

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR LAKE COUNTY, FLORIDA

KINGS RIDGE COMMUNITY  
ASSOCIATION, INC., SEYMOUR  
HOLZMAN, MAYNARD L. TIRRELL,  
ROY B. GORDON, WILLIAM CAMPBELL,  
ROBERT A. FOWLER, DONALD L. POLK,  
HOWARD W. RANDALL, DONALD W.  
SANTEE and MARQUETTE L. FLOYD,

CASE NO. 05-CA-2718

Plaintiffs,

vs.

LENNAR LAND PARTNERS, LENNAR  
HOMES, INC., LENNAR LAND PARTNERS  
SUB, INC., LNR LAND PARTNERS SUB  
INC., KINGS RIDGE L.L.C.,  
E. BING HACKER, MORTGAGE ADVISORS,  
INC., J. FRANK SURFACE, JR., JOHN  
DOE DEFENDANTS and UNKNOWN  
CO-CONSPIRATORS,

Defendants.

**DEFENDANTS' ANSWER AND DEFENSES  
AND RENEWED MOTION TO STRIKE DEMAND FOR JURY TRIAL**

Defendants, LENNAR LAND PARTNERS ("LLP"), LENNAR HOMES, INC. ("Lennar Homes"), LENNAR LAND PARTNERS SUB, INC. ("LLP Sub"), LNR LAND PARTNERS SUB INC. ("LNR Sub"), and E. BING HACKER ("Mr. Hacker") (collectively, the "Lennar Defendants") and Defendants, KINGS RIDGE L.L.C. ("KRL" or "Grantee"), MORTGAGE ADVISORS, INC. ("MAI") and J. FRANK SURFACE, JR. ("Mr. Surface") (collectively, "Kings Ridge Defendants"), through their undersigned counsel, hereby file their answer and affirmative defenses to the Amended Complaint served April 6, 2006.

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Per 2785-1 PAD

cc: client }  
RWA } via e-mail

ANSWER

Defendants answer the numbered allegations of the Amended Complaint as follows:

1. The Defendants deny the allegations of paragraph 1.
2. The Defendants are without knowledge, and therefore deny, as to any amount of damages claimed by each Plaintiff; further answering paragraph 2, the Defendants state that they are not liable for any amount of damages, attorney's fees, costs or interest.
3. Without admitting any action accrued, which the Defendants deny, the Defendants admit the allegations of paragraph 3 for purposes of venue only.
4. The Defendants deny the allegations of paragraph 4, including without limitation that any required notices or votes necessary were properly obtained prior to the Kings Ridge Community Association ("Association") purporting to bring an authorized action on behalf of either the Club Owners or the members of the Association.
5. The Defendants are without knowledge to admit or deny the allegations of paragraph 5.
6. The Defendants admit the allegations of paragraph 6.
7. The Defendants admit the allegations of paragraph 7.
8. The Defendants admit that Lennar Land Partners is a Florida general partnership which previously held title to certain real property and facilities that are the subject of Plaintiffs' claims. Such real property and facilities have a specific legal description and are defined in the Declaration Plaintiffs attach as Exhibit 1 to the Amended Complaint as "Club Facilities." In paragraph 8 and in multiple other paragraphs, which Plaintiffs in turn repeat in 16 counts, however, Plaintiffs have defined "Club Property" to mean "real estate commonly referred to as

the Kings Ridge Recreation Club or the Royal Club,” rather than to mean specifically described Club Facilities. To the extent Plaintiffs purport to allege anywhere in the Amended Complaint that “Club Property” encompasses more than the legally described Club Facilities, as defined in the attached Declaration, as amended, the Defendants deny the allegations.

9. The Defendants admit the allegations of paragraph 9.

10. The Defendants admit the allegations of paragraph 10, subject to the improper use of “Club Property” to include anything other than the “Club Facilities.” See response to paragraph 8 above.

11. The Defendants are without knowledge of the allegations of paragraph 11.

12. Subject to confirmation in discovery, the Defendants admit the allegations of the first sentence of paragraph 12. The Defendants deny the remaining allegations of paragraph 12.

13. The Defendants are without knowledge of the allegations of paragraph 13.

14. The Defendants admit the allegations of paragraph 14.

15. The Defendants deny the allegations of paragraph 15.

16. Lennar Homes admits the general allegations of paragraph 16.

17. The Defendants admit the allegations of paragraph 17.

18. The Defendants deny the compound allegations of paragraph 18.

19. The Defendants deny the legal description contained in paragraph 19 is identical to the statement of the legal description in Exhibit A-2 of the Declaration.

20. With respect to paragraph 20, the Defendants state that the Declaration speaks for itself and title to the Club Facilities is as reflected in publicly recorded deeds. The Defendants object to the improper use of “Club Property” to include anything other than the “Club Facilities.” See response to paragraph 8 above.

21. The Defendants admit the Declaration incorporates the definition of “Community Declaration,” but denies Plaintiffs’ underlining and italicizing appears in the definition.

22 The Defendants deny the compound allegations of paragraph 22. The Defendants specifically deny that Article VI, Section 24, which refers to the voluntary “Club Members,” gives any right to acquire to the Association.

23 The Defendants admit the first sentence of paragraph 23, pertaining to the renumbering of Fla. Stat. §617.31. The Defendants deny the statute contains Plaintiffs’ underlining and italicizing.

24. The Defendants deny the allegations of paragraph 24 as worded.

25 The Defendants deny the allegations of paragraph 25. The Defendants specifically object to the improper use in paragraph 25 of the definition of “Right to Acquire,” which incorporates the improper definition of “Club Property,” to mean any right other than the Club Members’ right to acquire “Club Facilities” under certain circumstances and as provided in the Declaration, as amended. *See* response to paragraph 8 above.

26. The Defendants deny the allegations of paragraph 26. The Defendants object to the improper use in paragraph 26 of the definition of “Right to Acquire,” for the reasons stated in paragraphs 8 and 25 above.

27. The Defendants admit that on or about August 30, 2000, LLP along with Recreation Corp. entered into an Acquisition and Operating Agreement with Kings Ridge L.L.C. The Defendants deny the remaining allegation in paragraph 27. The Defendants object to the improper use of “Club Property” to include anything other than the “Club Facilities” *See* response to paragraph 8 above.

