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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Michael R. Scarborough, Master-In-Equity
Case No.: 2023-CP-10-02281

Appellate Case No. 2025-001775

Grand Oaks Boulevard Association, Inc.,.....….Appellant.

v.

Proximity Neighborhoods Master Association, Inc.,.....Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the Master-In-Equity correctly grant summary judgment to Respondent where there is no genuine issue of fact that the Corrective Limited Warranty Deed, dated June 16, 2012, but made effective to the original closing date of November 15, 2004 (*see* the affidavit of H. Brown Hamrick attached thereto) is clear and unambiguous.

II. Did the Master-In-Equity correctly grant summary judgment to Respondent where there is no genuine issue of fact that under the terms of the Declaration of Covenants and Restrictions of Grand Oaks Plantation, Respondent's property falls outside the scope of the Declaration and Appellant does not have authority to assess Respondent.

III. Did the Master-In-Equity correctly grant summary judgment to Respondent where it found that equitable estoppel did not apply to bar Respondent's arguments that it was not required to pay Respondent's annual assessment under the Declaration of Covenants and Restrictions of Grand Oaks Plantation.

STATEMENT OF THE CASE

This case arises from the improper imposition of annual assessments by Appellant Grand Oaks Boulevard Association, Inc. ("Grand Oaks") to Respondent Proximity Neighborhoods Master Association, Inc. ("Proximity") under the Declaration of Covenants and Restrictions Grand Oaks Plantation (the "Grand Oaks Declaration") as recorded in the Register of Deeds Office for Charleston County ("ROD") on October 28, 1998, in Book P-313, Page 895, and as amended thereafter. **Grand Oaks Declaration.** The subject property within Proximity's community was conveyed free and clear of the Grand Oaks Declaration and, therefore, is not subject to any annual assessments required therein. Additionally, even if it is determined that Proximity's property was not conveyed free and clear of the Grand Oaks Declaration (which Proximity disputes), Proximity

is not obligated to pay annual assessments because the property falls outside the scope of the Grand Oaks Declaration's terms.

On May 11, 2023, Grand Oaks filed a breach of contract action against Proximity for Proximity's alleged failure to pay annual assessments that were incorrectly imposed upon it. **Compl. ¶¶ 1-11.** On June 26, 2023, Proximity answered, denied the allegations against it, and asserted certain affirmative defenses. **Answer ¶¶ 1-14.** Proximity later amended its answer on October 24, 2024 to assert a declaratory judgment counterclaim against Grand Oaks seeking judicial determination that Proximity's property is not subject to the Grand Oaks Declaration, is not required to pay annual assessments under the Grand Oaks Declaration, that Proximity did not breach the Grand Oaks Declaration, and that Grand Oaks should not have charged and collected assessments from Proximity. **Amend. Answer to Compl. With Counterclaim pp. 3-5.** On November 15, 2024, Grand Oaks filed its reply denying the allegations against it and asserting affirmative defenses. **Reply to Counterclaim pp. 1-3.**

On November 2, 2023, Grand Oaks filed a motion for summary judgment on its sole cause of action for breach of contract, seeking payment for the alleged outstanding annual assessment payments from Proximity. **Grand Oaks MSJ, Shuman Aff. dated November 3, 2023, and filed November 27, 2023; Schumann Supp. Aff., dated April 22, 2024, and filed May 3, 2024; Schumann Supp. Aff. II, dated February 14, 2025, and filed February 14, 2023.** On February 13, 2025, Proximity opposed Grand Oak's motion for summary judgment and moved for summary judgment on its declaratory judgment counterclaim. **Proximity MSJ; Proximity Memo. in Supp. MSJ with Exhs. A-J; Duc Aff.**

On August 19, 2024, this case was referred to the Master-In-Equity pursuant to the Consent Order of Reference entered by the Clerk of the Court. **Consent Order of Reference dated August**

19, 2024. The Master-In-Equity held a hearing on June 17, 2025, on both parties' motions for summary judgment. **MSJ Hearing Tr. pp. 1-37.** Thereafter, on June 21, 2025, the Master-In-Equity denied Grand Oaks' motion and granted Proximity's motion. **Order dated July 21, 2025, at pp. 1-6.** Grand Oaks moved for reconsideration, and the Master-In-Equity denied the motion on the grounds that "no issue [was] overlooked, misunderstood, or not considered." **Form 4 Order dated August 7, 2025.**

STATEMENT OF FACTS

Grand Oaks is responsible for administering and enforcing the Grand Oaks Declaration. The Declaration's primary purpose is to maintain the entranceway signs, appearance, and the landscaping along the right-of-way of the Grand Oaks Boulevard and Ashley Gardens Boulevard in West Ashley off Bees Ferry Road, which is the entrance of Grand Oaks Plantation. **Grand Oaks Declaration.** Pursuant to the Grand Oaks Declaration, "the premises conveyed shall be limited to two points of vehicle access to Grant Oaks Boulevard and Ashley Gardens Boulevard." *See* **Grand Oaks Declaration ¶ 4.** The Grand Oaks Declaration provides that "the Developer of each tract bordering upon or having as its access on Grand Oaks Boulevard or Ashley Gardens Boulevard [ ] covenants with the owner of each tract, and the owner by acceptance of a deed" agrees "to pay an annual assessment for the creation and continuance of the Grand Oaks Maintenance Fund **as hereafter set forth**." ***See id.* at ¶ 6(a) (emphasis added).** The Grand Oaks Maintenance Fund is to be used "solely for maintaining entrance signs and landscaping and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard." ***Id.*** Paragraph 6(a) of the Grand Oaks Declaration goes on to further specify that "**[o]nly** owners of tracts which border Grand Oaks Boulevard **and** Ashley Gardens Boulevard ***or*** use the Boulevards for the principal access from Bees Ferry Road to their property **shall have this covenant imposed upon their property**." ***Id.***

(emphasis added). The Grand Oaks Declaration also provides that there shall be "a general directory sign for developments" and that "[t]his directory sign shall designate each community bordering upon or having its principal access from Bees Ferry Road by way of the Grand Oaks Boulevard or Ashley Gardens Boulevard." ***Id.*** **at ¶ 5.**

