

IN THE CIRCUIT COURT IN AND
FOR SARASOTA COUNTY, FLORIDA

CASE NO. 2019-CA-005221

ANDREW J. BEHN, SONJA L. BEHN,
DOUGLAS S. BOESE, CHERYL D. BOESE,
JAMES M. BASSETT, MICHELLE D.
BASSETT, KATELYN SCIMONE,
MITCHELL L. McCAFFREY, JR.,
DEANNA DAWN MIXON-PIETSCH,
ROBERT E. PIETSCH, JERRY L MIXON,
MELODY C. MIXON, SHARI THOMPSON,
STEVEN S. LYDAY, TAMMY LYDAY,
GRANT T. GADWAY, NICOLE M.
GADWAY, DONALD R. SUMMERLIN,
KEITH N. BRADLEY, PRISCILLA
BRADLEY, DANIEL J. MAHONEY, II,
THEODORE P. WENTZEL, JR., CYNTHIA D.
WENTZEL, JEFFREY A. GEIGER,
DENISE M. GEIGER, DARRIN J. CARE,
MAHLON J. CARE, CATHERINE B. CARE,
TAMI V. CARE, JOSEPH DEAN ROBINSON,
ABIGAIL S. ROBINSON, KIM SLAUBAUGH,
SUSAN SLAUBAUGH, WAYNE E. LIND,
LUCINDA B. LIND, ARTHUR PIETSCH, THE
CHARLENE BURT REVOCABLE TRUST,
WILLIAM KREILING, III,
JUDY A. KREILING, ARTHUR E. LANGE,
CAROL S. LANGE, THE JULIA E. AJAMIAN
REVOCABLE LIVING TRUST,
DUSTIN COHEN, JASMINA COHEN,
JAMES MATHON, HOLLY BRODY,
TIMOTHY DANGARAN, LEAH DANGARAN,
MARK L. HUDSON, GAYLENE R. HUDSON,
JOHNNY RUTLEDGE, RANDY A. RUTLEDGE
JACOB CONRAD, MACI CONRAD,
DONALD H. POWERS, BETTY C. POWERS,
POWERS FAMILY REVOCABLE TRUST,
JUSTIN MAJORS, MELISSA MAJORS,
MICHAEL W. PATTON, ANGELA N. PATTON,
AARON GARBER, DEWEY MIXON,
NICOLE MIXON, JAN ADRIAAN BOTHA,
GERTINA JACOBA De BEER, JULIE SNYDER,
MICHAEL DELARUE, CHRISTINA DELARUE,

RONALD W. HASSELMAN, SHARLENE A.
HASSELMAN, CUNNINGHAM TRUST,
DANIEL D. STEIN, KYLE M. STEIN,
SHARON L. STEIN, BERNARD R. STEIN,
DANIEL M. SCARINZI and ELIZABETH S. SCARINZI

Plaintiff(s),

vs.

MYAKKA VALLEY RANCHES IMPROVEMENT
ASSOCIATION, INC.,

Defendant(s).

SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, ANDREW J. BEHN, SONJA L. BEHN, DOUGLAS S. BOESE, CHERYL D.
BOESE, JAMES M. BASSETT, MICHELLE D. BASSETT, KATELYN SCIMONE,
MITCHELL L. McCAFFREY, Jr., DEANNA DAWN MIXON-PRIETSCH, ROBERT E.
PRIETSCH, JERRY L MIXON, MELODY C. MIXON, SHARI THOMPSON, STEVEN S.
LYDAY, TAMMY LYDAY, GRANT T. GADWAY, NICOLE M. GADWAY, DONALD R.
SUMMERLIN, KEITH N. BRADLEY, PRISCILLA BRADLEY, DANIEL J. MAHONEY, II,
DARRIN J. CARE, MAHLON J. CARE, CATHERINE B. CARE, TAMI Y. CARE,
THEODORE P. WENTZEL, JR., CYNTHIA D. WENTZEL, JEFFREY A. GEIGER,
DENISE M. GEIGER, JOSEPH DEAN ROBINSON, ABIGAIL S. ROBINSON, KIM
SLAUBAUGH, SUSAN SLAUBAUGH, WAYNE E. LIND, LUCINDA B. LIND, ARTHUR
PIETSCH, THE CHARLENE BURT REVOCABLE TRUST, WILLIAM KREILING, III,
JUDY A. KREILING, ARTHUR E. LANGE, CAROL S. LANGE, THE JULIA E. AJAMIAN
REVOCABLE LIVING TRUST, DUSTIN COHEN, JASMINA COHEN,

JAMES MATHON, HOLLY BRODY, TIMOTHY DANGARAN, LEAH DANGARAN, MARK L. HUDSON, GAYLENE R. HUDSON, JOHNNY RUTLEDGE, RANDY A. RUTLEDGE, JACOB CONRAD, MACI CONRAD, DONALD H. POWERS, BETTY C. POWERS, POWERS FAMILY REVOCABLE TRUST, JUSTIN MAJORS, MELISSA MAJORS, MICHAEL W. PATTON, ANGELA N. PATTON, AARON GARBER, DEWEY MIXON, NICOLE MIXON, JAN ADRIAAN BOTHA, GERTINA JACOBA De BEER, JULIE SNYDER, MICHAEL DELARUE, CHRISTINA DELARUE, RONALD W. HASSELMAN, SHARLENE A. HASSELMAN, CUNNINGHAM TRUST, DANIEL D. STEIN, KYLE M. STEIN, SHARON L. STEIN, BERNARD R. STEIN, DANIEL M. SCARINZI and ELIZABETH S. SCARINZI (collectively “Plaintiffs”), sue Defendants, MYAKKA VALLEY RANCHES IMPROVEMENT ASSOCIATION, INC. (“Defendant-Association”), and state:

1. This is an action pursuant to chapter 86 and Section 712.12(3), Florida Statutes, for declaratory relief in the form of a judicial determination that covenants or deed restrictions¹ described herein did not, in fact, apply or operate to impose said covenants or restrictions on the Plaintiffs’ parcels² described herein as of October 1, 2018 and that any revitalization of covenants or deed restrictions described herein as to said parcels would unconstitutionally deprive Plaintiffs of rights or property.
2. Jurisdiction of this action is in the Circuit Court of Sarasota County, Florida by virtue of Sections 26.012(2)(g), 86.011, and 712.12(3), Florida Statutes, since this action involves the title to real property in said county.

¹ As used herein, the terms “covenant or restriction” shall have the meaning stated in Section 712.12(1)(b), Florida Statutes.

² As used herein, the term “parcel” shall have the meaning stated in Section 712.12 (1)(c), Florida Statutes.

3. Venue of this action is proper in Sarasota County, Florida by virtue of Section 47.011, Florida Statutes, since the real property in litigation is located in said county.
4. All conditions precedent to bringing this action have been performed or occurred.
5. “Myakka Valley Ranches is a subdivision originally developed by Myakka Valley, Inc. It consisted of an unrecorded plat and Units I-V. Between 1965 and 1978, Myakka Valley, Inc., filed and recorded Declarations of Restrictions on the unrecorded plat and on each of the five units of the subdivision. The restrictions for Unit II were filed and recorded on April 14, 1971. In 1982, Myakka Valley, Inc., assigned all of its rights and responsibilities under the Declarations of Restrictions to the” Defendant-Association.³
6. On August 7, 1969, the plat for Myakka Valley Ranches, Unit I, was recorded by Myakka Valley, Inc., at Plat Book 19, Pages 19 and 19A of the Public Records of Sarasota, County, Florida.
7. On December 31, 1965, restrictions for Myakka Valley Ranches, Unit I were recorded by Myakka Valley, Inc., at Official Records Book 559, Page 542, *et seq.*, in the Public Records of Sarasota County, Florida.
8. On or about August 19, 1969, Myakka Valley, Inc., recorded a deed to Carroll W. and Helen Wilken Pickett, for Lot 34, Unit I, Myakka Valley Ranches, at Official Records Book 804, Page 454, in the Public Records of Sarasota County, Florida.
9. Hence, as to such restrictions, Myakka Valley, Inc., or its successors in interest, had until August 19, 1999 to record a notice of preservation meeting the requirements of Sections

³ Lyday v. Myakka Valley Ranches Improvement Association, 279 So.3d 733 (Fla. 2d DCA 2019).

712.05 and 712.06, Florida Statutes.⁴ No such notice was filed by that date.

10. On April 13, 1971, the plat for Myakka Valley Ranches, Unit II, was recorded by Myakka Valley, Inc., at Plat Book 20, Pages 4 and 4A of the Public Records of Sarasota, County, Florida.
11. On April 14, 1971, restrictions for Myakka Valley Ranches, Unit II were recorded by Myakka Valley, Inc., at Official Records Book 890, Page 855, *et seq.*, in the Public Records of Sarasota County, Florida.
12. On or about August 4, 1971, Myakka Valley, Inc., recorded a deed to Raymond L. and Diana C. Profant, for Lot 44, Unit II, Myakka Valley Ranches, at Official Records Book

⁴ See, Lyday v. Myakka Valley Ranches Improvement Association, 279 So.3d 733, 735 (Fla. 2d DCA 2019):

“Instead, the Association relies on section 712.03(2), which exempts “[e]states, interests, claims, or charges, or any covenant or restriction, preserved by the filing of a proper notice in accordance with the provisions hereof.”

“Section 712.05(1) sets forth the method for preserving a claim pursuant to section 712.03(2):

“A person claiming an interest in land or a homeowners' association desiring to preserve a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with this chapter. Such notice preserves such claim of right or such covenant or restriction or portion of such covenant or restriction for up to 30 years after filing the notice unless the notice is filed again as required in this chapter.

