IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 15-009106 CA 04

PRESERVE GROVE ISLE, LLC,
A Florida Limited Liability Company,

Petitioner, and

GROVE ISLE ASSOCIATION, INC., a
Florida Not-For-Profit Corporation,

Intervenor Petitioner.

vs.

GROVE ISLE YACHT & TENNIS CLUB,
LLC, GROVE ISLE CLUB, INC., and
GROVE ISLE ASSOCIATES, LLLP,

Respondents.
_____/

FINAL ORDER ON PETITION FOR DECLARATORY RELIEF AND PERMANENT INJUNCTION

THIS CAUSE having come before the Court on July 27, 28 and 29, 2015 upon Non-Jury Trial, the Court having presided over said trial, considered the procedural history, all testimony and exhibits, relevant legal authority, and having been fully advised by the parties, the Court hereby **ORDERS** and **ADJUDGES** as follows:

Background

PRESERVE GROVE ISLE, LLC and GROVE ISLE ASSOCIATION, INC, as representative of 510 condominium unit owners on Fair Isle, seek declaratory and injunctive relief against GROVE ISLE YACHT & TENNIS CLUB, LLC, GROVE ISLE CLUB, INC, and GROVE ISLE ASSOCIATES, LLLP, contending that an enforceable restrictive covenant

requires the continued maintenance and operation of club facilities at Grove Isle Hotel and Spa. Grove Isle is a unique club-based community. The development plan was described by the Third District Court of Appeal in *Grove Isle Ass'n, Inc. v. Grove Isle Associates*, LLLP, 137 So. 3d 1081 (Fla. 3d DCA 2014) in the following manner:

> Fair Isle, a private island in Coconut Grove, Florida, is developed with three residential condominium towers, collectively known as "Grove Isle," and a hotel, club, marina, and spa. The towers were submitted to condominium ownership pursuant to a Declaration of Condominium recorded January 23, 1979 (the "Declaration"). The unit owners of each of the residential condominium towers are members of Grove Isle Association, Inc., an entity organized pursuant to Chapter 718, Florida Statutes.
>
> Grove Isle unit owners and visitors access Fair Isle by way of a private bridge over Biscayne Bay. A roadway on Fair Isle permits traffic between the residential condominium towers and the hotel, club, marina, and spa. The private bridge and roadway are owned and/or controlled by Grove Isle Associates, LLLP (the "Hotel and Club Owner"), Grove Isle Yacht Club Associates (the "Marina Owner"), and CII Spa, LLC, the owner of a fifty percent interest in Grove Spa, LLC (the "Spa Owner"). The Declaration imposes the obligation to maintain and repair the private bridge and roadway upon the Condominium Association.

Id. at 1085.

The club on Grove Isle opened in 1980. In 2013, Respondent Grove Isle Yacht & Tennis Club purchased Grove Isle Associates LLLP which owns the club property. At that time, Grove Isle Yacht & Tennis Club was notified that there were 32 lifetime members of the club on Grove Isle.

On April 9, 2015, condominium unit owners received a letter from "The Club at Grove Isle Hotel & Spa" stating that, in three weeks' time, all club facilities on Grove Isle, including the hotel, restaurant, bar, indoor health spa, swimming pool and tennis court ("Club Facilities") would be closed. The unit owners, who are required to maintain membership in the Club in conjunction with their condominium ownership, sought emergency temporary injunctive relief

against Respondents, Grove Isle Yacht & Tennis Club, LLC, Grove Isle Club, Inc., and Grove Isle Associates, LLLP ("New Developer") to prevent closure of the Club Facilities.

On April 27, 2015, the Court convened an expedited hearing on Petitioners' request for temporary injunction. Before the hearing was concluded, the parties stipulated to the entry of a temporary injunction. On April 29, 2015, the Court ratified the parties' stipulation. The terms of the stipulation required the Club Facilities (some of which had been closed) to remain open and further required that a commensurate level of service be provided to the unit owners for a period of 90 days, until August 15, 2015, pending completion of a trial on the merits of the unit owners' claims for permanent injunction and declaratory relief. The Court conducted the trial on the merits on July 27, 28, and 29, 2015.

Original Development and Marketing of Grove Isle Condominiums

The entirety of Grove Isle (a twenty acre private island in Coconut Grove, Florida) was developed in the late 1970s by Martin Margulies (the "Original Developer"), who owned the majority of Fair Isle. The development, consisting of three condominium towers and the Club Facilities, was permitted by a landmark settlement agreement, adopted as a final judgment in 1977 (the "Settlement Agreement") in litigation brought by unit owners of Coconut Grove against the Original Developer and the City of Miami. [Plaintiffs' Exhibit 1]. The Settlement Agreement states that it is a covenant running with the land and was recorded at Book 9912 Page 260 on January 11, 1978. It imposed affirmative and negative covenants on the entirety of the island and contemplated development of a private, club-based condominium community. It specifically identified the Club Facilities as they exist today and provided that use of the Club Facilities would be restricted to those "owning or leasing a dwelling unit on Fair Isle," hotel guests and "club members." § 5.4 (c).

Margulies prepared detailed plans for the condominium buildings and the Club Facilities as a single project, including the "Grove Isle Master Plan," Sheet A-1 featuring the entire development (the "Plans"). [Plaintiffs' Exhibit 9]. Sheet A-3 contains a detailed plan for construction of the Club Facilities. The Plans were submitted to City of Miami in 1977 and became a matter of public record at that time.

Marketing and sales of the condominium units began before the first tower was completed. Jack Lowell, the general manager of sales employed by Margulies, had sole responsibility for sales of these units. Although Margulies was not involved in sales, he worked with Lowell to create the original sales brochure (the "Brochure"), which contains a site plan showing the Club Facilities as they were ultimately constructed. [Plaintiffs' Exhibit 12]. The Brochure described the Club Facilities in the following manner:

> Plans call for a private club at the north end of the island. To be called Grove Isle Club, it will include a hotel for visiting guests, restaurant, lounge and health spa. The distinctive character and fine quality of the improvements and amenities on Grove Isle will be worthy of this superb residential location.

Margulies testified, through deposition, that he included the Club Facilities in the Brochure because it was always his intention to build them and he had no doubt that they would be constructed. He also testified that, although he thought he could close the Club Facilities at any time, it was his intention that purchasers would be mandatory members of the Club for as long as they owned their units and as long as they paid their membership dues.

In trial testimony, Lowell described a three dimensional model of the Brochure's site plan which was shown to prospective buyers (the "Model"). The Model included the Club Facilities, as they exist today. Lowell met with prospective buyers at a sales office located on a houseboat attached to Grove Isle. He showed prospective buyers the Brochure and the Model. The Plans were also kept at the houseboat sales office to show to prospective customers, if requested.