Proximity is the primary entity responsible for the enforcement of the Declaration of Covenants, Conditions, and Restrictions for The Proximity Neighborhoods Master Association, Inc. (the "Proximity Declaration"), as recorded in the ROD on November 10, 2014, in Book 0439, Page 959, and as amended thereafter. **Proximity Declaration.** The property that Proximity manages and operates is off Bees Ferry Road located next to the Grand Oaks Plantation, a portion of which includes the property at issue in this case designated as "TRACT D-2 310.669 ACRES TOTAL 97.424 ACRES WETLANDS 213.245 ACRES HIGHLAND" on certain Plat recorded in the ROD on October 15, 2004, in Plat Book EH, at Page 427 (the "Property"). **Subdivision Plat of Tract D.** The Property does not border Grand Oaks Boulevard **and** Ashley Gardens Boulevard. Only a small portion of the Property borders Ashley Gardens Boulevard. ***Id.*** Proximity was incorporated in 2013 and established in 2014 and, thus, could not have commenced paying any annual assessments to Grand Oaks beginning in 2012. **Proximity Declaration.**

Before Proximity's incorporation and the Property's development, Grand Bees Development, LLC ("Grand Bees") purchased the Property from Bees Resources, LP ("Bees Resources") in 2004 pursuant to a Limited Warranty Deed filed in the ROD on November 16, 2004. **Limited Warranty Deed.** The Limited Warranty Deed stated that the Property was being conveyed subject to the Grand Oaks Declaration. ***Id.*** However, on June 17, 2012, before the Property's development and the filing of the Proximity Declaration with the ROD, Bees Resources, as "Grantor," and Grand Bees, as "Grantee," filed a Corrective Limited Warranty Deed in the

ROD, which provided that "the parties have determined that, through inadvertence, the [Limited Warranty] Deed incorrectly referenced that the conveyance was subject to the [Grand Oaks Declaration]" and that Bees Resources "minded to execute and deliver within the Corrective Limited Warranty Deed to correct the error and **convey to [Grand Bees] the [Property]** . . . **free and clear of the [Grand Oaks Declaration], as amended. Corrective Limited Warranty Deed p. 1 (emphasis added).** The Affidavit of H. Brown Hamrick in the Corrective Limited Warranty Deed further attests that "[t]he property described in the foregoing deed, located in the City of Charleston, Charleston County, S.C., was transferred by Bees Resources, LP, a South Carolina limited partnership, to Grand Bees Development, LLC, a Florida limited liability company, on the 15th day of November, 2004," and made clear that the Corrective Limited Warranty Deed was "to correct the description of encumbrances described in a previous deed." ***See id.*** **at p. 4.**

Thereafter, the Property was developed to consist of single-family residences. **Proximity Declaration. § 3.2.** Various entities acting as the "Declarant" under the Proximity Declaration managed the Property during its development. **Third Amend. to the Proximity Declaration.** There is no evidence in the record to establish that Proximity, or its predecessors in interest (including Grand Bees), paid any annual assessments to Grand Oaks prior to the filing of the Proximity Declaration in 2014, or that Proximity, or its predecessors in interest, consistently paid any annual assessments to Grand Oaks from 2014 to 2021.

In or around 2020, Lennar Carolina, LLC ("Lennar") managed the Property as "Declarant" until the Property became owner-managed, through Proximity, in 2023. **Supp. Declaration to the Proximity Declaration Relinquishing Declarant's Rights.** The development of the community included the development of Proximity Drive, allowing Proximity's residents to gain primary and direct access to their homes from Bees Ferry Road rather than having to take Grand Oaks

Boulevard to Ashley Gardens Boulevard to Proximity Drive. ***See* Proximity Declaration, Exh. A (**Proximity includes "PROPERTY OF BEES FERRY-FCA LLC *TO CREATE* PROXIMITY DRIVE . . .") (emphasis in original); ***see also id.* at ¶ 2.14.** Thus, the Property's principal access from Bees Fee Road is Proximity Drive. A depiction of the Property from the Charleston County GIS is located below.

***See* Proximity MSJ Memo at p. 5.**

Proximity is not listed on any directory at the entranceway along the right-of-way of the Grand Oaks Boulevard and Ashley Gardens Boulevard in West Ashley off Bees Ferry Road, which

is the entrance of Grand Oaks Plantation. **Duc Aff. ¶ 2; Proximity MSJ Memo p. 10.** Proximity has never received meeting minutes from Grand Oaks. **Duc Aff ¶ 3.** Proximity did not regularly receive meeting notices for Grand Oaks's annual meetings, except for in 2022, when Grand Oaks provided Proximity with three (3) days' notice for its November 28, 2022, meeting. ***Id.* at ¶ 4.** Further, before October 2022, Proximity did not receive budget notices from Grand Oaks. ***Id.* at ¶ 5.**

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56, SCRCP." *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCP).

The purpose of summary judgment is to expedite the disposition of cases not requiring a fact finder. *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 177, 700 S.E.2d 283, 286 (Ct. App. 2010). The burden of proof rests with the party seeking summary judgment; however, the non-moving party must make a showing sufficient to establish the existence of an essential element on which it will bear the burden to prove at trial. *Baughman v. Am. Tel. & Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The "mere scintilla" standard does not apply to defeat summary judgment, but instead, the party must establish a genuine issue of material fact. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). "A fact is material if it 'might affect the outcome of

the suit under the governing law.'" *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is "genuine" if "a reasonable jury could return a verdict for the non-moving party." *Strothers v. City of Laurel*, 895 F.3d 317, 326 (4th Cir. 2018) (quoting *Anderson*, 477 U.S. at 248). It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013); *Nelson v. Piggly Wiggly Cent., Inc*., 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (holding one may not create a genuine issue of material fact by speculation or an "inferential leap").

Summary judgment is mandated when a party fails to make a showing sufficient to establish the existence of an element essential to that party's case. *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999). In such a situation, the moving party is entitled to judgment as a matter of law because the non-moving party has failed to demonstrate a genuine issue of material fact as to a necessary part of that party's claim. *Id*.