28. With the exception of the word, "purported," the Defendants admit the allegations of paragraph 28, subject to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

29. With respect to the allegations of paragraph 29, the Defendants deny that the Association had a "right of first refusal" and deny that either the Declaration or the statute required LLP to provide either (i) the Association or (ii) the Club Members or (iii) both with an opportunity to purchase the Club Facilities (or any other property) prior to the Community Completion Date. The Defendants deny the remaining allegations of paragraph 29. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

30. The Defendants admit the Sixth Amendment was executed on August 31, 2000 by LLP and acknowledged by Recreation Corp. With respect to the recording of the Sixth Amendment and Kings Ridge Deed, the Defendants state that they were both recorded on October 9, 2000 at 10:09:17 a.m., with the recording of the Kings Ridge Deed preceding the recording of the Sixth Amendment. The Defendants deny the remaining allegations of paragraph 30. The Defendants object to the improper use in paragraph 30 of the definition of "Right to Acquire," for the reasons stated in paragraphs 8 and 25 above.

31. The Defendants deny the allegations of paragraph 31. The text of the Sixth Amendment means what it does and is the best evidence of the meaning and effect of the Sixth Amendment, and the Defendants deny all allegations inconsistent therewith. The Defendants object to the improper use in paragraph 31 of the definition of "Right to Acquire," for the reasons stated in paragraphs 8 and 25 above.

32. The Defendants admit the allegations of paragraph 32.

33. The Defendants deny the allegations of paragraph 33.

34. The Defendants deny the allegations of paragraph 34, which incorporates the definitions of "Right to Acquire" and "Club Property," for the reasons stated in paragraphs 8 and 25 above. The Defendants admit the first sentence of paragraph 34. The Defendants deny the remaining allegations of paragraph 34.

35. The Defendants deny the allegations of paragraph 35. The text of the Corrective Deed means what it does and is the best evidence of the meaning and effect of the Corrective Deed, and the Defendants deny all allegations inconsistent therewith.

36. The Defendants deny the allegations of paragraph 36. The text of the Kings Ridge Deed and Corrective Deed mean what it does and is the best evidence of the meaning and effect of the Kings Ridge Deed and Corrective Deed, and the Defendants deny all allegations inconsistent therewith.

37. With the exception of the phrase, "purports to unilaterally amend," the Defendants admit the allegations of paragraph 37, subject to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

38. With respect to the recording of the Seventh Amendment and Corrective Deed, the Defendants state that they were both recorded on May 10, 2001 at 10:44:46 a.m., with the recording of the Corrective Deed preceding the recording of the Seventh Amendment. The Defendants deny the remaining allegations of paragraph 38. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

39. With regard to paragraph 39, the Defendants deny the Association or Club Members were not informed or did not have notice of the Sale Agreement, Kings Ridge Deed,

Corrective Deed, Sixth Amendment or Seventh Amendment. The Defendants deny the allegations of subparagraphs 39 a. and 39 b. With respect to subparagraph 39 c., the Defendants deny the Association or Club Members made an offer to purchase the Club Property or Club Facilities. With respect to subparagraph 39 d., the Defendants admit that LLP did not provide the Association or Club Members with an opportunity to make an offer for the "Club Property," and aver that LLP were under no legal obligation to do so. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

40. The Defendants admit the Community Completion Date occurred on or about January 25, 2005 and deny the remaining allegations of paragraph 40. The Defendants object to the improper use in paragraph 40 of the definition of "Right to Acquire," for the reasons stated in paragraphs 8 and 25 above.

41. The Defendants deny the allegations of paragraph 41. The Defendants object to the improper use in paragraph 41 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

42. The Defendants deny the allegations of paragraph 42. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

43. The Defendants admit a Document Book was provided to new residents. With respect to the remaining allegations of paragraph 43, the Defendants there are insufficient allegations as to time and identify of "new residents," thus the Defendants deny the allegations. The Defendants aver that one or more of the unidentified "new residents," including one or more of the named Plaintiffs, received a copy of the Sixth Amendment in his or her or their closing

documents or was or were on actual or constructive notice of the Sixth Amendment, or both, having acquired his, her or their Homesites after October 9, 2000.

44. The Defendants admit the allegations of paragraph 44, subject to the Defendants' objection to the improper use in paragraph 44 of the definition of "Right to Acquire," for the reasons stated in paragraphs 8 and 25 above.

45 The Defendants deny the allegations of paragraph 45. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

46. The Defendants deny the allegations of paragraph 46. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

47. The Defendants deny the allegations of paragraph 47. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

48. The Defendants deny the allegations of paragraph 48.

49 The text of the Article VI of the Declaration, as amended, is the best evidence of its meaning, and the Defendants deny the allegations of paragraph 49 to the extent inconsistent therewith.

50. Subject to confirmation in discovery and verification of each named Homeowner's individual circumstances and, for any Homeowners who were not the original purchasers of their Homesites, review of the history of election by the original owner of the Homesite to be or not to be a Club Member, the Defendants admit the allegations of paragraph 50.

51. Subject to confirmation in discovery the Defendants admit the allegations of paragraph 51.

52. The Defendants deny the allegations of paragraph 52.

53. The Defendants deny the allegations of paragraph 53.

54. The Defendants deny the allegations of paragraph 54.

55. The Defendants deny the allegations of paragraph 55. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

56. The Defendants deny the allegations of paragraph 56. The Defendants object to the improper use in paragraph 56 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

57. The Defendants deny the allegations of paragraph 57.

58. The Defendants deny the allegations of paragraph 58. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

59. The Defendants deny the allegations of paragraph 59. The Defendants object to the improper use in paragraph 59 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT I

60. LLP and KRL reallege their responses to paragraphs 1 through 47.

61. LLP and KRL deny the allegations of paragraph 61.

62. LLP and KRL deny the allegations of paragraph 62. LLP and KRL object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

63. LLP and KRL deny the allegations of paragraph 63. LLP and KRL object to the improper use in paragraph 63 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

64. LLP and KRL deny the allegations of paragraph 64. LLP and KRL object to the improper use in paragraph 64 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT 2

65. LLP and KRL reallege their responses to paragraphs 1 through 59.

66. LLP and KRL deny the allegations of paragraph 66.

67. LLP and KRL deny the allegations of paragraph 67. LLP and KRL object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

