

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY FLORIDA, CIVIL DIVISION

JOHN BARNER; ANN BARNER; DAVID  
BEWLEY, DONNA BEWLEY; BOB  
BROWN; LOIS BROWN; GEORGE  
COLLIARD; ELLEN COLLIARD; DONALD  
FEATHERMAN; SUSAN FEATHERMAN;  
HOWARD FELTMAN; ADRIENNE FELTMAN;  
BOB GREENFIELD; LOUISE GREENFIELD;  
DAVID JACARUSO; MARIE GRAZIOSI;  
JACK KAHDGAN; RUTH KAHDGAN; JAMES  
McLELLAN; PHYLLIS McLELLAN; JAMES  
STEWART; JOAN STEWART; NANETTE  
TURNER; ROY GOODWILL; and NANCY  
GOODWILL,

Plaintiffs/Counter-Defendant

v.

CASE NO: 2010-CA-5791-NC

THE LANDINGS MANAGEMENT  
ASSOCIATION, INC., a Florida  
Corporation,

Defendant/Counter-Plaintiff

**DEFENDANT/COUNTER-PLAINTIFF'S CROSS MOTION FOR SUMMARY  
JUDGMENT AS TO THE COMPLAINT AND COUNTERCLAIM  
MEMORANDUM IN SUPPORT THEREOF AND IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fla.R.Civ.P. 1.510(c), Defendant The Landings Management Association, Inc. ("Association") submits this memorandum in opposition to the Motion for Summary Judgment ("Motion") filed by Plaintiffs and in support of Defendant's Cross-Motion for Summary Judgment as to the Complaint and Counterclaim.

**I. INTRODUCTION**

1. The gravamen of Plaintiffs Complaint and Motion for Summary Judgment is that Paragraph 29 of the original Declaration of the Landings somehow placed a permanent restriction on the use of Tract F, yet Plaintiffs have consistently acknowledged

that Tract F is a common area within The Landings and have in fact demanded that the Association improve Tract F at the expense of the Association through assessments to its members. Plaintiffs' actions are akin to the famous proverb "have your cake and eat it too." Plaintiffs' benefited from the prior improvement of Tract F by the Association, but now change course and aver that Paragraph 29 is a covenant running with the land and the Association is prohibited from any use or development of Tract F in any way inconsistent with its "intended" use.

## II. UNDISPUTED FACTS

2. The following facts are agreed upon by the parties, as indicated by their respective pleadings. Citations following each fact are found in the Plaintiffs' Complaint ("COMPLAINT"), Defendant's Answer and Affirmative Defenses ("ANSWER"), and Defendant's Counterclaim ("COUNTERCLAIM").

3. In 1978, the Board of County Commissioners of Sarasota County, Florida, adopted Resolution No. 78-202 (the "Resolution"), which approved Special Exception Petition No. 675 authorizing use of The Landings development (the "underlying property") for single family detached dwellings and cluster housing. A copy of the Resolution is attached to the Complaint as Exhibit "A." COMPLAINT ¶ 6; COUNTERCLAIM ¶ 2.

4. The Resolution subjected The Landings to sixteen (16) stipulations. Stipulation Nine (9) required "[that an undeveloped reserve area, 300' from all directions from the eagle nesting site, be provided." COMPLAINT ¶ 7; ANSWER ¶ 7.

5. Before The Landings was developed in accordance with the Resolution, The Landings property was acquired by C & M Associates ("C&M") by deed dated January 27, 1978, and recorded in Official Records Book 1217, page 849, Public Records of Sarasota County, Florida. COMPLAINT ¶ 8; ANSWER ¶ 8.

6. On June 4, 1979, C&M conveyed all of The Landings property other than Tracts A and B (commercial parcels along US-41) to the Landings Development Company (LDC), by deed recorded in Official Records Book 1311, page 747, Public Records of Sarasota County, Florida. Then on July 3, 1979, LDC quitclaimed Tract F, the "Eagles Nest Area" ("ENA") back to C&M. COMPLAINT ¶ 9, 10; ANSWER ¶ 9, 10.

7. In 1980, C & M and LDC as owners of the underlying property, recorded the Landings - Unit One subdivision plat (the "Plat"). Tract F (the ENA) is legally described in the Plat as follows:

Tract F, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat Book 27, page 12, Public Records of Sarasota County, Florida.  
COMPLAINT ¶ 11; COUNTERCLAIM ¶ 3.

8. Tract F is generally circular in shape with a radius of approximately 300 feet. Today, a portion of Tract F abuts Landings Boulevard for approximately 100 feet along its northern boundary, and the remainder of Tract F is surrounded by single-family residential lots (the "Surrounding Lots") many of which are currently owned by the Plaintiffs in this action. Those lots are legally described as follows:

Lots 162, 163, 170, 171, 173 - 183, and 186 - 189, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat book 27, page 12, Public Records of Sarasota County, Florida.

COMPLAINT ¶ 12; COUNTERCLAIM ¶ 4.

9. Contemporaneously with the recording of the Plat, C&M, along with LDC as "Developer," recorded in Official Records Book 1372, page 1217, a Declaration of Maintenance Covenants and Restrictions on The Commons for The Landings (the "Declaration"). A copy of a portion of the Declaration is attached to the Complaint as Exhibit "D," COMPLAINT ¶ 13; COUNTERCLAIM ¶ 5.

