

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
CIVIL DIVISION

THOMAS AXMACHER, WILLIAM and  
SUSAN BURTON, LAUREN SHAPIRO  
DELLER, SEAFORD INVESTMENTS, LLC,  
ISOLA BELLA PROPERTY, LLC, GARSH  
INVESTMENTS LLLP, ADAM RIEMER and  
MARA RIEMER GOLDSTEIN, POLMYRA LLC,  
ALAN G. HASSENFELD, AS TRUSTEE OF THE  
ALAN G. HASSENFELD 2017 REVOCABLE  
RESIDENCE TRUST, SUZANNE IRVING,  
REEL CORPORATION, BENJAMIN LEWIN,  
WINNIE MOY, JOSEPH REICH, and  
BRISTTOLLE MANAGEMENT  
COMPANY, INC., individually and  
on behalf of all others similarly situated,

CASE NO.: \_\_\_\_\_

CLASS REPRESENTATION

Plaintiffs,

v.

FISHER ISLAND COMMUNITY  
ASSOCIATION, INC.

Defendant.

\_\_\_\_\_ /

**CLASS ACTION COMPLAINT**

Plaintiffs, Thomas Axmacher, William and Susan Burton, Lauren Shapiro Deller, Seaford Investments, LLC, Isola Bella Property, LLC, Garsh Investments LLLP, Adam Riemer and Mara Riemer Goldstein, Polmyra LLC, Alan G. Hassenfeld, as Trustee of the Alan G. Hassenfeld 2017 Revocable Residence Trust, Suzanne Irving, Reel Corporation, Benjamin Lewin, Winnie Moy, Joseph Reich, and Bristtolle Management Company, Inc. (“Plaintiffs”), individually, and on behalf of all others similarly situated (the “Class Members”), sue Defendant, Fisher Island Community Association, Inc. (“FICA”) and allege:

## **INTRODUCTION**

1. FICA is a homeowners' association that, in part, regulates the prestigious barrier island community in Miami-Dade County, Florida known as Fisher Island. While Fisher Island is often cited as having the highest per capita income of anywhere in the United States, FICA has systematically taken advantage of its residents, and forced the overwhelming majority of the owners to pay millions of dollars in improper assessments over at least the last five years.

2. In violation of its governing documents and Florida law, FICA permits certain homeowners to combine units, which exponentially increases the size of the home. This illicit practice has a significant financial impact across the entire island. Upon information and belief, Fisher Island is currently comprised of at least 840 properties that pay general and special assessments, as well as common area expenses. Among these, there are 52 residential properties that are combined units and/or lots, which receive improper and preferential treatment by not having to pay any amount of assessments – unlawfully shifting the burden to their neighbors. In total, 892 properties should be payment assessments, not 840.

3. More specifically, FICA permits owners of combined units to pay the same FICA assessments as owners of uncombined units. By combining units and only charging one FICA assessment, FICA unlawfully requires owners of uncombined units to subsidize the cost of living on Fisher Island for the owners of combined units.

4. This practice has the effect of adjusting the rate of assessment across the entire island, exempting one or more previously assessed units from future assessment, and increasing the proportionate share of general and special assessments, as well as common expenses, for owners of uncombined units.

5. From 2016-2021, FICA's violations of its governing documents and Florida law resulted and will continue to cause owners of uncombined units overpaying FICA in excess of \$11 million.

6. Plaintiffs commenced this action to remedy FICA's misconduct, to recover the money they are rightfully owed, and to prevent FICA from implementing the Master Covenants improperly and in violation of Florida law. Plaintiffs seek relief in this action individually, and on behalf of all Fisher Island owners of uncombined units.

### **JURISDICTION, PARTIES, AND VENUE**

7. This is an action in excess of \$30,000, exclusive of interest, costs, and attorneys' fees.<sup>1</sup>

8. Plaintiff, Thomas Axmacher, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

9. Plaintiffs, William and Susan Burton, are individuals that are owners of an uncombined unit in the Fisher Island community, and, upon information and belief, reside in New York County, New York.

10. Plaintiff, Lauren Shapiro Deller, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

11. Plaintiff, Seaford Investments, LLC, is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida, and is the owner of an uncombined unit in the Fisher Island community.

12. Plaintiff, Isola Bella Property LLC, is a Delaware limited liability company and is the owner of an uncombined unit in the Fisher Island community.

