**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT**
**IN AND FOR MARION COUNTY, FLORIDA**
**CIVIL DIVISION**

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| RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998,<br><br>Plaintiff,<br><br>v.<br><br>JUMBOLAIR DEVELOPMENT, LLC, a Florida Limited Liability Company, and JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation,<br><br>Defendants. | Case No.: |



**COMPLAINT**

Plaintiff, RONALD ZUPANCIC and MICHAEL MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998 ("Hawker" or "Plaintiff"), by the undersigned counsel, sue JUMBOLAIR DEVELOPMENT, LLC ("Third Master Developer") and JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation ("Association") (collectively, "Defendants"). In support, Hawker states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. RONALD ZUPANCIC and MICHAEL J. MCDERMOTT serve as Co-Trustees of Hawker. At all times relevant to this action, Hawker owned certain improved real properties in a residential subdivision known as the Jumbolair Aviation Estates, specifically, within a neighborhood or sub-association created by the Neighborhood Declaration of Covenants, Conditions, and Restrictions for Jumbolair Aviation Estates Jett Bleu Estates

recorded in OR Book 2928, Page 574, as amended by First Amendment to Jett Bleu Neighborhood Declaration of Covenants, Conditions and Restrictions for Jumbolair Aviation Estates-Jett Bleu Estates recorded in OR Book 5124, Page 1736, Public Records of Marion County, Florida (collectively referred to hereinafter as the "Jett Bleu Estates").

2. Third Master Developer, JUMBOLAIR DEVELOPMENT, LLC, is a Florida limited liability company with its principal place of business in Ocala, Florida. At all times relevant to this action, the Third Master Developer was owned and operated by Robert Bull and/or Debra Bull.

3. Association, JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., is a Florida not-for-profit corporation with its principal place of business in Ocala, Florida. Since March 2021, the Association has been controlled by the Third Master Developer, which, in turn, is owned and operated by Robert Bull and/or Debra Bull. Turnover, as defined below, of the Association from the Third Master Developer to the Association's members has not yet occurred.

4. Pursuant to Florida Statutes § 86.011 and § 26.012, the Court has subject matter jurisdiction over this dispute because this Complaint seeks declaratory relief and damages in excess of fifty thousand dollars ($50,000.00), exclusive of interest, costs, and attorneys' fees.

5. The Court has personal jurisdiction over Defendants under Fla. Stat. § 48.193 because all of the Defendants conduct business in the State of Florida and the causes of action raised below accrued within the State of Florida.

6. Venue is proper in Marion County, Florida for three primary reasons. First, the Defendants conducted, and continue to conduct, business in Marion County, Florida. Second, the causes of action raised below all accrued in Marion County, Florida. Third,

Section 14.19 of the Master Declaration of Covenants, Conditions and Restrictions for Jumbolair Aviation Estates, dated March 27, 2001 ("Original Master Declaration") and Section 16.11 of the Amendment, Restatement and Consolidation of Master Declaration of Covenants, Conditions and Restrictions for Jumbolair Aviation Estates, dated November 16, 2022 ("2022 Master Declaration"), both state that the venue for all disputes "relating to the interpretation, validity, performance, meaning, intention and enforcement" of the Original Master Declaration and the 2022 Master Declaration "shall be in Marion County, Florida."

## FACTUAL ALLEGATIONS

### A. Hawker's Purchase of the Hawker Property Within the Jumbolair Aviation Estates.

7. Jumbolair Aviation Estates is a private aviation-themed community located in Ocala, Florida, where residents can fly their aircraft into the neighborhoods and park them in hangers/parts of their backyards. The Jumbolair Aviation Estates is home to the largest private paved airfield in the United States known as runway 18/36 ("Runway"), which spans 7,550 x 210 ft.

8. In or around 2000, the original master developer of Jumbolair Aviation Estates, Jumbolair, Inc. ("Original Master Developer"),[1] began to market Jumbolair Aviation Estates to the public.

9. In its original promotional materials, Jumbolair Aviation Estates represented that the community possessed an asphalt runway with a "7,550' length and massive width"

[1] The Original Master Developer, Jumbolair, Inc., was owned and operated by Mr. Jeremy Thayer and Mrs. Terri Thayer.

which "can accommodate virtually any size, fully fueled, aircraft," including a Boeing 747. **Exhibit A.**

10. To that point, in the Original Master Declaration, the Original Master Developer represented that the Runway "ha[d] a load bearing capacity of 265,000 [pounds] for aircraft." **Exhibit B**, ¶ 3.8.

11. Based on these representations of the Original Master Developer, Hawker inquired about purchasing a large ten (10) acre parcel of land within the Jumbolair Aviation Estates to build a state-of-the-art aviation-themed residence with access to the Runway for use by, among other aircraft, a Boeing 707-138B aircraft ("707-138B").

12. On February 2, 2021, based on the representations as to the Runway's capacity, Hawker entered into a contract with the Original Master Developer and its two owners, Jeremy and Terri Thayer, to acquire ten (10) acres of real property identified in folio number 14580-000-00 ("Hawker Property"). Consequently, on March 27, 2001, Hawker closed on the contract and acquired the Hawker Property from Mrs. and Mrs. Thayer, individually.

13. Soon after, in June 2002, Hawker began construction. The construction of the Hawker Property took approximately ten months at a significant cost. Construction on the Hawker Property was completed in or around the summer of 2003.

14. To accommodate Hawker's vision of a state-of-the-art aviation-themed residence, the Original Master Developer and the Thayer's created a separate neighborhood sub-association exclusively for it known as the "Jett Bleu Estates," which was separate and independent of both Phase I and Phase II of the main Jumbolair Aviation Estates project.

**B. Hawker's Agreement Concerning the Installation, Maintenance, and Use of the PAPI Lights.**

15. A Precision Approach Path Indicator is a system of lights that provides visual approach slope information to an aircraft during its landing ("PAPI Lights"). PAPI Lights "are designed to reduce Controlled Flight into Terrain (CFIT) and landing distance over and under runs by assisting the pilot in establishing a stabilized descent."[2]

16. At the time that Hawker purchased the Hawker Property, the Jumbolair Aviation Estates did not have any PAPI Lights installed.