“The restrictions for Unit II were first recorded April 14, 1971, and on October 1, 1971, the developer filed a warranty deed subject to the deed restrictions transferring title to a parcel in Unit II. Thus, the Association had until 2001 to file its preservation notice pursuant to section 712.05(1). The Association filed its preservation notice in January 2004, but by then MRTA had already extinguished the restrictions rendering them “null and void.”

910, Page 399, in the Public Records of Sarasota County, Florida.

13. Hence, as to such restrictions, Myakka Valley, Inc., or its successors in interest, had until August 4, 2001 to record a notice of preservation meeting the requirements of Sections 712.05 and 712.06, Florida Statutes.⁵ No such notice was filed by that date.
14. On June 26, 1973, the plat for Myakka Valley Ranches, Unit III, was recorded at Plat Book 22, Pages 12, 12A and 12B of the Public Records of Sarasota, County, Florida.
15. On June 27, 1973, restrictions for Myakka Valley Ranches, Unit III were recorded at Official Records Book 1007, Page 615, *et seq.*, in the Public Records of Sarasota County, Florida.
16. On or about August 27, 1973, Myakka Valley, Inc., recorded a deed to Calvin J. and Nadine C. Bronson for Lot 167, Unit III, Myakka Valley Ranches at Official Records Book 1014, Page 515, in the Public Records of Sarasota County, Florida.
17. Hence, as to such restrictions, Myakka Valley, Inc., or its successors in interest, had until August 27, 2003 to record a notice of preservation meeting the requirements of Sections 712.05 and 712.06, Florida Statutes.⁶ No such notice was filed by that date.
18. On May 16, 1975, the plat for Myakka Valley Ranches, Unit IV, was recorded at Plat Book 23, Pages 10, 10A and 10B of the Public Records of Sarasota, County, Florida.
19. On May 19, 1975, restrictions for Myakka Valley Ranches, Unit IV were recorded at Official Records Book 1079, Page 343, *et seq.*, in the Public Records of Sarasota County, Florida.
20. On or about May 29, 1975, Myakka Valley, Inc., recorded a deed to C. Peter and Susan

⁵ See, footnote 4, *supra*.

⁶ See, footnote 4, *supra*.

M. Henefeld for Lot 222, Unit IV, Myakka Valley Ranches, at Official Records Book 1080, Page 770, in the Public Records of Sarasota County, Florida.

21. Hence, as to such restrictions, Myakka Valley, Inc., or its successors in interest, had until May 29, 2005 to record a notice of preservation meeting the requirements of Section 712.05 and 712.06, Florida Statutes.⁷ No such notice was filed.
22. On February 28, 1978, the plat for Myakka Valley Ranches, Unit V, was recorded at Plat Book 24, Pages 47, 47A and 47B of the Public Records of Sarasota, County, Florida.
23. On March 9, 1978, restrictions for Myakka Valley Ranches, Unit V were recorded at Official Records Book 1224, Page 639, *et seq.*, in the Public Records of Sarasota County, Florida.
24. On or about April 27, 1978, Myakka Valley, Inc., recorded a deed to Pinebrook Construction, Inc., for Lot 235, Unit V, Myakka Valley Ranches, at Official Records Book 1233, Page 1329, in the Public Records of Sarasota County, Florida.
25. Hence, as to such restrictions, Myakka Valley, Inc., or its successors in interest, had until April 27, 2008 to record a notice of preservation meeting the requirements of Sections 712.05 and 712.06, Florida Statutes.⁸ No such notice was filed.
26. Collectively, the property shown on the plat maps, above, is referred to herein as “Myakka Valley Ranches.”
27. Collectively, the above restrictions are referred to herein as the “Original Restrictions.”
Said restrictions constitute a “contract” between and among the lot owners and the

⁷ See, footnote 4, *supra*.

⁸ See, footnote 4, *supra*.

homeowners' association, if any, in said subdivision.⁹

28. True and correct copies of the above-referred to plat maps and above-mentioned deeds are filed as exhibits hereto.
29. Said plat maps contain no reference to the Original Restrictions, referred to herein, nor do they contain any reference to any purported amendments thereto.
30. True and correct copies of the Original Restrictions are also filed as exhibits hereto.
31. The Original Restrictions for Myakka Valley Ranches, Units I and II, make no provision for the creation of nor any reference to a "homeowners association." Although paragraph 13 of the Original Restrictions for Myakka Valley Ranches, Units III, IV and V mentions the Defendant-Association, it is only to the extent that paragraph 13 requires lot owners to be members of the Defendant-Association.¹⁰ None of the Original Restrictions contain a reference to chapter 720 ("**Homeowners Associations**"), Florida Statute,¹¹ nor does any provision of the Original Restrictions expressly refer to or incorporate by reference the Florida Statutes then or thereafter existing.

⁹ See, Williams v. Salt Springs Resort Association, Inc., 298 So.3d 1255, 1260 (Fla. 5th DCA 2020) ("A declaration operates as a contract among unit owners and the association, outlining their respective rights and responsibilities..."); Cohn v. Grand Condominium Association, Inc., 62 So.3d 1120, 1121 (Fla. 2011) ("A declaration ... operates as a contract among unit owners and the association, "spelling out mutual rights and obligations of the parties thereto."); Waterview Towers Condominium Association, Inc., v. City of West Palm Beach, 232 So.3d 401, 409 (Fla. 4th DCA 2017) ("These building restrictions are restrictive covenants, equitable rights arising out of the contractual relationship between and among the property owners."); Luani Plaza, Inc. v. Burton, 149 So.3d 712, 715 (Fla. 3^d DCA 2014) ("The Declaration and all properly adopted amendments thereto form a binding contract among the owners of the "units" in Luani Plaza."); and see, Dreamland Villa Community Club v. Rainey, 224 Ariz. 42, 226 P.3d 411, 416 (2010) ("Deed restrictions constitute a contract between the subdivision's property owners as a whole and the individual lot owners.").

¹⁰ Defendant, MYAKKA VALLEY RANCHES IMPROVEMENT ASSOCIATION, INC., is a Florida not-for-profit corporation.

¹¹ Nor its predecessor in ch. 617, Florida Statutes.

32. Chapter 720 (“**Homeowners Associations**”), Florida Statute, did not come into existence until 1992 (as part of ch. 617, Florida Statutes), fourteen years after the last of the Original Restrictions was recorded.
33. Each of the Original Restrictions permits amendments, some by 50% of the lot owners and some by the owners of 50% of the land encumbered.
34. Purportedly pursuant to said amendment provisions, purported amendments to the Original Restrictions were recorded on August 23, 1984 and June 12, 1986, at Official Records Book 1529, Page 440, *et seq.*, and Official Records Book 1862, Page 969, *et seq.*, respectively, in the Public Records of Sarasota County, Florida. In part, those amendments purport to require the owners of lots in Myakka Valley Ranches, Units I and II, to become members of the Defendant-Association. Plaintiffs are in doubt as to the validity of the above amendments.
35. On February 29, 2008, again purportedly pursuant to the amendment provisions in the Original Restrictions, owners of certain parcels in Myakka Valley Ranches recorded another purported amendment to the Original Restrictions. Said purported amendment (“the 2008 Amendment”) was recorded as Instrument #2008028276 in the Public Records of Sarasota County, Florida.
36. In contrast to the Original Restrictions, the 2008 Amendment purports to grant the Defendant-Association the power to enforce the covenants and restrictions in Units I-V, as well as to maintain all roads, easements, saddle trails, etc., shown on the above plat maps, and to assess the lot owners for such maintenance. It purports to obligate the lot owners to pay such annual and special assessments as the Defendant-Association may levy. It purports to grant the Defendant-Association lien rights against the lot owners’

properties for unpaid assessments. It purports to grant the Defendant-Association the right to recover attorney's fees incurred in enforcing the 2008 Amended Declaration. It purports to grant the Defendant-Association new architectural control powers. It purports to obligate lot owners to comply not only with the 2008 Amended Declaration, but also with such rules and regulations as the Defendant-Association may adopt from time to time. And, it purports to alter the amendment provisions of the Original Restrictions so that, under the 2008 Amendment, future amendments may be made by a majority of the Defendant-Association's board of directors and a 2/3's vote of the membership present at a meeting where a quorum (20% of the membership) is present. Consequently, no longer do a majority of the owners of each Unit have the ability to amend their own covenants and restrictions. Rather, all future amendments are to be made collectively by the owners of the five units the Defendant-Association purports to control. Conceivably, therefore, future amendments could be opposed by a majority of the owners in one Unit, but, nevertheless, be approved by a majority of owners in the other Units.

37. A true and correct copy of the 2008 Amendment is also filed as an exhibit hereto.

38. Plaintiffs are in doubt as to the validity of the 2008 Amendment, in light of the principles discussed in the cases of Holiday Pines Property Owners Association, Inc. v. Wetherington, 596 So.2d 84, 87 (Fla. 4th DCA 1992) and Riviera-Fort Myers Master Association, Inc. v GFH Investments, LLC, 313 So.2d 760, 764 (Fla. 2d DCA 2020), as well as the principles discussed in the case of Wilkinson v. Chiwawa Cmtys. Ass'n, Non-Profit Corp., 180 Wash.2d 241, 327 P.3d 614, 621-22 (Wash. 2014) ("*II. A Simple Majority Sought To Deprive Chiwawa Landowners of Their Property Rights, Inconsistent with the General Plan of Development*"). Plaintiffs are, additionally, in doubt as to

whether the Defendant-Association qualifies as a “homeowners association” as defined in Section 720.301, Florida Statutes.