Lowell testified that he believed the Club Facilities would be permanent amenities and, in selling units, he represented to purchasers that the Club Facilities would be "permanent." Lowell also testified that no representations were ever made that the Club Facilities, once constructed, could be closed at any time. Lowell stated that the "fine print" on the Brochure, which noted that the developer could not guarantee full development of the island or the amenities, was standard wording only. He testified that it had always been the intention of Margulies to build the Club Facilities and that the Club Facilities were in fact built. Lowell further indicated that the Club Facilities were used as an inducement for prospective purchasers.

Michael Felsher, an original purchaser and current unit owner, testified on behalf of the Unit owners. He testified that he purchased his condominium unit in 1978 from Lowell and that he also purchased a "lifetime membership" in the Club at that time. In deciding to purchase his unit, Felsher relied on the depiction of the club-based community, as shown on the Brochure and the Model, as well as Lowell's assurances. He indicated that as an avid tennis player, he was particularly drawn to the twelve tennis courts featured in the marketing materials. Felsher was told that the Club Facilities would be permanently available to him for use as long as he lived on Grove Isle. He believed that the "fine print" on the Brochure permitted the Developer the right not to construct the condominium towers and Club Facilities if he was unable to sell enough units to move forward with the project.

The testimony established that by the time the Original Developer started selling units in the second tower, the Club Facilities were already under construction and by the time he started selling units in the third tower, the Club Facilities were already completed.

Lifetime Memberships

Because membership in the Club was mandatory for unit owners, the Original Developer, and subsequent successors in interest to the Club, offered purchasers the opportunity to purchase "lifetime" memberships for one lump sum, as opposed to payment of annual fees. The fee for a "lifetime" membership ranged from $5,000 initially to as much as $25,000 over the years. While the exact number of "lifetime" memberships which the Club sold to unit owners over the course of time is unknown, when the New Developer purchased the Club property, approximately 32 lifetime members remained. [Plaintiffs' Exhibit 10, Exhibit "L," and Plaintiffs' Exhibit 11]. Margulies testified that "lifetime" membership was an inducement for purchasers to purchase units on Grove Isle.

Original Disclosure Documents

In addition to the Plans and the Brochure, the Disclosure Documents of Grove Isle, A Condominium, documents required by Florida law, also show the development of Grove Isle as a private, club-based residential community in which unit owners are mandatory members of the Club during their period of unit ownership. [Plaintiffs' Exhibit 3]. These documents were disseminated to all original prospective purchasers of units on Grove Isle.

The Offering Circular for Grove Isle, A Condominium ("Offering Circular") states in pertinent part:

> THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. *An apartment unit owner is a member of the Club during the period of ownership of the apartment unit upon payment of the initial membership fee.* There is no annual membership fee associated with club membership.
>
> MEMBERSHIP IN THE RECREATIONAL CLUB IS MANDATORY FOR UNIT OWNERS. The recreational facilities offered by the Club may include a restaurant, bar and hotel facilities, tennis court and swimming pool facilities. The initial membership fee must be paid by the owners of each apartment unit. The Condominium, exclusive of the club facilities, will provide recreational facilities

> including a swimming pool and pool deck, saunas and exercise room.
>
> THE UNIT OWNERS OF THE ASSOCATION MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITES. Land use-fees shall be used to provide security for the apartment unit owners and lighting, repairs and maintenance of bridges, roadways and other facilities and amenities . . .
>
> * * *
>
> *RECREATIONAL FACILITES MAY BE EXPANDED OR ADDED WITHOUT THE CONSENT OF UNIT OWNERS OR THE ASSOCIATION*.
>
> (Capital lettering in original; emphasis by italics added).
>
> 6. THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM….
>
> Grove Isle Club, Inc. is a corporation for profit formed or to be formed for owning and operating a proposed private club that may offer restaurant, bar and hotel facilities, tennis courts and swimming pool facilities for its members. MEBERSHIP IN THIS RECREATONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS. *Membership in the Grove Isle Club, Inc. shall become effective with the payment of the initial membership fee and shall continue for as long as the apartment unit owner retains ownership of an apartment unit* and no additional membership fees or dues shall accrue or become payable. There is no obligation imposed upon Developer to construct or provide any club facilities. The club membership requirement is described in detail on pages 38 to 39 of the disclosure documents.

(Capital lettering in original; emphasis in italics supplied). The Offering Circular included the then proposed "Declaration of Condominium," ("Declaration"). Pages 38-39 of the Offering Circular contained language relating to the Club that was later incorporated into Section 12.9 of the Declaration.

Recorded Declaration of Condominium

The Declaration was dated January 22, 1979 and was recorded in the public records at Book 10279 Page 223 on January 23, 1979. [Plaintiffs' Exhibit 2]. It was prepared by the Original Developer. It describes Grove Isle as a private, club-based residential community in

which unit owners are mandatory members of the Club during their period of unit ownership.

> 12.9. Club Membership. No person, firm or corporation may maintain ownership of an apartment within the condominium or a leasehold interest for a term of six (6) months or more (including options to renew) unless said person, firm or corporation is a member of Grove Isle Club, Inc.
>
> (a) Condition Precedent. As a condition precedent to ownership of a condominium parcel or a leasehold interest therein under a lease for a term of six (6) months or more (including options to renew), the prospective owner or lessee shall have first been approved as a member of the Grove Isle Club. The qualifications for membership therein shall from time to time be determined in the sole discretion of the Board of Directors of the Grove Isle Club. Any attempt to transfer title to a condominium parcel or assign or sublet an interest therein without such prior approval shall be void and of no effect.
>
> (b) Rules and Regulations. Membership in the Grove Isle Club shall be determined by rules and regulations which may be made from time to time by the directors of the Grove Isle Club.
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> (c) Termination of Membership. Subject to the rules and regulations governing club membership, a unit owner's membership in the Grove Isle Club shall terminate upon termination of ownership of the unit owner's apartment and a lessee's membership in the Grove Isle Club shall terminate upon termination of the leasehold interest in the apartment unit.
>
> (d) Survival of Provisions. If any portion of this section is held unenforceable by a court of competent jurisdiction, then the remaining portion shall remain in full force and effect.
>
> (e) Disclaimer. Nothing herein contained is intended to impose an obligation on the Developer, the Grove Isle Club, Inc., or any other entity to construct a club or provide club facilities.