ARGUMENT

I. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT BECAUSE THE MASTER-IN-EQUITY CORRECTLY FOUND THAT THE CORRECTIVE LIMITED WARRANTY DEED CORRECTED THE ORIGINAL DEED TO CONVEY THE PROPERTY FREE AND CLEAR OF THE GRAND OAKS DECLARATION

Grand Oaks argues the Master-In-Equity erred in finding that the Corrective Limited Warranty Deed corrected the error in the Limited Warranty Deed and conveyed the Property free and clear of the Grand Oaks Declaration, as amended. **Initial App. Br. p. 16.** Specifically, Grand Oaks argues that the Master-In-Equity's decision is meritless because Bees Resources had no authority to issue the Corrective Limited Warranty Deed "some eight years after the 11/16/2004

Supplemental Declaration was filed and, in any case, violated the Grand Oaks Covenants as it bound current property owners to higher assessments absent their written consent." ***Id.*** Grand Oaks misconstrues that Bees Resources was the grantor of the Property to Grand Bees and, thus, was entitled to execute a corrective deed to correct the Limited Warranty Deed and reflect the true intention of the parties at the time of the original conveyance on November 15, 2004.

Any person interested under a contract may have determined any question of construction arising under the instrument or contract and obtain a declaration of rights, status, or other legal relations thereunder. *See* S.C. Code § 15-53-30. "The construction of a clear and unambiguous deed is a question of law for the court." *See Gardner v. Mozingo*, 293 S.C. 23, 25-26, 358 S.E.2d 390 (1987). "The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties." *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731 (Ct. App. 1990). "One of the first canons of construction of a deed is that the intention of the grantor must be ascertained and effectuated if no settled rule of law is contravened." *See Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 590, 635 S.E.2d 649 (Ct. App. 2006) (internal quotation marks omitted). In determining the contracting parties' intention, a court first looks to the language of the contract, and if the language is clear and unambiguous, the language alone determines the contract's force and effect. *See Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526 (1976); *see also Santoro v. Schulthess*, 384 S.C. 250, 270, 681 S.E.2d 897 (Ct. App. 2009). Thus, "[w]hen a deed is unambiguous, any attempt to determine the grantor's intent . . . must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper." *See Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204-205, 743 S.E.2d 850 (Ct. App. 2013); *see also Gardner*, 294 S.C. at 25 ("The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself."). The Court cannot take into

consideration the circumstances surrounding the agreement's execution to determine intent when the agreement is unambiguous. *Williams*, 266 S.C. at 59.

Here, the Corrective Limited Warranty Deed, filed by Bees Resources, as "Grantor," and Grand Bees, as "Grantee," is unambiguous and conveyed the Property free and clear of the Grand Oaks Declaration, as amended. **Corrective Limited Warranty Deed.** As such, based on the Corrective Limited Warranty Deed's language alone, Grand Oaks does not have the authority to assess Proximity assessments under Paragraph 6 of the Grand Oaks Declaration. *See Gardner*, 293 S.C. at 26 (finding "[t]he deed is not ambiguous on its face" and "only becomes ambiguous when extrinsic evidence is considered" thus, "the question of the grantor's intent was one of law for the court and the trial judge's construction of the deed on the motion for summary judgment was not error."). Grand Oaks cannot submit any extrinsic evidence to contradict the plain language of the Corrective Limited Warranty Deed, including the Grand Oaks Declaration and any amendments thereto. *Id.* at 25. Moreover, Grand Oaks's argument that Grand Oaks's consent was needed to file the Corrective Limited Warranty Deed lacks merit as the transaction was between Bees Resources, as "Grantor" (and who was the "Declarant" under the Grand Oaks Declaration at the time the conveyance was made), and Grand Bees, as "Grantee."

A. Grand Oaks's Arguments Regarding the Invalidity and Unenforceability of the Corrective Limited Warranty Deed Are Not Preserved for Appeal Because Grand Oaks Did Not Present the Arguments to the Master-In-Equity

First, Grand Oaks's arguments regarding the invalidity and unenforceability of the Corrective Limited Warranty Deed cannot be considered because an argument must be raised to and ruled upon by the lower court to be preserved for appeal.

> A great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to

> the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004). If an argument is presented to the circuit court but not ruled upon, the litigant is obligated to move for reconsideration to obtain a ruling to preserve the argument for appeal. *Kosciusko v. Parham,* 428 S.C. 481, 506, 836 S.E.2d 362, 375 (Ct. App. 2019).

The preservation requirement is imposed to give the lower court an opportunity to rule properly after considering the relevant facts, law, and arguments. *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). This Court noted:

> The losing party must first try to convince the lower court it is [sic] has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments . . . Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Id.

Appellate courts will not reverse a lower court on a ground that was not submitted to the lower court. *Powers v. City of Aiken*, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970). After all, the court of appeals is a court of review. *Id.* The purpose of an appeal is to determine whether the lower court did not do something it should have or did something it should not have. *Id.* To accomplish this review purpose, an argument must be sufficiently presented to the lower court so it has an opportunity to rule. *See id.* "An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).

Grand Oaks's argument that "Proximity cannot use the Corrective Limited Warranty Deed as a legitimate basis to refuse to pay Annual Assessments" because (i) Bees Resources did not have the right to alter or amend the Grand Oaks Declaration, and (ii) the Corrective Limited Warranty Deed purportedly violates the Grand Oaks Declaration by imposing additional assessments upon owners without their written consent (**Initial App. Br. pp. 16-28**) was not presented to the Master-In-Equity on Grand Oaks' motion for summary judgment, at the motion for summary judgment hearing, or on its motion for reconsideration. ***See generally*** **Grand Oaks Amend. MSJ; MSJ Hearing Tr.;** ***see also*** **Mtn. to Alter pp. 1-4.** Furthermore, even if Grand Oaks raised these arguments in its motion for reconsideration, that is too late to preserve the arguments because an issue or argument cannot be presented for the first time in a motion to reconsider. *See Johnson*, 381 S.C. at 177. Since Grand Oaks did not raise to the Master-In-Equity its arguments that the Corrective Limited Warranty Deed is unenforceable because (i) Bees Resources did not have the right to alter and/or amend the Grand Oaks Declaration or (ii) the Corrective Limited Warranty Deed purportedly violates the Grand Oaks Declaration by imposing additional assessments upon owners without their written consent, these arguments are not preserved for appeal and should not be considered by this Court.