39. Additionally, Section IV (“**Maintenance Covenants and Assessments**”) of the 2008 Amendment purports to give the Defendant-Association lien rights against Plaintiffs’ parcels. Per the 2007 amendment to Section 720.3085 (“**Payment for assessments; lien claims**”), Florida Statutes, referenced herein, said liens (if valid and if the Original Restrictions were to be revitalized) could be given priority over the existing mortgages on Plaintiffs’ parcels.
40. No notice of preservation of the Original Restrictions (nor any purported amendment thereto) in compliance with the requirements of Sections 712.05 and 712.06, Florida Statutes, was recorded in the Public Records of Sarasota County, Florida, within 30 years of the recording of the first deed subject to each of those Restrictions. As such, the Original Restrictions were “null and void” as of October 1, 2018. Though a document entitled “Notice of Preservation of Restrictions for Myakka Valley Ranches Subdivision Under Marketable Record Title Act” was recorded by the Defendant-Association on January 6, 2004 as Instrument #2004002006 in the Public Records of Sarasota County, Florida, that document was untimely and, consequently, null and void.¹² It was additionally null and void because the Defendant-Association failed to pay the Clerk’s indexing fee so as to have that notice indexed under the names of the then-owners of lots in Myakka Valley Ranches, as required by Section 712.06(2) (“**Contents of notice; recording and indexing**”), Florida Statutes (2004).¹³ Hence, the Defendant-

¹² See, footnote 4, *supra*.

¹³ Section 712.06(2) (“**Contents of notice; recording and indexing**”), Florida Statutes (2004),

Association's purported "notice" was, in fact, **no** record notice to anyone thereafter searching the titles of lot owners in Myakka Valley Ranches in the Public Records of Sarasota County, Florida. Put another way, someone thereafter searching the title of a lot owner in Myakka Valley Ranches would have **no** way of knowing from the Public Record that the Original Restrictions had been arguably preserved as to that lot. The very essence and purpose of a "**notice of preservation**" is to give "**notice**" of the preservation. Absent indexing, such a notice is no notice at all. Of note also is the fact that the Defendant-Association's purported notice contains no "partial invalidity" or "severability" clause, nor does it reflect a separate directors' vote as to whether to preserve each set of restrictions separately as opposed to preserving all five sets as a group.

41. A true and correct copy of Instrument #2004002006 is also filed as an exhibit hereto.

42. Plaintiffs, ANDREW J. and SONJA L. BEHN, are the parcel owners¹⁴ of Lot 72, Unit I, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:¹⁵

a. Deed from Myakka Valley, Inc., to James Robert and Trudy A. Taylor,

states:

"(2) Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record, and index said notice in the same manner that deeds are entered, recorded, and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a tract index, such notice shall also be indexed therein."

¹⁴ As used herein, the phrase "parcel owner" shall have the meaning stated in Section 712.12(1)(d), Florida Statutes.

¹⁵ As used herein, the phrase "title transaction" shall have the meaning stated in Section 712.01(7), Florida Statutes.

recorded on or about June 21, 1971, at Official Records Book 903, Page 20 in the Public Records of Sarasota County, Florida.

- b. Deed from James Robert and Mary Louise Taylor to Kathleen A. Alton and Marc B. Alton, recorded on or about April 5, 1993, at Official Records Book 2494, Page 769 in the Public Records of Sarasota County, Florida.
- c. Deed from Kathleen A. Alton and Marc B. Alton to Plaintiffs, ANDREW J. and SONJA I. BEHN, recorded on or about July 17, 2001, as Instrument #2001101354, in the Public Records of Sarasota County, Florida.

43. Attached to the deed referred to in paragraph 43.a., above, are a list of use restrictions.

Those use restrictions have not been extinguished by ch. 712, Florida Statutes, per the exception listed in Section 712.03(1), Florida Statutes.

44. Plaintiffs, DOUGLAS S. and CHERYL D. BOESE, are the parcel owners of Lot 36, Unit I, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Ronald D. and Dolores M. Donnmeier to Dennis M. and Marjorie A. Sullivan, recorded on or about September 2, 1988, at Official Records Book 2059, Page 2200 in the Public Records of Sarasota County, Florida.
- b. Deed from Dennis M. Sullivan to Carol D. Collins, recorded on or about July 2, 1991, at Official Records Book 2310, Page 724 in the Public Records of Sarasota County, Florida.

- c. Deed from Carol D. Collins to Annabell Rothe, recorded on or about December 29, 1993, at Official Records Book 2585, Page 836 in the Public Records of Sarasota County, Florida.
- d. Deed from Annabell Rothe to Suzanne T. and Kirk Schwartzkopf and Brigantine Doran, recorded on or about December 23, 1997, at Official Records Book 3049, Page 1259 in the Public Records of Sarasota County, Florida.
- e. Deed from Suzanne T. and Kirk Schwartzkopf and Brigantine Doran to Suzanne T. and Kirk Schwartzkopf, recorded on or about May 29, 1999, as Instrument #1999074220 in the Public Records of Sarasota County, Florida.
- f. Deed from Suzanne T. and Kirk Schwartzkopf to Suzanne T. Schwartzkopf, recorded on or about February 19, 2003, as Instrument #2003032010 in the Public Records of Sarasota County, Florida.
- g. Deed from Suzanne T. Schwartzkopf to Friedrich A. and Heidi, Korsch, recorded on or about April 4, 2004, as Instrument #2003064600 in the Public Records of Sarasota County, Florida.
- h. Deed from Friedrich A. and Heidi, Korsch to Plaintiffs, DOUGLAS S. and CHERYL D. BOESE, recorded on or about August 10, 2006, as Instrument #2006144660 in the Public Records of Sarasota County, Florida.

45. Plaintiffs, JAMES M. and MICHELLE D. BASSETT, are the parcel owners of the south half of Lot 47, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel

through the following title transactions:

- a. Deed from Stanley R. and Mary S, Dinwoodie to Darrell E. and Barbara S. Gerken, recorded on or about April 17, 1973, at Official Records Book 998, Page 441 in the Public Records of Sarasota County, Florida.
- b. Deed from Darrell E. and Barbara S. Gerken to Plaintiffs, JAMES M. and MICHELLE D. BASSETT, recorded on or about February 23, 2003, as Instrument #2003033573, in the Public Records of Sarasota County, Florida.

46. The deed referred to in paragraph 46.a., above, specifically references by Official Records Book and Page number the Original Restrictions referred to in paragraph 11, above. However, because the Original Restrictions are defined “Community covenant or restriction” or “covenant or restriction” under Sections 712.01(1) and (2) and because those two defined categories are not listed in the exceptions to marketability in Section 712.03(1), they are only preserved after thirty years from the first deed out if they are “preserved by the [timely] filing of a proper notice in accordance with” Sections 712.05 and 712.06. Such was not done by October 1, 2018. Hence, the property referred to in paragraph 46 was not encumbered by the Original Restrictions on October 1, 2018.

47. Plaintiffs, KATELYN SCIMONE and MITCHELL L. McCAFFREY, Jr., are the parcel owners of the south half of Lot 48, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed George E. and Bonnie B. Zink to Raymond P. and Karlyn A. McPartlin, recorded on or about February 22, 1982, at Official Records Book 1494, Page 1351 in the Public Records of Sarasota County,

Florida.

- b. Deed from Raymond P. McPartlin to William K. Hall, recorded on or about December 29, 1988, at Official Records Book 2151, Page 1530 in the Public Records of Sarasota County, Florida
- c. Certificate of Title in favor of Wells Fargo Bank, N.A, Trustee, recorded on or about June 29, 2010, as Instrument #2010079300, in the Public Records of Sarasota County, Florida.
- d. Deed from Wells Fargo Bank, Trustee, to Katelyn Scimone, recorded on or about May 4, 2012, as Instrument #201205777, in the Public Records of Sarasota County, Florida.
- e. Deed from Katelyn Scimone to Plaintiffs, KATELYN SCIMONE and MITCHELL L. McCAFFREY, Jr., recorded on or about June 12, 2013, as Instrument #2013082369 in the Public Records of Sarasota County, Florida.

48. Plaintiffs, DEANNA DAWN MIXON-PRIETSCH and ROBERT E. PRIETSCH, are the parcel owners of the south half of Lot 53, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Warren C. and Janice S. Jillson to Louis J. and Phyllis E. Yambor, recorded on or about June 9, 1984, at Official Records Book 1695, Page 1379 in the Public Records of Sarasota County, Florida.
- b. Deed from Louis J. and Phyllis E. Yambor to Susana R. Pouso, recorded on or about June 16, 1993, at Official Records Book 2517, Page 2258 in the Public Records of Sarasota County, Florida.

- c. Deed from Susana R. Pouso to Plaintiffs, DEANNA DAWN MIXON-PIETSCH and ROBERT E. PIETSCH, recorded on or about November 16, 2017, as Instrument #2017141749, in the Public Records of Sarasota County, Florida.

49. Plaintiff, JERRY L. MIXON, is the parcel owner of Lot 56, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed Robert E. and Connie S. Zimmit to Plaintiff, JERRY L. MIXON and MELODY C. MIXON, recorded on or about March 13, 1978, at Official Records Book 1224, Page 1723, in the Public Records of Sarasota County, Florida..

50. Plaintiff, SHARI THOMPSON, is the parcel owner of part of Lot 58, Unit II, Myakka Valley Ranches (more particularly described on the deeds filed here with). Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc., to John S. and Altha E. Marcone, recorded on or about October 18, 1971, in the Public Records of Sarasota County, Florida.
- b. Deed from Pamela O'Dwyer, Guardian of John S. and Altha E. Marcone, to John S. and Altha G. Marcone, recorded on or about February 8, 1991, at Official Records Book 2274, Page 835, in the Public Records of Sarasota County, Florida.
- c. Deed from Kenneth D. Chapman, Successor Trustee of Altha G. Marcone Trust, to Plaintiff, SHARI THOMPSON, recorded on or about

February 26, 2001, as Instrument #2001024409, in the Public Records of Sarasota County, Florida.