10. Pursuant to Paragraph 1 of the Declaration, all the underlying property, other than Tract F, was made subject to the Declaration. COMPLAINT ¶ 14; COUNTERCLAIM ¶ 6.

11. Paragraph 29 of the Declaration reads in relevant part:

29. EAGLES' NEST AREA. The property described as "Tract F" in Exhibit "A" attached hereto is not subject to the provisions of this Declaration. ..  
COMPLAINT ¶ 15; COUNTERCLAIM ¶ 7.

12. Pursuant to Paragraph 13 of the Declaration, Defendant, The Landings Management Association, Inc., was organized "for the purpose of operating, maintaining, managing and improving the common areas of The Landings and for the purpose of enforcing these covenants and restrictions as such rights of enforcement may be assigned to it from time to time by the Developer." COMPLAINT ¶ 17; COUNTERCLAIM ¶ 13; ANSWER ¶ 17 ("Admitted that Paragraph 13 of the Declaration speaks for itself...").

13. Pursuant to Paragraph 2(h) of the original Declaration, "The Commons" or the "Common Areas" are limited to "real property (or interest therein) located in The

Landings which may hereafter be specifically set aside by Developer for the common use and enjoyment of all owners in The Landings as members of [Defendant]."  
COMPLAINT ¶ 18; COUNTERCLAIM ¶ 8.

14. Paragraph 7 of the Declaration states that "ownership of each portion of the Commons shall remain in Developer unless and until Developer shall transfer title thereto." COMPLAINT ¶ 19; COUNTERCLAIM ¶ 9.

15. When the Plat and Declaration were recorded in 1980, the LDC was the "Developer," and Tract F was owned by C&M, as Paragraph 29 of the Declaration itself makes clear: "Tract F ... is owned by C & M Associates and is not intended for development." COMPLAINT ¶ 20; COUNTERCLAIM ¶ 10; ANSWER ¶ 20 (Admitted that the Declaration speaks for itself).

16. Tract F was not part of the common areas or subject to the terms of the Declaration at the time the Plat and Declaration were recorded. COMPLAINT ¶ 21; COUNTERCLAIM ¶ 11.

17. Defendant is only authorized to improve common areas. COMPLAINT ¶ 22; COUNTERCLAIM ¶ 14; ANSWER ¶ 22.

18. On March 17, 1987, C&M, the then-owner of Tracts A, B, and F, quitclaimed to Defendant all of its right, title, and interest in Tract F, by deed recorded in Official Records Book 1936, page 2549, Public Records of Sarasota County, Florida. This deed included, inter alia, the following language:

Grantee, by the acceptance of this conveyance, hereby expressly assumes the obligation of and agrees to be bound by and to comply with all of the covenants, terms, provisions and conditions contained in the [Declaration].

The Property is conveyed to [Defendant] in its capacity as the management association for The Landings and is to be held and used by [Defendant] in accordance with its Charter and Bylaws and the [Declaration],

A copy of the foregoing deed is attached to the Complaint as Exhibit "E."

COMPLAINT ¶ 23; COUNTERCLAIM ¶ 12; ANSWER ¶ 23 (Admitted that the document is a true and correct copy and that it speaks for itself).

19. On July 19, 1995, LDC, by assignment dated July 19, 1995, assigned to Defendant all of its existing rights, title, interest, easements, powers, duties, obligations, and privileges under the Declaration. COMPLAINT ¶ 24; ANSWER ¶ 24. The "Assignment" recorded in Official Records Book 2767 page 282 among other things, specifically states that, "Developer is assigning to Association such reserved rights as described herein as Developer may still retain".

20. As stated in paragraph 13 hereinabove, one of the rights that the Developer (LDC) retained or reserved in paragraph 2 (h) of the original Declaration and subsequently assigned to Defendant, LMA, was the right to specifically set aside real property for the common use and enjoyment of all owners in The Landings as members of [Defendant].

21. On May 6, 2010, the Board of Directors of Defendant, LMA, adopted the "Proposed Master Plan For The Eagles Nest Area" dated May 6, 2010 and attached to Plaintiffs' Complaint as Exhibit "T". See minutes of Board of Directors meeting attached hereto as Exhibit "A".

22. In the “Executive Summary” of the duly adopted Master Plan (Exhibit “A” hereto), the Board of Directors of LMA in referring to the Eagles Nest Area (Tract F) unequivocally states:

**This area is a COMMON AREA of the LMA.** As a result, the LMA has the responsibility to maintain it in a safe, ecologically sound manner as it does all other common areas. (emphasis added)

23. Paragraph 29 of the original Declaration stated in its entirety:

29. EAGLES' NEST AREA. The property described as "Tract F" in Exhibit "A" attached hereto is not subject to the provisions of this Declaration, This property, approximately 7.4 acres in size, is owned by C & M Associates and is not intended for development. An eagles' nest is located on this property and it is the intent of C & M Associates to preserve the site as a nesting area for eagles. The site may be completely or partially fenced or otherwise barricaded to deter human intrusion. An observation stand, however, may be constructed on the site to permit viewing of the eagles and their habitat. The site is not intended as a park for the use of property owners in The Landings. The site is private property, and C & M Associates expressly reserves the right to restrict or prohibit access to the property and to impose and enforce such other restrictions as it may deem necessary to preserve the site. An easement appurtenant to the site for ingress and egress, utilities, and drainage is hereby granted to and reserved by C & M Associates over and under all private roads in The Landings. All rights granted to or reserved by C & M Associates hereunder and all other rights it may have pursuant to law may be assigned to an enforced by any other person, association, corporation, or entity.

