

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY FLORIDA**

**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
KAHGAN, RUTH KAHGAN, JAMES McLELLAN,
PHYLLIS McLELLAN, JAMES STEWART,
JOAN STEWART, NANETTE TURNER, ROY
GOODWILL and NANCY GOODWILL,**

Plaintiffs,

vs.

CASE NO.: 2010 CA 5791 NC

**THE LANDINGS MANAGEMENT
ASSOCIATION INC., a Florida
corporation,**

Defendant.

_____ /

**ANSWER AND AFFIRMATIVE DEFENSE OF
DEFENDANT, LANDINGS MANAGEMENT ASSOCIATION, INC.**

DEFENDANT, THE LANDINGS MANAGEMENT ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter "Defendant"), by and through its undersigned counsel, file this, its Answer and Affirmative Defense to the Complaint of Plaintiffs, JOHN BARNER, et al, (hereinafter "Plaintiffs") as follows:

JURISDICTION & VENUE

1. Admitted for jurisdictional purposes.
2. Admitted for jurisdictional purposes.
3. Admitted.

4. Admitted that Defendant is a Florida not-for-profit corporation organized for the purposes described in paragraph 17 of the Complaint, among other purposes described in its corporate charter, by-laws and the Declaration, all as lawfully amended from time to time.

5. Admitted.

GENERAL ALLEGATIONS

6. Admitted that a copy of Resolution No. 78-202 is attached to the Complaint as Exhibit "A" and that it speaks for itself, otherwise denied.

7. Admitted that the Resolution speaks for itself, otherwise denied.

8. Admitted.

9. Admitted that on June 04, 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. Without sufficient knowledge as to whether the conveyance erroneously included Tract F, therefore this specific allegation is denied.

10. Without sufficient knowledge to admit or deny, therefore denied.

11. Denied that a copy of the "Plat" is attached to the Complaint as Exhibit "B", accordingly, Defendant is without sufficient knowledge to admit or deny the remaining allegations of paragraph 11 of the Complaint are therefore denied, however, Defendant does admit that the "Plat" as recorded speaks for itself.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.
16. Denied.
17. Admitted that Paragraph 13 of the Declaration speaks for itself, to the extent that the allegations of paragraph 17 of the Complaint may be inconsistent therewith, they are denied.
18. Admitted that Paragraph 2(h) of the Declaration speaks for itself, to the extent the allegations of paragraph 18 of the Complaint may be inconsistent with Paragraph 2(h) of the Declaration they are denied.
19. Admitted that Paragraph 7 of the Declaration speaks for itself. To the extent the allegations of paragraph 19 of the Complaint may be inconsistent with Paragraph 7 of the Declaration they are denied.
20. Admitted that Paragraph 29 of the Declaration speaks for itself. To the extent the allegations of paragraph 20 of the Complaint may be inconsistent with Paragraph 29 of the Declaration they are denied.
21. Admitted that at the time the original Declaration was recorded, Tract F was not a part of the common areas and that the Declaration speaks for itself, otherwise denied.
22. Admitted that Defendant has authority to improve only common areas within The Landings, otherwise, denied.
23. Admitted that Exhibit "E" to the Complaint is a true copy of a quitclaim deed of Tract F to Defendant and that the deed speaks for itself, otherwise denied.
24. Admitted that LDC assigned to Defendant all of its existing rights, title,

interest, easements, powers, duties, obligations and privileges, etc. as more fully set forth in the assignment recorded at O.R. Book 2767 Page 282, Public Records of Sarasota County, Florida. Denied that Exhibit “F” to the Complaint is a copy of said assignment.

25. Admitted that paragraph 29 of the Declaration speaks for itself, otherwise denied.

26. Denied.

27. Admitted that Defendant amended the Declaration on multiple occasions, that Plaintiffs, through their duly appointed and authorized and lawfully appointed and elected representatives joined in the Amended Declarations, that the Amended Declarations are attached to the Complaint as Exhibit “H” and that the Amended Declarations speak for themselves, otherwise, denied..

28. Admitted that Defendant’s committee provided a “Proposed Master Plan for the Eagles Nest Area” and that a copy of one version of said plan is attached to the Complaint as Exhibit “H”, otherwise denied.

29. Denied.

30. Denied.

31. Admitted that the Declaration Amendment and the various versions of the Master Plan provided to Plaintiffs speak for themselves, that Tract F is a common area within the Landings. Denied that the original Declaration and the deed from C&M to Defendant placed permanent restrictions upon Defendant’s use of Tract F.

32. Admitted that Plaintiffs are owners of Surrounding Lots, some or all of which directly abut Tract F. Denied that Defendant’s past and proposed future actions stand to cause direct and irreparable harm to Plaintiffs.

33. Admitted that Plaintiffs and Defendant have corresponded and conversed

at length regarding the Master Plan and Declaration Amendment, otherwise denied.

34. Denied.

COUNT I – DECLARATORY JUDGMENT

35. Defendant re-alleges its previous responses to paragraphs 1 through 34 of the Complaint.

36. Without knowledge, therefore denied.

37. Admitted that Plaintiffs are requesting certain declaratory relief from this Court, denied that the relief requested is appropriate, lawful and just under the law as applied to the facts of this case.

AFFIRMATIVE DEFENSE – ESTOPPEL

38. Defendant realleges its responses to paragraphs 1 through 37 of Plaintiffs' Complaint.

39. As alleged in paragraph 17 of Plaintiffs' Complaint, 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.*"

40. Furthermore, as Plaintiffs correctly point out in paragraph 22 of their Complaint, "Defendant is only authorized to improve common areas."

41. 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 by virtue of the quitclaim deed dated March 17, 1987 (Exhibits “E” and “F” to Plaintiffs’ Complaint).

42. Specifically, 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.

43. 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 its members for the expense of said improvements.

44. Prior to filing their Complaint in this action, Plaintiffs have consistently acknowledged that Tract F is a common area within The Landings and contrary to the position they have taken in this action, have in the past demanded that Defendant improve Tract F by, among other things: improving its drainage; removing a potential fire hazard by clearing it of dead vegetation; removing invasive, non-native plant species; and insuring it against public liability exposure; all at the expense of Defendant through assessments to its members.

45. Defendant has justifiably and detrimentally relied upon its understanding and belief that Tract F became a common area upon its acquisition, caused the aforesaid improvements to be made and assessed its members for the expenses thereof.

46. 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.

47. Furthermore, Plaintiffs, through their duly elected and authorized representatives, have joined in the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint.

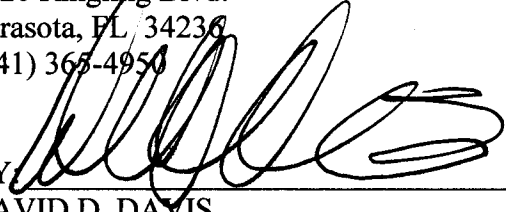
WHEREFORE, Defendant, The Landings Management Association, Inc. requests this Court to declare the following:

- 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 on Defendant's use of Tract F.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was furnished by email and Regular U.S. Mail to Charles J. Bartlett, Esq., 2033 Main Street, Suite 600, Sarasota, FL 34237 this 30th day of June 2010.

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BY: 

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