68. LLP and KRL deny the allegations of paragraph 68. LLP and KRL object to the improper use in paragraph 68 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

69. LLP and KRL deny the allegations of paragraph 69. LLP and KRL object to the improper use in paragraph 69 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT 3

70. LLP and KRL reallege their responses to paragraphs 1 through 47.

71. LLP and KRL deny the allegations of paragraph 71.

72. LLP and KRL deny the allegations of paragraph 72. LLP and KRL object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

73. LLP and KRL admit the Association contends the positions alleged in paragraph 73. LLP objects to the improper use in paragraph 73 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

74. LLP and KRL deny the allegations of paragraph 74. LLP and KRL object to the improper use in paragraph 74 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

75. LLP and KRL deny the allegations of paragraph 75.

76. LLP and KRL deny the allegations of paragraph 76. LLP and KRL object to the improper use in paragraph 76 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

77. LLP and KRL admit that the Association seeks a declaration. LLP and KRL deny the remaining allegations of paragraph 77 and all subparagraphs. LLP and KRL object to the improper use in paragraph 77 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT 4

78. LLP and KRL reallege their responses to paragraphs 1 through 59.

79. LLP and KRL deny the allegations of paragraph 79.

80. LLP and KRL deny the allegations of paragraph 80. LLP and KRL object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

81. LLP and KRL admit the Association contends the positions alleged in paragraph 81. LLP and KRL object to the improper use in paragraph 81 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

82. LLP and KRL deny the allegations of paragraph 82. LLP and KRL object to the improper use in paragraph 74 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

83. LLP and KRL deny the allegations of paragraph 83.

84. LLP and KRL deny the allegations of paragraph 84. LLP and KRL object to the improper use in paragraph 84 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

85. LLP and KRL admit that the Association seeks a declaration. LLP and KRL deny the remaining allegations of paragraph 85 and all subparagraphs. LLP and KRL object to the improper use in paragraph 85 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT 5

86. LLP, LLP Sub and LNR Sub reallege their responses to paragraphs 1 through 47.

87. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 87.

88. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 88. LLP, LLP Sub and LNR Sub object to the improper use in paragraph 88 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

89. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 89. LLP, LLP Sub and LNR Sub object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

90. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 90. LLP, LLP Sub and LNR Sub object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

91. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 91.

#### COUNT 6

92. LLP, LLP Sub and LNR Sub reallege their responses to paragraphs 1 through 59.

93. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 93.

94. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 94. LLP, LLP Sub and LNR Sub object to the improper use in paragraph 94 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

95. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 95. LLP, LLP Sub and LNR Sub object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

96. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 96. LLP, LLP Sub and LNR Sub object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

97. LLP, LLP Sub and LNR Sub deny the allegations of paragraph 97.

#### COUNT 7

98. The Lennar Defendants reallege their responses to paragraphs 1 through 47.

99. The Lennar Defendants deny the allegations of paragraph 99.

100. The Lennar Defendants deny the allegations of paragraph 100.

101. The Lennar Defendants deny the allegations of paragraph 101.

102. The Lennar Defendants deny the allegations of paragraph 102.

103. The Lennar Defendants deny the allegations of paragraph 103.

104. The Lennar Defendants deny the allegations of paragraph 104.

105. The Lennar Defendants deny the allegations of paragraph 105.

106. The Lennar Defendants deny the allegations of paragraph 106.

107. The Lennar Defendants deny the allegations of paragraph 107.

108. The Lennar Defendants deny the allegations of paragraph 108. The Lennar Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

109. The Lennar Defendants deny the allegations of paragraph 109. The Lennar Defendants object to the improper use in paragraph 109 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

110. The Lennar Defendants deny the allegations of paragraph 110. The Lennar Defendants object to the improper use in paragraph 110 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

111. The Lennar Defendants deny the allegations of paragraph 111. The Lennar Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

112. The Lennar Defendants deny the allegations of paragraph 112

113. The Lennar Defendants deny the allegations of paragraph 113. The Lennar Defendants object to the improper use of “Club Property” to include anything other than the “Club Facilities.” *See* response to paragraph 8 above.

114. The Lennar Defendants deny the allegations of paragraph 114. The Lennar Defendants object to the improper use in paragraph 114 of the definitions of “Right to Acquire” and “Club Property” for the reasons stated in paragraphs 8 and 25 above.

115. The Lennar Defendants deny the allegations of paragraph 115.

#### COUNT 8

116. The Lennar Defendants reallegé their responses to paragraphs 1 through 59.

117. The Lennar Defendants deny the allegations of paragraph 117.

118. The Lennar Defendants deny the allegations of paragraph 118.

119. The Lennar Defendants deny the allegations of paragraph 119.

120. The Lennar Defendants deny the allegations of paragraph 120.

121. The Lennar Defendants deny the allegations of paragraph 121.

122. The Lennar Defendants deny the allegations of paragraph 122.

123. The Lennar Defendants deny the allegations of paragraph 123.

124. Partners, LLP Sub and LNR Sub, Lennar Homes and Mr. Hacker deny the allegations of paragraph 124.

125. The Lennar Defendants deny the allegations of paragraph 125.

126. The Lennar Defendants deny the allegations of paragraph 126. The Lennar Defendants object to the improper use of “Club Property” to include anything other than the “Club Facilities.” *See* response to paragraph 8 above.

127. The Lennar Defendants deny the allegations of paragraph 127. The Lennar Defendants object to the improper use in paragraph 127 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

128. The Lennar Defendants deny the allegations of paragraph 128. The Lennar Defendants object to the improper use in paragraph 128 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

129. The Lennar Defendants deny the allegations of paragraph 129. The Lennar Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

130. The Lennar Defendants deny the allegations of paragraph 130.

131. The Lennar Defendants deny the allegations of paragraph 131. The Lennar Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

132. The Lennar Defendants deny the allegations of paragraph 132. The Lennar Defendants object to the improper use in paragraph 132 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

133. The Lennar Defendants deny the allegations of paragraph 133.

#### COUNT 9

134. The Kings Ridge Defendants reallege their responses to paragraphs 1 through 47.

135. The Kings Ridge Defendants deny the allegations of paragraph 135.

136. With regard to paragraph 136, the Kings Ridge Defendants admit that the original 1996 Declaration constituted a contract between and among the parties named therein. The Kings Ridge Defendants that Kings Ridge Defendants had knowledge of the Declaration and of

the rights of the Association under the Declaration, as it might be amended from time to time, pursuant to the Declarant's reserved right to amend.