B. Even if preserved, the Corrective Limited Warranty Deed is Valid and Expressly Conveyed the Property Free and Clear of the Grand Oaks Declaration Made Effective to the Original Closing Date of November 15, 2004

The Master-In-Equity's Order is not meritless on the grounds that Bees Resources had no authority to execute the Corrective Limited Warranty Deed as the Corrective Limited Warranty Deed corrected an error that was done "through inadvertence" wherein Bees Resources executed the Limited Warranty Deed that "incorrectly referenced that the conveyance was subject to the [Grand Oaks Declaration]," which included the amendment "recorded November 16, 2004 in Book

G516 at Page 225 in the RMC Office for Charleston County, South Carolina." **Corrective Limited Warranty Deed p. 1.** Grand Oaks has not presented any arguments or evidence demonstrating that the Corrective Limited Warranty Deed is ambiguous or invalid. Bees Resources, the entity that conveyed the Property to Grand Bees, was the correct entity to execute the Corrective Limited Warranty Deed and made the Corrective Limited Warranty Deed effective to the Property's original closing date on November 15, 2004, to clarify the Limited Warranty Deed's error as to the parties' intent. The Affidavit of H. Brown Hamrick attached to the Corrective Limited Warranty Deed attests that the Corrective Limited Warranty Deed was "to correct the description of encumbrances described in a previous deed" and that the "Date of Transfer of Title Closing Date" was "November 15, 2004." **Corrective Limited Warranty Deed p. 4.**

"A correction deed normally relates back to the date of the original deed, at least as between the parties to the deed. Thus, a second deed correcting the erroneous description contained in a former deed between the parties, as between them, related back and becomes effective as of the date of the first deed." *See* 26A C.J.S. 212, Deed § 173 (2026); *see also Cox v. Tanner*, 229 S.C. 568, 576, 93 S.E.2d 905, 910 (1956) (finding a second deed valid where the grantor first executed a deed to tract to deceased husband alone and subsequently gave a deed, denominated as corrective, to the husband and wife to "give effect to the intention of the parties"). Therefore, "as long as the original deed is not void for want of necessary formalities, a corrective deed may be issued by the original grantor to more accurately reflect the intentions of the parties to the original deed." *See Chicago Title Ins. Co. v. Accurate Title Searches, Inc.*, 173 Conn. App. 463, 492-93, 164 A.3d 683, 699 (2017) (citing *Cox*, 299 S.C. at 574-76).

The Corrective Limited Warranty Deed was not an amendment to change the nature of the Property conveyance but was executed and filed to correct an error and accurately reflect Bees

Resource's and Grand Bees' intentions at the time of the original conveyance on November 15, 2004, expressly conveying the property free and clear of the Grand Oaks Declaration, including the supplemental declaration "recorded November 16, 2004 in Book G516 at Page 225 in the RMC Office for Charleston County, South Carolina." **Corrective Limited Warranty Deed p. 1, 4.** Because the Corrective Limited Warranty Deed related back and is effective as of the date of the original conveyance, Bees Resources did not need Grand Oaks's authority to execute or issue the Corrective Limited Warranty Deed. As a result, the Corrective Limited Warrant Deed is enforceable, and the Master-In-Equity's Order must be affirmed.

C. Even if preserved, Bees Resources Did Not Need Grand Oaks's Authority to Execute and Record the Corrective Limited Warranty Deed Under Paragraph 13 of the Grand Oaks Declaration

Grand Oaks argues that once Bees Resources "sold off 50% of the developable acreage at issue both Bees Resources and its successors and assigns, were collectively barred from thereafter unilaterally altering, canceling, and/or otherwise amending the Grand Oaks Covenants." **Initial App. Br. pp. 20-21.** Grand Oaks relies upon the Supplemental Affidavit of Aicko Yves Schumann, sworn to on April 22, 2024, which states that "after 2/3's of the acreage owned by Developer had been sold, which occurred in 2007, [Grand Oaks] became responsible for the maintenance of the entrance signs, landscaping and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard" to argue that Bees Resources did not have authority to execute the Corrective Limited Warranty Deed in 2012 since Bees Resources' ability and legal authority to change the Grand Oaks Declaration terminated in or about 2007 "when such rights were contractually transferred over to Grand Oaks" pursuant to Paragraph 13 of the Grand Oaks Declaration. ***See*** **Initial App. Br. pp. 20-22; Schumann Supp. Aff. ¶ 2.**

Paragraph 13 of the Grand Oaks Declaration, as amended, provides:

> During the initial phase of development and so long as the Developer owns more than fifty (50%) percent of the developable acreage along Grand Oaks Boulevard and Ashley Gardens Boulevard or of the tracts using these Boulevards for principle access to the Bees Ferry Road, the Developer for itself and its successors and assigns reserves the right to modify, cancel, alter or change these covenants, provided, in no case, shall the Developer modify, alter or change these covenants in such a manner as to impose additional assessment upon any owner without such owner's express written consent. That at such time as the Developer has conveyed more than fifty (50%) percent of the developable acreage along Grand Oaks Boulevard and Ashley Gardens Boulevard or of the tracts using these Boulevards for principle access to the Bees Ferry Road, the right to modify, cancel or alter these covenants shall be vested in the Grand Oaks Boulevard Owners Association, Inc.

Grand Oaks Declaration ¶ 13.