17. Hawker sought to install PAPI Lights on the Jumbolair Aviation Estates to enhance the value of the Association and to add an important contribution to the safe use of the Runway and related facilities.

18. Hawker and the Original Master Developer came to an agreement that in consideration of Hawker purchasing, installing, and maintaining the PAPI Lights at its own ongoing expense, the Original Master Developer would pay the electricity expense relating to the PAPI Lights.

19. In furtherance of this agreement, in 2002, Hawker installed the PAPI Lights at its own significant expense.

20. The PAPI Lights were installed on Tract B-4 on the Plat of Unit Two, a designated Common Area of the Jumbolair Aviation Estates.

21. For more than twenty years, the agreement between Hawker and the Original Master Developer had been in effect such that Hawker has maintained the PAPI Lights at

[2] VGLS - Precision Approach Path Indicators (PAPI) | Federal Aviation Administration (faa.gov).

their own expense and, in turn, the Original Master Developer would pay the electricity servicing the PAPI Lights.

**C. Litigation between Hawker and the Original Master Developer.**

22. The United States Department of Transportation, Federal Aviation Administration ("FAA") requires owners or managers of private airfields registered with the FAA to file a document called an "Airport Master Record" with it annually. The Airport Master Record contains detailed information about the runways as well as general information on a particular airfield.

23. From the completion of the Runway in 1986 through 2005, the filed annual Airport Master Record noted that (1) the Runway could be used by aircraft of all sizes and (2) that the asphalt surface of the Runway was in good condition. That situation changed in 2006.

24. In 2006, a dispute arose between the Original Master Developer and Mr. and Mrs. Garemore, the owners of the Greystone Airport in which the Runway is located, regarding the capacity of the Runway—specifically concerning the weight of aircraft that the Runway could safely accommodate. In turn, Mr. and Mrs. Garemore filed an Airport Master Record stating that the asphalt surface on the Runway "is only 2 inches thick," that the "[p]avement structure can only support light load single wheel craft," and that "[h]eavier [aircraft] may cause immediate structural damage to the deteriorated surface and may generate FOD."[3]

25. In connection with Mr. and Mrs. Garemore's statement, on August 24, 2006, Hawker had an inspection of the Runway completed to determine the safety of the subject

[3] The Term "FOD" referred to foreign object debris.

airport ("Runway Inspection"). **Exhibit C**. Based on the inspector's findings, the inspector opined that the Runway:

> It is my opinion that Greystone Airport 17 FL is in condition for safe operations as long as it is properly maintained. **This includes operation of 707–100 operating at 190,000 pounds MTOW** and a Grumman 1159 operating at 66,000 pounds, MTOW on a weekly basis. I do recommend daily runway inspections, and any defects noted should be repaired promptly.

**Exhibit C** (emphasis added).

26. Based on the findings in the Runway Inspection, on May 24, 2007, Hawker filed a lawsuit in the Circuit of the Fifth Judicial Circuit in and for Marion County against the Original Master Developer, Mr. Thayer, Mrs. Thayer, Mr. Garemore, Sr., Mrs. Garemore, and Mr. Evans titled *Ellen Bannon and Margaret Rau, as Trustees of the Hawker Inv. Tr. dated March 1, 1998, v. Jumbolair, Inc. et al.*, Case No. 07-1301-CA-B ("2007 Lawsuit") for a judicial determination of several issues, including the capacity of the Runway.

27. In October 2007, Hawker obtained a comprehensive Engineer's Report for the Runway from Garver Engineers to conclusively determine the strength of the pavement on the Runway ("Engineer Report"). **Exhibit D**. Garver Engineers engaged Terracon, a geotechnical firm, to provide information derived from numerous borings on the Runway to determine the Runway's actual structural capacity.

28. The Engineer's Report concluded:

> During our visual inspection of the runway surface and pavement cores, we did not find evidence of pavement section failure. **The pavement strength calculations suggest the existing runway pavement section will support the above listed number of operations of a Boeing 707-138B** and a Gulfstream II as critical aircraft using the runway at Greystone Airport.

**Exhibit D** (emphasis added).

29. The "above-listed number of operations" is noted as:

> Given the actual pavement section (listed above) CBR value of 42.4, figure 3–4 shows that **1200 annual departures of a dual tandem gear aircraft with a maximum takeoff weight of 320,000 pounds can be supported by the least actual runway pavement section** (as represented by cores)

**Exhibit D** (emphasis added).

30. The Runway had been utilized regularly by aircraft with a maximum takeoff weight of a Boeing 707-138B for the last sixteen years without incident.

31. On November 12, 2008, Hawker entered into a settlement agreement with the Original Master Developer, the Association, Mr. Thayer, Mrs. Thayer, Mr. Garemore, Sr., Mrs. Garemore, and Mr. Evans ("Settlement Agreement") resolving all the issues in the 2007 Lawsuit. A redacted version of the Settlement Agreement is attached as **Exhibit E**. The parties to the Settlement Agreement included all of the parties which owned land under the Runway.

32. As it relates to the capacity of the Runway, Section 8 of the Settlement Agreement, titled "Heavy Aircraft Assessment Fees," states:

> Simultaneously upon the Closing, Jumbolair, as the [Original] Master Developer, shall cause to be filed an amendment to the Master Declaration, eliminating, nunc pro tunc, the imposition of any and all heavy aircraft assessment fees applicable to Lot Owners, including the existing Hawker [P]roperty and the property to be acquired pursuant to Paragraph 1 of this Agreement in Jett Bleu Estates, whose deeds from [Original] Master Developer], or Jeremy Thayer and Terri Thayer were recorded on, before or concurrent with the Closing of this transaction, in the form attached hereto as Exhibit "F" and by reference made a part hereof. **The amendment shall contain a recitation that the [Original] Master Developer and [Jumbolair Aviation Estates] expressly agree not to adopt, impose or create any similar special assessments which attempt to apportion expenses to the owners of the Jett Bleu Estates properties on other than a pro-rata basis with the other members of the [Association] and that no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than what [the Runway] is currently accommodating**.