137. The Kings Ridge Defendants deny the allegations of paragraph 137.

138. The Kings Ridge Defendants deny the allegations of paragraph 138.

139. The Kings Ridge Defendants deny the allegations of paragraph 139.

140. The Kings Ridge Defendants deny the allegations of paragraph 140.

141. The Kings Ridge Defendants deny the allegations of paragraph 141.

142. The Kings Ridge Defendants deny the allegations of paragraph 142.

**COUNT 10**

143. The Kings Ridge Defendants reallege their responses to paragraphs 1 through 59.

144. The Kings Ridge Defendants deny the allegations of paragraph 144.

145. With regard to paragraph 145, the Kings Ridge Defendants admit that the original 1996 Declaration constituted a contract between and among the parties named therein. The Kings Ridge Defendants that Kings Ridge Defendants had knowledge of the Declaration and of the rights of the Association under the Declaration, as it might be amended from time to time, pursuant to the Declarant's reserved right to amend.

146. The Kings Ridge Defendants deny the allegations of paragraph 146.

147. The Kings Ridge Defendants deny the allegations of paragraph 147.

148. The Kings Ridge Defendants deny the allegations of paragraph 148.

149. The Kings Ridge Defendants deny the allegations of paragraph 149.

150. The Kings Ridge Defendants deny the allegations of paragraph 150.

151. The Kings Ridge Defendants deny the allegations of paragraph 151.

COUNT 11

152. Lennar Homes and Mr. Hacker reallege their responses to paragraphs 1 through 47.

153. Lennar Homes and Mr. Hacker deny the allegations of paragraph 153.

154. With regard to paragraph 154, Lennar Homes and Mr. Hacker admit that the original 1996 Declaration constituted a contract between and among the parties named therein. Lennar Homes and Mr. Hacker admit the Declaration, as amended, is binding upon the Club Members and that Lennar Homes and Mr. Hacker had express knowledge of the Declaration and of the rights of the Association under the Declaration, as it might be amended from time to time pursuant to the Declarant's reserved right to amend. Lennar Homes and Mr. Hacker deny the allegations of paragraph 154.

155. Lennar Homes and Mr. Hacker admit the Lennar Homes was and is a separate legal entity from LLP. Lennar Homes and Mr. Hacker deny the second sentence of paragraph 155.

156. Lennar Homes and Mr. Hacker deny the allegations of paragraph 156.

157. Lennar Homes and Mr. Hacker admit that Lennar Homes and Mr. Hacker knew of the existence of the contractual relationship between LLP and the Association as set forth within the Declaration, as it might be amended from time to time pursuant to the Declarant's reserved right to amend.

158. Lennar Homes and Mr. Hacker deny the allegations of paragraph 158.

159. Lennar Homes and Mr. Hacker deny the allegations of paragraph 159. Lennar Homes and Mr. Hacker object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

160. Lennar Homes and Mr. Hacker deny the allegations of paragraph 160.

161. Lennar Homes and Mr. Hacker deny the allegations of paragraph 161. Lennar Homes and Mr. Hacker object to the improper use in paragraph 161 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

#### COUNT 12

162. Lennar Homes and Mr. Hacker reallege their responses to paragraphs 1 through 59.

163. Lennar Homes and Mr. Hacker deny the allegations of paragraph 163.

164. With regard to paragraph 164, Lennar Homes and Mr. Hacker admit that the original 1996 Declaration constituted a contract between and among the parties named therein. Lennar Homes and Mr. Hacker admit the Declaration, as amended, is binding upon the Club Members and that Lennar Homes and Mr. Hacker had express knowledge of the Declaration and of the rights of the Association under the Declaration, as it might be amended from time to time pursuant to the Declarant's reserved right to amend. Lennar Homes and Mr. Hacker deny the allegations of paragraph 164.

165. Lennar Homes and Mr. Hacker admit the Lennar Homes was and is a separate legal entity from LLP. Lennar Homes and Mr. Hacker deny the second sentence of paragraph 165.

166. Lennar Homes and Mr. Hacker deny the allegations of paragraph 166.

167. Lennar Homes and Mr. Hacker admit that Lennar Homes and Mr. Hacker knew of the existence of the contractual relationship between LLP and the Association as set forth within the Declaration, as it might be amended from time to time pursuant to the Declarant's reserved right to amend.

168. Lennar Homes and Mr. Hacker deny the allegations of paragraph 168.

169. Lennar Homes and Mr. Hacker deny the allegations of paragraph 169. Lennar Homes and Mr. Hacker object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

170. Lennar Homes and Mr. Hacker deny the allegations of paragraph 170.

171. Lennar Homes and Mr. Hacker deny the allegations of paragraph 171. Lennar Homes and Mr. Hacker object to the improper use in paragraph 171 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

### COUNT 13

172. The Defendants reallege their responses to paragraphs 1 through 47.

173. The Defendants deny the allegations of paragraph 173.

174. The Defendants deny the allegations of paragraph 174.

175. The Defendants deny the allegations of paragraph 175.

176. The Defendants deny the allegations of paragraph 176. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities" *See* response to paragraph 8 above.

177. The Defendants deny the allegations of paragraph 177. The Defendants object to the improper use in paragraph 177 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above

178. The Defendants deny the allegations of paragraph 178.

179. The Defendants deny the allegations of paragraph 179. The Defendants object to the improper use in paragraph 179 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above

180. The Defendants deny the allegations of paragraph 180.

181. The Defendants deny the allegations of paragraph 181. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

182. The Defendants deny the allegations of paragraph 182.

#### COUNT 14

183. The Defendants reallege their responses to paragraphs 1 through 59.

184. The Defendants deny the allegations of paragraph 184.

185. The Defendants deny the allegations of paragraph 185.

186. The Defendants deny the allegations of paragraph 186.

187. The Defendants deny the allegations of paragraph 187. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." See response to paragraph 8 above.