Of note, the Declaration also contains Section 3.2, "Maintenance, Management, and Operation of Commonly Used Facilities." This section of the Declaration imposes on unit owners the responsibility to pay for maintenance, managing and operating properties, facilities and services "outside of the Grove Isle Project," including "access bridge, gatehouse, landscaped grounds, roadways, conduits for utility services, sea walls, amenities and other lands with improvements thereon which are utilized to provide services and other benefits to unit owners and the Association." Although the unit owners derive benefit from the bridge and road to

access their homes, pursuant to Section 3.2, the unit owners pay for a similar benefit to the Club as other off-island non-resident members who do not contribute to these infrastructure maintenance costs.

Section 12 of the Declaration contains restrictions and specifies "[t]he following restrictions shall be applicable to and covenants running with the land of the condominium . . ." One of the enumerated restrictions is entitled "Developer" and reads, in relevant part, as follows:

> Until the Developer shall have completed the construction, development, promotion and sale of all units within the Grove Isle Project, it shall have the following rights: (d) To do and perform such other acts and things as the Developer may determine to be advisable for the development, promotion, sale, and lease of property located on Fair Isle, together with the operation of any club that may be located thereon. *All of the foregoing rights shall be performed in a manner that will not unduly interfere with the convenience of apartment owners and the facilities intended for their enjoyment.*

Section 12.8(d) (emphasis supplied). Located directly below this in the Declaration is the introduction to Club Membership. Finally, the Declaration provides the Grove Isle Club with the right to approve or disapprove any sale or lease of any unit and the right of first refusal.

Completed Development of Grove Isle Master Plan

The Original Developer completed construction of Grove Isle in accordance with the Grove Isle Master Plan in stages. Construction of the first tower was completed in 1979; the Club Facilities were completed in 1980; and the second and third towers were completed in 1981. [Plaintiffs' Exhibit 6: Certificates of Occupancy]. The Original Developer, along with Maurice Wiener, owned the entire island throughout this time period. It was not until 1995 that the Club property was conveyed to the original Club entity, Grove Isle Associates, Ltd., by quitclaim deed. [Plaintiffs' Exhibit 7: "Quitclaim Deed" Book 16714 Page 3479]. Following this conveyance, Club membership remained mandatory for unit owners and, with the exception of temporary closures for renovations, the Club Facilities remained open to the unit owners.

Subsequent Purchasers of Condominium Units

Other witnesses who testified on behalf of the unit owners, Janet McAliley and Alan Goldfarb, purchased their units subsequent to the completion of Grove Isle project in accordance with the original Grove Isle Master Plan.

McAliley testified that the Club Facilities are an integral part of the living experience at Grove Isle and that she uses the amenities on a regular basis. She testified that the availability of Club Facilities affected the purchase price she paid for her unit, and she was never told that the Club Facilities could be discontinued. McAliley also testified that the condition of the Club Facilities had badly deteriorated over the last several months. Felsher and Goldfarb also confirmed the deterioration of the existing Club Facilities.

Goldfarb testified that, he too, purchased two units on Grove Isle precisely because the Grove Isle club-based lifestyle afforded him the use of the Club Facilities as long as he lives there. He testified that, in purchasing his units and in making substantial expenditures in renovations, he relied on the existence of the Club Facilities, the mandatory nature of Club membership, and the understanding that he would be a member of the Club for as long as he owned his units.

Purchase of Club Property by New Developer

In 2013, Respondent Grove Isle Yacht & Tennis Club purchased several entities, including Grove Isle Associates LLLP ("GIA"), which owns the Club property, as well as the bridge which connects Grove Isle to the mainland.[1] The Interest Purchase Agreement ("IPA") expressly disclosed to the New Developer the existence of 32 "lifetime members" at that time. The IPA at Section 5.1.17 stated in part:

[1] In an unexplained irony, an entity designated "Grove Isle Yacht & Tennis Club" seeks to close the tennis facilities.

> Club Membership: Spa. Seller has disclosed that, to its knowledge, there may be 32 "members" of the Club who, prior to 1996, were issued "lifetime" memberships for same.

[Plaintiffs' Exhibit 10]. As introduced by the Petitioner at the final hearing, Eduardo Avila April 27, 2015 testimony revealed that he understood that "lifetime" members had an absolute right to membership as long as they owned units on Grove Isle.

Development Plans And Association Objections

In mid-October 2014, GIA submitted a proposed site plan under the Miami 21 Zoning Code ("Miami 21") for "dry-run administrative approval" by the City's Planning & Zoning Department. The proposed site plan consists of multiple 5-story residential buildings where the existing Club Facilities are located, as well as new Club Facilities where certain of the tennis courts are now located ("Miami 21 Plans"). Without any final approvals, in mid-November 2014, GIA submitted a waiver application to the City seeking a demolition waiver to demolish the Club Facilities.

On December 19, 2014, the Department completed a "dry-run review" and provided GIA with its comments. [Defendants' Exhibit B]. On December 30, 2014, the Association's zoning and land use attorney, Tony Recio, Esq., expressed the Association's concern with the Miami 21 Plans. [Defendants' Exhibit D]. Specifically, the Association pointed out that the Club Facilities may be a non-conforming use and, if demolished, the use of the Club Facilities by the Unit owners could be lost forever. Recio also lodged a formal objection to the GIA's request for a demolition waiver, on January 21, 2015. [Plaintiff's Exhibit 14]. To date, the demolition waiver has not been issued.

Further Review By The Department Of The Miami 21 Plans

Irene Hegedus, the City of Miami's Planning and Zoning Director testified at trial. She testified that the dry- run review of the Miami 21 Plans was "cursory" and not "final," and that it did not give GIA the right to build. She testified that no final plans have been approved by the City to date. Hegedus further indicated that there are certain aspects of the Miami 21 Site Plan that did not appear compliant with Miami 21, but that the plans could be modified to ensure future compliance.

Hegedus testified that the Club Facilities could be considered a legal non-conforming use pursuant to Miami 21, because the Club Facilities are located on a separate tract of land from the condominium units that the Club Facilities purport to accessorize. Thus, according to her testimony, if the New Developer closes the Club Facilities for a period of more than 120 days or demolishes the Club Facilities, the current unit owners could potentially lose their ability to access the new Club Facilities proposed by the New Developer. It stands to reason that under this result, only new unit owners and members of the public could access the proposed new Club Facilities.

The City of Miami clarified this issue in its amicus brief, stating:

> [I]f this Court finds that the existing Club Facilities and/or the proposed new Club Facilities are for the primary use and benefit of the existing condominium owners and/or any future condominium owners, then the Club Facilities are a legal conforming accessory use and this Court does not need to engage in any legal nonconforming use analysis. The Club Facilities may be reconstructed as an accessory use to the existing condominium units and/or any proposed condominium units.