See Exhibit D of the Complaint, Paragraph 29.

## **II. Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment**

Quite simply, the Plaintiffs are attempting to limit the Association’s rights and legal obligations concerning Tract F as they relate to maintenance obligations, improvements and usage by other members of LMA – as provided for by the Declaration

and amendments thereto – because the proposed Master Plan for the Eagles Nest Area may now allow other members of The Landings access to Tract F. Plaintiffs’ averment that Paragraph 29 of the Declaration created a covenant running with the land whereby Plaintiffs were clear beneficiaries as well as their contention that Tract F is not part of the common areas has no legal basis and is nothing short of disingenuous.

Notwithstanding the clear inequity of the Plaintiffs’ position, both the undisputed facts and applicable Florida law fail to support their position. As discussed in more detail below, the only evidence proffered to support Plaintiffs’ averment that Paragraph 29 is a covenant running with the land and that Plaintiffs are the intended beneficiaries – Paragraph 29 of the Declaration – actually demonstrates that this outcome is impossible. Quite simply, the Plaintiffs must bear the costs, along with all other members of The Landings, of maintaining and improving Tract F as a common area. And, because Tract F is a common area, all owners in The Landings are entitled to use and enjoyment thereof.

**A. Summary Judgment Standard**

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact that the moving party is entitled to a judgment as a matter of law.” Fla.R.Civ.P. 1.510(c). A party moving for summary judgment must conclusively show that there are no genuine issues of material fact. *See Romero v. All Claims Ins. Repair, Inc.*, 698 So. 2d 605, 606 (Fla. 3d DCA 1997) (citing *Albelo v. Southern Bell*, 682 So. 2d 1126, 1129 (Fla. 4th DCA 1996)).

If the evidence raises any conflicting issues or permits different reasonable inferences, summary judgment cannot be granted. *Romero*, at 605. “If the slightest doubt exists, the entry of summary judgment must be reversed.” *Labarierre v. Cervera Real Estate, Inc.*, 860 So. 2d 1077, 1078 (Fla. 3d DCA 2003).

**B. Paragraph 29 Cannot Be Deemed A Covenant Running With the Land (Or An Otherwise Valid Restriction) Because It Does Not Reveal Any Intention To Actually Impose A Current Or Future Restriction On the Use of Tract F**

While the wording of Paragraph 29 uses the words “intended” and “intent,” there is nothing in the language of that paragraph that clearly and unequivocally establishes any permanent restriction on the future use of Tract F. The language of Paragraph 29 merely set forth the then existing intent of the owner (C&M) at that particular moment in time. A statement of the current intent of the then-owner (C&M) as to what it may or may not do in the future falls far short of providing an unambiguous, unequivocal imposition of a permanent restriction on future use of Tract F. The language used in Paragraph 29 evidences, at best a statement as to the intention of C&M with respect to Tract F at that particular point in time, and in no way purports to prevent C&M (or any subsequent owner) from changing its intent as to future usage, and certainly does not indicate that future uses inconsistent with the then current intent of C&M are prohibited or restricted in any fashion.

**i. The Language of Paragraph 29**

The language actually used simply does not evidence a current intent to impose a permanent restriction on the future use of Tract F. For example, “This property,

approximately 7.4 acres in size is owned by C&M Associates and is not intended for development.” The words “is not intended for development” have many meanings, among others that the intention might change and the property subsequently developed. The intent may change based upon whether or not an eagles nest remains active, whether or not Sarasota County Resolution 78-202 is amended or modified by its Board of County Commissioners or for any or all other reasons. The language is simply not a clear, unequivocal permanent restriction on the future use of the property, either by C&M or subsequent owners.

The following language is substantially the same, “An eagles’ nest is located on this property, and it is the intent of C&M Associates to preserve the site as a nesting site for eagles.” Again, a statement as to existing intent of the current owner is simply not the declaration of the imposition of a permanent restriction. The most that can be inferred (assuming arguendo, which is not consistent with the case law establishing the requisites of a valid restriction, that a mere inference can support a valid restriction) is that the site may be preserved as long as there is an active eagle’s nest and as long as Paragraph 9 of Sarasota County Resolution 78-202 remains in force and effect.

Additionally, the most that may logically be evidenced by Paragraph 29 is a statement or covenant for the benefit of C&M only, and there is no indication of any intent to create a benefit for any party other than C&M itself. For example, by including Paragraph 29 in the original Declaration, C&M and the developer LDC satisfied paragraph 9 of Sarasota County Resolution 78-202 while leaving open the potential for

future development by C&M and LDC should circumstances change as to eagles nesting in Tract F. Paragraph 29 also benefited C&M by reserving easements to it and by negating any potential arguments by purchasers of abutting lots that they were led to believe that Tract F would eventually be developed as a park.