188. The Defendants deny the allegations of paragraph 188. The Defendants object to the improper use in paragraph 188 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

189. The Defendants deny the allegations of paragraph 189.

190. The Defendants deny the allegations of paragraph 190. The Defendants object to the improper use in paragraph 190 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

191. The Defendants deny the allegations of paragraph 191.

192. The Defendants deny the allegations of paragraph 192. The Defendants object to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

193. The Defendants deny the allegations of paragraph 193.

#### COUNT 15

194. LLP realleges its responses to paragraphs 1 through 47.

195. LLP denies the allegations of paragraph 195. LLP objects to the improper use in paragraph 195 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

196. LLP denies the allegations of paragraph 196. LLP objects to the improper use in paragraph 196 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

197. LLP denies the allegations of paragraph 197. LLP objects to the improper use in paragraph 188 of the definition of "Right to Acquire" for the reasons stated in paragraphs 8 and 25 above.

198. LLP denies the allegations of paragraph 198. LLP objects to the improper use of "Club Property" to include anything other than the "Club Facilities." *See* response to paragraph 8 above.

#### COUNT 16

199. LLP realleges its responses to paragraphs 1 through 59.

200. LLP denies the allegations of paragraph 200. LLP objects to the improper use in paragraph 200 of the definitions of "Right to Acquire" and "Club Property" for the reasons stated in paragraphs 8 and 25 above.

201. LLP denies the allegations of paragraph 201. LLP objects to the improper use in paragraph 201 of the definitions of “Right to Acquire” and “Club Property” for the reasons stated in paragraphs 8 and 25 above.

202. LLP denies the allegations of paragraph 202. LLP objects to the improper use in paragraph 202 of the definition of “Right to Acquire” for the reasons stated in paragraphs 8 and 25 above.

203. LLP denies the allegations of paragraph 203. LLP objects to the improper use of “Club Property” to include anything other than the “Club Facilities.” *See* response to paragraph 8 above.

#### MOTION TO STRIKE JURY TRIAL DEMAND

204. The Defendants move to strike Plaintiffs’ demand for jury trial, pursuant to the Club Covenants, ¶22, which provides:

22. Consent to trial by court. The respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim being brought by either of the parties hereto against the other relating to any matters whatsoever arising out of or in any way connected with the provisions of the Community Declaration relating to the Club Facilities, these Covenants or the Club Members or to the Community Association’s use or occupancy or the Club Facilities.

The Declaration, attached to Plaintiffs’ Amended Complaint, provides, in Section 22:

Section 22. Club Covenants. The Community Association and each Neighborhood Association and each Club Member, where applicable, shall be bound by and comply with the Club Covenants which are incorporated herein by reference.

## AFFIRMATIVE DEFENSES

Having answered the Amended Complaint against them, the Defendants hereby interpose the following Affirmative Defenses thereto:

205. **First Affirmative Defense:** The terms of the governing documents, including without limitation, Declaration, Association's Articles and Bylaws and Club Covenants, incorporated by reference into the Declaration, expressly bar the relief Plaintiffs seek.

206. **Second Affirmative Defense:** As to all counts and claims, one or more of the named Plaintiffs or the unnamed potential class members have failed to fulfill conditions precedent to the bringing of this action and all claims herein in that they have failed to comply with the requirements set forth in the Declaration, governing documents, Articles of the Association, Bylaws of the Association, Club Covenants, Florida Statutes or one or more of those sources.

207. **Third Affirmative Defense:** The Association has failed to satisfy a condition precedent to the filing of one or more claims the Association brings in this action. Specifically, Plaintiffs have failed to obtain the necessary vote of seventy-five (75%) percent of the Owners before commencing or prosecuting this lawsuit, as required by the governing documents for claims other than actions by the Association to enforce the provisions of the Declaration. *See, Declaration, Article XIX, Section 2, the Association's Articles and the Association's Bylaws.* The Association has likewise failed to obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum was properly attained, as required by Fla. Stat. §720.303. This mandatory pre-exercise vote would obligate Plaintiffs and their members to abide by the judicial relief they claim to seek and to pay the required purchase price for the Club Facilities.

The Amended Complaint fails to allege, because it cannot, that Plaintiffs conducted the necessary vote and obtained the requisite majority vote of the Club Members or Association's members or both to pursue the claims they are pursuing. The Amended Complaint further fails to allege that Plaintiffs obligated themselves or that the Association properly obligated its members to pay the money required to purchase the Club Facilities, in the event the court were to rule in the Plaintiffs' favor. As a result, the nonexistence of this required vote precludes the necessary element of having a plaintiff that is ready, willing and able to exercise the right to acquire the Club Facilities. The lack of a pre-exercise binding vote demonstrates that this lawsuit is nothing more than a theoretical exercise or a request for a nonbinding advisory opinion. Consequently, without the pre-existing binding vote of the Plaintiffs and all other homeowners to pay whatever purchase price may be determined for the right to acquire, this court could: (1) proceed through a lengthy trial; (2) determine that the Club Members are entitled to purchase the Club Facilities; (3) establish a procedure to determine the price for such purchase; (4) have a purchase price established; (5) order the Plaintiffs (and all other Club Members) to close upon the purchase; and then (6) be faced with Plaintiffs who then elect not to proceed, because there was no preexisting binding vote by the affected Club Members obligating them to follow through with whatever the Court were to determine. If Plaintiffs wait until after the Court conducts all of its judicial work to hold a vote, and it is then determined that the Club Members do not want to purchase the Club Facilities, or more likely do not want to spend or borrow the millions of dollars required to purchase, the result would be a complete waste of years of the Court's and Defendants' time and resources. Until such time as a vote has been taken, whereby the Club Members or Association members or both obligate themselves to spend the money required in the event it is determined

Plaintiffs are entitled to pursue a right to acquire the Club Facilities, the Court is judicially precluded from engaging in what is only a theoretical exercise.