Thus, the ability of the New Developer to redevelop and relocate the Club Facilities and ensure a larger patronage at such facilities hinges upon the validation of the Settlement Agreement he seeks to circumvent for purposes of these proceedings.

Testimony of Eduardo Avila

Eduardo Avila's testimony from the temporary injunction hearing and deposition was introduced into evidence. On July 28, 2015, Avila indicated that he intended to close the Club Facilities on August 15, 2015. Upon further reflection and in an effort to demonstrate his willingness to compromise, Avila later testified that he intended to temporarily close the Club Facilities and erect a state-of-the-art Club, eventually providing access to all 510 unit owners and unit owners of the proposed newly constructed units.

Specifically, Avila stated:

> A. We have always intended to keep the clubhouse open. It would serve as our sales center during the sales process. We – once we file for a building permit we will need to shed it so we can start demolition and unit construction. So our goal has always been to keep the clubhouse open as long as we can.
>
> * * *
>
> Q. And as long as you are making money, it's your intention to offer the club to the other 510 unit owners, right?
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> A. My intention is now to open the club, and you know it is a club for profit. I have the ability, I believe, if the club is not making money, to raise the dues so that it makes money.
>
> Q. So under no circumstances you are saying would you ever close the club there?
>
> A. What would I do with a $10,000,000 structure that ---
>
> Q. I want to be clear, because this could really change this lawsuit significantly.
>
> A. My intention is to keep the club open as long as --
>
> Q. Under any circumstances?
>
> A. -- I get the support of the club members; you know, the rates can be small or larger. If less people want to use it, there may have to be a mechanism to make sure those who use it pay for the services.

> Q. And you are willing to commit yourself under oath here at this time that you are saying that it is your intention to keep the club facilities open?
>
> A. Absolutely.

Avila testified that he was willing to keep the existing Club Facilities open as long as possible during the construction of new Club Facilities and that he would work in good faith to make alternative, temporary facilities available on Grove Isle during construction. He admitted some the proposed location of the new facilities presented challenges to continued operation.

Legal Analysis

As framed in the Second Amended Complaint, the unit owners seek a declaration that the New Developer must provide the 510 unit owners with Club Facilities on Grove Isle "in the future and on an interrupted basis" and "at all times that they are owners of units on Grove Isle." The unit owners also seek injunctive relief preventing the New Developer from redeveloping the Club property unless the right of unit owners to future use of Club Facilities on Grove Isle is preserved.

Standing

Respondents contest Petitioners' standing to maintain this action. Florida Rule of Civil Procedure 1.221 provides in relevant part:

> A homeowners' or condominium association, after control of such association is obtained by homeowners or unit owners other than the developer, may institute, settle, or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest to the members . . .

Section (4) of Rule 1.221 further provides that a condominium association may institute actions regarding "representations of a developer pertaining to any existing or proposed commonly used facilities." *See also Four Jay's Constr., Inc. v. Marina at the Bluffs Condo. Ass'n, Inc.*, 846 So. 2d 555, 557 (Fla. 4th DCA 2003), *citing Kesl, Inc. v. Racquet Club of Deer Creek II Condo.,*

Inc., 574 So. 2d 251 (Fla. 4th DCA 1991) ("This court has recognized that an association may sue and be sued as the representative of condominium unit owners in an action to resolve a controversy of common interest to all units [pursuant to Rule 1.221]."); *Juno by the Sea Condo. Apts., Inc. v. Juno by the Sea N. Condo. Ass'n*, 418 So. 2d 1190 (Fla. 4th DCA 1982)). Although Rule 1.221 specifically authorizes the right of a condominium association to institute certain actions, the ensuing list of authorized actions is illustrative, not exhaustive, as evidenced by the phrase "including, but not limited to." *See Kohl v. Bay Colony Club Condominium, Inc.*, 398 So. 2d 865, 870(Fla. 4th DCA 1981) ("[W]e construe Rule 1.221, Florida Rules of Civil Procedure, as authorizing the association to maintain actions on behalf of all unit owners concerning any matter of common interest, including, but not limited to, the common elements).

Applying these principles to the instant case, the Court concludes that the requested declaration "concerns matters of common interest" to the 510 unit owning members of Association and also concerns "representations of a developer." All unit owners are mandatory members of the Club and, as such, have a common interest in the provision of Club Facilities on Grove Isle. All unit owners have a common interest in the Settlement Agreement and the Declaration, both of which are recorded covenants which run with their land. PGI also has standing as it is comprised of unit owners and mandatory members of the Club who bought their units subject to the Settlement Agreement and Declaration. *See also, e.g., Osius v. Barton*, 109 Fla. 556, 147 So. 862, 868 (1933) (restrictive covenants may be enforced by those who may be considered beneficiaries of covenants); *White v. Metro. Dade Cnty*., 563 So. 2d 117, 122-23 (Fla. 3d DCA 1990) ("[i]n order to enforce a deed restriction, plaintiffs must show that they sustained an injury that was greater in degree than that sustained by the general public…, or that the restriction in the deed was intended for plaintiffs' benefit.").

Standard for Entitlement to Injunctive Relief

A claim for a permanent injunction is an extraordinary remedy that must only be granted sparingly. *Gomez v. Fradin*, 41 So.3d 1068, 1071 (Fla. 4th DCA 2010); *Hiles v. Auto Bahn Fed'n, Inc.*, 498 So. 2d 997, 998 (Fla. 4th DCA 1986). Under most circumstances, a party seeking injunctive relief must "establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief." *K.W. Brown & Co. v. McCutchen*, 819 So. 2d 977, 979 (Fla. 4th DCA 2002). However, "when injunctions enforce restrictive covenants on real property, irreparable harm is not required." *Planned Parenthood of Greater Orlando v. MMB Properties*, --- So.3d ----, 2015 WL 2414382, *4, Fla. App. 5 Dist., 2015, *citing Stephl v. Moore*, 94 Fla. 313, 114 So. 455 (1927) (holding complainant not required to allege irreparable harm in seeking injunction to prevent violation of restrictive covenant restraining free use of land; complainant only needed to allege violation of covenant). Courts have dispensed of this requirement due to the fact that "Florida law has long recognized that injunctive relief is available to remedy the violation of a restrictive covenant without a showing that the violation has caused an irreparable injury—that is, an injury for which there is no adequate remedy at law." *Autozone Stores, Inc. v. Northeast Plaza Venture, LLC*, 934 So. 2d 670, 673 (Fla. 2d DCA 2006). Thus, "[w]here an injunction is sought to prevent the violation of a restrictive covenant, appropriate allegations showing the violation are sufficient and it is not necessary to allege, or show, that the violation amounts to an irreparable injury." *Jack Eckerd Corp. v. 17070 Collins Ave. Shopping Ctr., Ltd.*, 563 So. 2d 103, 105 (Fla. 3d DCA 1990)); *See also Coffman v. James*, 177 So. 2d 25, 31 (Fla. 1st DCA 1965) ("It is well established in this jurisdiction that even in the absence of a showing of irreparable [sic] injury injunctive relief is grantable as a matter of right,

subject only to sound judicial discretion, to restrain the violation of a restrictive covenant affecting real estate.").

