment required herein, including but not limited to charges for garbage service, cable service and other utilities, the monthly assessment described in Paragraph 4.3, the management fee described in Paragraph 4.4, or the PRD and Boulevard Annual Maintenance Fee described in Paragraph 4.8, the Declarant may place a lien on that Owner's Lot and such Lot Owner's rights hereunder in order to secure the payment of such monies. If Owner



fails to make such payments Declarant may foreclose the lien in the manner provided for in the foreclosures of mortgages and may obtain a judgment for the amounts due. In any such action or other action to enforce the provision of this lien, including appeals, the Declarant shall be entitled to recover its reasonable attorney's fees and costs and interest at the highest rate permitted by law. The lien provided for herein shall be inferior to any third party institutional financing on the Lot.

Sale or transfer of any Lot shall not affect the lien for the monthly charges/assessments described in Section 4.3, the management fee described in Section 4.4, the PRD and Boulevard Annual Maintenance Fee described in Section 4.8, or any other assessments, charges or fees thereafter becoming due or from the lien thereof. First mortgagees acquiring title as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, shall be liable for unpaid fees, assessments and charges as expressly set forth below in this Section 4.9. Except as otherwise provided by Florida law as amended from time to time, if a first mortgagee acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such mortgagee's liability for the unpaid assessments or charges, including, without limitation, the monthly charge/assessment described in Section 4.3, the management fee described in Section 4.4, or the PRD and Boulevard Annual Maintenance Fee described in Section 4.8, that accrued or came due before such mortgagee's acquisition of title, shall be the lesser of: (a) the Lot's unpaid common expenses and assessments or charges that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Declarant; or (b) one percent of the original mortgage debt. The limitations on first mortgagee liability as set forth above in this Section 4.9 apply only if such first mortgagee filed suit against the Owner and initially joined the Declarant as a defendant in the mortgagee foreclosure action. However, joinder of the Declarant is not required if, on the date the complaint is filed, the Declarant was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee. Any unpaid assessments or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, prorate, including such acquirer and his successors and assigns. No Owner or acquirer of title to a Lot by foreclosure (or by deed in lieu of foreclosure) may, during the period of his, her or its ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

58. Section 4.9 of the Osprey Pointe Declaration states as follows:

If a Lot Owner fails to pay any charge or assessment required herein, including but not limited to charges for garbage service, cable service and other utilities, the monthly assessment described in Paragraph 4.3, the management fee described in Paragraph 4.4, or the PRD and Boulevard Annual Maintenance Fee described in



Paragraph 4.8, the Manager may place a lien on that Owner's Lot and such Lot Owner's rights hereunder in order to secure the payment of such monies. If Owner fails to make such payments Manager may foreclose the lien in the manner provided for in the foreclosures of mortgages and may obtain a judgment for the amounts due. In any such action or other action to enforce the provision of this lien, including appeals, the Manager shall be entitled to recover its reasonable attorney's fees and costs and interest at the highest rate permitted by law. The lien provided for herein shall be inferior to any third party institutional financing on the Lot.

59. Section 7.1 of the Regal Pointe Declaration states as follows:

Every owner shall have a right and easement of enjoyment in and to the streets shown on any plat of the Community which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to assess each Owner that Owner's pro rata share of the costs of repair, upkeep and replacement of the streets within the Community, except as limited herein.

B. The right of the Association to dedicate or transfer all or any part of the streets to any public agency authority for such purposes and subject to such conditions as may be agreed to by the members, subject to Declarant's rights hereunder. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members of the Association has been recorded.

60. Section 9.1 of the Osprey Pointe Declaration states as follows:

Every owner shall have a right and easement of enjoyment in and to the streets on the plat hereof which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to assess each Owner that Owner's pro rata share of the costs of repair, upkeep and replacement of the streets within the subdivision, except as limited herein.

B. The right of the Association to dedicate or transfer all or any part of the streets to any public agency authority for such purposes and subject to such conditions as may be agreed to by the members, subject to Declarant's rights hereunder. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the members of the Association has been recorded.