**Exhibit E** (emphasis added).

33. Section 24 of the Settlement Agreement, titled "Binding Effect," provides the Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, and each and all of their heirs, agents, personal representatives, [s]uccessors[,] and assigns." **Exhibit E.**[4]

34. At the time of the Settlement Agreement, the Runway was able to accommodate a Boeing 707-138B with a maximum takeoff weight of 247,000 pounds. As such, Section 8 of the Settlement Agreement restricted the Original Master Developer and the Association from implementing any amendments that restricted or limited the use of the Runway from a level sufficient to accommodate a Boeing 707-138B.

35. Consistent with its obligations under the Settlement Agreement, in November 2008, the Original Master Developer executed and recorded an Amended and Restated First Amendment to Master Declaration of Covenants, Conditions and Restrictions for Jumbolair Aviation Estates ("2008 Amendment "). **Exhibit F**. The 2008 Amendment provided that:

> By execution hereof, **Jumbolair, Inc. on behalf of itself, and as Master Developer in control of the Jumbolair Aviation Estates Owners Association, Inc., expressly covenants that no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than what [the Runway] is currently accommodating**.

**Exhibit F**, ¶ 3 (emphasis added).

36. Both the Settlement Agreement and 2008 Amendment make clear that the Original Master Developer and the Association cannot implement any amendments that

[4] According to an Airport Agreement entered into on February 25, 2021, the Third Master Developer, among others, "are the successors in interest to [the Second Master Developer] and to [the Original Master Developer] as the owners of the Jumbolair Parcel . . ." **Exhibit N**, p. 2.

would restrict the Runway from accommodating an aircraft of the weight of a Boeing 707-138B that had a maximum takeoff weight of 247,000 pounds.

**D. Ownership Changes in the Jumbolair Aviation Estates.**

37. Even though the Jumbolair Aviation Estates was advertised as a 40-lot estate, the Original Master Developer failed to sell a majority of the lots it advertised. As a result, the Original Master Developer struggled financially.

38. In 2011, as a consequence of the Original Master Developer's financial instability, an action was commenced by Jumbo Holding, LLC ("Second Master Developer")[5] to foreclose on a mortgage granted by the Original Master Developer of the Jumbolair Aviation Estates to its original lender. A Stipulated Final Judgment of Foreclosure was entered on October 28, 2013, in the foreclosure action.

39. Under the Stipulated Final Judgment, a public sale of the properties owned by the Original Master Developer within the Jumbolair Aviation Estates, including all of the parcels under the Runway but with the exception of one parcel owned by Mr. Roberts.

40. The sale occurred on December 2, 2013, and the Second Master Developer was the highest bidder. As a result, as of December 13, 2013, when the Certificate of Title was issued, the Second Master Developer became the owner and operator of the Jumbolair Aviation Estates and the majority of the land under the Runway.

41. On August 25, 2014, the Original Master Developer executed an Assignment of Master Developer Rights for Jumbolair Aviation Estates, effective as of December 13, 2013, to the Second Master Developer ("First Assignment"). **Exhibit G**.

[5] The Second Master Developer was owned and operated by Mr. Frank J. Merschman.

42. The First Assignment assigned "all rights of [Original Master Developer] . . . for Jumbolair Aviation Estates . . . and [Second Master Developer] hereby accepts such assignment of all of the [Original Master Developer] **rights and responsibilities** . . . ." **Exhibit G** (emphasis added).

43. Through the First Assignment, the Second Master Developer assumed and accepted all of the **rights and responsibilities** the Original Master Developer related to Hawker including, but not limited to: (1) the right and duty to maintain the Runway2008 Amendment; and (2) the Original Master Developer's agreement with Hawker regarding the PAPI Lights.

44. The Second Master Developer abided by all the rights and responsibilities it assumed, as it related to Hawker, pursuant to the First Assignment.

45. In 2019, after six years of owning the Jumbolair Aviation Estates, the Second Master Developer listed all of the properties it owned within the Jumbolair Aviation Estates project for sale.

46. The Jumbolair Aviation Estates properties were sold to Robert Bull and Debra Bull in early 2021.

47. In connection with the sale, on February 26, 2021, the Second Master Developer executed an Assignment of Master Developer and Declarant Rights for Jumbolair Aviation Estates ("Second Assignment") to the Third Master Developer. **Exhibit H**.

48. The Second Assignment states that the Second Master Developer "does hereby permanently assign, transfer, and convey unto [the Third Master Developer], and [the Third Master Developer] hereby accepts such assignment of . . . all of the [Second Master

Developer's] **rights and responsibilities** or other rights and privileges under and pursuant to said Declarations . . . ." **Exhibit H** (emphasis added).

49. Through the Second Assignment, the Third Master Developer assumed and accepted all rights and responsibilities the Original Master Developer granted to, and the Second Master Developer assumed and continued to abide by, Hawker including, but not limited to: (1) the right and duty to maintain the Runway; and (2) the Original Master Developer's agreement with Hawker regarding the PAPI Lights.

50. On November 12, 2022, the Third Master Developer executed the 2022 Master Declaration. In the 2022 Master Declaration, the Third Master Developer defined the "Existing Master Declaration" as including, but not being limited, to the Original Master Declaration and the 2008 Amendment. As a result, the Third Master Developer acknowledged that it was bound by the Original Master Declaration and the 2008 Amendment, both of which are part of the declaration rights of the Jumbolair Aviation Estates.

51. Further, Section 5.2 of the 2022 Master Declaration states that "[t]he Master Developer shall be entitled to cast twice the total number of votes that the total number of Class A Members and Class B Members are entitled to cast until Turnover."[6] Until Turnover happens (which has not occurred), the Third Master Developer controls the Association and dictates what the Association will or will not do.

[6] Section 1.59 of the 2022 Master Declaration states that "Turnover" shall occur once the "Master Developer has conveyed . . . to Owners other than the Master Developer . . . ninety percent (90%) of the Lots in all phases of the contemplated Jumbolair Aviation Estates that will ultimately be operated by the Master Association." As of the filing of this Complaint, less than 25% of available Lots have been sold in the over twenty years of the Jumbolair Aviation Estates' existence.

