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Certified Mail – Return Receipt Requested
Article No. 7018 0360 0000 2103 9765 & Email: Pdervishi@shirlawgroup.com

Patrick Dervishi, Esq.
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Boca Raton, Florida 33431

Re: Huebner, Dover, Kolshak and Spillers Complaint to Indian Hammock Hunt & Riding Club, Inc.

Dear Mr. Dervishi:

My law firm has been retained to represent Indian Hammock Hunt & Riding Club, Inc., (the “Club”) to respond to your recent Notice of Complaint letter dated July 3, 2024. I understand that you represent Robert Huebner, Willard Dover, Max Kolshak and Randy Spillers (jointly your “Clients”). Please direct all future correspondence or other communication in this matter directly to my attention.

Your July 3, 2024 letter sets forth six separate headings. I am responding to each of those headings as follows:

I. Notice of Complaint.

I understand your Clients contend that the Board of Directors is unlawfully proceeding with the construction of a quail barn facility on common area lands owned by the Club and contend that such an action is ultra vires.

II. The Dispute.

Your Clients assert that the Board of Directors has been influenced by the Hunt Committee and its hunting members to proceed with the construction of a quail barn facility based on representations to the community are misleading. Your Clients further assert that the construction of the quail barn would unlawfully restrict common areas for the exclusive use by the Club’s hunting members without amending the First Amended and Restated Declaration of Restrictions of Indian Hammock Hunt & Riding Club effective November 2, 1998 as recorded in Official Record Book 0413 at Page 0777 of the public records of Okeechobee County, Florida (the “Declaration”) and that the construction of the quail barn would destroy the vested rights of the Club’s members. The Club disagrees with your assertions.

III. The Applicable Provisions of the Association's Governing Documents

You cite numerous sections of the Declaration in support of your Clients' position, however, it appears that Article V, Section 1 of the Declaration directly addresses the issue of whether the Club has the authority to construct a quail barn. Article V, Section 1 of the Declaration states, in pertinent part:

In order to provide, operate or maintain or replace facilities or services, including those that may not be otherwise available to the Property and the Common Areas, when necessary or desirable as determined by the Club in its sole discretion, the Club is authorized by all of the Owners to act in their behalf and is empowered to contract for . . . the installation of, maintenance, repair or replacement of . . . recreational and hunting facilities . . . The judgment of the Club in the letting of contracts and the raising or expenditure of funds therefore shall be final (emphasis added).

The above-cited language provides the Board with power to provide and install recreational and hunting facilities, including those that may not be otherwise available. The quail barn is a recreational or hunting facility. Therefore, the Club (the Board) in its sole discretion, has the ability to decide whether to provide and install the quail barn, and the judgment of the Board is final.

IV. The Alleged Impairment of the Members' Vested Rights

Your Clients allege that the Club is attempting to cannibalize and take away a portion of the common areas for exclusive use by its hunting members. This is not true. There are many common areas at the Club containing facilities which are utilized by some members more than other members, but may certainly be used by all members. These facilities include a swimming pool, an exercise room, an equestrian arena, and a shooting range. Some of these facilities require that the members pay some type of facility fee for use of the facilities, and some of the facilities have certain rules and regulations imposed which dictate how and when a member may use a specific facility.

The decision by the Board to construct a quail barn is no different than the Board's decision to construct and/or maintain the swimming pool, the equestrian arena, the exercise room and/or the shooting range. All members have the ability to utilize any of the facilities, however, must abide by the rules and regulations in place for each facility.

In your letter you compare the construction of the quail barn to the lease of aircraft hangars to specific members. I agree that the Club did not have the legal authority to lease hangar areas to specific members without amendment to the Declaration, because a hangar lease would provide a single member with the exclusive right to possess land within the common areas. Therefore, an amendment to the Declaration was necessary.

The construction of the quail barn does not provide any specific member with any right to use the quail barn. The quail barn is being constructed for the use of all members, similar to the facilities I cited above. It will be up to each specific member as to whether that member wishes to utilize the quail barn in accord with the rules and regulations associated with use of the facility.

V. Swain v. Meadows at Martin Downs Homeowners' Association, Inc.

I have reviewed *Swain v. Meadows at Martin Downs Homeowners' Association, Inc.*, 59 So.3d 258 (Fla. 4th DCA 2011). In *Swain*, the owners alleged that the association did not have the authority to build a maintenance facility on common areas without a vote of the property owners, and the association argued that it did have such a right. The trial court granted the association's motion for summary judgment determining that the association had the power to build the facility without a vote of the unit owners. The property owners appealed the trial court's decision and the Fourth District held that summary judgment was improper because the association's declaration did not specifically provide the association with the authority to construct new improvements, it only provided the association with the authority for maintenance, repair and replacement of the facilities. Although the Fourth District reversed the trial court's summary judgment and sent the case back to the trial court, I understand that the trial court thereafter again ruled in favor of the association and determined that the association did have the power to construct the facility without a vote of the property owners.

As per Article V, Section 1 of the Club's Declaration which I cited above, the Board has the power to provide and install recreational and hunting facilities in its sole discretion, including facilities that may not otherwise be available. This broad language was absent from the declaration at issue in *Swain*. It seems clear that the Fourth District would have ruled in favor of the association at the summary judgment stage if the declaration at issue in *Swain* had the specific grants of power present in the Club's Declaration.

The *Swain* decision supports the Club's position that the Board, in its sole discretion, has the power and authority to construct the quail barn without a vote of the members.

VI. Response to Relief Requested.

Your Clients demanded that the Club refrain from any further actions relating to the construction of the quail barn, withdraw any prior votes or purported approvals for the quail barn, and terminate any related applications, permits, or agreements relating to the construction of the quail barn.

The Club has considered your Clients' demands and rejects the demands in total. The Club is proceeding with the construction of the quail barn in accord with the Board's prior determinations.

I believe the information set forth herein is clear, however, please feel free to contact me directly to discuss any questions you may have.

Sincerely,

BRENNAN & KRETSCHMER

By: Fred L Kretschmer Jr
Fred L. Kretschmer, Jr.

FLK/cy
cc: Indian Hammock Hunt & Riding Club, Inc.