61. Section 7.2 of the Regal Pointe Declaration states as follows:

Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

62. Section 9.2 of the Osprey Pointe Declaration states as follows:

Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

63. Section 7.3 of the Regal Pointe Declaration, as amended by the Sixth Amendment to the Regal Pointe Declaration, states as follows:

**Creation of the Lien and Personal Obligation of Assessment.** Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay the Association: (i) monthly assessments or charges and (ii) special assessments for capital improvements as established by the Association as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees shall be a charge and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessments fell due. The assessment and lien provisions of this Section 7 shall not apply to any Lot or other property owned by Declarant or by any successor Declarant succeeding to all or a portion of Declarant's rights herein, whether by assignment, in reorganization, or by other arrangement. Notwithstanding anything to the contrary contained herein, until the Turnover Date, the Declarant covenants to subsidize the general operating expenses of the Association, by contributing the difference, if any, between net operating expenses and all income of the Association including but not limited to assessment income from Member other than the Declarant, interest income and income from ancillary operations. Declarant, however, shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement fund, or special assessments, if any. Declarant's rights and obligations hereunder may be assigned to a successor Declarant. During the period of Declarant control, in return for subsidizing the general operating expense of the Association, any net operating profit made by the Association, will revert back to the Declarant to offset existing and future capital improvements, operating expenses, support costs, and start-up costs. Net operating profit shall mean the amount by which income from all sources of the Association exceeds operating costs and expenses, but excluding depreciation expenses and amortization expense.

64. Section 9.4 of the Osprey Pointe Declaration states as follows:

**Creation of the Lien and Personal Obligation of Assessment.** The Declarant, for each Lot owned within the Subdivision, hereby covenants and each Owner of



any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (i) monthly assessments or charges and (ii) special assessment for capital improvements as established by the Association as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessments fell due. The personal obligation for assessments shall not pass to his successors in title unless expressly assumed by them.

65. Section 7.4 of the Regal Pointe Declaration states as follows:

**Purpose of Assessments:**

- A. To promote the health, safety, and welfare of the Owners and residents of the Community and for the improvement and maintenance of the streets;
- B. For the improvement, maintenance, protection, security and operations of the Association and Association equipment and facilities, if any, the Conservation Areas, if any, and the Surface Water Management System Facilities, if applicable and if necessary;
- C. Where deemed desirable by the Declarant (so long as Declarant owns any Lot within the Community) and subsequent thereto, the Board of Directors, to provide services of general benefit to the Owners and residents on a Community-wide basis or otherwise;
- D. To pay the operating expenses of the Association; and
- E. For such other purposes and uses as are authorized by the Governing Documents as amended from time to time.

66. Section 9.5 of the Osprey Pointe Declaration states as follows:

**Purpose of Assessments.** The assessments levied by the Association shall be used to promote the health, safety and welfare of the Owners of the Lots and for the improvements and maintenance of the streets.

67. Section 7.5 of the Regal Pointe Declaration states as follows:

**Assessment.** The initial annual assessments against Owners by the Association shall be Zero Dollars (\$0.00) per Lot.

68. Section 9.6 of the Osprey Pointe Declaration states as follows:

**Assessment.** The initial annual assessments against Owners by the Association shall be Zero Dollars (\$0) per Lot.



69. Section 7.6 of the Regal Pointe Declaration states as follows:

**Vote.** From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the annual assessment permitted in this Section 7 may be increased each year above the assessments for the previous year by a vote of the majority of the membership who are voting in person or by proxy at a meeting duly called for this purpose.

70. Section 9.7 of the Osprey Pointe Declaration states as follows:

**Vote.** From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the annual assessment permitted in this Section 9 may be increased each year above the assessments for the previous year by a vote of the majority of the membership who are voting in person or by proxy at a meeting duly called for this purpose.

71. Section 7.7 of the Regal Pointe Declaration states as follow:

**Special Assessments for Capital Improvements.** In addition to the annual assessment authorized in this Section 7, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the streets, provided that any such assessment shall have the assent of two-thirds (2/3) of all members who are voting in person or by proxy at a meeting duly called for this purpose.

72. Section 9.8 of the Osprey Pointe Declaration states as follows:

**Special Assessments for Capital Improvements.** In addition to the annual assessment authorized in this Section 9, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the streets, provided that any such assessment shall have the assent of two-thirds (2/3) of all members who are voting in person or by proxy at a meeting duly called for this purpose.

73. Section 7.8 of the Regal Pointe Declaration states as follow:

**Notice and Quorum for any Action Authorized under Sections 7.6 and 7.7.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.6 and 7.7 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

74. Section 9.9 of the Osprey Pointe Declaration states as follows:

**Notice and Quorum for any Action Authorized under Sections 9.7 and 9.8.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 9.7 and 9.8 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast a majority of all vote of each class of membership shall constitute a quorum.

75. Section 7.9 of the Regal Pointe Declaration states as follow:

**Uniform Rate of Assessments.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

76. Section 9.91 of the Osprey Pointe Declaration states as follows:

**Uniform Rate of Assessments.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

77. Section 7.14 of the Regal Pointe Declaration states as follows:

**Capital Improvements.** At all times hereafter, all capital improvements to the streets shall require the approval of two-thirds (2/3) of all Members who are voting in person or by proxy at a meeting duly called for this purpose and shall require the consent of the Declarant (until such time as Declarant no longer owns any Lot within the Community).