**E. Grant of Easement for the Use of the Runway**.

52. The Runway was built in the 1980s by the Original Master Developer f/k/a Jumbolair Inc., when it was owned by Arthur Jones. At the time that the Runway was built, there existed a grass runway, owned by James Garemore, that ran from east to west and crossed the center section of the Runway.

53. On September 12, 2008, the Original Master Developer, the Association, and all parties who owned any land under the Runway at the time entered into an agreement defining the several parties' rights concerning the use and access of the Runway (the "Runway Agreement"). **Exhibit I**.

54. The Runway Agreement was recorded on September 15, 2008, and runs with all of the land under the Runway on the Jumbolair Aviation Estates, and every future owner of the land under the Runway is bound to abide by its terms.

55. Under Section 4 of the Runway Agreement, the Original Master Developer and Roberts Development Corporation

> [g]rant to all present and **future owners of [Jumbolair Aviation Estates] and their heirs, successors, and assigns, including Hawker** . . . a perpetual, non-exclusive easement, which shall run with the land, to use and access the Runway[] . . . for takeoff, landing, parking and taxiing, including, without limitation, all existing taxiways constructed on the eastern side of the paved runway, for private, non-commercial aviation use only. The aforesaid perpetual, non-exclusive easement shall apply to all present and future phases of Jumbolair Aviation Estates and all present and future taxiways thereupon, regardless of whether such phase or taxiway is situated on real property that is presently owned or after acquired.

**Exhibit I**, ¶ 4 (emphasis added).

56. The perpetual easement extended to the "respective agents, guests, employees, tenants, licensees, contractors, vendors and invitees" of Hawker. **Exhibit I**, ¶ 7.

57. The perpetual easement contained in the Runway Agreement was reaffirmed in 2016 by the Second Master Developer in an Acknowledgment of, and Consent To, Master Declaration of Covenants, Conditions and Restrictions for Jumbolair Aviation Estates

> **Easement Rights**. By execution hereof the undersigned, as an owner of a portion of the Airport, and as the successor Declarant under the Master Declaration, hereby acknowledges the rights granted to each Owner under the Master Declaration and the Easement Agreement, and consents to the same. Without limiting the foregoing, the undersigned hereby grants to each Owner, as to the portion of the Airport owned by the undersigned, those easement rights set forth in favor of such Owner in the Master Declaration and the Easement Agreement, subject to such terms, limitations, obligations and restrictions set forth in the Master Declaration, including, but not limited to, the obligation of the Master Association to maintain and keep in good repair the Airport, and of each Owner to pay Assessments to the Master Association with regard to the same.

**Exhibit J**, ¶ 3.

### F. The Third Master Developer's Failure to Abide by 20 Years of Prior Developer's Agreements and Obligations.

58. As explained above, the Third Master Developer assumed all rights and responsibilities of the Original Master Developer and Second Master Developer and is bound by their agreements and waivers as they relate to Hawker.

59. However, the Third Master Developer has acted inconsistent with its rights and responsibilities and has impeded Hawker from enjoying the benefits it has been enjoying for more than twenty years. There are two key issues under which the Third Master Developer has impeded Hawker.

#### a. The Third Master Developer Wrongly Implements the Weight Restriction on the Runway.

60. As explained above, the Original Master Declaration makes it clear the Runway has a load-bearing capacity of 265,000 pounds. **Exhibit B**, ¶ 3.8. The Original Master

Declaration also contained several restrictions on a master developer's ability to limit or restrict the member's use of the Runway.

61. First, Section 3.3 of the Original Master Declaration requires that "[e]xcept as required by law or governmental regulation, there shall be no limitation of the use of the [Runway], nor shall the maintenance or repair of the [Runway] be discontinued or suspended, without the affirmative vote of ninety (90%) of Members of all classes." **Exhibit B**, ¶ 3.3.

62. Second, the 2022 Master Declaration, in Section 3.4, titled "Continuity of Airport," adds an exception to the Third Master Developer's ability to limit the use of the Runway, so that the Third Master Developer only needs to receive the affirmative vote of ninety (90%) of Members of all classes "after conveyance of the [Runway] by the Master Association and termination of the rights of the . . . Association and its Member in and to the [Runway] as contemplated hereinafter." **Exhibit K**, ¶ 3.4.

63. Third, Section 14.3.1 of the Original Master Declaration states that while "Master Developer shall have the right until Turnover . . . to modify, enlarge, amend, delete, waive or add provisions" to the Original Master Declaration, such amendments "shall not limit the use of the [Runway]." **Exhibit B**, ¶ 14.3.1 (emphasis added).

64. Fourth, in the express provisions of the Settlement Agreement, which were incorporated into the 2008 Amendment, both the Original Master Developer and the Association agreed that "no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than what [the Runway] is currently accommodating." **Exhibits E and F**.[7]

[7] As explained above, at the time of the execution of the Settlement Agreement, the Runway was accommodating a Boeing 707-138B that had a maximum takeoff weight of 247,000

65. Recently, the Third Master Developer asserted to Hawker that it has a survey that demonstrate the entire Runway cannot support an aircraft that exceeds 60,000 pounds of gross weight. Through this survey, the Third Master Developer has taken the position that the entire Runway cannot currently accommodate an aircraft with the original load-bearing capacity that the Runway could handle back in 2001 (or 2008 at the time of the execution of the Settlement Agreement and 2008 Amendment ).

66. Rather than maintain and repair the Runway as required, the Third Master Developer has implemented restrictions and limitations to the Runway that are inconsistent with the Original Master Declaration, the Settlement Agreement and 2008 Amendment.

67. To begin, the Third Master Developer, in Section 3.8 of the 2022 Master Declaration, the Third Master Developer acknowledges that the Runway "ha[s] a load bearing capacity of 60,000 pounds for aircraft with a single wheel gear and/or an I/PCN Value of 22/F/B/X/T." As such, rather than repair the Runway, the Third Master Developer "impose[d] on all Owners or Members having a right to use the [Runway]," except for those owning lots on the Jett Bleu Estates, a 60,000-pound aircraft weight restriction on the Runway. **Exhibit K**, ¶ 3.8. This unilateral limitation changes the entire concept and marketability of the Jumbolair Aviation Estates from one where the Runway could accommodate virtually any size aircraft to one that can only accommodate substantially lighter and smaller aircraft.