208. **Fourth Affirmative Defense:** The Association's claims based upon any alleged right to acquire on the part of the Association are subject to the express terms of the Club Covenants that were incorporated by reference into the Declaration, including without limitation paragraph 21 of the Club Covenants, which provides:

21. Conveyance. Should Club Owner, in its sole discretion, at any time and without being obligated to do so, desire to convey the Club Facilities to the Community Association, it may do so by Special Warranty Deed, reserving unto itself, without set off or deduction, the continuing right to receive the total of all Club Facilities Fees. The continuous payment of such Club Facilities Fees shall be secured by a mortgage and pledge of such Club Facilities Fees and the continuation of the lien rights for collection thereof. The conveyance shall be subject to easements, restrictions, reservations, conditions, limitation and declarations of record, real estate taxes for the year of conveyance, zoning and land use regulations and facts shown by an accurate survey. The Community Association shall be deemed to pay all service and similar contracts relating to the ownership, operation and administration of the conveyed Club Facilities. The Community Association shall, and does hereby, indemnify and hold Club Owner harmless on account hereof. The Community Association shall be obligated to accept such conveyance(s) without setoff, condition, or qualification of any nature. The Club Facilities personal property and equipment thereon and appurtenances thereto shall be conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREA BEING CONVEYED. The Community Association shall pay all costs associated with the conveyance(s).

209. **Fifth Affirmative Defense:** Article VI of the Articles of Incorporation of the Association states the Association shall have powers, subject to the Declaration, including the Club Covenants. Acquisition of the Club Facilities by the Association in any manner other than as expressly provided in Section 21 of the Club Covenants would not be a proper exercise of the

Association's power to acquire property "in connection with the functions of the Association" and would violate the Association's Article of Incorporation.

210. **Sixth Affirmative Defense:** As a matter of law, exercise of the Declarant's reserved right of amendment, by adopting the Sixth Amendment to the Declaration, could not be considered wrongful, where each of the Plaintiff Homeowners took ownership of their Homesite subject to the Declarant's reserved contractual right of amendment. Article II, Section 2 of the Declaration entitled "Amendment" states the Declarant reserved the right to amend the Declaration in its absolute discretion at any time prior to the Community Completion Date, barring any claims by Plaintiffs based upon a right to acquire prior to the Community Completion Date.

211. **Seventh Affirmative Defense:** Plaintiffs cannot establish that they were or are ready, willing and able to purchase the Club Facilities by paying the purchase price required for the Club Facilities.

212. **Eighth Affirmative Defense:** Any consideration or vote by the Association's Board of Directors or Association's Membership, had such a vote been required in connection with exercise of the Club Members' right to acquire, would have been subject to the Declarant's Class B majority voting rights, Declarant's power to direct the voting of the Association's Membership or Board of Directors and Declarant's Class B member's "right to disapprove any such action, policy, or program proposed or authorized by the Community Association, Board, A.C.C. or any committee." See The Association's ByLaws, Article VII.

213. **Ninth Affirmative Defense:** Pursuant to the Declaration at Article VI, Section 25(g), the Association and each individual Plaintiff Club Member, by electing to be a Club Member and acceptance of title to his or her Homesite, ratified and confirmed that "Declarant,

Community Association or Club Owner, have fully discharged all duties to each Club Member concerning the Club including, but not limited to and without acknowledging or imposing same, any fiduciary duties imposed by law," barring any claim by Plaintiffs to the contrary.

214. **Tenth Affirmative Defense:** The express terms of section 24 of Article VI of the original Declaration and Declaration as amended provide that any right to acquire belongs to Club Members. The Club Members could not assign nor did they assign such right to the Association, barring any direct claim by the Association for any alleged breach of the Declaration.

215. **Eleventh Affirmative Defense:** The Amended Complaint fails to state a cause of action upon which relief can be granted. Specifically, the Declaration, which constitutes the complete basis of the Plaintiffs' sixteen claims, specifically precludes Plaintiffs from seeking damages against the Defendants *See, e.g.*, Declaration, Article XVII Section 13. Accordingly, the Declaration which is the basis of each Count is inconsistent with each Count in which Plaintiffs claim damages and each such Count is a nullity and should be dismissed or, alternatively, judgment should be entered in favor of Defendants against Plaintiffs on each such Count.

216. **Twelfth Affirmative Defense:** The statute upon which the Plaintiffs proceed does not apply to conveyances incidental to financing. The conveyance to a special purpose entity, the Grantee, was incidental to the overall purpose of the transaction, namely, to supply the Grantor with funds in a structured finance transaction. The financing transaction was initiated and organized by Defendant, Mortgage Advisors, Inc., an entity that is engaged in the business of financing and managing infrastructure systems and recreational facilities for adult and retirement communities. Because the conveyance of the Club Facilities was incidental to the

main financing purpose of the transaction, the “right to acquire” provisions of Fla. Stat. § 720.31 were not triggered and the conveyance was one that is expressly excepted from the statutory right to acquire, barring the relief Plaintiffs seek. *See* Fla. Stat. §720.31(4)(e), formerly numbered as 617.31(4)(e).

217. **Thirteenth Affirmative Defense:** Pursuant to Fla. Stat. §720.31(2), formerly §617.31(2), the Grantor, as Facility Owner, was “under no obligation to sell to the homeowners’ association or to interrupt or delay other negotiations, and he or she shall be free at any time to execute a contract for the sale of the facilities to a party or parties other than the homeowners’ association.”

218. **Fourteenth Affirmative Defense:** There was no decision by the Grantor to “offer for sale” the Club Facilities, as is contemplated in Fla. Stat. §720.31(a), nor was there a “bona fide offer to purchase” the facilities, as is contemplated in Fla. Stat. §720.31(2). Accordingly, conditions precedent to the claims of Plaintiffs have not occurred.

219. **Fifteenth Affirmative Defense:** Plaintiffs and unnamed potential class members fail to state a cause of action for breach of contract to the extent that the allegations contained in the Amended Complaint differ from or are not contained within the terms of the written agreements between the parties by virtue of the parol evidence rule or the Statute of Frauds, or both.

220. **Sixteenth Affirmative Defense:** Any “right to acquire” of the Club Members does not extend to anything more than “Club Facilities,” as the Declaration defines the phrase. Accordingly, the plain language of the Declaration bars any claim by Plaintiffs of a right to acquire any real or personal property other than the “Club Facilities” and further bars Plaintiffs’ claims for damages.

221. **Seventeenth Affirmative Defense:** The action is barred by failure of a condition precedent. Namely, the Association and one or more of the named Plaintiffs or unnamed potential class members failed to provide the required notice of any alleged breach or an opportunity to cure pursuant the Declaration.