78. Section 9.96 of the Osprey Point Declaration states as follows:

**Capital Improvements.** At all times hereafter, all capital improvements to the streets shall require the approval of two-thirds (2/3) of all members who are voting in person or by proxy at a meeting duly called for this purpose and shall require the consent of the Declarant, notwithstanding the provisions of Paragraph 9.3, until January 1, 2002.

79. Article 11.5 of the Regal Pointe Declaration states as follows:

**Vote Required.** Except as otherwise required by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for that purpose by at least two-thirds (2/3) of the voting interests of each class of Members present and voting, provided that notice of the text of each proposed amendment was sent to the Member with notice of the meeting.



80. Article 11.10 of the Regal Point Declaration states as follows:

**Amendment by Declarant.** Notwithstanding the foregoing and anything to the contrary contained herein, and in addition to any other right of amendment or modification provided for in this Declaration, Declarant may, in its sole discretion, by an instrument filed of record in Polk County, Florida, unilaterally modify, enlarge, amend, waive, or add to the covenants, conditions, restrictions and other provisions of this Declaration, and any recorded exhibit hereto. Declarant shall not be bound by the amendment requirements set forth in this Declaration, including without limitation, the procedural, required vote and recording of certificate requirements set forth above. The right set forth in this Section 1.10 shall expire at such time as no Declarant owns any Lot within the Community.

81. Article 8 of the Osprey Pointe Declaration states as follows:

**Duration and Amendment.** The foregoing covenants, restrictions, reservations, and servitudes shall be considered and construed as covenants, restrictions and servitudes running with the Subject Property, and the same shall bind all persons claiming ownership of all or any portions of said Subject Property. Any inconsistency, vagary or ambiguity in these Declarations shall be resolved solely by the Manager in writing and shall be recorded as an amendment hereto which shall have the effect of amending these Declaration. The Manager reserves the right to amend at any time these Declarations for the purposes of establishing such further restrictions or modifying existing restrictions as it deems necessary in its sole and absolute discretion to carry out the spirit and intent of these Declaration.

82. The facts, circumstances, and issues alleged herein show the existence of a real and substantial controversy between the Plaintiffs and Deer Creek. There is a bona fide, actual, and present need for Declaratory Judgment of this Court, and if one is not granted, the rights of the Plaintiffs will be irreparably damaged.

83. The Plaintiffs request that this Court declare the rights of the parties as to the provisions from the Declarations referenced above, and enter a Declaratory Judgment determining:

a) The legal basis of Deer Creek to impose assessments for the golf course upon the Plaintiffs;

- b) The legal basis of Deer Creek to impose assessments for capital improvements not voted on by all owners;
- c) The legal basis of Deer Creek to construct capital improvements not voted on by all the owners;
- d) The specific expenses, charges, and other items that Deer Creek may legally charge the Plaintiffs with regard to the golf course and capital improvements;
- e) The legal basis of Deer Creek to give discounts to Certificate Holders; and
- f) The legal basis of Deer Creek to pass unilateral amendments to the Declarations.

WHEREFORE, Plaintiffs request this Court to enter a Declaratory Judgment regarding the issues set forth herein, for an award of the Plaintiffs' attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as this Court deems just and proper.

**COUNT II – BREACH OF CONTRACT/BREACH OF REGAL POINTE  
DECLARATION (DEER CREEK)**

84. This is an action against Deer Creek for Breach of Contract/Breach of Regal Pointe Declaration.

85. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

86. Deer Creek has, and continues to, breach the terms of the Regal Pointe Declaration, including but not limited to, Articles 1, 2, 4, 7, and 11 of the Regal Pointe Declaration and all amendments thereto, by assessing the Plaintiffs for expenses related to the upkeep and maintenance of the golf course and capital improvements not approved by a vote of the owners, by constructing capital improvements without a vote of the owners, by granting



assessment discounts to Certificate Holders and thereby not charging all owners for their pro rata share of expenses, and by passing unilateral amendments to the Regal Pointe Declaration.

87. As a direct and proximate result of Deer Creek's breach of covenants contained in the Regal Pointe Declaration and breach of contract, Plaintiffs have suffered damages in the overpayment of assessments, since May 12, 2014.

WHEREFORE, Plaintiffs demand judgment against Deer Creek for damages resulting from the overpayment of assessments, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Regal Pointe Declaration, and for such other and further relief as the Court deems just and proper.