51. The deed referred to in paragraph 50.a., above, specifically references by Official Records Book and Page number the Original Restrictions referred to in paragraph 11, above. However, because the Original Restrictions are defined “Community covenant or restrictions” or “covenant or restrictions” under Sections 712.01(1) and (2) and because those two defined categories are not listed in the exceptions to marketability in Section 712.03(1), they are only preserved after thirty years from the first deed out if they are “preserved by the [timely] filing of a proper notice in accordance with” Sections 712.05 and 712.06. Such was not done by October 1, 2018. Hence, the property referred to in paragraph 46 was not encumbered by the Original Restrictions on October 1, 2018.

52. Plaintiffs, STEVEN S. and TAMMY LYDAY, are the parcel owners of Lot 76, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from David E. and Carola M. Olson to Burton C. and Jo Ann Quam, recorded on or about January 21, 1980, at Official Records Book 1351, Page 1274 in the Public Records of Sarasota County, Florida.
- b. Deed from Burton C. and Jo Ann Quam to Sean Osborne, recorded on or about January 22, 1991, at Official Records Book 2269, Page 2461 in the Public Records of Sarasota County, Florida.
- c. Deed from Sean Osborne to Susan L. Nordmark, recorded on or about June 17, 1996, at Official Records Book 2864, Page 296, in the Public Records of Sarasota County, Florida.

- d. Deed from Susan L. Nordmark to Natalie R. Wolter, recorded on or about February 1, 2000, as Instrument #2000012283, in the Public Records of Sarasota County, Florida.
- e. Deed from Natalie R. Wolter to Francis and Cynthia J. Albano, recorded on or about February 1, 2002, as Instrument #2002018043, in the Public Records of Sarasota County, Florida.
- f. Deed from Francis and Cynthia J. Albano to Plaintiffs, STEVEN S. and TAMMY LYDAY, recorded on or about March 16, 2010, as Instrument #2010032163, in the Public Records of Sarasota County, Florida.

53. Plaintiffs, GRANT T. and NICOLE M. GADWAY, are the parcel owners of Lot 77, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from John C. and Marie E. Planker to John C. Planker, recorded on October 16, 1985, at Official Records Book 1811, Page 1400 in the Public Records of Sarasota County, Florida..
- b. Deed from John C. Planker to Robert Nikla, recorded on August 17, 2005, as Instrument #2005184794, in the Public Records of Sarasota County, Florida..
- c. Deed from Robert Nikla to William A and Norma Whitler, recorded on April 4, 2006, as Instrument #2006062257, in the Public Records of Sarasota County, Florida.
- d. Deed from William A and Norma Whitler to Plaintiffs, GRANT T. and NICOLE M. GADWAY, recorded on April 4, 2017, as Instrument

#2017041446, in the Public Records of Sarasota County, Florida.

54. Plaintiff, DONALD R. SUMMERLIN, is the parcel owner of part of Lot 78, Unit II, Myakka Valley Ranches (more particularly described on the deeds filed here with). Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed Edward W. and Dorothy E. Krasenics to Mel and Terry M. Decker, recorded on or about March 28, 1982, at Official Records Book 1501, Page 293 in the Public Records of Sarasota County, Florida.
- b. Deed from Mel and Terry M. Decker to Plaintiff, DONALD R. SUMMERLIN, recorded on or about December 31, 1990, at Official Records Book 2265, Page 2766 in the Public Records of Sarasota County, Florida.

55. Plaintiffs, KEITH N. and PRISCILLA BRADLEY, are the parcel owners of Lot 79, Unit II, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Thomas G. and Helen A. Sears to Murray G. and Cynthia C. Watkins, recorded on or about March 7, 1988, at Official Records Book 2014, Page 1041 in the Public Records of Sarasota County, Florida.
- b. Deed from Murray G. and Cynthia C. Watkins to Plaintiffs, KEITH N. and PRISCILLA BRADLEY, recorded on or about June 2, 1995, at Official Records Book 2744, Page 612, in the Public Records of Sarasota County, Florida.

56. Plaintiff, DANIEL J. MAHONEY, is the parcel owner of the north 340 feet of Lot 81, Unit II, Myakka Valley Ranches. Said Plaintiff derives title to said parcel through the

following title transactions:

- a. Deed from Dawn E. Tarquini to Darrell F. and Pamela S. Holler, recorded on or about June 2, 1983, at Official Records Book 1590, Page 688 in the Public Records of Sarasota County, Florida.
- b. Deed from Darrell F. and Pamela S. Holler to George T. Zimmer, recorded on or about December 30, 1988, at Official Records Book 2087, Page 2169 in the Public Records of Sarasota County, Florida.
- c. Deed from George T. Zimmer to James R. and Susan I. Nordmark, recorded on or about March 14, 1989, at Official Records Book 2106, Page 1793 in the Public Records of Sarasota County, Florida.
- d. Deed from James R. and Susan I. Nordmark to John J. and Sandra K. Krisch, recorded on or about May 25, 1995, at Official Records Book 2741, Page 2689 in the Public Records of Sarasota County, Florida.
- e. Deed from John J. and Sandra K. Krisch to Roger S. and Mary E. Marquis, recorded March 19, 2004, as Instrument #2004049360, in the Public Records of Sarasota County, Florida.
- f. Deed from Roger S. and Mary E. Marquis to Roger S. and Mary E. Marquis, Trustees, recorded January 9, 2006, as Instrument #2006003939, in the Public Records of Sarasota County, Florida.
- g. Deed from Roger S. and Mary E. Marquis, Trustees, to Daniel L and Joan R, McGee, recorded October 6, 2008, as Instrument #2008133944, in the Public Records of Sarasota County, Florida.
- h. Deed from Daniel L and Joan R, McGee, recorded July 28, 2017, as

Instrument #2017094978, in the Public Records of Sarasota County, Florida.

57. Plaintiffs, THEODORE P. WENTZEL, JR., and CYNTHIA D. WENTZEL, are the parcel owners of Lots 91 and 91A, Unit III, Myakka Valley Ranches. Said Plaintiffs derives title to said parcels through the following title transactions:

- a. Deed Matthew Gillette Robinson to John W. Kolb, Jr., and Julia M. Kolb, recorded on or about December 3, 1986, at Official Records Book 1904, Page 1781 in the Public Records of Sarasota County, Florida..
- b. Deed from John W. Kolb, Jr., and Julia M. Kolb to Wentzel's Investments, LLC., recorded September 4, 2015, as Instrument #2015111361, in the Public Records of Sarasota County, Florida
- c. Deed from Wentzel's Investments, LLC to Plaintiffs, THEODORE P. WENTZEL, JR., and CYNTHIA D. WENTZEL, recorded October 6, 2015, as Instrument #2015124522, in the Public Records of Sarasota County, Florida.

58. Plaintiffs, JEFFREY A. and DENISE M. GEIGER, are the parcel owners of Lot 194, Unit IV, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Spencer C. and Valerie Whittington to William J., Robert W. and Margaret L Scholz, recorded on or about September 3, 1987, at Official Records Book 1972, Page 1203 in the Public Records of Sarasota County, Florida.
- b. Deed from Robert W. and Margaret L Scholz to Plaintiffs, JEFFREY A.

and DENISE M. GEIGER, recorded on or about August 15, 1993, at Official Records Book 2765, Page 2510 in the Public Records of Sarasota County, Florida.

59. Plaintiffs, DARRIN J. CARE, MAHLON J. CARE, CATHERINE B. CARE, and TAMI V. CARE, are the parcels owner of Lot 245A, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Scott A. and Lori B. Dreffin to Mahlon J. and Catherine B. Care, recorded on or about September 17, 1987, at Official Records Book 1975, Page 2609 in the Public Records of Sarasota County, Florida.
- b. Deed from Mahlon J. and Catherine B. Care to Plaintiffs, DARRIN J. CARE, MAHLON J. CARE, CATHERINE B. CARE, and TAMI V. CARE, recorded on or about May 8, 1997, at Official Records Book 2967, Page 2542 in the Public Records of Sarasota County, Florida.

60. Plaintiffs, JOSEPH DEAN ROBINSON and ABIGAIL S. ROBINSON, are the parcel owners of Lot 248, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Joseph D. and Charlotte M. Robinson to Joseph D. and Abigail S. Robinson, recorded on or about November 28, 1983, at Official Records Book 1635, Page 926 in the Public Records of Sarasota County, Florida.

61. Plaintiffs, KIM and SUSAN SLAUBAUGH, are the parcel owners of Lot 260, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following

title transactions:

- a. Deed from Myakka Valley, Inc., to Lavon and Joyce Parrish, recorded on or about November 1, 1978, at Official Records Book 1268, Page 975 in the Public Records of Sarasota County, Florida.
- b. Deed from La Von and Joyce Parrish to Timothy K. and Susan Schulz, recorded on or about September 3, 1991, at Official Records Book 2325 Page 826 in the Public Records of Sarasota County, Florida.
- c. Deed from Timothy K. and Susan Schulz to Susan Schulz, Erwin Wertjen and Brigitte Wertjen, recorded on or about January 19, 1996, at Official Records Book 2812 Page 2213 in the Public Records of Sarasota County, Florida.
- d. Deed from Susan Schulz, Erwin Wertjen and Brigitte Wertjen to Plaintiffs, KIM and SUSAN SLAUBAUGH, recorded on or about February 14, 2003, as Instrument #2003029719, in the Public Records of Sarasota County, Florida.

62. The deed referred to in paragraph 61.a., above, specifically references by Official Records Book and Page number the Original Restrictions referred to in paragraph 23, above. However, because the Original Restrictions are defined “Community covenant or restrictions” or “covenant or restrictions” under Sections 712.01(1) and (2) and because those two defined categories are not listed in the exceptions to marketability in Section 712.03(1), they are only preserved after thirty years from the first deed out if they are “preserved by the [timely] filing of a proper notice in accordance with” Sections 712.05 and 712.06. Such was not done by October 1, 2018. Hence, the property referred to in

paragraph 46 was not encumbered by the Original Restrictions on October 1, 2018.