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<sup>1</sup> The estimated value of Real Capital Partners' claims is in excess of the minimum jurisdictional threshold required by this Court. The actual value of its claims will be determined by a fair and just jury in accordance with Article 1, Section 21, Fla. Const.

13. Plaintiff, Garsh Investments LLLP, is a Delaware limited liability company with its principal place of business in Miami-Dade County, Florida and is the owner of uncombined units in the Fisher Island community.

14. Plaintiffs, Adam Riemer and Mara Riemer Goldstein, are individuals residing in Norfolk County, Massachusetts and are the owners of an uncombined unit in the Fisher Island community.

15. Plaintiffs, Polmyra LLC, is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

16. Plaintiff, Alan G. Hassenfeld, as Trustee of the Alan G. Hassenfeld 2017 Revocable Residence Trust, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

17. Plaintiff, Suzanne Irving, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

18. Plaintiff, Reel Corporation, is a corporation incorporated under the laws of the British Virgin Islands with a principal place of business located in Miami-Dade County, Florida. It is an owner of an uncombined unit in the Fisher Island community.

19. Plaintiff, Benjamin Lewin, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

20. Plaintiff, Winnie Moy, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

21. Plaintiff, Joseph Reich, is an individual residing in Miami-Dade County, Florida and is the owner of an uncombined unit in the Fisher Island community.

22. Plaintiff, Bristtolle Management Company, Inc., is a corporation incorporated under the laws of the British Virgin Islands and is an owner of an uncombined unit in the Fisher Island community.

23. Defendant, FICA, is a Florida corporation, with its principal place of business in Miami-Dade County, Florida.

24. Venue is proper in Miami-Dade County, Florida, pursuant to Section 47.011, 47.041, and 47.051, Florida Statutes. The events giving rise to this action arose and occurred in Miami-Dade County, Florida, the causes of action alleged herein all accrued in Miami-Dade County, Florida, FICA conducts substantial business in Miami-Dade County, Florida, and the Fisher Island properties at issue in this case are all located in Miami-Dade County, Florida.

25. All applicable conditions precedent to the filing of this lawsuit have been performed, waived, excused, or satisfied.

26. The above-named Plaintiffs retained the undersigned counsel to represent their interests in connection with this case, and are obligated to pay undersigned counsel reasonable attorneys' fees and costs for services rendered.

### **GENERAL ALLEGATIONS**

#### **I. The 2009 Amended and Restated Master Covenants Prohibits Combined Lots and Units from Only Paying One FICA Assessment.**

27. FICA is the Homeowners'/Community Association for all of Fisher Island pursuant to the 2009 Amended and Restated Master Covenants for Fisher Island (the "Master Covenants") and Chapter 720 of the Florida Statutes. FICA assesses all homeowners for general and special assessments, as well as common area expenses as set for in the Master Covenants. A copy of the Master Covenants is attached hereto as **Exhibit A**.

28. The Master Covenants also created individual condominiums communities within Fisher Island such as Bayside Village, Seaside, Seaside Villas, Bayside Village East, Marina Village, Marina Village II, Oceanview, and Oceanview II. Over time, additional condominium properties were constructed on Fisher Island, all of which are subject to and governed by the Master Covenants, including FICA. It is the method and manner by which FICA assesses each land parcel and unit within Fisher Island that gives rise to this action.

29. FICA's Master Covenants authorizes it to levy general and special assessments, as well as capital improvement assessments (*i.e.* to common areas) against a **"Lot"** located in Fisher Island pursuant to FICA's approved budget.

30. A **"Lot"** is a defined term in the Master Covenants, as follows:

**an individual parcel of land within Fisher Island which is shown as an individual lot on the various site plans (or similar plans) . . . and, after the conveyance thereof by Declarant to an Owner other than the Declarant or the Club, the lot legally described in the deed of such conveyance.**

**In the case of a condominium made subject to this Declaration, the "Lots" therein shall be the individual condominium units thereof (and not the parcels) of real property on which the condominium is constructed.**

31. Thus, a **"Lot"** is (i) a vacant or empty parcel that is described in Fisher Island's site plans or deed of conveyance; (ii) a parcel of land on which a dwelling is built as originally constructed, as set forth in Fisher Island's site plans or deed of conveyance; or (iii) with respect to condominiums, the individual condominium unit as originally constructed.