Legal Right to Continued Operation of Club Facilities

Petitioners contend that the exhibits and testimony establish that the unit owners have a clear legal right to the continued operation of the Club Facilities.

As a preliminary matter, the Court notes that the language contained within Section 12.9 of the declaration is mandatory, not permissive:

> 12.9. Club Membership. *No person firm or corporation may maintain ownership of an apartment within the condominium or a leasehold interest for a term of six (6) months or more (including options to renew) unless said person, firm or corporation is a member of Grove Isle Club, Inc.*
>
> (a) Condition Precedent. As *a condition precedent* to ownership of a condominium parcel or a leasehold interest therein under a lease for a term of six (6) months or more (including options to renew), *the prospective owner or lessee shall have first been approved as a member of the Grove Isle Club*. The qualifications for membership therein shall from time to time be determined in the sole discretion of the Board of Directors of the Grove Isle Club. Any attempt to transfer title to a condominium parcel or assign or sublet an interest therein without such prior approval shall be void and of no effect.
>
> * * *
>
> (c) Termination of Membership. Subject to the rules and regulations governing club membership, *a unit owner's membership in the Grove Isle Club shall terminate upon termination of ownership of the unit owner's apartment and a lessee's membership in the Grove Isle Club shall terminate upon termination of the leasehold interest in the apartment unit.*

(emphasis supplied). Thus, the clear and unambiguous terms of the Declaration require all unit owners to be mandatory members of the Club. If a unit owner is not a member of the Club, the unit owner may not maintain ownership of a unit. This language necessarily presumes that an operational Club will continue to exist. If the Club ceases to exist, unit members would be required to maintain membership in a nonexistent club and continue to pay dues in an amount determined at the discretion of the "club owner;" yet, unit owners

would receive nothing in return.

Moreover, the Declaration clearly provides that any individual desiring to purchase a unit on Grove Isle must obtain Club membership approval prior to acquiring ownership or a lease in the unit. The Club is even free to exercise the right of first refusal for any proposed unit sale. Thus, if the Club ceased to exist, unit owners could not freely alienate their property, as prospective unit owners could not be approved for Club membership. This is contrary to established public policy. *See Seagate Condominium Assoc., Inc. v. Duffy,* 330 So. 2d 484, 485 (Fla. 4th DCA 1976) (Unreasonable restraints impinge upon the free alienability of property, which fosters economic and commercial development).

The Declaration further indicates that membership in the Club is terminated "upon termination of ownership of the unit owner's apartment." The Declaration does not delineate any other method of termination. Moreover, the Declaration does not provide any means of transfer of membership to another commensurate club facility upon closure of the Club. Thus, considering the relevant portions of the Declaration in pari materia, it is abundantly clear that unit owners are afforded both the right and the obligation to belong to the Club for the duration of their unit ownership.

This interpretation is further supported by the Original Developer's sale of lifetime memberships to unit owners. Lifetime memberships, by their terms, terminate only upon the death of the holder of the membership. In fact, the minutes of a special meeting held by Grove Isle Club, Inc. on July 16, 1979 reveal that the original directors and officers of the Club contemplated that "lifetime" memberships would persist even after "lifetime" members sold their units and left Grove Isle. [Defendants' Exhibit C]. As courts have recognized that the sale of lifetime memberships obligates the grantor of the membership and its successors to provide

services in conjunction with the memberships, the tender of lifetime memberships in the instant case presuppose the continued existence and operation of the Club. *See e.g. Martin v. Town & Country Dev., Inc.*, 230 Cal. App.2d 422, 41 Cal. Rptr. 47, 10 A.L.R.3d 1347 (1964) (Defendant corporation, which owned an athletic facility and an adjoining hotel, offered lifetime memberships with the purchase of ten shares of the corporation's stock. Plaintiffs purchased the memberships, but then the corporation leased both properties to another corporation, which closed the athletic facility and converted it to hotel uses. The court affirmed a judgment for plaintiffs, agreeing with the trial court that the lifetime membership created a contract that was subject to termination only upon the members' resignation or expulsion.). In the instant case, the sale of lifetime memberships presupposes the continued existence of the Club.

The Court notes that, in addition to requiring mandatory Club membership of unit owners, which is co-extensive with their ownership, the Declaration at Section 3.2 requires unit owners to pay for maintenance of the island's infrastructure owned by the New Developer. While the access bridge serves the Unit owners, it also affords access to and maintains the infrastructure the Club Facilities owned by the Club (and will serve new unit owners of Grove Isle upon the New Developer's completion of an additional 65 units) at the unit owners' sole cost.

Finally, the Court concludes that the "disclaimer" on which the New Developer relies does not relieve the Club of its obligation to continue to provide Club Facilities to unit owners as long as they own their units. The "disclaimer" states:

> (e) Disclaimer. *Nothing herein contained is intended to impose an obligation on the Developer, the Grove Isle Club, Inc., or any other entity to construct a club or provide club facilities.*

Plainly read, and in the context of Section 12.9 and the Declaration as a whole, the "disclaimer"

permitted the Original Developer to walk away from the project if it could not sell the units. However, once constructed and provided, neither the Original Developer nor the New Developer can close the Club Facilities at any time it chooses. *See e.g., Wall v. Fry*, 162 N.C. App. 73, 590 S.E.2d 283, 286 (N.C. Ct.App. 2004) (A developer cannot use restrictive covenants to create the illusion of a high quality subdivision and then shield itself from responsibility by claiming that it did not promise to construct the amenities implied in the covenants and that the covenants did not give rise to an affirmative obligation) *citing Lyerly v. Malpass*, 82 N.C. App. 224, 229 346 S.E. 2d 254, 258 (1986).

Additionally, assuming the Declaration contains any ambiguity, the evidence in the record shows that the intention of the parties was to provide and to receive the use of the Club Facilities as long as unit owners owned their units. Such evidence includes: the Settlement Agreement, the Plans, the Brochure, the Model, the Offering Circular, the sale of "lifetime" memberships, and the testimony of Lowell and Felsher that the Club Facilities were intended to serve as "permanent amenities" to unit ownership. However, because the Court concludes that the Declaration can be reasonably construed, parol evidence is not necessary to reach this legal conclusion.