63. Plaintiffs, WAYNE E. and LUCINDA B. LIND, are the parcel owners of Lot 262, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from John H. and Laure A. Craddock to Carolyn L. Wells, recorded on or about July 2, 1981, at Official Records Book 1452, Page 265 in the Public Records of Sarasota County, Florida.
- b. Deed from Carolyn L. Wells to Henry L and Donna Schinzel, recorded on or about June 6, 1989, at Official Records Book 2126, Page 1030, in the Public Records of Sarasota County, Florida.
- c. Deed from Henry L and Donna Schinzel to Donna Schinzel, recorded on or about August 4, 1995, at Official Records Book 2763, Page 268, in the Public Records of Sarasota County, Florida.
- d. Deed from Donna Schinzel to Marc and Donna Simon, recorded on or about September 12, 2003, as Instrument #2003185330, in the Public Records of Sarasota County, Florida.
- e. Deed from Marc and Donna Simon to Plaintiffs, WAYNE and LUCINDA LIND, recorded on or about September 18, 2012, as Instrument #2012119958, in the Public Records of Sarasota County, Florida.

64. Plaintiffs, WAYNE E. and LUCINDA B. LIND, are the parcel owners of that part of Section 19, Township 37 South, Range 20 East, in Sarasota County, Florida (more particularly described on the deeds filed here with). Said Plaintiffs derive title to said

parcel through the following title transactions:

- a. Deed from The Nature Conservancy to Cindi Bennett and Wayne E. Lind, recorded on or about August 19, 1986, at Official Records Book 1879, Page 2905 in the Public Records of Sarasota County, Florida.
- b. Deed from Cindi Bennett and Wayne E. Lind to Plaintiffs, WAYNE E. and LUCINDA B. LIND, recorded on or about December 2, 1987, at Official Records Book 1993, Page 215 in the Public Records of Sarasota County, Florida.

65. Plaintiff, ARTHUR R. PIETSCH, is a parcel owner of Lot 34, Unit I, Myakka Valley Ranches. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc., to Helen and Carroll N. Pickett, recorded on or about August 18, 1969, at Official Records Book 804, Page 454 in the Public Records of Sarasota County, Florida.
- b. Deed from Helen Pickett to Audie and Margaret F. Seals, recorded on or about April 16, 1992, at Official Records Book 2388, Page 1369 in the Public Records of Sarasota County, Florida.
- c. Deed from Audie and Margaret F. Seals to Plaintiff. ARTHUR R. PIETSCH, and Gina M. Pietsch, recorded on or about October 19, 1999, as Official Records Instrument #1999140645, in the Public Records of Sarasota County, Florida.

66. Attached to the deed referred to in paragraph 65.a., above, are a list of use restrictions. Those use restrictions have not been extinguished by ch. 712, Florida Statutes, per the

exception listed in Section 712.03(1), Florida Statutes.

67. Plaintiff, THE CHARLENE BURT REVOCABLE TRUST, is the parcel owner of that part of Lot 40, Unit II, Myakka Valley Ranches, described on the deeds below. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from John M. and Pamela D. Beakley to William E. and Eunice B. Brasington, recorded on or about April 15, 1980, at Official Records Book 1366, Page 838 in the Public Records of Sarasota County, Florida.
- b. Deed from the heirs of William E. Brasington to George A. and Joan A. Gonsalves, recorded on or about March 28, 1996, at Official Records Book 2836, Page 251 in the Public Records of Sarasota County, Florida.
- c. Deed from George A. and Joan A. Gonsalves to Robert and Lorraine B. Turner, recorded on or about February 11, 2003, as Official Records Instrument #2003027215 in the Public Records of Sarasota County, Florida.
- d. Deed from Robert and Lorraine B. Turner to Charlene Burt, recorded on or about November 16, 2007, as Official Records Instrument #2007172196 in the Public Records of Sarasota County, Florida.
- e. Deed from Charlene Burt to Plaintiff, THE CHARLENE BURT REVOCABLE TRUST, recorded on or about December 9, 2008, as Official Records Instrument #2008159202 in the Public Records of Sarasota County, Florida.

68. Plaintiffs, WILLIAM KREILING, III, and JUDY A. KREILING, are the parcel owners of that part of Lot 50A, Unit II, Myakka Valley Ranches, described on the below deeds.

Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Edward W. and Dorothy E. Krasenics to Mel and Terry M. Decker, recorded on or about March 26, 1982, at Official Records Book 1501, Page 293 in the Public Records of Sarasota County, Florida.
- b. Deed from Mel and Terry M. Decker to Michael E. and Linda A. McBride, recorded on or about May 5, 1995, at Official Records Book 2736, Page 1086 in the Public Records of Sarasota County, Florida.
- c. Deed from Michael E. and Linda A. McBride to Plaintiffs, WILLIAM KREILING, III, and JUDY A. KREILING (a/k/a Judith Kreiling), recorded on or about October 22, 1998, as Official Records Instrument #1998141548 in the Public Records of Sarasota County, Florida.

69. Plaintiffs, ARTHUR E. LANGE and CAROL S. LANGE, are the parcel owners of Lot 64, Unit I, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Ralph J. Mitchell, III, to Richard G. and Gloria Taber, recorded on or about June 24, 1981 at Official Records Book 1449, Page 2115 in the Public Records of Sarasota County, Florida.
- b. Deed from Richard G. and Gloria Taber to Tate and Lucille

Gabbert, recorded on or about September 25, 1989, at Official Records Book 2153, Page 2758, in the Public Records of Sarasota County, Florida.

- c. Deed from Tate and Lucille Gabbert to Deborah K. Graham, recorded on or about July 25, 1994, at Official Records Book 2625, Page 740 in the Public Records of Sarasota County, Florida.
- d. Deed from Deborah K. Graham to Robert A. Lorensen and Bessie S. Swift, recorded on or about July 25, 1997, at Official Records Book 2995, Page 2342 in the Public Records of Sarasota County, Florida.
- e. Deed from Robert A. Lorensen and to Robert A. Lorensen and Bessie S. Swift recorded on or about September 30, 1997, at Official Records Book 3018, Page 1629 in the Public Records of Sarasota County, Florida.
- f. Deed from Robert A. Lorensen to Richard C. Bronge, recorded on or about December 17, 2013, as Official Records Instrument #2013167503 in the Public Records of Sarasota County, Florida.
- g. Deed from Richard C. Bronge to Plaintiffs, ARTHUR E. LANGE and CAROL S. LANGE, recorded on or about August 13, 2014, as Official Records Instrument #2014096592 in the Public Records of Sarasota County, Florida.

70. Plaintiff, THE JULIA E. AJAMIAN REVOCABLE LIVING TRUST, is the parcel owner of that part of Lot 65, Unit I, Myakka Valley Ranches, described on the deeds below. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Donald B. and Cynthia A. Whitehouse to Richard G. and Gloria Taber, recorded on or about March 1, 1977, at Official Records Book 1164, Page 448 in the Public Records of Sarasota County, Florida.
- b. Deed from Richard G. and Gloria Taber to Julia E. Ajamian, recorded on or about July 10, 1990, at Official Records Book 2225, Page 765 in the Public Records of Sarasota County, Florida.
- c. Deed from Julia E. Ajamian to Plaintiff, THE JULIA E. AJAMIAN REVOCABLE LIVING TRUST, recorded on or about August 6, 2009, as Official Records Instrument #2009097274 in the Public Records of Sarasota County, Florida.

71. Plaintiffs, DUSTIN COHEN and JASMINA COHEN, are the parcel owners of Lot 67, Unit I, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Robert D. and Shirley F. Hapner to David L. and Cindy L. Ferguson, recorded on or about August 1, 1983, at Official Records Book 1606, Page 0091, in the Public Records of Sarasota County, Florida.
- b. Deed from David L. and Cindy L. Ferguson to David L. Ferguson, recorded on or about March 23, 2001, as Official Records Instrument #2001037743, in the Public Records of Sarasota County, Florida.
- c. Deed from David L. Ferguson to Daniel C. and Gloria L.

Lowrey, recorded on or about February 1, 2002, as Official Records Instrument #2002018060, in the Public Records of Sarasota County, Florida.

- d. Certificate of Title from Daniel C. and Gloria L. Lowrey to U.S. Bank, N.A., recorded on or about July 28, 2015, as Official Records Instrument #2015093262, in the Public Records of Sarasota County, Florida.
- e. Deed from U.S. Bank, N.A., to Donald M. LaPlante and Tracey J. Walker, recorded on or about July 12, 2016, as Official Records Instrument #2016086194, in the Public Records of Sarasota County, Florida.
- f. Deed from Donald M. LaPlante and Tracey J. Walker to Donald M. LaPlante, recorded on or about February 24, 2017, as Official Records Instrument #2017022701, in the Public Records of Sarasota County, Florida.
- g. Deed from Donald M. LaPlante to Plaintiffs, DUSTIN COHEN and JASMINA COHEN, recorded on or about March 24, 2017, as Official Records Instrument # 2017035175, in the Public Records of Sarasota County, Florida,

72. Plaintiffs, JAMES MATHON and HOLLY BRODY, are the parcel owners of Lot 82, Unit III, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Stanley R. and Mary S. Dinwoodie to Norman C. and Laura L.

McAllister, recorded on or about June 5, 1975, at Official Records Book 1081, Page 110 in the Public Records of Sarasota County, Florida.

b. Deed from Norman C. and Laura L. McAllister to Linda F. and William J. Peterson, recorded on or about December 4, 1995, at Official Records Book 2798, Page 2343 in the Public Records of Sarasota County, Florida.

c. Deed from William J. Peterson to Linda F. Peterson, recorded on or about January 26, 1996, at Official Records Book 2865, Page 1118 in the Public Records of Sarasota County, Florida.

d. Deed from Linda F. Peterson to Plaintiffs, JAMES MATHON and HOLLY BRODY, recorded on or about February 13, 2013, as Official Records Instrument #2013022050 in the Public Records of Sarasota County, Florida.