32. A **"Unit"** is also a defined term in the Master Covenants, as follows:

**any dwelling unit constructed on a Lot or any condominium dwelling unit in any condominium building that may be erected on any parcel of land within The Properties,** which land is designated by Declarant by recorded instrument to be subject to this Declaration (and to the extent Declarant is not the Owner thereof, then by Declarant joined by the owner thereof).

33. Each dwelling or home constructed on a **“Lot”** or an individual dwelling unit within a particular condominium community in Fisher Island is classified as a **“Unit”**.

34. A **“Lot”** and **“Unit”** are both defined to exclusively cover single parcels or individual condominium dwellings as originally constructed.

35. For purposes of general and special assessments, as well as capital improvements, the Master Covenants states that the **“Rate of Assessment”** shall be **“uniform”** and each **“Unit”** shall constitute **one unit** for assessment purposes (each an **“Assessment Unit”**).

36. The Master Covenants specifically states the **“Purpose of Assessments”** is so that FICA members can share proportionately, based on the number of Lots and/or Units owned, in the maintenance, operation, management, and insurance of common areas. And, the duties of the FICA Board of Directors include, but are not limited to, assessing **“Lots”** and maintaining a roster of the **“Lots”**.

37. Maintaining a roster of the **“Lots”** is critical because the Master Covenants also contemplates the **“construction”** of **“New Units”** on Fisher Island, which can only be done when there is an issued building permit for new construction.

38. Nowhere in the Master Covenants is there any provision that authorizes FICA to delete **“Lots”** from its roster by combining more than one **“Lot”** or **“Unit”**; that is; the roster can only increase through the construction of **“New Units”**. Otherwise, assessments would no longer be uniform or proportionate as originally set forth in the Master Covenants.

39. FICA’s conduct in allowing owners to combine existing Lots and/or Units changes the number of **“Assessment Units”**, which violates Section 720.306(c) of the Florida Statutes.

This law states:

an amendment [to the Master Covenants] may not materially and adversely alter the proportionate voting interest appurtenant to a parcel **or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.**

40. Moreover, FICA's actions continues the conduct of the prior developer, which is contrary to the Florida's public policy as set forth in Section 720.375 of the Florida Statutes, which prohibits the following:

unilateral amendments to governing documents that are **arbitrary, capricious, or in bad faith**; destroy the general plan of development; prejudice the rights of existing non-developer members to use and enjoy the benefits of common property; or **materially shift economic burdens from the developer to the existing non-developer members.**

41. FICA's misconduct improperly and unlawfully *de facto* amends the Master Covenants without a vote, without the approval of every record owner, and without the approval of every lienholder.

42. FICA continuously, systematically, unilaterally, and unlawfully, over at least the last five years, with the unreasonable consent of the prior developer, (i) adjusted the rate of assessment by exempting one or more previously assessed units from future assessment; and (ii) increased the proportionate share of general and special assessments, as well as capital expenses, owed by record owners of uncombined units.

## **II. The Plaintiffs and Class Members Incurred Significant Damages.**

43. This conduct allows the number of Lots and Units on Fisher Island, and their corresponding assessments, to be in a constant state of flux because they can currently be combined whenever desired.



44. Certainty is attained by prohibiting this practice from occurring in the future, and reimbursing the Plaintiffs and the Class Members the damages incurred, which are summarized below:

<b>OVERCHARGES BY FICA DUE TO COMBINING UNITS</b>									
FICA Assessments	2016	2017	2018	2019	2020	2021	Total Dues	Special Assessment	Total Overcharge
	\$	\$	\$	\$	\$	\$	\$	\$	\$
FICA Budget	\$21,232,752	\$21,535,229	\$22,800,424	\$22,737,435	\$24,151,299	\$25,516,074		\$65,000,000	
# of Assessed Units	803	800	847	845	842	840		844	
FICA Dues Paid Per Unit	\$26,441.78	\$26,919.04	\$26,919.04	\$26,908.21	\$28,683.25	\$30,376.28		\$77,014.22	
# of Combined Units	48	50	50	50	50	52		50	
# of Total Units to Assess	851	850	897	895	892	892		894	
Proper FICA per Unit	\$24,950.35	\$25,335.56	\$25,418.53	\$25,404.96	\$27,075.45	\$28,605.46		\$72,706.94	
Overcharge Per Unit	\$1,491.43	\$1,583.47	\$1,500.50	\$1,503.25	\$1,607.81	\$1,770.81	\$9,457.28	\$4,307.28	\$13,764.56
Total Amount Overcharged	\$1,197,618.29	\$1,266,776	\$1,270,923.50	\$1,270,246.25	\$1,353,776.02	\$1,487,480.40	\$7,846,828.46	\$3,635,344.32	\$11,482,164.78