**COUNT III – BREACH OF CONTRACT/BREACH OF OSPREY POINTE  
DECLARATION (DEER CREEK)**

88. This is an action against Deer Creek for Breach of Contract/Breach of Osprey Pointe Declaration.

89. Plaintiffs, Michael and Linda Patrix, re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

90. Deer Creek has, and continues to, breach the terms of the Osprey Pointe Declaration, including but not limited to, Articles 1, 2, 4, 8, and 9, of the Osprey Pointe Declaration and all amendments thereto, by assessing the Plaintiffs for expenses related to the upkeep and maintenance of the golf course and capital improvements not approved by a vote of the owners, by constructing capital improvements without a vote of the owners, by granting assessment discounts to Certificate Holders and thereby not charging all owners for their pro rata share of expenses, and by passing unilateral amendments to the Regal Pointe Declaration.

91. As a direct and proximate result of Deer Creek's breach of covenants contained in the Osprey Pointe Declarations and breach of contract, Plaintiffs have suffered damages in the overpayment of assessments, since May 12, 2014.

WHEREFORE, Plaintiffs demand judgment against Deer Creek for damages resulting from the overpayment of assessments, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Osprey Pointe Declaration, and for such other and further relief as the Court deems just and proper.

**COUNT IV – UNJUST ENRICHMENT (DEER CREEK)**

92. This is a cause of action against Deer Creek for unjust enrichment.

93. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

94. Deer Creek has been unjustly enriched by the Plaintiffs by accepting payments designated only for the maintenance and use of the property and amenities established by the Declarations.

95. Deer Creek has been unjustly enriched by the Plaintiffs paying more in assessments than their pro rata share as established by the Declarations.

96. Deer Creek has and continues to accept and retain the benefits of the payments made by the Plaintiffs, unjustly enriching Deer Creek.

97. The circumstances created by Deer Creek's acceptance and retention of the excess payments by Plaintiffs is inequitable, as Deer Creek has retained a benefit without providing any value to the Plaintiffs, where assessments have been diverted to uses and expenses related to the golf course and capital improvements not voted on by all owners.

WHEREFORE, Plaintiffs demand judgment against Deer Creek for the unjust enrichment of Deer Creek for the overpayments made to Deer Creek, for pre-judgment and post-judgment



interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as is just and proper.

**COUNT V – EQUITABLE ACCOUNTING (DEER CREEK)**

98. This is an action against Deer Creek for an equitable accounting.

99. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

100. Deer Creek has, and continues to require payment of assessments purportedly under the terms of the Declarations.

101. Deer Creek has failed to allow Plaintiffs to vote on any budgets or provide the Plaintiffs with financial information related to Deer Creek, the expenditures required, or the assessments imposed.

102. The Plaintiffs are at the mercy of Deer Creek, the entity that should be protecting the Plaintiffs from the misuse of assessments paid by them, and as such a fiduciary relationship exists between the Plaintiffs and Deer Creek.

103. Furthermore, the financial transactions at issue occurred over a more than three (3) year period, involve many hundreds of thousands of dollars, and involve complex transactions.

104. Other legal remedies available to the Plaintiffs are inadequate as only the Plaintiffs have the ability to produce the financial records needed to conduct the requested accounting.

WHEREFORE, Plaintiffs request this Court to required Deer Creek to provide a full accounting of the books and records of Deer Creek, the expenditures of Deer Creek, and the

basis for assessment to the Plaintiffs, for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as is just and proper.

**COUNT VI – ACTION FOR DAMAGES FOR DECEPTIVE AND UNFAIR TRADE PRACTICES (DEER CREEK)**

105. This is an action against Deer Creek for damages for deceptive and unfair trade practices.

106. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

107. Fla. Stat. Section 501.204 declares unlawful and prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. This statute is part of what commonly is known as Florida's Deceptive and Unfair Trade Practices Act.

108. Fla. Stat. Section 501.211(1) entitles anyone aggrieved by a violation of Florida's Deceptive and Unfair Trade Practices Act to bring an action for actual damages against another who has committed a deceptive or unlawful trade practice.

109. The actions of Deer Creek as alleged in paragraphs 16 through 32 above are unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Fla. Stat. Section 501.204.

110. As a direct and proximate result of the above-described actions of Deer Creek, Plaintiffs have suffered actual damages, and will continue to suffer actual damages in the future, including but not limited to, overpaid assessments to Deer Creek.

WHEREFORE, Plaintiffs demand judgment against Deer Creek for damages resulting from the overpayment of assessments, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations and Fla. Stat. Section



501.2105, and for such other and further relief as the Court deems just and proper. Additionally, Plaintiffs pray that the Court will enjoin Deer Creek from further violations of Fla. Stat. Section 501.204.