However, as demonstrated above in Section I.B above, the Corrective Limited Warranty Deed was executed to correct an inadvertent mutual error that took place on November 15, 2004, when the original Limited Warranty Deed was executed by Bees Resources to convey the Property to Grand Bees. **Corrective Limited Warranty Deed.** Grand Oaks was not, and has never been, a party to the Property conveyance in 2004, and it has never been the title owner of the Property. **Limited Warranty Deed; Corrective Limited Warranty Deed.** The Corrective Limited Warranty Deed was not a modification, cancellation, or alteration to the Grand Oaks Declaration's terms, but was a corrective deed filing to demonstrate the parties intended to convey the Property free and clear of the certain encumbrances, including the Grand Oaks Declaration, effective November 15, 2004, before Grand Oaks purportedly took over enforcement of the Grand Oaks Declaration and while Bees Resources was the "Developer" under the Grand Oaks Declaration. ***Id.***

D. Even if preserved, the Corrective Limited Warranty Deed is Not Rendered Unenforceable by the Grand Oaks Declaration

For the reasons set forth above, and for the reasons explained below, the Corrective Limited Warranty Deed does not violate the Grand Oaks Declaration, rendering the Corrective Limited Warranty Deed unenforceable. Grand Oaks attempts to use Paragraph 13 of the Grand Oaks Declaration to argue that Bees Resources could not convey property free and clear of the Grand Oaks Declaration if it would subject owners to *higher* monetary assessments. **Initial App. Br. pp. 23-28.** Grand Oaks's argument lacks merit as Paragraph 13 of the Grand Oaks Declaration does not require the Developer to obtain the owner's written consent to impose a ***higher*** annual maintenance assessment, it only requires written consent where the Developer seeks to impose ***additional*** assessments. **Grand Oaks Declaration ¶ 13.** Since covenants are contractual in nature, "the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning." *See Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).

Grand Oaks does not argue that, without Proximity's contribution to the Grand Oaks Boulevard Maintenance Fund, Grand Oaks's owners will have to pay an additional assessment separate from the maintenance annual assessment imposed by Paragraph 6 of the Grand Oaks Declaration. Instead, Grand Oaks cites its annual budgets for the years 2021 through 2023 to demonstrate that without Proximity's contribution, other neighborhoods within Grand Oaks will be charged more money per year for the annual assessment to the Grand Oaks Boulevard Maintenance Fund. **Initial App. Br. pp. 24-28.** However, the Grand Oaks Declaration does not prohibit the imposition of a higher annual assessment for the Grand Oaks Boulevard Maintenance Fund so long as it comports with the calculations in Paragraph 6 of the Grand Oaks Declaration. *See generally* **Grand Oaks Declaration.** Instead, Paragraph 13 of the Grand Oaks Declaration prohibits the imposition of any ***additional*** assessments, other than what is provided for at

Paragraph 6, without the owners' written consent. There is no express authority within the Grand Oaks Declaration that prohibits the imposition of higher assessments. As a result thereof, Grand Oaks's argument lacks merit, and the Corrective Limited Warranty Deed should be deemed enforceable as (i) Bees Resources was authorized to execute the deed to correct the intentions of the parties to the November 15, 2004 conveyance and (ii) the Corrective Limited Warranty Deed does not violate the terms of the Grand Oaks Declaration by requiring owners to pay more in annual maintenance assessments. For this additional reason, the Master-In-Equity's decision must be affirmed.

E. Furthermore, Grand Bees Did Not Accept via Deed the Covenant and Agreement to Pay Annual Assessments Pursuant to the Grand Oaks Declaration

Furthermore, pursuant to the terms of the Corrective Limited Warranty Deed, which was made effective to the original closing date of November 15, 2004 (*see supra* at Argument § I.B), Grand Bees expressly accepted the Property free and clear of the Grand Oaks Declaration and, therefore, is not subject to Paragraph 6(a) therein pursuant to its terms.

In pertinent part, Paragraph 6(a) of the Grand Oaks Declaration states:

> The Developer [Bees Resources] for each tract bordering upon or having as its access on Grand Oaks Boulevard or Ashley Gardens Boulevard hereby covenants with the owner of each such tract, and **the owner by the acceptance of a deed**, is deemed to covenant and agree to pay an annual assessment for the creation and continuance of the Grand Oaks Boulevard Maintenance Fund as hereafter set forth.

***See* Grand Oaks Declaration ¶ 6(a) (emphasis added).**

Because Grand Bees expressly accepted the Property free and clear of the Grand Oaks Declaration, including the supplemental declaration recorded on November 16, 2004, in Book G516 at Page 255 (the "2004 Supplemental Declaration"), as of November 15, 2004 pursuant to the Corrective Limited Warranty Deed (*see supra* at Argument § I.B), Grand Bees did not

"covenant and agree to pay an annual assessment for the creation and continuance of the Grand Oaks Boulevard Maintenance Fund" under Paragraph 6(a) of the Grand Oaks Declaration. For this additional reason, the Property was conveyed free and clear of the Grand Oaks Declaration, Proximity is not subject to any obligation to pay annual assessments thereunder, and the Master-In-Equity's decision must be affirmed.

II. THE MASTER-IN-EQUITY CORRECTLY HELD THAT PROXIMITY IS NOT EQUITABLY ESTOPPED TO DENY ANY ALLEGED OBLIGATION TO PAY THE ANNUAL ASSESSMENTS

The Master-In-Equity correctly held that equitable estoppel does not apply under these circumstances. *See* **Order dated July 21, 2025, at p 4.** Grand Oaks argues, without any evidentiary support, that Proximity "voluntarily, knowingly, and willingly paid its share of the Annual Assessments in 2012 and continued to do so through 2021, some nine years longer than Proximity now claims it was obligated." **Initial App. Br. pp. 28-33.** There is no evidence in the record demonstrating that Proximity, or any of its predecessors in interest, started paying the annual assessments pursuant to Paragraph 6 of the Grand Oaks Declaration in 2012 or that it regularly and consistently paid the annual assessment thereafter. Grand Oaks cites case law holding that the homeowners in the cases cited were estopped from claiming a refund of assessments previously paid to support its assertion that Proximity cannot claim it should not pay Annual Assessments from 2022 onward. ***Id.*** (citing *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 364-48, 356 S.E.2d 411, 413-14 (Ct. App. 1987) (finding the homeowner was estopped to claim a refund of all assessments paid to the homeowners' association in excess of what was due under a proper calculation); *Nash v. Tara Plantation Homeowners Ass'n, Inc.*, No. 2010-UP-355, 2010 W.L. 10080093, at *6 (Ct. App. July 12, 2010). Proximity is not, and was not, seeking a refund of any assessments paid on its behalf. **MSJ Hearing Tr. pp. 30:15-25, 34:16-**

21. Rather, Proximity only requested an Order finding that it was not subject to the Grand Oaks Declaration and the obligation to pay any annual assessments moving forward, which was correctly granted by the Master-In-Equity. ***See id.*****; *see also* Amend. Ans. pp. 3-5.** Equitable estoppel does not bar Proximity from asserting that it is not obligated to pay annual assessments to Grand Oaks from 2022 onward.