### **CLASS REPRESENTATION ALLEGATIONS**

45. Plaintiffs and Class Members reallege paragraphs 1 through 44 above as if set forth fully herein. Pursuant to Florida Rules of Civil Procedure 1.220(a) and (b)(1)-(3), Plaintiffs bring these claims as a class action on behalf of each of them, and all other similarly situated persons and/or entities. Specifically, Plaintiffs seeks to represent the following persons (“the Class” or “Class Members”):

All persons and/or entities that are (i) members of FICA and own uncombined Units and/or Lots in the Fisher Island community and, (ii) who, during the five (5) years before the filing of the Complaint in this matter through the date of class notice, paid general, special, and common area expenses to FICA.

The Class definition is subject to amendment as needed.

46. Excluded from the Class is Defendant, its employees, agents and assigns, any members of FICA that own uncombined Units and/or Lots, and any individuals and/or entities that previously owned an uncombined unit prior to the filing of the Complaint in this matter through the date of the class notice.

47. Members of the above-defined Class can be identified through FICA's records.

### **Numerosity**

48. This action satisfies the numerosity requirement of Fla. R. Civ. P. 1.220(a)(1). At the time of the filing of this case, Plaintiffs do not know the exact number of putative Class Members. Upon information and belief, the number of Class Members is at least 840 unit owners.

49. The alleged size of the putative Class, and relatively modest value of each individual claim, makes joinder of all Class Members impracticable or impossible.

### **Predominance of Common Questions of Law and Fact**

50. This action satisfies the commonality requirement of Fla. R. Civ. P. 1.220(a)(2) and (b)(3). This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. The common legal and factual questions include at least the following:

- a. Whether the 2009 Amended and Restated Master Covenants for Fisher Island permits FICA to assess combined Units and/or Lots as one Assessment Unit for homeowner general and special assessment purposes, as well as for the assessment of common area expenses;
- b. Whether FICA breached the 2009 Amended and Restated Master Covenants for Fisher Island by assessing combined Units and/or Lots as one Assessment Unit for homeowner general and special assessment purposes, as well as for the assessment of common area expenses;
- c. Whether FICA is liable for damages, and the amount of such damages;

- d. Whether FICA's conduct is the proximate cause of such damages;
- e. Whether FICA should be preliminarily and permanently enjoined in the future from assessing combined Units and/or Lots as one Assessment Unit for homeowner general and special assessment purposes, as well as for the assessment of common area expenses; and
- f. Whether Plaintiffs and Class Members are entitled to any other remedy.

### **Typicality**

51. This action satisfies the typicality requirement of Fla. R. Civ. P. 1.220(a)(3). Plaintiffs' claims and the relief sought herein are typical of the claims of the putative Class Members, as Plaintiffs and Class Members have been injured in the same manner by FICA's uniform misconduct – assessing combined Units and Lots as one Assessment Unit for homeowner general and special assessment purposes, as well as for the assessment of common area expenses. This practice has the effect of adjusting the rate of assessment across the entire island, exempting one or more previously assessed Units and Lots from future assessment, and increasing the proportionate share of assessments and expenses for owners of uncombined Units and Lots.

52. Plaintiffs share the above facts and legal claims and/or questions with all putative Class Members. Further, a sufficient relationship exists between FICA's conduct and the damages sustained by the Plaintiffs and the putative Class Members.

### **Adequacy**

53. This action satisfies the adequacy requirement of Fla. R. Civ. P. 1.220(a)(4). Plaintiffs, as members of FICA, are owners of uncombined Units and/or Lots in Fisher Island, and are adversely affected by FICA's misconduct. Plaintiffs will fairly and adequately protect the interests of putative Class Members. Plaintiffs' interests and the interests of the Class

Members are the same, and Plaintiffs are committed to the vigorous prosecution of this action. Plaintiffs are all familiar with the facts of this case, as well as the essential issues involved.

54. Plaintiffs have retained counsel experienced in complex class action litigation. Plaintiff intends to prosecute this action vigorously, and has no interest adverse or antagonistic to those of the Class Members.