68. Third Master Developer did not receive the "affirmative vote of ninety (90%) of Members of all classes" under Section 3.3 of the Original Master Declaration to impose

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pounds. As a result, under Section 4.1, the Runway must be maintained and kept in good repair to ensure that it can accommodate an aircraft of the weight of a Boeing 707-138B.

the 60,000-pound weight limitation contained in Section 3.8 of the 2022 Master Declaration. Indeed, the Third Master Developer unilaterally implemented Section 3.8 because it refuses to spend significant amounts of money to maintain and repair the Runway.[8]

69. Further, rather than repair the Runway as required, the Defendants implemented a displaced threshold that reduces the length of the Runway from 7,550 feet to around 6,000 feet.[9] Once again, this was done without the requisite approval under Section 3.3 of the Original Master Declaration, and in express derogation of Section 14.3.1.

70. While the 2022 Master Declaration makes it clear that while the Jett Bleu Estates are not bound by the 60,000-pound restriction to the Runway, it still asserts that "the [Jett Bleu Estates] . . . shall [be] liable for any damage to the [Runway] caused by their landing, takeoff, or taxiing of aircraft which exceed 60,000 pounds of gross weight . . . ." **Exhibit K**, ¶ 3.8. Hawker, its guests, and its invitees currently use several aircraft that exceed the 60,000-pound capacity of the Runway. Because portions of the Runway cannot support more than 60,000 pounds and the Third Master Developer and Association refuse to maintain the entire Runway, Hawker, its guests, its invitees, and related entities through the size of their aircraft, are improperly deprived of the ability to use the Runway as intended.



[8] If the Third Master Developer is deemed responsible for the entire cost to repair the Runway to the agreed-upon standard, it will bear the entire cost of repairing the Runway. Conversely, if the Association is deemed responsible, the Third Master Developer, given its controlling interest in the Association, would be responsible for a significant portion of the Association's assessment to repair the Runway.

[9] To that point, the Third Master Developer has verbally threatened Hawker with a two million dollar fine if Hawker uses the area behind the displaced threshold for anything other than its limited "authorized" use.

**b. The Third Master Developer's Refusal to Abide Under the PAPI Lights Agreement.**

71. As explained above, Tract B-4 on the Plat of Unit Two is and has always been designated as a common area of the Jumbolair Aviation Estates. The designation of Tract B-4 on the Plat of Unit Two as a Common Area is exemplified by Section 6.1 of the 2022 Master Declaration, titled "Dedication of Common Areas," which states that Tract B-4, as "depicted on the Plat of Unit Two," is dedicated as a Common Area of the Jumbolair Aviation Estates.

72. Section 6.2 of the 2022 Master Declaration, titled "Property Rights," states that "[e]very Owner shall have a right of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot." To that point, Florida Statute § 720.304(1), as it relates to common areas, states that "[a]ll common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities."

73. As a result, under Sections 6.1 and 6.2 of the Master Declaration and Florida Statutes § 720.304(1), Hawker, through their ownership of the Hawker Property on the Jett Bleu Estates, has the right to use Tract B-4 on which the PAPI Lights are installed.

74. Hawker had been using the PAPI Lights with no issues, under the agreement with the Original Master Developer, until the summer of 2023.

75. On July 12, 2023, during a confrontation between Mr. Bull and the representatives of Hawker, Mr. Bull was removed from the Hawker Property. At that time, Mr. Bull told representatives of Hawker that any land to the west of the Runway (including, but not limited to, Tract B-4) was private property and that he would trespass any representative of Hawker who stepped foot on any of the same.

76. Additionally, on August 23, 2023, representatives of Hawker contacted Mr. Bull to have the Third Master Developer turn on the PAPI Lights. The representatives' request to turn on the PAPI Lights was met with a stern "No" from the Third Master Developer.

77. Even though the Third Master Developer advertises the Runway as having PAPI Lights, the Third Master Developer has taken active steps to prohibit Hawker from (1) accessing Tract B-4, which the Third Master Developer is aware is Common Area, and (2) using the PAPI Lights altogether. Specifically, the Third Master Developer has moved the switch associated with turning on the PAPI Lights from a designated common area to the side of a new horse riding arena on the Third Master Developer's private property.

78. Even though, as an accommodation, Hawker has proposed to pay a portion of the Third Master Developer's electricity bill associated with the PAPI Lights, the Third Master Developer has still refused to provide access to the PAPI Lights to Hawker.

79. The PAPI lights increase the safety of aircraft landing on the Runway. Even so, the Third Master Developer has completely disregarded the rights and safety of those who need to use the PAPI Lights to retaliate against Hawker for refusing to abide by its unrealistic demands as it relates to Runway maintenance. Such actions are not permissible under either the 2022 Master Declaration or the Florida Statutes.

### G. Third Master Developer Impedes Hawker from Quiet Use and Enjoyment of the Hawker Property.

80. In sum, the Third Master Developer, through its disregard for the 2022 Master Declaration, the Settlement Agreement and the 2008 Amendment, and all of the preexisting agreements, have impeded Hawkers' continued quiet enjoyment and benefits on the Hawker Property that they have been afforded for over twenty years.

81. To attempt to resolve the issues outlined above, on September 15, 2023, the Plaintiff, in compliance with Fla. Stat. § 720.311, sent a letter titled, "*Statutory Offer and Demand to Participate in Presuit Mediation under Fla. Stat. § 720.311*," ("Presuit Letter") to the Defendant, along with other interrelated entities, to attempt to resolve the issues outlined above. **Exhibit L**.

82. The statute of limitations for all causes of actions were automatically tolled since September 15, 2023. Fla. Stat. § 720.311(1) ("The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations.").

83. The Parties were unable to resolve the outstanding issues contained in the Presuit Letter at the January 10, 2024, mediation.

84. As a result, the Plaintiff has retained the undersigned counsel to represent them and must pay said attorneys a reasonable fee for services rendered.