A. Grand Oaks's Argument that Equitable Estoppel Applies to Bar Proximity from Asserting That it is Not Obligated to Pay Annual Assessments to Grand Oaks from 2022 to Present is Not Preserved because Grand Oaks Did Not Present this Argument to the Master-In-Equity

As an initial issue, Grand Oaks did not argue that equitable estoppel, nor waiver, should apply to bar Proximity from asserting that it is not obligated to pay annual assessments to Grand Oaks from 2022 onward on the grounds that Proximity had constructive record notice of the Corrective Limited Warranty Deed, only that Proximity was equitably barred from recovering any annual assessments previously paid to Grand Oaks before and through 2021 because it had allegedly paid the annual assessment years prior. ***See generally*** **Grand Oaks's MSJ; Grand Oaks Amend. MSJ; Grand Oaks Reply to Counterclaims; MSJ Hearing Tr.** As a result, this argument cannot be considered because an argument must be raised to and ruled upon by the lower court to be preserved for appeal. *See supra* at Argument § I.A.

B. Even if Preserved, Equitable Estoppel is Inapplicable Where the Parties Are Bound by the Corrective Limited Warranty Deed

Grand Oaks seeks to use the doctrine of equitable estoppel to introduce evidence of Proximity's alleged past performance in paying annual assessments to Bees Resources as "Declarant," and then Grand Oaks, since 2012 under the Grand Oaks Declaration (before Proximity was ever incorporated). However, the Master-In-Equity correctly found that the

Corrective Limited Warranty Deed is clear and unambiguous and that this is the type of evidence that the parole evidence rule excludes. ***See* Order dated July 21, 2025, at p. 4.**

The language of the Corrective Limited Warranty Deed is clear that "through inadvertence, the [Limited Warranty] Deed incorrectly referenced that the conveyance was subject to the [Grand Oaks Declaration]," including the 2004 Supplemental Declaration. *See* **Corrective Limited Warranty Deed at p. 1**; *see also Penza*, 404 S.C. at 204-205; *Gardner*, 294 S.C. at 25. "Allowing [Grand Oaks's] equitable estoppel claim to go forward—with the introduction of parole evidence that would entail—would be tantamount to permitting a party to convert an unambiguous [deed] into an ambiguous one based on little more than 'the subjective, after-the-fact meaning one party assigns to it.'" *See Rodarte v. University of South Carolina*, 419 S.C. 592, 604, 799 S.E.2d 912 (2017) (citations omitted); *see also Gardner*, 294 S.C. at 25. As a result thereof, the doctrine of equitable estoppel should be held not to apply under the circumstances herein, and the Master-In-Equity's determination affirmed.

C. Even if Preserved, Equitable Estoppel is Inapplicable Where Both Parties' Knowledge is Equal

Grand Oaks argues that Proximity cannot utilize the Corrective Limited Warranty Deed to assert its non-obligation position because "Proximity 'had access to the same facts that give rise to Proximity's current contention it is not bound by the Grand Oaks Covenants but did not assert its non-obligation until involved in this case.'" ***See* Initial App. Br. p. 31 (citations omitted).** A party claiming equitable estoppel (Grand Oaks) must show, "1) a lack of knowledge and the means of knowledge of truth as to facts in question; 2) justifiable reliance upon the conduct of the party estopped; and 3) prejudicial change in the position of the party claiming estoppel." *See Evins v. Richland County Historic Preservation Coming*, 341 S.C.15, 20, 532 S.E.2d 876, 878 (2000). "Estoppel cannot exist if the knowledge of both parties is equal, and nothing is done by one to

mislead the other." *Id.* Here, Grand Oaks cannot satisfy the first element required for a party claiming equitable estoppel, as it had the same constructive record notice of the Corrective Limited Warranty Deed as Proximity. *See, e.g.*, *Adams v. Adams*, 220 S.C. 131, 139-41, 66 S.E.2d 809, 813 (1951) (finding the appellant "had only to refer to the public records of Colleton County to ascertain the true status of the property in question if he did not have actual knowledge and was bound thereby.").

In *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 28, 413 S.E.2d 821, 824 (1992), the Supreme Court held that the plaintiffs could not argue that the City of North Myrtle Beach should be estopped from exercising authority and control over a portion of a street end claimed by the plaintiffs on the grounds the city failed to deter the plaintiffs from claiming exclusive use of the street end because the plaintiffs were charged with the same knowledge that the street end had been offered for dedication to the public via deed. Thus, because the city did not have any superior knowledge of the nature of the street end compared to the plaintiffs, equitable estoppel did not apply.

The same holding in *Helsel* applies here. Grand Oaks had constructive record notice of the existence of the Corrective Limited Warranty Deed clarifying the intent of Bees Resources and Grand Bees to convey the Property free and clear of the Grand Oaks Declaration. *See, e.g.*, *Leasing Enter., Inc. v. Livingston*, 294 S.C. 204, 207, 363 S.E.2d 410, 412 (Ct. App. 1987) (finding "recording is the method by which a third party without actual notice is alerted to the possible transfer of interest in real property"); *see also In re Davis*, 490 B.R. 221, 229 (D.S.C. 2013) ("Recording also provides constructive notice to others of the interest recorded"). Grand Oaks had the same "means of knowledge of the truth as to the facts in question" as Proximity. *See Rodarte*, 419 S.C. 592 at 604 (finding an "unambiguous written contract is inherently incompatible with the

doctrine of equitable estoppel" because to succeed, "a party must prove 'lack of knowledge, and the means of knowledge, of truth as to the facts in question'" (citations omitted)). As a result, Grand Oaks cannot claim equitable estoppel against Proximity.