### **Superiority**

55. This action also satisfies the requirements of Fla. R. Civ. P. 1.220(b)(1) and (2), well as the superiority requirement of (3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members' claims is impracticable or impossible for at least the following reasons:

- a. The Class Members' claims predominate over any questions of law or fact (if any) affecting only individual Class Members;
- b. Absent a Class, the Class Members will continue to suffer damage and FICA's violations of law will continue without remedy;
- c. Given the size of individual Class Members' claims, few (if any) putative Class Members could afford to or would seek legal redress individually for the wrongs FICA committed and continues to commit against them. Absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts, while also increasing the delay and expense to all parties and the courts. Comparatively, the class action device provides economies of scale and allows Class Members' claims to be comprehensively administered and uniformly adjudicated in a single proceeding;
- e. When the liability of FICA has been adjudicated, the claims of all Class Members can be administered efficiently and determined uniformly by the Court;

- f. No difficulty impedes this action's management by the Court as a class action, which is the best available means by which the Plaintiffs and the Class Members can seek redress for the damages caused to them by FICA's uniform misconduct;
- g. The litigation and trial of the claims of the Plaintiffs and the Class Members are manageable; and
- h. Because Plaintiffs seeks, in part, injunctive relief and equitable relief for the entire Class, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, and establishing incompatible standards of conduct for FICA. Currently, FICA refuses to enforce the plain meaning of the Master Covenants, which affects Plaintiffs and the Class Members the same, and it refuses to correct the harm that has occurred for at least the last five years. Prospective relief is also required, which cannot be achieved solely through an award of money damages. Additionally, bringing individual claims would burden the courts and result in an inefficient method of resolving this action. As a practical matter, adjudications with respect to individual Class Members would be dispositive of the interests of other Class Members who are not parties to the adjudication, and may impair or impede their ability to protect their respective interests. Consequently, class treatment is a superior method for resolution of the issues in this case.

### **CAUSES OF ACTION**

#### **COUNT I – DECLARATORY JUDGMENT**

56. Plaintiffs and Class Members reallege paragraphs 1 through 55 above as if set forth fully herein.

57. This is an action for a declaratory judgment against FICA.

58. Plaintiffs, the Class Members, and FICA are required to comply with, and are governed by, the Master Covenants, which is an enforceable written contract. The terms of the Master Covenants serve as the consideration for the parties' respective rights and obligations.

59. FICA materially breached the Master Covenants by adjusting the rate of assessment across the entire island, exempting one or more previously assessed Units and Lots from future assessment, and increasing the proportionate share of general and special assessments, as well as common expenses, for owners of uncombined Unit and Lots.

60. FICA's misconduct improperly and unlawfully amends the Master Covenants without a vote, without the approval of every record owner, and without the approval of every lienholder.

61. FICA continuously, systematically, unilaterally, and unlawfully, over the last five years, with the unreasonable consent of the prior developer, engaged in the above misconduct.

62. Thus, Plaintiffs and the Class Members seek a determination from this Court that the Master Covenants do not authorize FICA to assess owners of combined Units and Lots as a single Assessment Unit for purposes of general and special assessments, as well as capital improvements for common area expenses.

63. There is a bone fide, actual, present, and practical need for the declaration.

64. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts.

65. Plaintiffs and the Class Members believe FICA has been interpreting the Master Covenants, over at least the last five years, in a manner that (i) adjusted the rate of assessment by exempting one or more previously assessed units from future assessment; and (ii) increased the proportionate share of general and special assessments, as well as capital expenses, owed by record owners of uncombined Units and Lots.

66. There is some immunity, power, privilege, or right of Plaintiffs and the Class Members that is dependent upon the facts or the law applicable to the facts.

67. There are entities and individuals who have, or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter of this dispute, either in fact or law.

68. The antagonistic and adverse interests are all before the court by proper process.

69. The relief sought herein is not a request for the Court to give legal advice or to answer questions propounded from curiosity.

### **COUNT II – BREACH OF CONTRACT**

70. Plaintiffs and Class Members reallege paragraphs 1 through 55 above as if set forth fully herein.

71. This is an action for a breach of contract against FICA.

72. Plaintiffs, the Class Members, and FICA are required to comply with, and are governed by, Master Covenants, which is an enforceable written contract. The terms of the Master Covenants serve as the consideration for the parties' respective rights and obligations.