**COUNT VII – ACTION FOR DAMAGES FOR CIVIL CONSPIRACY (DEER CREEK AND BOARD MEMBER DEFENDANTS)**

111. This is an action against Deer Creek and the Board Member Defendants for damages for civil conspiracy.

112. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

113. Deer Creek and the Board Member Defendants conspired to commit, or cause each other or a third party to commit, one or more of the acts set forth in paragraph 16 through 32 above. Such acts are unlawful and are in violation of Fla. Stat. Section 501.204, part of Florida's Deceptive and Unfair Trade Practices Act.

114. In furtherance of the conspiracy, both Deer Creek and the Board Member Defendants committed one or more overt acts as more particularly described in paragraph 16 through 32 above.

115. As a direct and proximate result of the above-described actions of Deer Creek and the Board Member Defendants, Plaintiffs have suffered damages and will continue to suffer damages in the future, including but not limited to, overpaid assessments to Deer Creek.

WHEREFORE, Plaintiffs demand judgment against Deer Creek for damages resulting from the overpayment of assessments, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations and Fla. Stat. Section 501.2105, and for such other and further relief as the Court deems just and proper. Additionally,

Plaintiffs pray that the Court will enjoin Deer Creek and the Board Member Defendants from further violations of Fla. Stat. Section 501.204.

**COUNT VIII – BREACH OF FIDUCIARY DUTY (RICHARD WALDROP)**

116. This is an action against Richard Waldrop for breach of fiduciary duty.

117. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

118. Richard Waldrop represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

119. Through his position as a Board member, Richard Waldrop acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

120. Furthermore, as a Board member for Deer Creek, Richard Waldrop owed a duty to the Plaintiffs to abide by the Declarations.

121. Richard Waldrop knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

122. Furthermore, Richard Waldrop knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more



specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

123. By engaging in the above-described actions, Richard Waldrop breached the fiduciary duty he owed to the Plaintiffs and has defrauded the Plaintiffs.

124. As a direct and proximate result of these breaches of Richard Waldrop's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Richard Waldrop for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT IX – BREACH OF FIDUCIARY DUTY (JAMES LEE)**

125. This is an action against James Lee for breach of fiduciary duty.

126. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

127. James Lee represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

128. Through his position as a Board member, James Lee acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

129. Furthermore, as a Board member for Deer Creek, James Lee owed a duty to the Plaintiffs to abide by the Declarations.

130. James Lee knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the

care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

131. Further, James Lee knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

132. By engaging in the above-described actions, James Lee breached the fiduciary duty he owed to the Plaintiffs and has defrauded the Plaintiffs.

133. As a direct and proximate result of these breaches of James Lee’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against James Lee for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT X – BREACH OF FIDUCIARY DUTY (JOAN LEAH)**



134. This is an action against Joan Leah for breach of fiduciary duty.

135. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

136. Joan Leah represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

137. Through her position as a Board member, Joan Leah acquired influence and trust was reposed in her as a fiduciary for the Plaintiffs such that a duty existed.

138. Furthermore, as a Board member for Deer Creek, Joan Leah owed a duty to the Plaintiffs to abide by the Declarations.

139. Joan Leah knowingly or negligently breached and/or failed to perform her duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering her own assessment obligation. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

140. Further, Joan Leah knowingly or negligently breached and/or failed to perform her duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, herself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described

above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching herself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

141. By engaging in the above-described actions, Joan Leah breached the fiduciary duty she owed to the Plaintiffs and defrauded the Plaintiffs.

142. As a direct and proximate result of these breaches of Joan Leah's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Joan Leah for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XI – BREACH OF FIDUCIARY DUTY (MICHAEL CARUSO)**

143. This is an action against Michael Caruso for breach of fiduciary duty.

144. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

145. Michael Caruso represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

146. Through his position as a Board member, Michael Caruso acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

147. Furthermore, as a Board member for Deer Creek, Michael Caruso owed a duty to the Plaintiffs to abide by the Declarations.

148. Michael Caruso knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments



for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

149. Further, Michael Caruso knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

150. By engaging in the above-described actions, Michael Caruso breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

151. As a direct and proximate result of these breaches of Joan Leah’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Michael Caruso for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XII – BREACH OF FIDUCIARY DUTY (DAVID ESCH)**

152. This is an action against David Esch for breach of fiduciary duty.

153. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

154. David Esch represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

155. Through his position as a Board member, David Esch acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

156. Furthermore, as a Board member for Deer Creek, David Esch owed a duty to the Plaintiffs to abide by the Declarations.

157. David Esch knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

158. Further, David Esch knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically



described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs.

Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

159. By engaging in the above-described actions, David Esch breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

160. As a direct and proximate result of these breaches of David Esch's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against David Esch for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XIII – BREACH OF FIDUCIARY DUTY (RALPH TARANTO)**

161. This is an action against Ralph Taranto for breach of fiduciary duty.

162. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

163. Ralph Taranto represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

164. Through his position as a Board member, Ralph Taranto acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

165. Furthermore, as a Board member for Deer Creek, Ralph Taranto owed a duty to the Plaintiffs to abide by the Declarations.

166. Ralph Taranto knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments

for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

167. Further, Ralph Taranto knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

168. By engaging in the above-described actions, Ralph Taranto breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

169. As a direct and proximate result of these breaches of Ralph Taranto’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Ralph Taranto for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XIV – BREACH OF FIDUCIARY DUTY (OWEN O’NEIL)**



170. This is an action against Owen O'Neil for breach of fiduciary duty.

171. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

172. Owen O'Neil represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

173. Through his position as a Board member, Owen O'Neil acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

174. Furthermore, as a Board member for Deer Creek, Owen O'Neil owed a duty to the Plaintiffs to abide by the Declarations.

175. Owen O'Neil knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek by and abide by the Declarations levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

176. Further, Owen O'Neil knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically

described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs.

Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

177. By engaging in the above-described actions, Owen O'Neil breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

178. As a direct and proximate result of these breaches of Owen O'Neil's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Owen O'Neil for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XV – BREACH OF FIDUCIARY DUTY (JOHN NEWSOME)**

179. This is an action against John Newsome for breach of fiduciary duty.

180. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

181. John Newsome represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

182. Through his position as a Board member, John Newsome acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

183. Furthermore, as a Board member for Deer Creek, John Newsome owed a duty to the Plaintiffs to abide by the Declarations.

184. John Newsome knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments



for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

185. Further, John Newsome knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

186. By engaging in the above-described actions, John Newsome breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

187. As a direct and proximate result of these breaches of John Newsome's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against John Newsome for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.8 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XVI – BREACH OF FIDUCIARY DUTY (JORETA SPECK)**

188. This is an action against Joreta Speck for breach of fiduciary duty.

189. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

190. Joreta Speck represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

191. Through her position as a Board member, Joreta Speck acquired influence and trust was reposed in her as a fiduciary for the Plaintiffs such that a duty existed.

192. Furthermore, as a Board member for Deer Creek, Joreta Speck owed a duty to the Plaintiffs to abide by the Declarations.

193. Joreta Speck knowingly or negligently breached and/or failed to perform her duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering her own assessment obligation. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.



194. Further, Joreta Speck knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

195. By engaging in the above-described actions, Joreta Speck breached the fiduciary duty she owed to the Plaintiffs and defrauded the Plaintiffs.

196. As a direct and proximate result of these breaches of Joreta Speck’s fiduciary duty, Plaintiffs have been damaged

WHEREFORE, Plaintiffs demand judgment against Joreta Speck for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XVII – BREACH OF FIDUCIARY DUTY (WALTER DORAZ)**

197. This is an action against Walter Doraz for breach of fiduciary duty.

198. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

199. Walter Doraz represented Plaintiffs’ interests as a member of the Board of Directors of Deer Creek.

200. Through his position as a Board member, Walter Doraz acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

201. Furthermore, as a Board member for Deer Creek, Walter Doraz owed a duty to the Plaintiffs to abide by the Declarations.

202. Walter Doraz knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

203. Further, Walter Doraz knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.



204. By engaging in the above-described actions, Walter Doraz breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

205. As a direct and proximate result of these breaches of Walter Doraz's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Walter Doraz for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.8 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XVIII – BREACH OF FIDUCIARY DUTY (CHARLES MORLEY)**

206. This is an action against Charles Morley for breach of fiduciary duty.

207. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

208. Charles Morley represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

209. Through his position as a Board member, Charles Morley acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

210. Furthermore, as a Board member for Deer Creek, Charles Morley owed a duty to the Plaintiffs to abide by the Declarations.

211. Charles Morley knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the

correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a “Q&A sheet,” sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

212. Further, Charles Morley knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

213. By engaging in the above-described actions, Charles Morley breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

214. As a direct and proximate result of these breaches of Charles Morley’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Charles Morley for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XIX – BREACH OF FIDUCIARY DUTY (GEORGE SCHREMP)**

215. This is an action against George Schrempp for breach of fiduciary duty.

216. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.



217. George Schremp represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

218. Through his position as a Board member, George Schremp acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

219. Furthermore, as a Board member for Deer Creek, George Schremp owed a duty to the Plaintiffs to abide by the Declarations.