85. All conditions precedent to the bringing of this action have occurred or have been waived.

**COUNT I – DECLARATORY JUDGMENT**
**(IMPLEMENTATION OF 60,000 WEIGHT LIMITATION)**

86. This is an action for a declaratory judgment against the Third Master Developer on whether the Third Master Developer had the necessary authority to implement the 60,000 weight limitation contained in Section 3.8 of the 2022 Master Declaration under Florida law.

87. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

88. There is a bona fide, actual, present practical need for the declaration on whether the Third Master Developer had the necessary authority to implement Section 3.8 of

the 2022 Master Declaration. The Third Master Developer has implemented and is enforcing Section 3.8 of the 2022 Master Declaration against the residents of the Jumbolair Aviation Estates without the necessary 90% approval required under Section 3.3 of the Original Master Declaration. Additionally, the Third Master Developer has implemented and is enforcing Section 3.8 of the 2022 Master Declaration in violation of Section 14.3.1 of the Original Master Declaration, as the amendment to Section 3.8 limits the use of the Runway.

89. This declaration concerns a present, ascertained, or ascertainable state of facts or present controversy as to the state of facts. Here, the Parties disagree over whether the Third Master Developer had the necessary authority to implement Section 3.8 of the 2022 Master Declaration for the reasons stated above. The Parties disagree as to whether the answer is in the affirmative or negative.

90. Some immunity, power, privilege, or right of Hawker depends on the facts or the law applicable to the facts—specifically, Hawker's right to use the Runway without limitations and/or the risk of a liability-shifting clause contained in Section 3.8, as it had been doing for over twenty years according to the Original Master Declaration.

91. The Third Master Developer has, or reasonably may have, an actual, present, adverse, and antagonistic interest to Hawker in determining whether the Third Master Developer had the necessary authority to implement Section 3.8 of the 2022 Master Declaration.

92. The antagonistic and adverse interests of the Third Master Developer are all before the Court.

93. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. Rather, the Parties need the Court's

determination to determine whether the Third Master Developer had the necessary authority to implement Section 3.8 of the 2022 Master Declaration. In the meantime, the Third Master Developer is enforcing Section 3.8 without the necessary authority to do so, and the harm will continue to occur until the Court rules on this issue.

94. Section 86.111, Florida Statutes, provides that "court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar." Hawker respectfully requests a speedy hearing on this Count.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Trustees of THE HAWKER INVESTMENT TRUST, dated March 1, 1998, respectfully request that the Court enter declaratory judgment against the Defendant, JUMBOLAIR DEVELOPMENT, LLC, and find that the Third Master Developer did not have the necessary authority to implement Section 3.8 of the 2022 Master Declarations (thereby rendering Section 3.8 *void ab initio*), attorneys' fees, costs, interest, as well as all other relief the Court deems just and proper.

**COUNT II – BREACH OF SETTLEMENT AGREEMENT**
**(60,000-POUND LIABILITY CLAUSE IN SECTION 3.8)**

95. This is an action against the Third Master Developer and Association for a breach of the Settlement Agreement under Florida law.

96. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

97. The Settlement Agreement is a validly executed document between Hawker, the Association, and the Original Master Developer, among others.

98. Through the First Assignment and the Second Assignment, the Third Master Developer was assigned all rights and responsibilities held by the Original Master Developer,

including the rights and responsibilities of the Original Master Developer contained in the Settlement Agreement which it expressly accepted.

99. Section 8 of the Settlement Agreement provided that "no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than what [the Runway] is currently accommodating."

100. At the time of the execution of the Settlement Agreement, based on the Runway Inspection and the Engineer Report, at the time of the Settlement Agreement, the Runway was able to accommodate a Boeing 707-138B with a maximum takeoff weight of 247,000 pounds.

101. Section 8 of the Settlement Agreement restricted the Original Master Developer and the Association from implementing any amendments to restrict the use of the Runway from a level sufficient to accommodate a Boeing 707-138B. As a result, Section 8 of the Settlement Agreement mandates that "no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than" the size of a Boeing 707-138B.

102. In the 2022 Master Declaration, the Third Master Developer imposed a 60,000-pound aircraft restriction on the Jumbolair Aviation Estates. **Exhibit K**, ¶ 3.8. While the 2022 Master Declaration makes it clear that the Jett Bleu Estates cannot be bound by the 60,000-pound restriction, it nonetheless states that "**the [Jett Bleu Estates] . . . shall [be] liable for any damage to the [Runway] caused by their landing, takeoff, or taxiing of aircraft which exceed 60,000 pounds of gross weight** . . . ." **Exhibit K**, ¶ 3.8 (emphasis added).

103. Hawker owned two aircraft that exceeded 60,000 pounds at the time of the execution of the 2022 Master Declaration. The Third Master Developer has also unilaterally changed the composition of prospective purchasers in the Jumbolair Aviation Estates to only those persons with aircraft that weigh less than 60,000 pounds, a significant decrease in the marketability of the Jumbolair Aviation Estates as a whole.

104. The Third Master Developer knew at the time of the execution of the 2022 Master Declaration that Hawker owned two aircraft that exceeded 60,000 pounds.

105. The Third Master Developer breached the Settlement Agreement by implementing Section 3.8 of the 2022 Master Declaration. Additionally, the Third Master Developer breached the Settlement Agreement by prospectively holding Hawker liable for damage caused by its aircraft to the Runway, each of which exceeds 60,000 pounds, as such an implementation it restricts Hawker's use of the Runway.

106. The Association breached the Settlement Agreement by allowing the Third Master Developer to implement Section 3.8 of the 2022 Master Declaration and attempting to hold Hawker liable for damage caused by its aircraft to the Runway, each of which exceeds 60,000 pounds, as such implementations restrict Hawker's use and all of the residents' use of the Runway.

107. Hawker has been damaged by the Third Master Developer and Association's breach of the Settlement Agreement, including, but not limited to, the loss of use and enjoyment of the Runway.