Accordingly, the Court concludes that the unit owners have a contractual right to use of the Club Facilities on Grove Isle as long as they own their units and as long as they pay their membership dues. *See Lambert v. Berkeley South Condo, Ass'n, Inc*., 690 So. 2d 586 (Fla. 4th DCA 1996) (Applying ordinary rules of contract construction to governing documents of condominium); *Flamingo Ranch Estates, Inc. v. Sunshine Ranches*, 303 So. 2d 665, 666 (Fla. 4th DCA 1974) ("[R]ules of construction required that clauses which are apparently inconsistent with or repugnant to each other [should] be given interpretation and construction as will

reconcile them, if possible").

Equitable Right to Continued Operation of Club Facilities

Petitioners contend that the documents, the development plan, and the representations of the developer are sufficient to imply an implied restrictive covenant running with the land. Respondents counter with the assertion that Petitioners have failed to demonstrate necessity in conjunction with preexisting use, thus any claim for implied easement by estoppel fails. *See Tortoise Island Communities, Inc. v. The Moorings Assoc., Inc.*, 489 So. 2d 22 (Fla. 1986).

Although the Court has determined that the testimony and exhibits introduced into evidence sufficiently establish the existence of an express restrictive covenant, it considers the further issues raised by the parties.

As a preliminary matter, in Florida, the common-law rule of an implied grant of a way of necessity is codified by statute. *See* § 704.01(1), Fla. Stat. (The right to an easement based upon preexisting use is "[b]ased on public policy, convenience, and necessity"). Respondents correctly assert that Petitioners have failed to prove necessity, as required to enforce an implied easement based upon preexisting use. "A common law way of necessity is an implied reservation or grant that arises when a single grantor conveys part of a parcel of land resulting in either the part conveyed or the part retained being cut off from access to a public road." *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1230 (Fla.2004). In the instant case, Petitioners do not seek to enforce an implied grant of right of way based upon preexisting use. Rather, Petitioners seek to demand that the property be used in a certain manner, thus, requiring the New Developer to continue providing Club Facilities.

Although the terms are often used interchangeably, an easement is not identical in definition to an implied restrictive covenant or equitable servitude. In 1920, the Supreme Court

of Washington explained the distinction in relief sought under the applicable equitable doctrines in the following manner:

> There is a wide difference between actual legal ownership of an interest or easement in the real estate of another, and the right, because of equitable principles, to demand that property of that other shall be used only in a certain manner. The one right is based on partial legal title, while the other is based on conduct, representations and acts which in justice, between man and man, may not be repudiated.

Johnson v. Mt. Baker Park Presbyterian Church, 113 Wash. 458, 466, 194 P. 536 (1920). In accord with these concepts, the law recognizes that "[i]t is possible for a restrictive covenant to arise by implication from the conduct of parties or from the language used in deeds, plats, maps, or general building development plans." *Skyline Woods Homeowners Association, Inc. v. Broekmeier*, 276 Neb. 792, 805, 758 N.W. 376, 387 (2008), *citing* Richard R. Powell & Michael Allan Wolf, Powell on Real Property, sec. 60.03(1) (2000); 20 Am. Jur. 2d *Covenants, Conditions, and Restrictions*, sec. 155 (2005). Courts have determined that, "[i]n order for implied restrictive covenants to exist, there must be a common grantor of land who has a common plan of development for that land." *Id*., *citing Roper v. Camuso*, 376 Md. 240, 829 A.2d 589 (2003); Annot., 119 A.L.R. 5th 519 (2004). The Supreme Court of Nebraska described implied restrictive covenants arising out of a common plan of development in the following manner:

> If there is a common plan of development that places restrictions on property use, then such restrictions may be enforced in equity. "A court's primary interest in equity is to give effect to the actual intent of the grantor ... by looking not only to language in deeds, but variously to matters extrinsic to related written documents, including conduct, conversation, and correspondence."

Skyline Woods v. Broekmeier, 276 Neb. at 805 (quoting *Roper v. Camuso*, 376 Md. 240, 829 A.2d 589, 602 (2003)).

In 1984, the Arizona Court of Appeals considered whether a finding of a general plan for development supported a finding of an implied restrictive covenant in conjunction with a golf course. In *Shalimar Association v. D.O.C. Enterprises, Ltd.*, 142 Ariz. 36, 688 P. 2d 682 (Ariz. App. 1984), the owners of homes surrounding a golf course filed suit against the new owners of the golf course seeking declaratory relief and the enforcement against the new owners of an implied restriction limiting the use of the property to a golf course. The trial court entered judgment in favor of the homeowners and golf course owners appealed. The Arizona appellate court noted that upon acquiring a tract of land, the original developer "designed a golf course which was intended as an integral part of the general plan for the development and improvement" of the overall property. The court further found:

> The plan, including the golf course, was for the purpose of inducing people to buy property in the Shalimar subdivisions and was intended to be for the benefit of those purchasers and their successors in interest. A map showing the proposed development was shown to potential lot buyers and was recorded in the office of the Maricopa County Recorder in August 1960.

Id. at 37, 683. Applying these facts, the appellate court affirmed the trial court, noting that:

> The homeowners are seeking not to enforce among themselves mutual restrictive covenants, but to enforce the promise of the developer as to the use of land retained by him. The developer retained the land and sold surrounding lots with the promise that the land retained would be used only as a golf course.

Id. at 41, 687. In support of its decision, the *Shalimar* court stated:

> In *Ute Park Summer Homes Association v. Maxwell Land Grant Co*.[, 77 N.M. 730, 427 P.2d 249 (1967)], the developer had sold lots in a subdivision of land and distributed maps containing an area marked 'golf course.' The map was never recorded, nor did any of the deeds contain any reference to the map or to any interest in a golf course. After the lots had been sold, the developers sought to sell the golf course area without restriction to its use. The New Mexico Supreme Court held that lot owners had a legal right to use of the area as a golf course. This right, the court held, came into existence because of maps and representations of the developer's agents. The court said:

> '[W]here land is sold with reference to a map or plat showing a park or like open area, the purchaser acquires a private right, generally referred to as an easement, that such area shall be used in the manner designated. As stated, this is a private right and it is not dependent on a proper making and recording of a plat for purposes of dedication.' 77 N.M. at 734, 427 P.2d at 253.