73. Plaintiffs, TIMOTHY DANGARAN and LEAH DANGARAN, are the parcel owners of Lot 85, Unit III, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

a. Deed from Donald A. Whitmer to Brenda F. Whitmer, recorded on or about April 22, 1985, at Official Records Book 1771, Page 627, in the Public Records of Sarasota County, Florida.

b. Deed from Brenda F. Whitmer to Ronald E. and Jennifer L. Carr, recorded on or about August 13, 1993, at Official Records Book 2539, Page 96 in the Public Records of Sarasota County, Florida.

c. Deed from Ronald E. and Jennifer L. Carr to C T Closing Corporation, recorded on or about March 31, 1998, at Official Records Book 3087, Page 2652 in the Public Records of Sarasota County,

Florida.

- d. Deed from C T Closing Corporation to Stephen R. Grant, et al., recorded on or about March 31, 1998, at Official Records Book 3087, 2655 of Sarasota County, Florida.
- e. Deed from Stephen R. Grant to Plaintiffs, TIMOTHY DANGARAN and LEAH DANGARAN, recorded on or about May 23, 2017, as Official Records Instrument #2017064103 in the Public Records of Sarasota County, Florida.

74. Plaintiffs, MARK L. HUDSON and GAYLENE R. HUDSON, are the parcel owners of that part of Lot 103, Unit III, Myakka Valley Ranches described on the deeds below. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Freida S. Wiley to Lloyd C. and Elizabeth V. Younkin, recorded on or about August 16, 1977 at Official Records Book 1188, Page 1174 in the Public Records of Sarasota County, Florida.
- b. Deed from Lloyd C. and Elizabeth V. Younkin to Michael S. Freeman, recorded on or about April 27, 1994, at Official Records Book 2625, Page 669, in the Public Records of Sarasota County, Florida.
- c. Deed from Michael S. Freeman to Joyce St. Giermaine and Timothy Seldin, recorded on or about August 7, 2000, as Official Records Instrument #2000100918 in the Public Records of Sarasota County, Florida.
- d. Deed from Joyce St. Giermaine and Timothy Seldin to Thomas H. and Jacqueline H. Street, recorded on or about September 3, 2003, as Official

Records Instrument #2003178130 in the Public Records of Sarasota County, Florida.

- e. Deed from Thomas H. and Jacqueline H. Street to Plaintiffs, MARK L. HUDSON and GAYLENE R. HUDSON, recorded on or about February 27, 2008, as Official Records Instrument # 2008026722 in the Public Records of Sarasota County, Florida.

75. Plaintiffs, JOHNNY RUTLEDGE and RANDY RUTLEDGE, are the parcel owners of Lot 104, Unit III, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from William J. and Dolores E. Beauchamp to William E. and Laurencine Shackleton, recorded on or about January 22, 1987, at Official Records Book 1917, Page 1773 in the Public Records of Sarasota County, Florida.
- b. Deed from Richard E. Shackleton, P.R., to Richard E. Shackleton, Trustee, recorded on or about February 27, 2014, as Official Records Instrument # 2014022765 in the Public Records of Sarasota County, Florida.
- c. Deed from Richard E. Shackleton, Trustee, to Raymond C. Shackleton, recorded on or about February 27, 2014, as Official Records Instrument # 2014022767 in the Public Records of Sarasota County, Florida.
- d. Deed from Raymond C. Shackleton to NMA Acres LLC, recorded on or about September 7, 2016, as Official Records Instrument #

201611252 in the Public Records of Sarasota County, Florida.

- e. Deed from NMA Acres LLC to Plaintiffs, JOHNNY RUTLEDGE and RANDY RUTLEDGE, recorded on or about January 7, 2019, as Official Records Instrument # 2019001580 in the Public Records of Sarasota County, Florida.

76. Plaintiffs, JACOB CONRAD and MACI CONRAD, are the parcel owners of Lot 111, Unit III, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc., to Grovne T. and Wanda W. Hall, recorded on or about August 3, 1976, at Official Records Book 1131, Page 2004 in the Public Records of Sarasota County, Florida.
- b. Deed from Wanda W. Hall to Plaintiffs, JACOB CONRAD and MACI CONRAD, recorded on or about February 27, 2020, as Official Records Instrument # 2020027951 in the Public Records of Sarasota County, Florida.

77. Plaintiffs, DONALD H. POWERS, BETTY C. POWERS, and POWERS FAMILY REVOCABLE TRUST, is the parcel owner of Lot 144, Unit III, Myakka Valley Ranches. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Thomas G. and Connie J. Wells to Donald H. and Betty C. Powers, recorded on or about August 6, 1986, at Official Records Book 1876, Page 880 in the Public Records of Sarasota County, Florida.
- b. Deed from Donald H. and Betty C. Powers to Plaintiff, POWERS FAMILY REVOCABLE TRUST, recorded on or about March 25, 2019 as Official Records

Instrument #2019036719 in the Public Records of Sarasota County, Florida.

78. Plaintiffs, JUSTIN MAJORS and MELISSA MAJORS, are the parcel owners of Lot 147, Unit III, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc., to Margaret E. Kleiner, recorded on or about September 28, 1973, at Official Records Book 1018, Page 89, in the Public Records of Sarasota County, Florida.
- b. Deed from Linda Jean Greiner, attorney-in-fact for Margaret E. Kleiner, to Harold E. and Charlotte D. Evans, recorded on or about February 19, 1997, at Official Records Book 2940, Page 559, in the Public Records of Sarasota County, Florida.
- c. Deed from Harold E. and Charlotte D. Evans to Charlotte E. Evans, recorded on or about December 1, 2005, as Official Records Instrument #2005265739, in the Public Records of Sarasota County, Florida.
- d. Deed from Charlotte E. Evans to Plaintiffs, JUSTIN MAJORS and MELISSA MAJORS, recorded on or about January 30, 2020, as Official Records Instrument #2020013410, in the Public Records of Sarasota County, Florida.

78. Plaintiffs, MICHAEL W. PATTON and ANGELA N. PATTON, are the parcel owners of that part of Lot 169, Unit III, Myakka Valley Ranches, described on the deeds below. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Homer B. and Christel G. Anderson to Gary C. and Constant L. Swikle, recorded on or about March 19, 1987, at Official Records Book 1930, Page 2095, in the Public Records of Sarasota County, Florida.
- b. Deed from Gary C. and Constant L. Swikle to John K. and Jean H. Patton,

recorded on or about June 30, 1995, at Official Records Book 2753, Page 1666, in the Public Records of Sarasota County, Florida.

- c. Deed from John K. and Jean H. Patton to Plaintiffs, MICHAEL W. PATTON and ANGELA N. PATTON, recorded on or about November 1, 2006, as Official Records Instrument #2006193096 in the Public Records of Sarasota County, Florida.

79. Plaintiff, AARON GARBER, is the parcel owner of Lot 176, Unit IV, Myakka Valley Ranches. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc. to Michael and Donna M. Garber, recorded on or about December 1, 1979, at Official Records Book 1331, Page 780, in the Public Records of Sarasota County, Florida.
- b. Deed from Michael and Donna M. Garber to Karsten and Nadine Garber, recorded on or about July 2, 1992, at Official Records Book 2412, Page 2483 in the Public Records of Sarasota County, Florida.
- c. Deed from Karsten and Nadine Garber to Plaintiff, AARON GARBER, recorded on or about March 21, 2016, as Official Records Instrument # 2016033270 in the Public Records of Sarasota County, Florida.

80. The deed referred to in paragraph 79.a., above, specifically references by Official Records Book and Page number the Original Restrictions referred to in paragraph 19, above. However, because the Original Restrictions are defined “Community covenant or restriction” or “covenant or restriction” under Sections 712.01(1) and (2) and because those two defined categories are not listed in the exceptions to marketability in Section 712.03(1), they are only preserved after thirty years from the first deed out if they are “preserved by the [timely] filing of a proper notice in

accordance with” Sections 712.05 and 712.06. Such was not done by October 1, 2018. Hence, the property referred to in paragraph 79 was not encumbered by the Original Restrictions on October 1, 2018.

81. Plaintiffs, DEWEY MIXON and NICOLE MIXON, are the parcel owners of Lot 205, Unit IV, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Thomas E. and Frances J. Myers to Richard E. Irvin and Jerry M. Bonafonte, recorded on or about November 6, 1987, at Official Records Book 1987, Page 2141, in the Public Records of Sarasota County, Florida.
- b. Order Determining Homestead Status of Real Property, recorded on or about June 7, 2006, as Official Records Instrument # 2006113106, in the Public Records of Sarasota County, Florida.
- c. Deed from Daniel and Jesse Irvin to Jan and Ewa Gilowski, recorded on or about June 20, 2006, as Official Records Instrument # 2006105386, in the Public Records of Sarasota County, Florida.
- d. Deed from Jan and Ewa Gilowski to Plaintiffs, DEWEY MIXON and NICOLE MIXON, recorded on or about April 5, 2021, as Official Records Instrument # 2021060170, in the Public Records of Sarasota County, Florida.