See, *Washington Apartment Hotel Co., v. Schneider*, 75 So. 2d 907 (Fla. 1954).

Where a grantor creates a benefit for itself alone, the covenant was not intended to run with the land. If the grantor (C&M) had proposed to create a covenant that would attach to the property and follow the property for the benefit of subsequent grantees of any adjoining tracts (Plaintiffs), C&M had but to provide that it did so for itself, its successors and assigns, but it did not do so. See, also *Finchum v. Vogel*, 194 So. 2d 49 (Fla. 4<sup>th</sup> DCA 1967) (A mere “reservation” or “restriction” only for the benefit of the grantor does not constitute a “restriction” that can be enforced by subsequent grantees against others).

Similarly, “The site may be completely or partially fenced or otherwise barricaded to deter human intrusion.” Again it is abundantly clear that C&M is doing nothing other than indicating its then existing intent that it may or may not do or not do something in the future. All of the following language is similarly conditional, i.e. “An observation stand, however, may be constructed on the site to permit viewing of the eagles and their habitat. The site is not intended as a park for the use of property owners in the Landings. The site is private property, and C&M Associates expressly reserves the right to restrict or prohibit access to the property and to impose such other restrictions as it may deem necessary to preserve the site.” While C&M expressly reserves the right to restrict or prohibit access, it is not expressly exercising that right. Again, while C&M gives notice

that it may or may not do things in the future, there are no words whatsoever that come close to expressing an intent to create or impose any permanent restriction on future use by means of the language used. While C&M may or may not have been “reserving” a right to do something in the future, there are no “words of grant” or of similar import to indicate that it is currently exercising any such right to restrict the future use of Tract F, either by itself or by any future grantee.

As in the deed or gift context, while there is no requirement to use certain technical words of an actual current grant or conveyance, it is essential that the language used denote the intention of the parties for an actual, present transfer of title. See, e.g. *19 Fla. Jur. 2d Deeds § 18*. The statements in Paragraph 29 of the then existing intent of C&M does not create a valid permanent restriction running with the land any more than a statement of intent to enter into a contract in the future supports the finding of an existing contract, the statement of intent to make a gift in the future constitutes a completed gift, or a statement of the intent to convey property in the future constitutes a conveyance.

Where there is no language in the pertinent document expressly forbidding the future use of property it is error to construe the document to find or impose a permanent restriction against that use. *Esbin v. Erickson*, 987 So. 2d 198 (Fla. 3d DCA 2008). There is nothing in Paragraph 29 that unambiguously requires that Tract F only be used for purposes consistent with what was only stated as C&M’s then existing intent as to that use.

Perhaps most importantly, it is clear that at the time the original Declaration was drafted and recorded C&M, LDC and their counsel knew how to appropriately create

permanent covenants running with the land as evidenced by the language they used in paragraph 31 of the original Declaration which reads as follows:

31. COVENANTS TO RUN WITH THE TITLE TO THE LAND.  
These covenants, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property and shall remain in full force and effect until terminated in accordance with the provisions hereof or otherwise according to the laws of the State of Florida.

The aforesaid language is commonly used by real estate attorneys in order to express a clear and concise intent to create covenants running with the land. By utilizing said language in Paragraph 31 and electing not to use the same or similar language in Paragraph 29 is a strong argument in favor of the fact that C&M and LDC did not intend expressions of C&M's then existing intent as to usage of Tract F to become permanent restrictions or "covenants running with the land".

ii. **Understanding Hagan v. Sabal Palms, Inc.**

As noted by Plaintiffs' in their Motion, the seminal case on restrictions and whether any restriction is or is not a covenant running with the land such that they may be enforced by subsequent grantees is *Hagan v. Sabal Palms, Inc.*, 186 So. 2d 302 (Fla. 2d DCA 1966). The language in *Hagan*, "No building shall be used for any purpose other than as a dwelling," was found to be a "clear, concise and to the point" expression of intention of the creation of a general scheme of exclusive residential building and thus restricting the buildings to that use.

Put simply, applying the standard found in *Hagan*, the language in Paragraph 29 is not clear, concise or to the point and expresses no intention of creating a covenant

running with the land. Without a clearly expressed intention to permanently restrict the future use of the land there can be no valid restriction, and without a valid restriction, by definition there can be no covenant running with the land. Thus, Plaintiffs' allegation of a covenant running with the land fails!

**C. Paragraph 29 of the Declaration Cannot Be the Basis For The Imposition Of A Restrictive Covenant Running With The Land Because The Declaration By It's Own Terms Excludes Tract F From Its Scope of Operation**

The Declaration specifically and explicitly excludes Tract F from its scope of operation. While the Declaration perhaps purports to incorporate a description or definition of what may or may not be done with Tract F, it is not possible to create a valid covenant running with the land by means of an instrument that by its own terms excludes from its operation and effect the land supposedly so burdened by a negative easement or equitable servitude.

Frankly, because Tract F is specifically excluded from the operation of the Declaration, by definition there is no restriction "in the chain of title" as to any of the owners of the various lots.