D. Even if Preserved, Proximity is Not Equitably Estopped as a Matter of Law

First, estoppel and waiver are protective only and are to be invoked as shields, and not as offensive weapons. As a result, the doctrine of equitable estoppel must be "limited to saving harmless or making whole the party in whose favor they arise and should not, in any case, be made the instruments of gain or profit." *See Janasik v. Fairway Oaks Villa Horizontal Property Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992); *Ott v. Ott*, 182 S.C. 135, 188 S.E. 789, 792 (1936) ("'[The doctrine of equitable estoppel] was never intended to work a positive gain to a party.'" (*citing* 10 R.C.L. 697, 698)). While equitable estoppel can be used as an affirmative defense to counterclaims, equitable estoppel cannot be asserted as an offensive weapon to obtain judgment for Grand Oaks, including a finding that Proximity is obligated to pay annual assessments pursuant to the Grand Oaks Declaration.[1]

The elements of equitable estoppel as related to the party being estopped are:

> (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts.

See Rodarte, 419 S.C. at 601 (*citing Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007)).

[1] Importantly, Grand Oaks's cause of action against Proximity does not seek judgment that Proximity is obligated to pay annual assessments pursuant to the Grand Oaks Declaration. Grand Oaks's sole cause of action against Proximity is for breach of contract. ***See generally*** **Compl.**

Grand Oaks cites *Nash* to support its contention that equitable estoppel applies. **Initial App. Br. at pp. 28, 30-33.** However, first, Grand Oaks cannot rely on *Nash* as it is an unpublished opinion and order of this Court and has no precedential value pursuant to Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."). Second, *Nash* is inapplicable to this case. The *Nash* Court found the applicable covenants in that case applied to the appellants' lots because, based on the language of the relevant documents at issue, the developer intended for the covenants to apply to appellants' lots and the appellants waived any such contention otherwise. *See Nash*, 2010 W.L. 10080093, at *2-4. Here, the Grand Oaks Covenants do not apply to the Property pursuant to the language of the Corrective Limited Warranty Deed and for the additional reasons stated below (*see supra* at Argument § I; *see infra* at Argument § III). **Corrective Limited Warranty Deed.** Further, the *Nash* Court held that the appellants in that case paid dues, voted on homeowners' association issues, and participated in meetings for years before asserting their lots were not bound by the applicable covenants. *See Nash*, 2010 W.L. 10080093, at *6.

Here, there is no evidence in the record to establish that Proximity, or its predecessors in interest (including Grand Bees), paid any annual assessments to Grand Oaks before the filing of the Proximity Declaration in 2014, nor that Proximity, or its Declarant(s), consistently paid any annual assessments to Grand Oaks. There is also no evidence in the record to demonstrate that Proximity intended for Grand Oaks to rely upon any alleged annual assessment payments made to Grand Oaks. Finally, there is no evidence in the record that Proximity benefited from paying annual assessments to the Grand Oaks Maintenance Fund. Instead, evidence in the record shows that "Proximity is not listed on any directory at the entranceway along the right-of-way of the Grand Oaks Boulevard and Ashley Gardens Boulevard in West Ashley off Bees Ferry Road," that

"Proximity has never received meeting minutes from [Grand Oaks]," that before November 2024, "Proximity did not regularly receive meeting notices for [Grand Oak's] annual meetings, except for in 2022, when Grand Oaks[sic] provided Proximity with three (3) days' notice for its November 28, 2022 meeting," and that "before October 2022, Proximity did not receive budget notices from [Grand Oaks]." ***See* Duc Aff. at ¶¶ 2-5.** Furthermore, evidence in the record shows that Grand Oaks Boulevard and Ashley Gardens Boulevard are not the primary means of accessing the Property from Bees Ferry Road because of the development of Proximity Drive. *See supra* at p. 6; ***see also* Proximity Declaration ¶¶ 2.13, 8.6(B), Exh. A.** As a result of the foregoing circumstances, the elements required for equitable estoppel are not met, and Proximity must not be barred from arguing that it is not obligated to pay annual assessments under the Grand Oaks Declaration. Therefore, Grand Oaks's appeal should be denied, and the Master-In-Equity's Orders affirmed.

Furthermore, it would be unfairly prejudicial for Proximity to be required to pay the annual assessment under the Grand Oaks Declaration where it is not bound to its terms and has not enjoyed or benefitted from the maintenance of entrance signs and landscaping of the Grand Oaks Maintained Fund. The entrance signs are for Grand Oaks Plantation, not Proximity (***see* Duc Aff. ¶ 2**), and Proximity's owners use Proximity Drive, not Grand Oaks Boulevard and Ashley Gardens Boulevard, as their principal access to their property. *See supra* at p. 6; ***see also* Proximity Declaration ¶¶ 2.13, 8.6(B), Exh. A.**

III. THE MASTER-IN-EQUITY CORRECTLY HELD THAT PROXIMITY IS NOT REQUIRED TO PAY ASSESSMENTS UNDER THE GRAND OAKS DECLARATION BECAUSE PRINCIPAL ACCESS TO PROXIMITY IS NOT FROM GRAND OAKS BOULEVARD AND ASHLEY GARDENS BOULEVARD

Even if the Corrective Limited Warranty Deed is invalid and the Property is subject to the Grand Oaks Declaration, which Proximity refutes and maintains it is not (*see supra* at Argument

§ I), the Property is not required to pay assessments under the Grand Oaks Declaration by its own terms. *See Chan*, 302 S.C. at 289 ("When a contract is perfectly plain and capable of legal construction the language of the contract determines the full force and effect of the document," and any "[a]mbiguity in a contract must be construed against the party who prepared it."). The Grand Oaks Declaration's language provides that the primary purpose is to maintain the entryway for those property owners who utilize the entryway at Grand Oaks Boulevard. ***See* Grand Oaks Declaration ¶ 4** ("The premises conveyed shall be limited to two points of vehicle access to Grand Oaks Boulevard and Ashley Gardens Boulevard"). Paragraph 6(a) of the Grand Oaks Declaration expressly states as follows:

> The Developer for each tract bordering upon or having as its access on Grand Oaks or Ashely Gardens Boulevard hereby covenants with the owner of each such tract, and the owner by the acceptance of a deed, is deemed to covenant and agree to pay an annual assessment for the creation and continuance of the Grand Oaks Boulevard Maintenance Fund **as hereinafter set forth.** The sum so received by Developer shall be used to provide funds solely for maintaining entrance signs and landscaping and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard. **Only** owners of **tracts which border Grand Oaks Boulevard and Ashley Gardens Boulevard *or* use the Boulevards for the principal access from Bees Ferry Road to their property shall have this covenant imposed upon their property.**