220. George Schremp knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

221. Further, George Schremp knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the

Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

222. By engaging in the above-described actions, George Schremp breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

223. As a direct and proximate result of these breaches of George Schremp's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against George Schremp for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XX – BREACH OF FIDUCIARY DUTY (CURTIS DOERRER)**

224. This is an action against Curtis Doerrer for breach of fiduciary duty.

225. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

226. Curtis Doerrer represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

227. Through his position as a Board member, Curtis Doerrer acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

228. Furthermore, as a Board member for Deer Creek, Curtis Doerrer owed a duty to the Plaintiffs to abide by the Declarations.

229. Curtis Doerrer knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe



Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

230. Further, Curtis Doerrerr knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

231. By engaging in the above-described actions, Curtis Doerrerr breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

232. As a direct and proximate result of these breaches of Curtis Doerrerr's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Curtis Doerrerr for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXI – BREACH OF FIDUCIARY DUTY (RICHARD KETCHAM)**

233. This is an action against Richard Ketcham for breach of fiduciary duty.

234. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

235. Richard Ketcham represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

236. Through his position as a Board member, Richard Ketcham acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

237. Furthermore, as a Board member for Deer Creek, Richard Ketcham owed a duty to the Plaintiffs to abide by the Declarations.

238. Richard Ketcham knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

239. Further, Richard Ketcham knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount



of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

240. By engaging in the above-described actions, Richard Ketcham breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

241. As a direct and proximate result of these breaches of Richard Ketcham’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Richard Ketcham for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXII – BREACH OF FIDUCIARY DUTY (SUSAN MILLER)**

242. This is an action against Susan Miller for breach of fiduciary duty.

243. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

244. Susan Miller represented Plaintiffs’ interests as a member of the Board of Directors of Deer Creek.

245. Through her position as a Board member, Susan Miller acquired influence and trust was reposed in her as a fiduciary for the Plaintiffs such that a duty existed.

246. Furthermore, as a Board member for Deer Creek, Susan Miller owed a duty to the Plaintiffs to abide by the Declarations.

247. Susan Miller knowingly or negligently breached and/or failed to perform her duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering her own assessment obligation. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a “Q&A sheet,” sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

248. Further, Susan Miller knowingly or negligently breached and/or failed to perform her duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, herself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching herself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of her actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

249. By engaging in the above-described actions, Susan Miller breached the fiduciary duty she owed to the Plaintiffs and defrauded the Plaintiffs.



250. As a direct and proximate result of these breaches of Susan Miller's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Susan Miller for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXIII – BREACH OF FIDUCIARY DUTY (JAMES CHANDLER)**

251. This is an action against James Chandler for breach of fiduciary duty.

252. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

253. James Chandler represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

254. Through his position as a Board member, James Chandler acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

255. Furthermore, as a Board member for Deer Creek, James Chandler owed a duty to the Plaintiffs to abide by the Declarations.

256. James Chandler knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

257. Further, James Chandler knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

258. By engaging in the above-described actions, James Chandler breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

259. As a direct and proximate result of these breaches of James Chandler’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against James Chandler for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXIV – BREACH OF FIDUCIARY DUTY (RICHARD EVANS)**

260. This is an action against Richard Evans for breach of fiduciary duty.

261. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

262. Richard Evans represented Plaintiffs’ interests as a member of the Board of Directors of Deer Creek.

263. Through his position as a Board member, Richard Evans acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.



264. Furthermore, as a Board member for Deer Creek, Richard Evans owed a duty to the Plaintiffs to abide by the Declarations.

265. Richard Evans knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

266. Further, Richard Evans knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

267. By engaging in the above-described actions, Richard Evans breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

268. As a direct and proximate result of these breaches of Richard Evans’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Richard Evans for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXV – BREACH OF FIDUCIARY DUTY (ALBERT RETTEW)**

269. This is an action against Albert Rettew for breach of fiduciary duty.

270. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

271. Albert Rettew represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

272. Through his position as a Board member, Albert Rettew acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

273. Furthermore, as a Board member for Deer Creek, Albert Rettew owed a duty to the Plaintiffs to abide by the Declarations.

274. Albert Rettew knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant also participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.



275. Further, Albert Rettew knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

276. By engaging in the above-described actions, Albert Rettew breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

277. As a direct and proximate result of these breaches of Albert Rettew’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Albert Rettew for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXVI – BREACH OF FIDUCIARY DUTY (JOE GOLDEN)**

278. This is an action against Joe Golden for breach of fiduciary duty.

279. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

280. Joe Golden represented Plaintiffs’ interests as a member of the Board of Directors of Deer Creek.

281. Through his position as a Board member, Joe Golden acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

282. Furthermore, as a Board member for Deer Creek, Joe Golden owed a duty to the Plaintiffs to abide by the Declarations.