If Tract F is specifically excluded from the Declaration, it by definition cannot be part of a "general plan of development or improvement" which is one of the requirements for the creation or existence of any restrictive covenant such as may be enforced by any grantee against another grantee. At the very least the exclusion of Tract F from the Declaration followed by some description of a use restriction as to the excluded land is ambiguous and does not show that the intention to impose the restriction as one running with the land is clear. *Hagan v. Sabal Palms, Inc.*, 186 So. 2d 302 (Fla. 2d DCA 1966).

**D. Conclusion**

Plaintiffs arguments are substantively defective and must be denied. Simply put, neither the law nor the facts support entry of a summary judgment for the Plaintiffs.

**III. Association's Cross Motion for Summary Judgment**

Pursuant to Fla.R.Civ.P. 1.510(c), Defendant/Counter-Plaintiff, The Landings Management Association, Inc. ("Association") submits this Cross-Motion for Summary Judgment as to Plaintiffs' Complaint and to its Counterclaim. The grounds for this motion are:

Plaintiffs' Complaint and Motion for Summary Judgment assert that Paragraph 29 of the original Declaration constitutes a covenant running with the land that was intended to benefit Plaintiffs (adjacent lot owners). However, for the reasons set forth in the Associations memorandum of law above, Paragraph 29 is not a covenant running with the land.

Furthermore, although Tract F was not part of the commons or the common areas of The Landings at the time the original Declaration was adopted by the Developer on January 9, 1980 and subsequently recorded on May 19, 1980 at Official Records Book 1372 Page 1217, it decidedly became a part of the commons or common areas as defined in the Declaration, as amended from time to time, by virtue of the quitclaim deed dated March 17, 1987 (Exhibits "E" and "F" to Plaintiffs' Complaint).

As stated above, the aforesaid quitclaim deed recites in pertinent part:

Grantee, by the acceptance of this conveyance, hereby expressly assumes the obligations of and agrees to be bound by and to comply with all of the covenants, terms, provisions and conditions contained in the Declaration of Maintenance, Covenants and Restrictions on the Commons for The Landings recorded in Official Records Book 1372, page 1217, as amended, of the Public Records of Sarasota County, Florida.

The property is conveyed to Grantee in its capacity as the management association for The Landings and is to be held and used by Grantee in accordance with its Charter and Bylaws and the Declaration of Maintenance, Covenants and Restrictions on the Commons for the Landings.

Defendant's charter and the terms of the original Declaration and its subsequent amendments do not contemplate or allow its ownership of property other than the commons or common areas as defined by the Declaration. As alleged in paragraph 18 in its Counterclaim, Defendant has consistently treated Tract F as a common area since acquiring it by virtue of the aforesaid quitclaim deed, has made improvements to Tract F and has assessed all of its members for the expense of said improvements. Although Plaintiffs denied these allegations in their "Answer And Defense To Counterclaim", they do admit in their "Response To Defendant's Amended First Request For Admissions" to the following:

2. Admitted that some or all of us signed a petition regarding improvement of drainage within the ENA; otherwise denied.
4. Admitted that some or all of us signed a petition which in part related to the removal of invasive and non-native plant species from the ENA; otherwise denied.
5. Admit that we benefitted generally from certain work performed in the ENA as related to drainage and the clearance of vegetation. Denied that the work increased the value of our property.

6. Admitted that the work performed in the ENA was funded through assessments of LMA.

Yet, Plaintiffs continue to insist that Tract F (also known as the ENA) is not a common area or part of the commons as defined in the original Declaration or as defined in the Declaration as amended (see Defendant's Second Request For Admissions and Plaintiffs' Response). If Tract F (the ENA) is not a common area, what is it and what authority does the Defendant have to maintain it and expend Association funds (funds generated from assessments to all of its members, not just Plaintiffs) for its maintenance and improvement? Plaintiffs' position in this dispute that Tract F is not a common area defies logic and basic common sense.

Defendant has consistently, justifiably and detrimentally relied upon its understanding and belief that Tract F became a common area upon its acquisition from C&M, caused the aforesaid improvements to be made and assessed its members for the expenses thereof. Plaintiffs have benefited from Defendant's treatment of Tract F as a common area and the improvements to Tract F that Plaintiffs demanded and knowingly accepted and are now estopped from taking a contrary position.

Furthermore, as noted in paragraphs 13 and 19-22 above, if there was ever any question as to Tract F's status as a common area prior to the LMA Board of Directors' adoption of the "Proposed Master Plan For The Eagles Nest Area", that question was put to bed by the adoption of said Plan wherein the Board stated unequivocally that the Eagles Nest Area (ENA) is "**COMMON AREA of the LMA**". To the extent it may not already have done so, LMA thereby exercised its assigned right from the developer to

specifically set aside real property for the common use and enjoyment of all owners in The Landings as members of [Defendant].

As explained hereinabove, the law and evidence clearly establish that there are no genuine issues of material fact that preclude the entry of summary judgment in the Defendant, Association's favor on both Plaintiffs' Complaint and the Association's Counterclaim. Put simply, the facts are agreed upon, but Plaintiffs averments and proof are inapposite to Florida law and precedent. To the contrary, Defendant's claims are clearly supported by the law and undisputed facts in this action.