82. Plaintiffs, JAN ADRIAAN BOTHA and GERTINE JACOBA DeBEER, are the parcel owners of Lot 208, Unit IV, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Agreement for Deed from Janice L. McAllister, Trustee, to Michael C. and Angela G. Swart, recorded on or about September 23, 1988, at Official Records Book

- 2064, Page 402, in the Public Records of Sarasota County, Florida.
- b. Deed from Michael C. Swart to Angela G. Swart, recorded on or about April 19, 1996, at Official Records Book 2843, Page 821, in the Public Records of Sarasota County, Florida.
 - c. Deed from Janice L. McAllister, Trustee, to Angela G. Swart, recorded on or about November 20, 1998, as Official Records Instrument # 1998155093, in the Public Records of Sarasota County, Florida.
 - d. Deed from Janice L. McAllister and Angela G. Swart to Bram Riegel, recorded on or about January 27, 2003, as Official Records Instrument # 2003015554, in the Public Records of Sarasota County, Florida.
 - e. Deed from Bram Riegel to Darren K. and Danielle Whitley, recorded on or about October 7, 2005, as Official Records Instrument # 2005226910, in the Public Records of Sarasota County, Florida.
 - f. Deed from Darren K. and Danielle Whitley to Brett and Courtney Washmuth, recorded on or about August 11, 2010, as Official Records Instrument #2010097954, in the Public Records of Sarasota County, Florida.
 - g. Deed Brett and Courtney Washmuth to James A. and Boni L. Loudon, recorded on or about June 6,2018, as Official Records Instrument # 2018074876, in the Public Records of Sarasota County, Florida.
 - h. Deed from Brett Washmuth to Courtney Washmuth, recorded on or about March 19, 2019, as Official Records Instrument #2019032756, in the Public Records of Sarasota County, Florida.
 - i. Deed from Courtney Washmuth and James A. and Boni L. Loudon to Plaintiffs,

JAN ADRIAAN BOTHA and GERTINE JACOBA DeBEER, recorded on or about March 19, 2019, as Official Records Instrument #2019032757, in the Public Records of Sarasota County, Florida.

83. Plaintiff, JULIE A. SNYDER, is the parcel owner of Lot 211, Unit IV, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Peter and Gertaude Steenfatt to Timothy J. and Nadine J. Allmond, recorded on or about August 28, 1987, at Official Records Book 1971, Page 2569, in the Public Records of Sarasota County, Florida.
- b. Deed from Timothy J. and Nadine J. Allmond to Thomas Rigney, recorded on or about July 24, 1989, at Official Records Book 2138, Page 2077, in the Public Records of Sarasota County, Florida.
- c. Deed from Thomas Rigney to Millicent E. Kennedy, recorded on or about April 1, 2002, as Official Records Instrument #20029511491, in the Public Records of Sarasota County, Florida.
- d. Deed from Millicent E. Kennedy to Millicent E. Kennedy, Trustee, recorded on or about March 28, 2002, as Official Records Instrument #20029511493, in the Public Records of Sarasota County, Florida.
- e. Certificate of Title from Millicent E. Kennedy, Trustee, to Patricia A. Martin, recorded on or about January 8, 2013, as Official Records Instrument #2013003020, in the Public Records of Sarasota County, Florida.
- f. Deed from Patricia A. Martin to Julie A. Snyder, recorded on or about June 9, 2014, as Official Records Instrument #2014067115, in the Public Records of Sarasota County, Florida.

84. Plaintiffs, MICHAEL DELARUE and CHRISTINA DELARUE, are the parcel owners of Lot 219, Unit IV, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Gary B. and Elaine M. Crowell to Paul D. and Susan B. Shrader, recorded on or about August 1, 1980, at Official Records Book 1384, Page 788, in the Public Records of Sarasota County, Florida.
- b. Deed from Paul D. and Susan B. Shrader to Charles T. and Dolores Dougherty, recorded on or about May 6, 1997, at Official Records Book 2967, Page 511, in the Public Records of Sarasota County, Florida.
- c. Deed from Charles T. and Dolores Dougherty to James Dougherty, recorded on or about July 1, 2002, as Official Records Instrument #2002107276, in the Public Records of Sarasota County, Florida.
- d. Deed from Charles T. and Diana M. Dougherty to James C. Dougherty, recorded on or about May 2, 2003, as Official Records Instrument #2003085316, in the Public Records of Sarasota County, Florida.
- e. Deed from James C. and Diana M. Dougherty to Plaintiffs, MICHAEL DELARUE and CHRISTINA DELARUE, recorded on or about October 9, 2017, as Official Records Instrument #2017124623, in the Public Records of Sarasota County, Florida.

85. Plaintiffs, RONALD W. HASSELMAN and SHARLENE A. HASSELMAN, are the parcel owners of that part of Lot 230, Unit IV, Myakka Valley Ranches, described on the deeds below. Said Plaintiffs derive title to said parcel through the following title transactions:

- a. Deed from Myakka Valley, Inc., to Robert W. and Lou Don Bates, recorded on or

about August 22, 1975, at Official Records Book 1089, Page 615, in the Public Records of Sarasota County, Florida.

- b. Deed from Robert W. Bates to Lou Don Bates, recorded on or about October 1, 2001, as Official Records Instrument #2001140387, in the Public Records of Sarasota County, Florida.
- c. Deed from Lou Don Bates to Plaintiffs, RONALD W. HASSELMAN and SHARLENE A. HASSELMAN, recorded on or about February 25, 2002, as Official Records Instrument #2002031103, in the Public Records of Sarasota County, Florida.

86. The deed referred to in paragraph 85.a., above, specifically references by Official Records Book and Page number the Original Restrictions referred to in paragraph 19, above. However, because the Original Restrictions are defined “Community covenant or restriction” or “covenant or restriction” under Sections 712.01(1) and (2) and because those two defined categories are not listed in the exceptions to marketability in Section 712.03(1), they are only preserved after thirty years from the first deed out if they are “preserved by the [timely] filing of a proper notice in accordance with” Sections 712.05 and 712.06. Such was not done by October 1, 2018. Hence, the property referred to in paragraph 85 was not encumbered by the Original Restrictions on October 1, 2018.

87. Plaintiff, CUNNINGHAM TRUST, is the parcel owner of Lot 243, Unit V, Myakka Valley Ranches. Said Plaintiff derives title to said parcel through the following title transactions:

- a. Deed from Rudy Alstrom to Merle R. and Susan A. Lee, recorded on or about July 10, 1986, at Official Records Book 1861, Page 1113, in the Public Records of Sarasota County, Florida.
- b. Deed from Merle R. and Susan A. Lee to Charles F. and Elizabeth A. Swift,

recorded on or about July 1, 1989, at Official Records Book 2134, Page 1979, in the Public Records of Sarasota County, Florida.

c. Deed from Charles F. and Elizabeth A. Swift to William C. and Karen J. Cunningham, recorded on or about June 17, 2005, as Official Records Instrument #2005132525, in the Public Records of Sarasota County, Florida.

d. Deed from William C. and Karen J. Cunningham to Plaintiff, CUNNINGHAM TRUST, recorded on or about April 22, 2020, as Official Records Instrument #2020053691, in the Public Records of Sarasota County, Florida.

88. Plaintiffs, DANIEL D. STEIN, KYLE M. STEIN, SHARON L. STEIN, and BERNARD R. STEIN, are the parcel owners of that part of Lot 245, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

a. Deed from Scott A. and Lori B. Drefffen to Thomas and Michele Jurgielewicz, recorded on or about July 5, 1983, at Official Records Book 1599, Page 0042, in the Public Records of Sarasota County, Florida.

b. Deed from Michele Jurgielewicz to Plaintiffs, DANIEL D. STEIN, KYLE M. STEIN, SHARON L. STEIN, and BERNARD R. STEIN, recorded on or about November 20, 2020, as Official Records Instrument # 2020164674, in the Public Records of Sarasota County, Florida.

89. Plaintiffs, DANIEL M. SCARINZI and ELISABETH S. SCARINZI, are the parcel owners of Lot 253, Unit V, Myakka Valley Ranches. Said Plaintiffs derive title to said parcel through the following title transactions:

a. Deed from Myakka Valley, Inc., to Charles R. and Renee J. Aplin, recorded on or about January 15, 1986, at Official Records Book 1829, Page 1448, in the Public

Records of Sarasota County, Florida.

b. Deed from Charles R. and Renee J. Aplin to Richard K. and Cheryl D. Fox, recorded on or about October 9, 1991, at Official Records Book 2334, Page 2463, in the Public Records of Sarasota County, Florida.

c. Deed from Richard K. and Cheryl D. Fox to Carl E. and Karen Patrick, recorded on or about December 29, 1994, at Official Records Book 2699, Page 1203, in the Public Records of Sarasota County, Florida.

d. Deed from Karen Patrick to Carl E. Patrick, recorded on or about June 23 2008, as Official Records Instrument #2008086148, in the Public Records of Sarasota County, Florida.

e. Deed from Carl E. Patrick to Plaintiffs, DANIEL M. SCARINZI and ELISABETH S. SCARINZI, recorded on or about September 7, 2012, as Official Records Instrument #2012115881, in the Public Records of Sarasota County, Florida.

90. The recording of the last deed referenced in paragraphs 42 through 89, above, constituted a “novation” of the “contract” that is the Original Restrictions, thereby incorporating by implication (as of the date that deed was recorded) into said novations the then-existing Florida Statutes.¹⁶

91. True and correct copies of the deeds referred to in paragraphs 42 through 89, above, are filed here with as exhibits. Collectively, those deeds constitute Plaintiffs’ “chain of title” to the parcels referred to therein.

92. None of the deed referred to in paragraphs 42 through 89, above, specifically reference

¹⁶ See, e.g., Holiday Square Owners Association, Inc. v. Tsetsenis, 820 So.2d 450, 455 (Fla. 5th DCA 2002).

the Original Restrictions or any purported amendment thereto.

93. The first deeds referred to in paragraphs 42 through 89, above, are Plaintiffs' "root of title," as defined in Section 712.01(6), Florida Statutes.