***See* Grand Oaks Declaration ¶ 6(a) (emphasis added).**

Grand Oaks misconstrues its own governing document to argue that the Grand Oaks Declaration creates a "two-prong obligation scenario where the owners of any parcels either abutting or using either Grand Oaks Boulevard or Ashley Gardens Boulevard as their primary ingress/egress from Bees Ferry Road were subject to the Annual Assessments." *See* **Initial App. Br. at p. 12.** However, the language of Paragraph 6(a) cited above clearly provides that Grand Oaks's interpretation is mistaken. Rather, annual assessments to the Grand Oaks Boulevard

Maintenance Fund will only be imposed upon an owner's property if the owner has a home that borders Grand Oaks Boulevard ***and*** Ashley Gardens Boulevard, ***or*** the owner uses Grand Oaks Boulevard and Ashley Gardens Boulevard for principal access from Bees Ferry Road to get to their house. The Property fits into neither of those categories. Only a small portion of the Property borders Ashley Gardens Boulevard, and no portion of the Property borders Grand Oaks Boulevard. *See supra* at p. 6; ***see also*** **Subdivision Plat of Tract D; Grand Oaks Phase 5 & 6 Plat.** And ***principal access*** to that small portion of the Property from Bees Ferry Road is not from Grand Oaks Boulevard and Ashley Gardens Boulevard. Rather, since the development of Proximity, principal access from Bees Ferry Road is Proximity Drive. *See supra* at p. 6; ***see also*** **Proximity Declaration ¶¶ 2.13, 8.6(B), Exh. A.** Therefore, owners with homes within the Property shall not "have this covenant imposed upon their property" as is set forth in Paragraph 6(a). As a result, the Master-In-Equity's determination must be affirmed.

IV. GRAND OAKS'S ANNUAL ASSESSMENTS ARE UNENFORCEABLE BECAUSE ITS APPLICATION OF THE GRAND OAKS DECLARATION IS INEQUITABLE AS TO PROXIMITY

Assuming arguendo that the Corrective Limited Warranty Deed is invalid, and the Property is subject to the Grand Oaks Declaration, which Proximity refutes and maintains it is not (*see supra* at Argument §§ I, III), Grand Oaks is not entitled to judgment in its favor because it inconsistently and inequitably applies the Grand Oaks Declaration amongst the sub-associations that are subject to it. Pursuant to Grand Oaks's annual budgets, Grand Oaks assessed Proximity $18,220.00 for 2021, which was 26.55% of Grand Oaks's total budget for 2021, $18,759.00 for 2022, which was 26.25% of Grand Oaks's total budget for 2022, and $20,718.00 for 2023, which was 26.45% of Grand Oaks's total budget for 2023. **Schumann Supp. Aff. at Exhs. E-G.** Grand Oaks treats

Proximity as the largest neighborhood subject to the Grand Oaks Declaration. ***Id.* at Exh. G** ("Proximity Master Association representing the largest GO neighborhood").

Proximity understands that Grand Oaks relied upon the following language to calculate the assessments levied against Proximity: "In the event that the assessments are paid by an Owners Association the voting shall be vested in that Association and the assessments shall be calculated on the total acreage in such original unsubdivided tract before its re-subdivision." ***See* Grand Oaks Declaration ¶ 6(i).** Grand Oaks misinterprets this subparagraph. The first sentence of Paragraph 6(i) states: "An owner of a tract of land who **re-subdivides such tract in multiple parcels of less than one acre** may provide in its covenants for the payment of the maintenance assessment by an Owners Association." ***Id*. (emphasis added).** Thus, Paragraph 6(i) provides that if an owner re-subdivides the tract into parcels less than one (1) acre and the Owner Association pays the assessment on behalf of its members owing less than one (1) acre parcels, the assessment will be calculated on the total acreage of the original unsubdivided tract before the tracts were re-subdivided to parcels of less than one (1) acre.

Here, the Property was initially subdivided into Phases, not in multiple parcels of less than one (1) acre. **Subdivision Plat of Lots 1-4.** The property closest to Ashley Gardens Boulevard was subdivided to create Grand Oaks Phases 5 & 6 and was then further subdivided. **Grand Oaks Phase 5 & 6 Plat.** Grand Oaks Phases 5 and 6 contain a total of approximately 20 acres that is then broken down into thirty (30) separate lots totaling 6.331 acres, right of ways totaling 1.671 acres, and community shared areas totaling 12.414 acres. As a result, the maximum number of acres that Grand Oaks could assess Proximity for is 20 acres.

Grand Oaks contends that Proximity must be assessed "in such original unsubdivided tract" going back to the Property's 214 acres. However, Grand Oaks does not assess its other members

based on their "original unsubdivided tract." For example, Bees Resources owned Tracts B & B-1, which totaled over 230 acres. **Subdivision Plat of Lots 1-4.** Those Tracts were then subdivided into "New Lot 5," "New Lot 6," "New Lot 7," and "New Lot 8" and then further subdivided. **Subdivision Plat of New Lots 5-8.** Moss Creek at Grand Oaks ("Moss Creek"), which is now what was "New Lot 6," is assessed based on 84 acres. ***See e.g.*, Schumann Supp. Aff. at Exh. E.** However, if following Grand Oaks's calculation method, Moss Creek would be assessed "the total acreage in such original unsubdivided tract before its subdivision," i.e., approximately 230 acres. ***See* Grand Oaks Declaration ¶ 6(i).** Thus, Grand Oaks is treating Proximity inequitably compared to its other members, and Grand Oaks' assessments levied against Proximity in 2022, 2023, and 2024 are unconscionable and unenforceable. As a result, judgment should not, and cannot, be entered in Grand Oaks's favor as a matter of law.

CONCLUSION

For the foregoing reasons, Proximity respectfully requests that this Court affirm the Master-In-Equity's decisions to grant summary judgment to Proximity and deny summary judgment to Grand Oaks.

This 20th day of April, 2026.

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