WHEREFORE, Defendant, The Landings Management Association, Inc. respectfully requests this Court to enter summary final judgment dismissing Plaintiffs' claims and declaring the following:

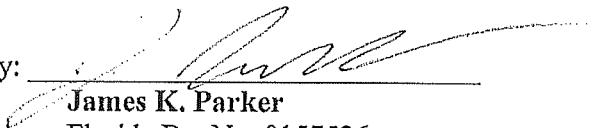
- a. That Tract F is a common area within The Landings.
- b. That Tract F is subject to the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint.
- c. That the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint was lawfully adopted by the members of Defendant, The Landings Management Association, Inc.

- d. That Paragraph 29 of the original Declaration did not place permanent restrictions or "covenants running with the land" on Defendant's use of Tract F.
- e. That the only restrictions on Defendant's use of Tract F are those imposed by its "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint as it may be amended from time to time and those imposed by the appropriate governmental authorities including Sarasota County Resolution No. 78-202 to the extent that it remains in force and effect.

Respectfully submitted this 23<sup>d</sup> day of February, 2011.


**BOYD RICHARDS PARKER & COLONNELLI, P.L.**  
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Management Association Only As To  
Defending The Claims Alleged In  
Plaintiffs' Complaint*  
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BY:   
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*Attorneys for Defendant*  
*The Landings Management Association, Inc.*  
*As To Its Counterclaimant Only*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 23<sup>d</sup> day of February, 2011 to: **Charles J. Bartlett, Esq.**, Atty for Plaintiffs, P.O. Box 4195, Sarasota, FL 34230-4195.

  
David D. Davis, Esq.

1 **The Landings Management Association, Inc.**  
2 **Minutes of the Board of Directors Meeting**  
3 **May 6, 2010**

4 **Call to Order**

5 Bob Capo called the meeting to order at 7:00pm at the Landings Racquet Club, 5350 Landings  
6 Boulevard, Sarasota, Florida.

7 **Determination of Quorum**

8 Present were Bob Capo, William Whitman, Richard Bayles, Henry Rhodes, Larry Spelman, Norman  
9 Olshansky, and Edgar "Larry" Lawrence, Jack Jost attended via conference phone ,constituting a quorum.  
10 Also present were George Niel of Argus Property Management, Inc., Irwin Starr of *The Landings Eagle*  
11 and Ben Mayne, Landscape Chairman, and sixteen homeowners.

12 **Confirmation of Proper Meeting Notice**

13 The notice was posted in accordance with the by-laws of the Association and requirements of Florida  
14 Statutes.

15 **Appointment of Acting Secretary**

16 A motion was made and seconded to appoint George Niel as Acting Secretary for the meeting. The  
17 motion passed unanimously.

18 A motion was made by Larry Spelman seconded by William Whitman to approve the April 1, 2010  
19 minutes. Motion passed unanimously.  
20

21 **President's Report:**

22 The President stated that the Notice of Preservation of Declaration of Maintenance Covenants and  
23 Restrictions, with attachments was recorded in the Public Records of Sarasota County, Florida on April  
24 27, 2010.

25 The President then reported that he, William Whitman and the Property Manager are working with Chad  
26 J. Engel (Transit Maintenance Manager) of Sarasota County concerning the condition of bus stop area on  
27 Kestral Park Way N and would develop a plan of action. Jack Jost suggested that, because the County  
28 would be doing work on Association property, a written agreement should be obtained from the County.  
29 The Property Manager then stated that he would contact Chad Engel to obtain such an agreement.

30 The President then reported that he had received a letter from Icard, Merrill, Attorneys and Counselors,  
31 concerning the ENA (Tract-F) Use and Restrictions. The President noted that the letter referred to their  
32 clients; however the clients' were not named. He further stated that the letter asked for an answer from the  
33 Association's attorney by May 15, 2010. The President further stated that an answer would be sent after  
34 Board action concerning the "Proposed Master Plan for the Eagles Nest Area."

35 **Treasurer's Report:**

36 The Treasurer stated that there was nothing unusual to report concerning the March 31, 2010, financial  
37 statements. He further stated that if the new Board members needed further explanations concerning the  
38 financial statements they should contact him.

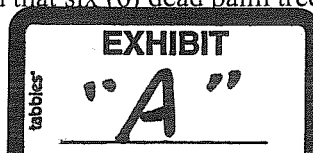
39 **Committee Reports:**

40 **Safety and Security:**

41 William Whitman reported that speeding is still a problem throughout The Landings and that he and  
42 the Manager are working on some possible solutions.

43 **Landscape:**

44 Ben Mayne reported that the invasive foliage in the ENA had been cut back with six (6) types of  
45 exotic plants removed. He also reported that six (6) dead palm trees had been removed and replaced  
46 at the Kestral Park South Island.



47       **Roads:**  
48       Larry Spelman stated that he had no report; however he was going to call John Minder for a progress  
49       report on the engineering stage of the 2010 road project.

50       **Drainage:**  
51       Jack Jost reported that he is still waiting for a report from Kurt Jensen, the civil engineer who is  
52       working on a drainage plan for The Landings, before making any recommendations. He also stated  
53       that Henry Rhodes and Karl Maggard are also helping him with drainage issues at The Landings.