94. By operation of ch. 712, ("**Marketable Record Titles to Real Property**"), Fla.Stat. (hereafter "MRTA"), the Original Restrictions (and any purported amendments thereto¹⁷) were extinguished on the 30 year anniversary of the recording of those deeds referred to in paragraphs 8, 12, 16, 20, and 24 – each of which 30 year anniversary occurred prior to October 1, 2018.

95. Part III ("**Covenant Revitalization**") of chapter 720 ("**Homeowners' Associations**"), Florida Statutes, provides a mechanism for revitalizing covenants or restrictions extinguished by operation of MRTA. The Defendants-Association has repeatedly threatened to use that mechanism to revitalize the now extinguished Original Restrictions (as purportedly amended above) as to the Plaintiffs' parcels described herein.

96. Should the Defendant-Association succeed in revitalizing the Original Restrictions (as purportedly amended), the effective date of the "revitalized" Original Restrictions (as purportedly amended) will be the date said revitalized restrictions are recorded, per Section 720.407 ("**Recording; notice of recording; applicability and effective date**"), Florida Statutes.

97. Consequently, all Florida Statutes as they exist on the date the revitalized restrictions are recorded will impliedly modify the contract to which Plaintiffs and their parcels were originally governed. This will unconstitutionally deprive Plaintiffs of certain property

¹⁷ See, e.g., Matissek v. Waller, 51 So.3d 625 (Fla. 2d DCA 2011).

and contract rights that existed prior to the revitalization, but were impliedly modified by the revitalization.

98. By way of example, the following substantive changes to chapter 720 ("**Homeowners' Associations**"), Florida Statutes, have occurred. Should the Original Restrictions be revitalized and should the Defendant-Association be found to be a "homeowners association," as defined in Section 720.301, Florida Statutes, or should the revitalized Original Restrictions be subsequently amended to make said entity qualify as such a defined "homeowners association, then the below changes will impliedly modify Plaintiffs' "contract" applicable to their parcels described herein –

- a. Effective June 14, 1995, Section 617.305 (now 720.305) ("**Obligations of members; ...**") was amended to give homeowners associations the power to levy fines on homeowners and to suspend their right to use common areas and facilities, "[i]f the governing documents so provide" (Laws of Florida, ch. 95-274, § 55). This change, if made applicable to Plaintiffs' "contract," would override the common law/contract law prohibition against imposing penalties for breaches of contract,¹⁸ which prohibition otherwise makes provisions in the governing documents authorizing the imposition of such penalties unenforceable.¹⁹
- b. Effective July 1, 1997, Section 617.305 (now 720.305) ("**Obligations of members; ...**") was amended to give homeowners associations the power to suspend homeowners' voting rights for failure to pay annual assessments "[i]f the governing documents so provide" (Laws of Florida, ch. 97-311, § 2). Again, this change, if made applicable to Plaintiffs' "contract," would override "anti-penalty" common law/contract law impliedly a part of said "contract."
- c. Effective July 1, 2007, Section 720.3085 ("**Payment for assessments; lien claims**") was created (Laws of Florida, ch. 2007-173, § 11). Sub-section (1) of that statute caused the priority of liens recorded by a homeowners association to

18 Restatement (Second) of Contracts, Section 355 ("**Punitive Damages**") -

"a. Compensation not punishment. The purpose of awarding contract damages is to compensate the injured party. ... For this reason, courts in contract cases do not award damages to punish the party in breach or to serve as an example to others unless the conduct constituting the breach is also a tort for which punitive damages are recoverable."

19 See, e.g., Hyman v. Cohen, 73 So.2d 393, 401 (Fla. 1954); Rusniaczek v. Tableau Fine Art Group, Inc., 139 So.3d 355, 358 (Fla. 3d DCA 2014); Coleman v. B.R. Chamberlain & Sons, Inc., 766 So.2d 427, 429 (Fla. 5th DCA 2000).

relate back to the recording date of the original declaration. Sub-section (2)(b) made the purchaser of a parcel jointly liable with past owners for unpaid assessments accruing prior to the time of transfer. Sub-section (3)(b) exempted homeowner association late fees from the limits of ch. 687 and eliminated the home owners' ability to direct how payments should be applied. Again, these changes, if made applicable to Plaintiffs' "contract," would override common law/contract law impliedly a part of said "contract."

- d. Effective July 1, 2010, Section 720.305 ("**Obligations of members; ...**") was amended to eliminate the qualifying phrase "[i]f the governing documents so provide," meaning homeowners associations were empowered by the Legislature to levy fines on homeowners and to suspend their right to use common areas and facilities, **regardless** of whether "the governing documents so provide" (Laws of Florida, ch. 2010-174, § 24). Again, this change, if made applicable to Plaintiff(s)' "contract," would override "anti-penalty" common law/contract law impliedly a part of said "contract."
- e. Effective July 1, 2010, Section 720.31(6) ("**Recreational leaseholds; right to acquire; escalation clauses**"), Florida Statutes, was created (Laws of Florida 2010-174, § 27). That sub-section empowered homeowners associations to acquire "leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas, and other recreational facilities...regardless of whether the lands or facilities are contiguous to the lands of the community or whether such lands or facilities are intended to provide enjoyment, recreation, or other use or benefit to the owners." Again, this change, if made applicable to Plaintiffs' "contract," would override common law/contract law impliedly a part of said "contract," which act to prohibit such changes to the subdivision's original scheme of development.²⁰
- f. Effective July 1, 2011, Section 617.305 (now 720.305) ("**Obligations of members; ...**") was amended to expand the "fining" powers of the homeowners' association. It empowered the association to fine an owner not only for the owner's actions, but also for the actions of any occupant, licensee or invitee "to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association" (Laws of Florida 2011-196, § 18). Similarly, the owner's right to use the common areas and facilities could be suspended not only for the owner's actions, but also for the actions of any occupant, licensee or invitee "to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association." Again, these changes, if made applicable to Plaintiffs' "contract," would override "anti-penalty" common law/contract law impliedly a part of said "contract."
- g. Effective July 1, 2021, Section 720.306 ("Meetings of members; voting and elections procedures; amendments") was amended to authorize homeowners' associations to curtail owners ability to lease their property. (Laws of Florida

²⁰ See, e.g., Holiday Pines Property Owners Association, Inc. v. Wetherington, 596 So.2d 84, 87 (Fla. 4th DCA 1992).

2021-99, § 22).

99. Consequently, if the above changes in the Florida Statutes were to modify the pre-existing “contract” between Plaintiffs and their fellow lot owners in their Unit, Plaintiffs would be unconstitutionally deprived of pre-existing rights Plaintiffs had under the “contract” established as of the original date their deed to their parcel was recorded.²¹

100. Additionally, many of the Plaintiffs have mortgages on their parcels. As discussed in paragraph 98, above, revitalization of the Original Restrictions (as purportedly amended) could automatically modify the priority position of those mortgages vis-à-vis the lien rights of the (purported) homeowners’ association, the Defendant-Association, thereby possibly putting Plaintiffs into default under those mortgages.

101. Further, many of the Plaintiffs purchased their parcels at a time when the Original Restrictions had expired. The title insurance policies on their properties, therefore, did not except out the Original Restrictions as an encumbrance on their parcels. Revitalization of the Original Restrictions could potentially constitute a breach of those title insurance policies in terms of increasing the title insurer’s exposure beyond what the title insurer originally agreed to insure.

102. Likewise, many of the Plaintiffs purchased their properties at a time when the Original Restrictions had expired. Plaintiffs bargained for the purchase of property free

²¹ Under Article I, Section 10 (“**Prohibited laws**”) of Florida’s Constitution, in pertinent part, states: “No ... law impairing the obligation of contracts shall be passed.” This prohibition is specifically incorporated in Section 720.302 (“**Purposes, scope and application**”), Florida Statutes, which, in pertinent part, states: “Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such

of the restrictions contained in the Original Restrictions. Revitalizing the Original Restrictions would *ex post facto* alter the rights and obligations under the contracts Plaintiffs purchased their properties.

103. Based on all the above, revitalizing the Original Restrictions would unconstitutionally deprive Plaintiffs of rights and property.
104. The above constitutes a present controversy between Plaintiffs and Defendant.
105. There is a practical need for the declaration sought herein.
106. Plaintiffs' rights are dependent upon the applicable law and facts stated above.
107. The Court has before actual, present, adverse and antagonistic interests in this subject matter.
108. The antagonistic interests are all before the Court.
109. This action is not merely asking the Court to give legal advice.²²

WHEREFORE Plaintiffs pray that this Court will take jurisdiction herein and enter a judgment declaring that (1) the covenants or deed restrictions threatened to be revitalized by the

contract rights, ...”

²² See, e.g., May v. Holley, 59 So.2d 636, 639 (Fla. 1952) as follows:

“Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, [1] **present practical need for the declaration**; that the declaration should deal with a present, ascertained or ascertainable state of facts or [2] **present controversy** as to a state of facts; that [3] **some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable** to the facts; that there is some person or persons who have, or reasonably may have an [4] **actual, present, adverse and antagonistic interest** in the subject matter, either in fact or law; that the [5] **antagonistic and adverse interests are all before the court** by proper process or class representation and that the relief sought is [6] **not merely the giving of legal advice** by the courts or the answer to questions propounded from curiosity. These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.” (Emphasis and numerals supplied).

Defendants-Association did not apply or operate to impose said covenants or restrictions on the Plaintiffs' parcels as of October 1, 2018 and that (2) any revitalization of such covenants or deed restrictions as to the Plaintiffs' parcels would unconstitutional deprive Plaintiffs of rights or property, and (3) awarding Plaintiffs the costs of this action and such other relief as this Court deems appropriate.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by electronic mail transmission to the following persons on this 17th day of December, 2021:

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Exhibits filed here with –

Plats
Original Restrictions
Deeds referred to in paragraphs 8, 12, 16, 20 and 24
2004 Notice of Preservation
2008 Amendment
Deeds in Plaintiffs' chains of title