142 Ariz. at 44, 688 P.2d at 690.

In 2010, in a case presenting similar facts, the Alabama Supreme Court decided *Heatherwood Holdings, LLC v. First Commercial Bank*, 61 So. 3d 1012 (Al. 2010). There, the court considered whether to recognize an implied restrictive covenant in conjunction with efforts to preserve a golf course pursuant to a common scheme of development. The court considered the *Shalimar* opinion and noted that the documents presented with regard to the golf course required each owner of a residence in the subdivision to be a member of the "Heatherwood Golf Club," in some capacity. *Id*. at 1024. Additionally, marketing materials and advertisements described the subdivision as a golf course community. *Id.* The court concluded that Alabama law would recognize or imply a restrictive covenant as to a golf course constructed as part of a residential development.

The reasoning employed by the *Shalimar* and *Heatherwood* courts is consistent with the concept that a developer's representations may give rise to restrictions on the use of a tract of land. Respondents have asserted that as Petitioners are not third-party beneficiaries of the Settlement Agreement, Petitioners lack standing to enforce covenants set forth in the agreement. This is contrary to several legal authorities. Numerous courts have recognized that under a common scheme of development theory, privity of contract is not required. The Supreme Court of Virginia explained this concept in 1927:

> [T]he right to enjoin is not dependent upon the existence of a right of action at law; that the right of a third person to the protection of the covenant is an equitable right by whatever name called; and that the determination of the person who is entitled to sue is dependent on the intention of the parties to the covenant

> as disclosed by the language of the covenant, and the facts and circumstances surrounding its execution.

Cheatham v. Taylor, 148 Va. 26, 39, 138 S.E. 545, 549 (Va. 1927). *See also* 2 American Law of Property § 9.24 (A.J. Casner ed.1952) ("Where an owner of land enters into a contract that he will use or abstain from using his land in a particular way or manner, equity will enforce the agreement against any purchaser or possessor with notice who attempts to use the land in violation of its terms, irrespective of whether the agreement creates a valid covenant running with the land at law or not."); *See also Lakemoor Community Club, Inc. v. Swanson*, 24 Wn. App. 10, 600 P.2d 1022, review denied, 93 Wn.2d 1001 (1979) (Holding that where a covenant limited use of lots in a subdivision to residential purposes, a provision that no lot should be used as a street or as a public way to areas outside the subdivision "without the written consent of the [developer]," which was not to be unreasonably withheld, did not make it permissible for the developer to convey a tract to a grantee and then to grant 'consent' to the grantee to use the tract as an access route. The developer had informed potential purchasers orally and via brochure that the subdivision would be self-contained, consist of no more than 300 lots, and be protected by a 'closed' road system); *Womack v. Dean*, Tex. Civ. App. 1954, 266 S.W.2d 540 (The failure of the grantor to put the restriction in many of his deeds thends against the establishment of a general building plan but does not preclude a finding that one was intended).

Applying this equitable principle, courts have found that there must be privity of contract *or* a general plan or scheme of development. *See e.g. Wasson Interests, Ltd. v. Adams*, 405 S.W.3d 971, 974 (Tex.App.-Tyler 2013, no pet.) *Save the Prairie Soc. v. Greene Development Group, Inc.*, 323 Ill.App.3d 862, 752 N.E.2d 523 (Ill. App. 1st DCA 2001).

A common plan or scheme of development is a well-recognized principle in Florida jurisprudence. In *Hagan v. Sabal Palms, Inc.*, 186 So. 2d 302 (Fla. 1966), the Florida Supreme

Court observed:

> Where the owner of a tract of land subdivides it and sells distinct parcels thereof to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement, such restrictions may be enforced by any grantee against any other grantee, either on the theory that there is a mutuality of covenant and consideration, or on the ground that mutual negative equitable easements are created; and this doctrine is not dependent on whether the covenant is to be construed as running with the land. 26 C.J.S. Deeds s 167(2), p. 1143 et seq. Building restrictions imposed by a grantor on lots, being evidently for the benefit, not only of the grantor, but also of his grantees and subsequent successors in title, the burden, as well as the benefit, of the restrictions is an incident to ownership of the lots, because in a neighborhood scheme the burden follows the benefit.

Id. at 307, *citing Kittinger v. Rossman*, 12 Del. Ch. 228, 110 A. 677; *Palmer v. Circle Amusement Co.*, 130 N. J. Eq. 356, 22 A.2d 241; *Reed v. Williamson*, 164 Neb. 99, 82 N.W. 2d 18; *Edwards v. Surratt*, 228 S.C. 512, 90 S.E. 2d 906.

In *Klinger v. Zaremba Florida Company*, 502 So. 2d 1252 (Fla. 3d DCA 1986), the Third District Court of Appeal considered whether the purchasers of condominium units could enjoin developers from deviating from a prospectus and an original plan of development. The developers filed plans that included a jogging path and VITA course around a lake located in the proposed condominium community. The developers then altered their plans and eliminated the jogging path and VITA course. The unit owners claimed the plans were not in substantial compliance and sought an injunction to prevent further development. A special master ruled in favor of the developers and exceptions to the special master's findings were rejected by the circuit court. The Klinger court determined that "[e]ven though the developers were not required to complete the final phases of development, they made clear representations that, if completed, the total development would include the jogging path and the VITA course." *Id*. at 1252. The appellate court reversed the trial court, finding that elimination of the amenities was a "substantial matter." *Id*. *See also Osius v. Barton*, 147 So. 862 (Fla. 1933) (A uniform plan of

development is not the sine qua non for sustaining the validity of building restrictions, but the presence or absence of such a plan may be the main factor determining the propriety of judicial enforcement in the absence of other pertinent proof).

In the instant case, Respondents contend that the New Developer is not subject to a common plan or scheme of development, as the Club Facilities and the condominium units are located on separate tracts of land. The Court disagrees. When Margulies proposed and gained approval for the development of the community pursuant to the Settlement Agreement, Grove Isle was a single parcel. Thus, there is a common source of title and a single grantor.

Respondents further assert that the "disclaimer" clause reflected on the circular is sufficient to defeat a common plan or scheme of development. In *Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc.*, 303 So.2d 665 (Fla. 1974), the Florida Supreme Court considered rules of construction relating to inconsistencies between reservation or disclaimer clauses and commons schemes of development, observing:

> In a sense, there is an inherent inconsistency between an elaborate set of restrictive covenants designed to provide for a general scheme or plan of development (generally considered to be for the benefit of the respective grantees), and a clause therein whereby the grantor reserves to itself the power at any time in its sole discretion to change or even arbitrarily abandon any such general scheme or plan of development (a power which is solely for the benefit of the grantor).