54       **Lakes:**  
55       Edgar “Larry” Lawrence reported that there were no issues with the lakes at this time.

56       **Public Relations:**  
57       In the absence of Katherine “Katy” Leidel there was no Public Relation report.

58       **Strategic Planning:**  
59       Henry Rhodes then passed out to each Board member a “Proposal for Landscape Architectural  
60       Services and Fees for the Landings Eagles Nest Area” at a cost of \$2,500.00. After a discussion,  
61       William Whitman made a motion seconded by Henry Rhodes to implement the plan. On the question  
62       Norman Olshansky asked that the motion be amended to state that the \$2,500.00 should be charged to  
63       the contingency line item. After which and further discussion the motion passed unanimously.

64       **Old Business:**  
65       Henry Rhodes then read the “Proposed Master Plan for The Eagles Nest Area” in its entirety. William  
66       Whitman then moved that the Board adopt the Proposed Master Plan for The Eagles Nest Area as  
67       recommended by the Strategic Planning Committee dated May 6, 2010 and implement the seven  
68       recommendations specified on page four. (A copy of the report is attached as Exhibit “A.”)  
69       After discussion, Larry Spelman called for the question and the following vote was taken:  
70       Bob Capo, Henry Rhodes, Richard Bayles, Larry Spelman William Whitman and Jack Jost voted in  
71       the affirmative. Norman Olshansky and Edgar “Larry” Lawrence voted “No.”  
72       The motion passed.

73       The Manager was then directed to inform of the Association’s attorney of the adoption of “Proposed  
74       Master Plan for The Eagles Nest area” so that a proper reply could be made to the letter (previously  
75       discussed) received from Icard, Merrill Attorneys and Counselors.

76       Howard Feltman then stated that he was one of the clients’ [sixteen (16) in all] referred to in the letter the  
77       Association received from Icard Merrill Attorneys & Counselors. He further stated that they would be  
78       pursuing an emergency injunction to prevent further action by the LMA with respect to the ENA pending  
79       the outcome of the intended lawsuit.

80       Larry Spelman then stated that no further discussion should take place because of a possible lawsuit.  
81       There being no further business, on a motion by William Whitman and seconded by Richard Bayles the  
82       meeting was adjourned at 8:06pm. The next regular meeting is scheduled for June 3, 2010 at 7:00 pm.

83       Respectfully submitted,  
84  
85  
86       George Niel, Acting Secretary

# EXHIBIT "A"

## PROPOSED MASTER PLAN FOR THE EAGLES NEST AREA

RECOMMENDED TO THE LMA BOARD

BY THE STRATEGIC PLANNING COMMITTEE

### EXECUTIVE SUMMARY

This plan is being proposed by the Landings Management Association (LMA) for the on-going maintenance of the Eagle's Nest Area (ENA). The LMA has undertaken the work on the ENA to: mitigate flooding, address ecological issues of invasive plants and re-establish the native canopy, preserve the nesting area for eagles, minimize fire hazard from overgrown weeds and preserve the privacy of the adjacent homeowners. This area is COMMON AREA of the LMA. As a result, the LMA has the responsibility to maintain it in a safe, ecologically sound manner as it does all other common areas.

### INTRODUCTION

This provides a perspective and specific recommendations for the LMA board to resolve the long-standing issue between the board and the homeowners whose properties border the ENA in The Landings. The LMA board has a responsibility to maintain it appropriately, just as it does other common areas. Consequently, the LMA board has directed that a master plan be developed for the area.

## BACKGROUND

As the LMA has exercised its responsibility to maintain the property in a safe, environmentally sound manner, the homeowners whose properties are adjacent to the ENA have raised concerns about LMA's efforts. Their concerns have been voiced at LMA board meetings and have been the subject of innumerable articles, editorials and letters to the editor in "The Landings Eagle."

The homeowners' concerns are that the ENA would be developed in some fashion, and opened to activities that would negatively affect their privacy. The LMA has been diligent to preserve the tranquility of the area and its natural setting, and to make certain that the homeowners' rights would not be adversely affected.

The homeowners have claimed that the LMA board has consistently "chipped away at their rights". The LMA board strongly rejects that position. In fact, the board has been diligent in avoiding any proposed action that would be contentious.

The homeowners have asked that a sign be placed at the entrance of the ENA that limits the hours of access to the area. In addition, requests were made to include several other restrictions including "banning recreational activities"; "dogs must be leashed"; "pick up litter"; "open 8am to dusk"; "no motorized vehicles"; "no admittance during eagles nesting period"; "no loitering".