222. **Eighteenth Affirmative Defense:** As to all counts and claims, one or more of the named Plaintiffs and unnamed potential class members' claims are barred by the applicable statute of limitations.

223. **Nineteenth Affirmative Defense:** Under the doctrines of estoppel and waiver, the Association's claims are barred by its actual knowledge of the conveyance, by imputation of knowledge to the Association through its officers and directors who actually knew of the conveyance or by subsequent ratification or inaction following knowledge of the conveyance.

224. **Twentieth Affirmative Defense:** One or more of the named Plaintiffs or unnamed potential class members is precluded from pursuing his or her claims, because he or she purchased his or her Homesite with actual or constructive knowledge of and subject to the transfer from Grantor to Grantee, the Declaration, as amended, the Sixth Amendment, the Special Warranty Deed or any one or more of the foregoing.

225. **Twenty-First Affirmative Defense:** Under the doctrines of estoppel and waiver, the Homeowner Plaintiffs' claims are barred because one or more of them actually knew about the conveyance, had constructive knowledge by the publicly recorded documents relating to the conveyance or had knowledge by imputation through their representatives or agents and failed timely to challenge the conveyance or sat on his or her alleged rights.

226. **Twenty-Second Affirmative Defense:** Some or all of the claims set forth in Plaintiffs' Amended Complaint are barred by the doctrine of laches, including claims made on

behalf of the putative class, because one or more of the named Homeowner Plaintiffs or unnamed potential class members waited for an unreasonable period of time to pursue their alleged rights.

227. **Twenty-Third Affirmative Defense:** The terms of the Sixth Amendment to the Declaration, which relates back to prior purchasers, validly deferred the right to acquire until following the Community Completion Date, rendering Plaintiffs' claims not ripe for adjudication.

228. **Twenty-Fourth Affirmative Defense:** Plaintiffs' counts based upon an alleged deprivation of an ownership or property right are barred by Article VI, Section 25(h) of the Declaration, which provides that, each Club Member, by electing to be a Club Member and accepting title to a Homesite, and the Association ratify, confirm and agree that the provisions of the Declaration [do] not grant ownership rights in the Club Facilities in favor of the Club Association or Club Members but, rather, grants [sic] a non-exclusive license and membership to use the Club Facilities subject to full compliance with all obligations imposed on each of them relating thereto."

229. **Twenty-Fifth Affirmative Defense:** Article VI, Section 25(g) provides that each Club Member, by electing to be a Club Member and accepting title to a Homesite, and the Homeowners Association ratify, confirm and agree that the Declarant, the Homeowners Association or the Club Owner have fully discharged all duties to each Club Member concerning the Club including, but not limited to and without acknowledging or imposing same, any fiduciary duties imposed by law, barring any relief Plaintiffs seek to the contrary.

230. **Twenty-Sixth Affirmative Defense:** Plaintiffs' tort claims are barred by the independent tort rule.

231. **Twenty-Seventh Affirmative Defense:** The Homeowner Plaintiffs' claims are barred by the doctrines of estoppel and waiver. As a result of their yielding their personal right to the Association, a separate entity that is not a Club Member under the Declaration, Plaintiffs have waived whatever personal right to an option or right to acquire that they may have had and are estopped from asserting to the contrary. Further, by waiting from August 30, 2000 or, at the latest the date of recording, October 9, 2000 until present to institute this lawsuit, Plaintiffs have further waived any right to acquire. Plaintiffs and others claimed to be members of the purported class may further be barred, in whole or in part, from recovery based on the doctrines of estoppel and waiver due to their statements, action or inaction.

232. **Twenty-Eighth Affirmative Defense:** Counts 8, 9, 10, 11 and 12 (tortious interference) must be dismissed as to the Defendants named in those counts. Plaintiffs specifically allege the Defendants tortiously interfered with Plaintiffs' rights to acquire the Club Facilities. If the Plaintiff Homeowners had a right to acquire the Club Facilities, which Defendants deny, then this right was executory in nature and not contractual. Absent a breach of contract, no claim for tortious interference with a contract right can stand as a matter of law.

233. **Twenty-Ninth Affirmative Defense:** Florida's economic loss doctrine bars Plaintiffs' claims sounding in tort, because the alleged wrongful conduct arises from the same acts Plaintiffs' allege constitute the alleged breach of contractual obligations pursuant to the Declaration.

234. **Thirtieth Affirmative Defense:** Plaintiffs' Amended Complaint fails to define adequately any class of persons who could properly prosecute this action as a class action, fails to allege any claim that could be properly prosecuted as a class action and otherwise fails to satisfy the requirements of Rule 1.220 of the Florida Rules of Civil Procedure. Additionally,

some or all of the claims made in Plaintiffs' Amended Complaint are barred because the named Plaintiff Homeowners and members of the putative class lack standing to represent the Club Members and non-Club Member homeowners.

235. **Thirty-First Affirmative Defense:** Whatever right the Plaintiffs may have to a right to acquire is personal to the Homeowner Plaintiffs. Plaintiffs have waived that right by delegating their rights to the Association, an entity that is not a Club Member under the Declaration or Club Covenants, and by allowing the Association to assume all decision making and authorization with respect to the alleged statutory right to acquire the Club Facilities.

236. **Thirty-Second Affirmative Defense:** The Plaintiff Homeowners lack authority to force nonparty homeowners, including those who expressly elected *not* to become Club Members at the time they purchased their Homesites, to pursue a "right to acquire" the Club Facilities belonging to Club Members. The Association cannot now divest the homeowners of the free election they made not to encumber their Homesites with the obligations of Club Membership and financial and other burdens associated with owning the Club Facilities.

237. **Thirty-Third Affirmative Defense:** Plaintiffs lack privity and, therefore, standing to pursue rescission of the deeds in question from Grantor to Grantee.

238. **Thirty-Fourth Affirmative Defense:** Awarding Plaintiffs the relief sought would unjustly enrich them, by allowing them to benefit without any cost from the Kings Ridge Defendants having risked millions of dollars of capital, at a time when the number of ultimate Club Members could not be known and development of the Club Facilities was yet incomplete.