108. Section 27 of the Settlement Agreement states that "[t]he prevailing party . . . to any litigation arising out of this Agreement shall be entitled to recover from the non-prevailing party . . . reasonable attorney's fees and costs, whether incurred in connection with

trial or appellate proceedings." Based on the violation, Hawker is entitled to recover its fees and costs.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998, respectfully request that the Court enter judgment against the Defendants, JUMBOLAIR DEVELOPMENT, LLC and JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., for specific performance to rescind Section 3.8 of the 2022 Master Declaration and repair the Runway so that it can accommodate an aircraft of the weight of a Boeing 707-138B that has a maximum takeoff weight of 247,000 pounds, damages, attorneys' fees, costs, interest, and any other relief this Court deems just and proper.

**COUNT III – BREACH OF 2008 AMENDMENT**
**(60,000-POUND LIABILITY CLAUSE IN SECTION 3.8)**

109. This is an action against the Third Master Developer and Association for a breach of the 2008 Amendment under Florida law.

110. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

111. The 2008 Amendment is a validly executed document between Hawker, the Association, and the Original Master Developer, among others.

112. Through the First Assignment and the Second Assignment, the Third Master Developer was assigned all rights and responsibilities held by the Original Master Developer, including the rights and responsibilities of the Original Master Developer contained in the 2008 Amendment which it expressly accepted.

113. Section 3 of the 2008 Amendment provided that "no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to

aircraft of any size and class equal to or less than what [the Runway] is currently accommodating."

114. At the time of the execution of the 2008 Amendment, based on the Runway Inspection and the Engineer Report, at the time of the 2008 Amendment, the Runway was able to accommodate a Boeing 707-138B with a maximum takeoff weight of 247,000 pounds.

115. Section 3 of the 2008 Amendment restricted the Original Master Developer and the Association from implementing any amendments to restrict the use of the Runway from a level sufficient to accommodate a Boeing 707-138B. As a result, Section 3 of the 2008 Amendment needs to be construed to read as "no amendments shall be adopted, imposed, created, or implemented which shall restrict the use of [the Runway] to aircraft of any size and class equal to or less than" the size of a Boeing 707-138B.

116. In the 2022 Master Declaration, the Third Master Developer imposed a 60,000-pound aircraft restriction on the Jumbolair Aviation Estates. **Exhibit K**, ¶ 3.8. While the 2022 Master Declaration makes it clear that the Jett Bleu Estates cannot be bound by the 60,000-pound restriction, it nonetheless states that "**the [Jett Bleu Estates] . . . shall [be] liable for any damage to the [Runway] caused by their landing, takeoff, or taxiing of aircraft which exceed 60,000 pounds of gross weight** . . . ." **Exhibit K**, ¶ 3.8 (emphasis added).

117. Hawker owned two aircraft that exceeded 60,000 pounds at the time of the execution of the 2022 Master Declaration. The Third Master Developer has also unilaterally changed the composition of prospective purchasers in the Jumbolair Aviation Estates to only those persons with aircraft that weigh less than 60,000 pounds, a significant decrease in the marketability of the Jumbolair Aviation Estates as a whole.

118. The Third Master Developer knew at the time of the execution of the 2022 Master Declaration that Hawker owned two aircraft that exceeded 60,000 pounds.

119. The Third Master Developer breached the 2008 Amendment by implementing Section 3.8 of the 2022 Master Declaration. Additionally, the Third Master Developer breached the 2008 Amendment by prospectively holding Hawker liable for damage caused by its aircraft to the Runway, each of which exceeds 60,000 pounds, as such an implementation it restricts Hawker's use of the Runway.

120. The Association breached the 2008 Amendment by allowing the Third Master Developer to implement Section 3.8 of the 2022 Master Declaration and attempting to hold Hawker liable for damage caused by its aircraft to the Runway, each of which exceeds 60,000 pounds, as such implementations restrict Hawker's use and all of the residents' use of the Runway.

121. Hawker has been damaged by the Third Master Developer and Association's breach of the 2008 Amendment, including, but not limited to, the loss of use and enjoyment of the Runway.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998, respectfully request that the Court enter judgment against the Defendants, JUMBOLAIR DEVELOPMENT, LLC and JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., for specific performance to rescind Section 3.8 of the 2022 Master Declaration and repair the Runway so that it can accommodate an aircraft of the weight of a Boeing 707-138B that has a maximum takeoff weight of 247,000 pounds, damages, attorneys' fees, costs, interest, and any other relief this Court deems just and proper.

**COUNT IV – BREACH OF 2022 MASTER DECLARATION**
**(MAINTENANCE OF THE RUNWAY)**

122. This is an action against the Association for a breach of the 2022 Master Declaration under Florida law.

123. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

124. The 2022 Master Declaration constitutes a contract between the Parties "circumscribing the extent and limits of the enjoyment and use of real property." *Woodside Vill. Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002) (citing *Pepe v. Whispering Sands Condo. Ass'n, Inc.,* 351 So.2d 755 (Fla. 2d DCA 1977)). As a result, the Parties, including the Association, are bound to abide by the terms 2022 Master Declaration.

125. Section 4.1 of the 2022 Master Declaration states that the Association "shall maintain and keep in good repair . . . [the Runway] . . . ." **Exhibit K**, ¶ 4.1. The Association's duty to maintain and keep the Runway in good repair is also found in Section 4.1 of the Original Master Declaration. **Exhibit K**, ¶ 4.1. This is an ongoing and continuing obligation in nature.

126. In the Original Master Declaration, the Original Master Developer represented that the Runway "ha[d] a load bearing capacity of 265,000 [pounds] per aircraft." **Exhibit B**, ¶ 3.8. The 2008 Amendment reduced the requirements to maintaining the Runway to accommodate planes with a maximum takeoff weight of a Boeing 707-138B of 247,000 pounds. As a result, Section 4.1 of both the Original Master Declaration, as amended, and the 2022 Master Declaration must be read to provide that the Runway must be maintained and kept in good repair to ensure that it can accommodate an aircraft of the weight with a maximum takeoff weight of a Boeing 707-138B.

127. Per the Third Master Developer, the entirety of the Runway currently cannot support an aircraft over 60,000 pounds. This is evidenced by Section 3.8 of the 2022 Master Declaration, which states that the Runway "ha[s] a load bearing capacity of 60,000 pounds for aircraft with a single wheel gear and/or an ACN/PCN Value of 22/F/B/X/T."