With regard to activities in this area, it is important to note that there are clear and explicit rules that apply: Paragraph 6 (f) of the newly amended "Declaration of Maintenance Covenants and Restrictions on the Commons for The Landings" states:

"NO PERSON SHALL, WITHOUT THE WRITTEN APPROVAL OF THE LMA, DO ANY OF THE FOLLOWING ON ANY PART OF 'THE COMMONS' : OPERATE MOTORCYCLES FOR ANY PURPOSE OTHER THAN AS A MEANS OF TRANSPORTATION ON THE PRIVATE ROADS; SWIM IN ANY AREA OTHER THAN IN APPROVED POOLS; PERMIT THE RUNNING OF ANIMALS; LIGHT ANY FIRES EXCEPT IN DESIGNATED PUBLIC AREAS; FELL ANY TREES OR INJURE ANY LANDSCAPING; INTERFERE WITH ANY DRAINAGE, UTILITY, OR ACCESS EASEMENTS; BUILD ANY STRUCTURES OTHER THAN RECREATIONAL AND OTHER COMMON FACILITIES CONSTRUCTED OR APPROVED BY LMA; DISCHARGE ANY LIQUID OR MATERIAL, OTHER THAN NATURAL DRAINAGE, INTO ANY LAKE OR POND; ALTER OR OBSTRUCT ANY LAKES, PONDS, OR WATERCOURSES ; OR INTERFERE WITH ANY WATER CONTROL STRUCTURES OR APPARATUS."

These rules address many of the provisions the homeowners desired to have listed on signage.

## LMA ACTION

In the Spring of 2008, the LMA board and homeowners formed an 8-person committee to resolve the issue. In a vote of 5-2 (1 abstention), that ENA committee agreed to specific steps to be taken by the LMA to address all concerns.

The LMA board authorized this committee to commission an outside environmental expert to help draft a detailed plan. The plan was to address the many environmental and ecological problems in the ENA that resulted from a lack of maintenance over a period of years, while at the same time, being sensitive to the privacy concerns of the homeowners.

Since then, environmental remediation in the ENA has included removal of invasive and exotic species, including Brazilian Pepper and Carrot Wood trees, and grape and poison ivy vines, and partial replacement of vegetation with native species. The actions of the board also addressed fire concerns because weeds had grown to over six feet. Further, the weeds had become an eyesore.

Importantly, a major swale was installed by LMA to gather runoff water from the ENA and divert it to a new underground drainage system that carries the captured water into the existing Landings drainage system. Approximately, \$60,000 has been spent on the ENA to date to resolve the myriad ecological and environmental problems and solve the drainage issue. These drainage improvements provided meaningful benefit to the homeowners adjacent to the ENA.

The LMA board believes it has been diligent in its stewardship of the ENA.

## **THE STRATEGIC PLANNING COMMITTEE'S RECOMMENDATIONS:**

### **1. SIGNAGE**

It is proposed that there be a sign posted at the ENA entrance which states: "Area is open 8 AM to Dusk". Further, it is proposed that a special section of the Greenbook be developed which emphasizes the restrictions for the ENA.

### **2. ACCESS TRAIL**

An access trail is also recommended. This would be a simple path so all Landings residents would know where to walk to observe the eagles nest and the natural setting. This path would consist of natural materials. The path would be designed so as to limit access away from areas close to the adjacent homes.

### **3. SPECIAL PRIVACY PLANTINGS**

It is proposed, as an extra measure of privacy, that "privacy" hedges or shrubbery be planted, based on budget allocations. This would screen homes from any viewing by those who are walking on the path.

### **4. GATE**

An entrance gate is not proposed. This is a natural area of beauty and tranquility that should remain open to all Landings residents to enjoy, while obeying the reasonable regulations in the Greenbook. It is proposed, however, that shrubbery or hedges be planted to define the entranceway to the ENA.

### **5. HORTICULTURAL PLAN**

The attached horticultural plan detailing additional indigenous Florida trees and plants in the area has been developed with the assistance of a qualified Landscape Architect. This plan would further beautify the area and provide even more privacy for homeowners.

### **6. REMOVAL OF MELALEUCA TREE**

The Melaleuca tree (an invasive species) that is in the front easement at Landings Blvd would be removed.

### **7. ADDITIONAL SECURITY FOR THE ENA**

This plan would provide security patrols for the ENA, especially during hours after dusk. The plan for patrolling the area will be developed by the head of security and the LMA president.

**SUMMARY,**

The LMA board believes it has been a good steward of the ENA while being sensitive to homeowners' concerns. There has been no discussion nor is there any desire for any recreational activities in this area, no playground, no development, or no violation of homeowners' rights. The LMA has expended approximately \$60,000 to date not only to follow environmental and ecological recommendations by outside experts, but also to address fire concern from weeds, and to fix the drainage/flooding problems that have plagued the ENA for years.

The board's actions have also provided further beauty to the area, and eliminated weeds and exotics that were threatening the remaining native trees. The cost to complete the master plan over the next three to five years will be an additional approximate \$30,000. Future work will be approved by the LMA board of directors as funds become available.

On-going maintenance will be minimal, but mowing is necessary approximately four to six times per year, depending on rainfall and growth. Not only does the area need continuing maintenance, but not to do so would waste all of the funds that have been expended to bring the ENA up to acceptable environmental standards to date.

The LMA board has taken its actions, while respecting the privacy of the homeowners, accepting environmental and ecological responsibility for the area, and providing an area of pride and beauty for the entire community.

Respectfully submitted,

LMA Strategic Planning Committee

Henry Rhodes, Chair    Debra Doherty    Jack Jost    Larry Lawrence    Karl Maggard    Roger Rowen

May 6, 2010 FINAL