Id. at 666. The court stated, "[w]hen such occurs, as it has in this case, rules of construction require that clauses which are apparently inconsistent with or repugnant to each other be given such an interpretation and construction as will reconcile them, if possible." Applying these principles of construction, the court concluded that a disclaimer or reservation clause in a restrictive declaration is valid only to the extent it is "exercised in a reasonable manner as not to destroy the general scheme or plan of development." *Id.*

In the instant case, every written description of the Grove Isle development references a "private, club-based condominium community." It is logical that in order to be "club-based," it is necessary that an operating, functional club exist. This description is solidified by the mandatory membership regulations set forth in the Declaration. As was so eloquently penned by the Honorable John Waites in *In re T 2 Green, LLC v. J.L. Abercrombie*, 363 B.R. 753 (D.S.C. 2006):

> Paragraph 2 of Section III grants each lot owner "the right and the privilege to designate one Family Unit to use and enjoy the facilities of the King's Grant Country Club," subject to the payment of membership dues established by Debtor. The privilege to use and enjoy the Club Amenities runs with the title to the Defendants' property. The purpose of this language appears to be to restrict the use of the Property so that Club Amenities will be available to the Defendants and their successors in title upon payment of reasonable dues related to the maintenance of the amenities. This language in Section III evidences something more than a mere right to join a club, which would otherwise be available to the Defendants as members of the public, but rather it evidences a covenant by the Developer that it, and its successors, will provide property on which such amenities will be situated so that these amenities may be used by residents of the Subdivision. By promising in the Recorded Declarations that residents of the Subdivision had the right to use the Club Amenities, the Developer clearly intended to restrict the use of some portion of the Property for the purposes of making the Club Amenities available to the Defendants.

Id. at 764.

The Covenant Runs with the Land

In *Hagan v. Sabal Palms*, the Florida Supreme Court discussed the enforcement of contractual and equitable limitations regarding the use of land and reiterated the established concept:

> "Restrictions limiting the use of land, if reasonable, may be enforced in courts of equity against the land designated to be benefited or burdened in whosesoever hands it may be, without regard to whether the creation of the restriction is in the nature of an easement or of a covenant, provided the parties, both grantee and grantor, understood the nature and burden of the restriction and had notice thereof, either Actual or constructive."

186 So. 2d at 310 (quoting 26 C.J.S. Deeds s 167(1) at 1142). Thus, "the question whether a covenant runs with the land does not depend upon its being performed upon the land itself; its performance must touch and concern the land or some right or easement annexed or appurtenant thereto and tend necessarily to enhance its value or render it more convenient and beneficial to the owner or occupant." *Id*. In the instant case, the operation of the Club Facilities necessarily enhances the extrinsic and intrinsic value of the Petitioners' units. According to the testimony, the Club Facilities render dining, exercising, and socializing more convenient and entice provide an enticement to prospective buyers.

Conclusion and Relief

Thus, the Court concludes that to allow the New Developer to permanently close and demolish the club or exclude existing unit owners from a proposed new club facility would be patently unreasonable, as it would destroy the common plan or scheme of development. The buyers relied upon the common development plan, inclusive of the amenities, in consideration of the purchase of their units. There has been no demonstration that maintaining and operating the Club Facilities imposes a burden on the New Developer. New Developer has not alleged changed circumstances, frustration of purpose, or inability to operate the Club Facilities. On the contrary, the evidence established that in 2014, profits in excess of one million dollars were amassed in conjunction with the Club Facilities. As indicated previously, Petitioners are not required to demonstrate irreparable harm or an inadequate remedy at law, as they seek to enforce a restrictive covenant. Nonetheless, the Court would be remiss in failing to note that testimony was adduced regarding the restrictions on mobility suffered by many of the elderly unit owners of Grove Isle. It was abundantly clear to the Court the profound impact the closure of the Club would have on the quality of life of these individuals, many of whom have resided in Grove Isle

for decades and have come to rely upon the restaurant and other Club Facilities as their only beacon in an otherwise housebound existence. Thus, the Court concludes that these factors support a finding of irreparable harm and an inadequate remedy at law.

The Court is compelled to observe that the unit owners seek the continued operation and maintenance of the Club Facilities in this suit, yet the evidence demonstrated that in another pending lawsuit, unit owners seek to circumvent the financial obligations imposed in conjunction with membership. The obligations imposed by the Declaration are reciprocal. It is axiomatic that unit owners must pay their dues to support the very Club Facilities they claim they wish to enjoy. It is further evident that the New Developer must enjoy the continued patronage of the unit owners at the Club Facilities in order to continue to ensure the financial ability to provide quality services. Moreover, the New Developer has the right to renovate and develop the Club property, which may necessitate some interruption in the provision of full services on-site.

Accordingly, on the basis of the foregoing facts and the law, the Court **DECLARES** that:

(1) The existing Club Facilities were created for the primary use and benefit of the existing condominium unit owners and in furtherance of creating a private, club-based community;

(2) The Original Developer and his successors and assigns enjoy a reciprocal benefit from the operation of Club Facilities, in the form of profit generated from patronage and membership dues;

(3) The Declaration and all documents, including the Settlement Agreement, and the common plan or scheme of development create a covenant that runs with the land that endows unit owners with the right to use the Club Facilities on Grove Isle as long as they own their units and as long as they pay their membership dues;

(4) The New Developer was on notice of the restrictive covenant when it purchased the property;

(5) The New Developer is entitled to collect dues and set a reasonable amount of dues to ensure profit; and,

(6) The New Developer is permitted to reconstruct and relocate Club Facilities, in compliance with Miami 21, but such newly constructed and/or relocated facilities will continue to exist for the primary use and benefit of the existing condominium unit owners and any future condominium unit owners.

The Court further issues the following **INJUNCTIVE RELIEF**:

(1) The New Developer is prohibited from closing or demolishing the existing Club Facilities until valid building permits are issued;

(2) During any possible construction by the New Developer, the New Developer shall continue to provide Club services and amenities on Grove Isle to the unit owners, as commensurate to existing facilities as is possible, including restaurant facilities and services; tiki bar; pool and a minimum of eight tennis courts. The New Developer shall work in good faith to build and complete new Club Facilities in advance of construction of other components of redevelopment in order to minimize or eliminate the timeframe within which permanent Club Facilities are unavailable to unit owners; and,

(3) The New Developer shall make available to all existing and future unit owners/unit owners the new Club Facilities upon their completion on an equal basis.

The Court retains jurisdiction to enforce the terms of this Final Order and to equitably adjust the any portions of this Final Judgment which may further impede the rights of the parties as discussed in this Final Order. This includes actions taken by Petitioners' which serve to

undermine Respondents' ability to construct, finance, or renovate the Club Facilities or operate the Club Facilities at a profit.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 08/13/15.

BRONWYN C. MILLER
CIRCUIT COURT JUDGE

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
Judge's Initials BCM

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.
Conformed copies:

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