283. Joe Golden knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above. Defendant further participated in the distribution of a "Q&A sheet," sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

284. Further, Joe Golden knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek by and abide by the Declarations supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.



285. By engaging in the above-described actions, Joe Golden breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

286. As a direct and proximate result of these breaches of Joe Golden's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Joe Golden for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXVII – BREACH OF FIDUCIARY DUTY (DAVID SMITH)**

287. This is an action against David Smith for breach of fiduciary duty.

288. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

289. David Smith represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

290. Through his position as a Board member, David Smith acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

291. Furthermore, as a Board member for Deer Creek, David Smith owed a duty to the Plaintiffs to abide by the Declarations.

292. David Smith knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the

correspondence from counsel for the Plaintiffs as referenced above. Defendant further participated in the distribution of a “Q&A sheet,” sent to all the owners including the Plaintiffs, promising that only Certificate Holders, and no one else, would be responsible for any financial losses experienced by the golf course.

293. Further, David Smith knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and “freebies” more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

294. By engaging in the above-described actions, David Smith breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

295. As a direct and proximate result of these breaches of David Smith’s fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against David Smith for damages, for pre-judgment and post-judgment interest, and for attorneys’ fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

**COUNT XXVIII – BREACH OF FIDUCIARY DUTY (JOHN RILEY)**

296. This is an action against John Riley for breach of fiduciary duty.

297. Plaintiffs re-allege paragraphs 1 through 32 above, as if set forth in their entirety.

298. John Riley represented Plaintiffs' interests as a member of the Board of Directors of Deer Creek.

299. Through his position as a Board member, John Riley acquired influence and trust was reposed in him as a fiduciary for the Plaintiffs such that a duty existed.

300. Furthermore, as a Board member for Deer Creek, John Riley owed a duty to the Plaintiffs to abide by the Declarations.

301. John Riley knowingly or negligently breached and/or failed to perform his duties as a Board member of Deer Creek and abide by the Declarations by levying assessments for the care, upkeep, and maintenance of the above-referenced golf course, which is not a part of the property referenced in, or bound by, the Regal Pointe Declaration or the Osprey Pointe Declaration, for the improper personal benefit and purpose of lowering his own assessment obligation. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.

302. Further, John Riley knowingly or negligently breached and/or failed to perform his duties as a Board member for Deer Creek and abide by the Declarations by supporting a scheme to give Certificate Holders, himself included, an illegal assessment discount of \$15.00 per month, along with other valuable discounts, credits and "freebies" more specifically described above, and not made available to the Plaintiffs, for the improper personal benefit and purpose of enriching himself and obtaining free services at the expense of the Plaintiffs. Defendant knew or should have known of the impropriety of his actions as these issues were raised in a lawsuit filed by Deer Creek on August 19, 2016, and through the correspondence from counsel for the Plaintiffs as referenced above.



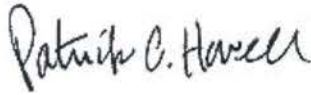
303. By engaging in the above-described actions, John Riley breached the fiduciary duty he owed to the Plaintiffs and defrauded the Plaintiffs.

304. As a direct and proximate result of these breaches of John Riley's fiduciary duty, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against John Riley for damages, for pre-judgment and post-judgment interest, and for attorneys' fees and costs pursuant to Article 4.9 of the Declarations, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 27th day of July, 2017.

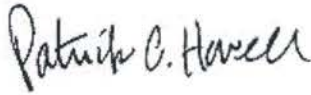
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By:   
Patrick C. Howell, Esq.  
Florida Bar No. 069299

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 27<sup>th</sup> day of July, 2017, that a true and correct copy of the foregoing was electronically filed with the Clerk of Court via Florida's statewide E-Portal system which will serve electronic notice of filing to: Jeffrey M. Partow, Esq. / Christina Bredhal, Gierke, Esq., Cole, Scott, Kissane, P.A., Tower Place, Suite 400, 1900 Summit tower Blvd., Orlando, FL 32810, [jeffrey.partlow@csklegal.com](mailto:jeffrey.partlow@csklegal.com) / [christina.gierke@csklegal.com](mailto:christina.gierke@csklegal.com) / [jeanna.bond@csklegal.com](mailto:jeanna.bond@csklegal.com).

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By:   
Patrick C. Howell, Esq.  
Florida Bar No. 069299