239. **Thirty-Fifth Affirmative Defense:** Plaintiffs fail to state a cause of action against Mr. Hacker or Mr. Surface in Counts 7, 8, 9, 10, 11, 12, 13 and 14. Each gentleman acted solely in his authorized and representative capacity for the entity or entities for which he

served. The Amended Complaint fails to allege that either Mr. Hacker or Mr. Surface at any time acted outside the scope of his authority or in an individual capacity. Moreover, Plaintiffs have failed to allege Mr. Hacker or Mr. Surface engaged in any self dealing upon which any tort liability could be predicated.

240. **Thirty-Sixth Affirmative Defense:** Counts 5 and 6 (Breach of Declaration) against the Grantor and its general partners fail to state a cause of action because Plaintiffs fail to allege a duty on the part of the Grantor's general partners to Plaintiffs to do the acts they allege that Grantor did not do; fail to allege the general partners of the Grantor were parties to the Declaration; and, in fact, there was no legal duty on the part of the Grantor and its general partners to "transfer the Club Facilities" or "Club Property" to the Plaintiffs.

241. **Thirty-Seventh Affirmative Defense:** Plaintiffs' putative class action claims should be denied because the claim of each named Plaintiff or is that of an individual for a separate alleged wrong, unique and without a cognizable class.

242. **Thirty-Eighth Affirmative Defense:** Plaintiffs cannot satisfy the requirements set out in Rule 1.220 of the Florida Rules of Civil Procedure. There are no questions of law or fact common to the members of the putative class that predominate over questions affecting only individual members. A class action is not superior to other available methods for the fair and efficient adjudication of the controversy made the subject of this case.

243. **Thirty-Ninth Affirmative Defense:** Plaintiffs cannot satisfy the class action prerequisites set out in Rule 1.220 of the Florida Rules of Civil Procedure. Namely, the questions of law and fact presented by Plaintiffs' claims are not common to the members of the putative class, the claims of the named Plaintiffs are not typical of the claims of the putative class

members, and the named Plaintiffs will not and cannot fairly and adequately protect the interests of the putative class members.

244. **Fortieth Affirmative Defense:** Counts 1 and 2 fail to state a cause of action for rescission because Plaintiffs have failed to allege legally sufficient grounds for rescission, such as fraud, mutual mistake, false representations, impossibility of performance or other sufficient grounds; fail to allege a sufficient basis to demonstrate they have standing to seek rescission of the Special Warranty Deeds; and cannot establish that Plaintiffs were or are “ready, willing and able” to restore the parties to the position they occupied prior to the August 31, 2000 conveyance and that such restoration, even if Plaintiffs were “ready, willing and able” is, in fact, possible.

245. **Forty-First Affirmative Defense:** As to all counts and claims, the damages allegedly sustained by one or more or all of the named Plaintiffs and unnamed potential class members were proximately caused by one or more intervening or superseding causes.

246. **Forty-Second Affirmative Defense:** Plaintiffs fail to state a cause of action against Defendants for any intentional tort, because Plaintiffs have failed to allege a legally sufficient malicious motive on the part of the Defendants or coercion by them.

247. **Forty-Third Affirmative Defense:** Counts 7 and 8 (Breach of Fiduciary Duty) against the Lennar Defendants failure to state a cause of action because Plaintiffs fail to allege, with respect to each of the Lennar Defendants, a legally recognized and sufficient basis for or source from which the “fiduciary or confidential relation” between Plaintiffs and each of the Lennar Defendants arose; fail to allege privity with each of the Lennar Defendants and how influence by each Lennar Defendant was acquired and abused to the detriment of Plaintiffs; fail to allege any tortious acts independent of contractual obligations to avoid the application of the economic loss doctrine to bar the breach of fiduciary claims; fail to allege the “fiduciary or

confidential relation” with each of the Lennar Defendants existed at the time of the events about which Plaintiffs complain; fail to allege that, while a fiduciary, each of the Lennar Defendants violated his or its fiduciary obligations to Plaintiffs; fail to allege that each of the Lennar Defendants violated a fiduciary duty by willful misconduct, bad faith or gross negligence; and fail to allege each of the Plaintiffs suffered damages as a proximate result of a violation of the alleged fiduciary obligation.

248. **Forty-Fourth Affirmative Defense:** Any and all claims for damages are barred to the extent that the alleged damages are speculative or otherwise uncertain.

249. **Forty-Fifth Affirmative Defense:** As to all counts and claims, one or more or all of Plaintiffs and potential unnamed class members have failed to mitigate their damages.

250. **Forty-Sixth Affirmative Defense:** As to all counts and claims, one or more or all of Plaintiffs and potential unnamed class members must have any claimed damages or recovery offset by any and all collateral sources received by them.

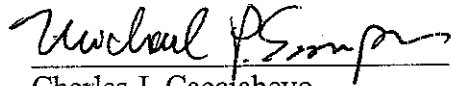
251. **Forty-Seventh Affirmative Defense:** The Kings Ridge Defendants are entitled to a setoff for any and all costs incurred by them as a result of risking their capital to financing the acquisition of the Club Facilities and Club Facilities Fees and to a reasonable return on their investment commensurate with the substantial risks they took.

252. **Forty-Eighth Affirmative Defense:** Defendants are entitled to a setoff for any and all benefits the Club Members received flowing from the conveyance of the Club Facilities to the Grantee.

253. **Forty-Ninth Affirmative Defense:** Plaintiffs and others claimed to be members of the purported class may be barred, in whole or in part, from recovery, due to spoliation of evidence.

254. Fiftieth Affirmative Defense: There is no legal basis alleged for recovery by Plaintiff Homeowners of attorney fees, barring any claim for same. Any claim for attorney fees by the Association is subject to the limitations and conditions established in the Declaration and governing documents.

WHEREFORE, based on the above, Defendants demands judgment be entered against Plaintiffs, for the recovery of its costs in this action and for such other and further relief as is allowable under the laws of the State of Florida.

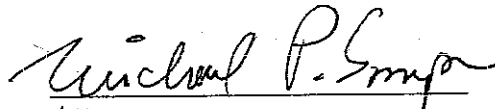


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via  
U.S. Mail this 19<sup>th</sup> day of May, 2006 to:

Robert W. Anthony, Esquire  
Ladd H. Fassett, Esquire  
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Attorney