73. FICA materially breached the Master Covenants by adjusting the rate of assessment across the entire island, exempting one or more previously assessed Units and Lots from future assessment, and increasing the proportionate share of general and special assessments, as well as common expenses, for owners of uncombined Units and Lots.

74. FICA's misconduct improperly and unlawfully amends the Master Covenants without a vote, without the approval of every record owner, and without the approval of every lienholder.

75. FICA continuously, systematically, unilaterally, and unlawfully, over at least the last five years, with the unreasonable consent of the prior developer, engaged in the above misconduct.

76. As a direct and proximate result of FICA's misconduct, Plaintiffs and the Class Members incurred significant damages.

### **COUNT III – INJUNCTIVE RELIEF**

77. Plaintiffs and Class Members reallege paragraphs 1 through 55 above as if set forth fully herein.

78. This is an action for injunctive relief against FICA.

79. Plaintiffs, the Class Members, and FICA are required to comply with, and are governed by, Master Covenants, which is an enforceable written contract. The terms of the Master Covenants serve as the consideration for the parties' respective rights and obligations.

80. FICA materially breached the Master Covenants by adjusting the rate of assessment across the entire island, exempting one or more previously assessed Units and Lots from future assessment, and increasing the proportionate share of general and special assessments, as well as common expenses, for owners of uncombined Units and Lots.

81. FICA's misconduct improperly and unlawfully amends the Master Covenants without a vote, without the approval of every record owner, and without the approval of every lienholder.

82. FICA continuously, systematically, unilaterally, and unlawfully, over at least the last five years, with the unreasonable consent of the prior developer, engaged in the above misconduct.

83. As a direct and proximate result of FICA's misconduct, Plaintiffs and the Class Members incurred significant damages and continue to incur significant damages so long as FICA continues to unlawfully assess owners of uncombined Units and Lots.



84. As a result, Plaintiffs and the Class Members seek a preliminary and a permanent injunction against FICA from disproportionately assessing owners of uncombined units as set forth above.

85. Plaintiffs and the Class Members have a substantial likelihood of success on the merits, and have a clear legal right to relief.

86. With respect to prospective relief, Plaintiffs and the Class Members lack an adequate remedy at law.

87. Absent the entry of a preliminary and permanent injunction, Plaintiffs and the Class Members will suffer irreparable harm, and will be unlawfully required to pay, in perpetuity, a disproportionate share of general and special assessment, as well as capital improvements for common area expenses.

88. Injunctive relief will serve the public interest so that the Master Covenants are properly enforced as written, and as originally intended.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request, on behalf of each of them and the Class, as set forth in Counts I-III, that this Court:

A. Determine that the claims alleged herein may be maintained as a class action under Rules 1.220(a), (b)(1), (b)(2), and (b)(3) of the Florida Rules of Civil Procedure, and issue an order certifying the Class as defined above, appointing Plaintiffs as class representatives, and their counsel as class counsel;

B. Determine that the Master Covenants do not authorize FICA to assess owners of combined Units and Lots as a single Assessment Unit for purposes of general and special assessments, as well as for capital improvements for common area expenses.

C. Award all damages to which Plaintiffs and the Class Members are entitled, which shall not be paid in the form of any type of assessment to Plaintiffs or the Class Members. Among other ways to award damages, an assessment by FICA to the owners of combined Units and Lots can be made to compensate Plaintiffs and the Class Members for their financial harm;

D. Grant preliminary and permanent injunctive relief;

E. Award reasonable attorneys' fees and costs to Plaintiffs and the Class Members against FICA pursuant to Section 720.305 of the Florida Statutes;

F. Due to FICA's unilateral decision not to mediate this dispute prior to the filing of this action, award reasonable attorneys' fees and costs incurred by Plaintiffs and the Class Members against FICA in attempting to obtain a mediation of this case pursuant to Section 720.311 of the Florida Statutes;

G. Prohibit FICA from recovering an award of reasonable attorneys' fees and costs in the event FICA prevails in this action due to its unilateral decision not to mediate this dispute prior to the filing of this action pursuant to Section 720.311 of the Florida Statutes; and

H. Grant such other and further relief that this Honorable Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all counts so triable.

Dated: January 29, 2021

**MORGAN & MORGAN, P.A.**  
**Business Trial Group**

/s/ Joshua B. Alper

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