128. The Plaintiff has demanded the Association repair and maintain the Runway so that it conforms with the weight requirements from the Original Master Declaration, as subsequently amended.

129. The Association has refused to repair the Runway so that it conforms with the weight requirements from the Original Master Declaration, as subsequently amended.

130. Rather than repair the Runway to conform with Section 4.1, the Association has implemented a displaced threshold that reduces the length of the Runway from 7,550 feet to around 6,000 feet.

131. The Association has breached its obligations under Section 4.1 of the 2022 Master Declaration by failing to maintain and keep the Runway in good repair, given that (1) the Runway, which originally was able to "accommodate virtually any size, fully fueled, aircraft" up to 265,000 pounds, **Exhibit B**, and that was subsequently renegotiated to ensure that the Runway could accommodate a Boeing 707-138B, can now only accommodate an aircraft that does not exceed 60,000 pounds, and (2) the implementation of the displaced threshold that reduces the length of the Runway from 7,550 feet to around 6,000 feet.

132. Hawker has been damaged because of the Association's breach. Specifically, Hawker uses several aircraft that exceed the 60,000-pound limitation, and therefore has compromised its use of its aircraft on the Runway because it cannot accommodate aircraft of that weight.

133. Section 16.4.2 of the 2022 Master Declaration states that "[t]he costs and attorney's fees incurred by the prevailing Person in any action, including any appeal, to enforce the Master Documents shall be levied against the non-prevailing Person." Because Hawker seeks to enforce the terms of the 2022 Master Declaration, which is part of the "Master Documents" under Section 1.32 of the 2022 Master Declaration, Hawker is entitled to fees in connection with the enforcement of this Count.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, A1998, respectfully request that the Court enter judgment against the Defendant, JUMBOLAIR AVIATION ESTATES OWNERS ASSOCIATION, INC., for specific performance to repair the Runway so that it can accommodate an aircraft of the weight of a that has a maximum takeoff weight of 247,000 pounds, damages, attorneys' fees, costs, interest, and any other relief this Court deems just and proper.

**COUNT V – VIOLATION OF SECTION 720.304(3), FLORIDA STATUTES (USE AND ENJOYMENT OF TRACT B-4)**

134. This is an action for the Third Master Developer's violation of Section 720.304, Florida Statutes.

135. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

136. Section 720.304(1), Florida Statutes, states that

> All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any parcel

> owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

137. Section 720.304(3) states that "[a]ny owner prevented from exercising rights guaranteed by subsection (1) . . . may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights."

138. Tract B-4 on the Plat of Unit Two, where the PAPI Lights were installed, is and has always been designated as a common area of the Jumbolair Aviation Estates. The designation of Tract B-4 on the Plat of Unit Two as a Common Area is exemplified by Section 6.1 of the 2022 Master Declaration, titled "Dedication of Common Areas," which states that Tract B-4, as "depicted on the Plat of Unit Two," is dedicated as a Common Area of the Jumbolair Aviation Estates.

139. Notwithstanding the above, the Third Master Developer has prohibited Hawker and its guests from accessing Tract B-4 on the Plat of Unit Two to retaliate against Hawker.

140. Even further, the Third Master Developer has threatened to trespass Hawker should it seek to access Tract B-4 on the Plat of Unit Two.

141. By prohibiting Hawker from using and accessing Tract B-4 on the Plat of Unit Two, a designated common area, the Third Master Developer violated Section 720.304(1), Florida Statutes.

142. Hawker is prohibited from accessing and using a common area, a right that the Florida Statutes have afforded it. As a result, Hawker has been damaged by the Third Master Developer's prohibition.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998, respectfully request that the Court enter judgment against the Defendant, JUMBOLAIR DEVELOPMENT, LLC, and enjoin the enforcement of JUMBOLAIR DEVELOPMENT, LLC to deprive the owner of its rights to access and enjoy the use of Tract B-4 on the Plat of Unit Two, as well as all other relief the Court deems just and proper.

**COUNT VI – BREACH OF ORAL AGREEMENT**
**(USE OF PAPI LIGHTS)**

143. This is an action against the Third Master Developer for a breach of an oral agreement surrounding the use of the PAPI Lights under Florida law.

144. Hawker reincorporates by reference Paragraphs 1–85 of the Complaint as if fully set forth herein.

145. On or around 2002, Hawker and the Original Master Developer entered into an oral agreement surrounding the PAPI Lights. Specifically, in consideration of Hawker purchasing, installing, and maintaining the PAPI Lights at their own expense, the Original Master Developer would pay the electricity expenses relating to the PAPI Lights.

146. The oral agreement was that Hawker could use the PAPI Lights that they purchased, installed, and maintained.

147. The oral agreement is a valid agreement under Florida law.

148. In connection with the oral agreement, in 2002, Hawker purchased and installed the PAPI Lights at their own significant expense.

149. In connection with the oral agreement, Hawker has maintained the PAPI Lights at its own expense.

150. In connection with the oral agreement, Hawker has been able to access and use the PAPI Lights.

151. Through the First Assignment and the Second Assignment, the Third Master Developer was assigned all rights and responsibilities held by the Original Master Developer, including the rights and responsibilities contained in the Original Master Developer's oral agreement with Hawker regarding the PAPI Lights.

152. Since July 2023, the Third Master Developer has refused outright to provide Hawker with use and access to the PAPI Lights, in violation of the oral agreement ostensibly because of the Parties' disagreements on the Runway issues.

153. Hawker has been damaged by the Third Master Developer's refusal to allow Hawker to use and access the PAPI Lights.

**WHEREFORE**, the Plaintiff, RONALD ZUPANCIC and MICHAEL J. MCDERMOTT, as Co-Trustees of the HAWKER INVESTMENT TRUST, dated March 1, 1998, respectfully request that the Court enter judgment against the Defendant, JUMBOLAIR DEVELOPMENT, LLC, for specific performance to allow Hawker to use the PAPI Lights, damages, costs, interest, and any other relief this Court deems just and proper.

[SIGNATURES ON NEXT PAGE]

Dated: January 18, 2024.

Respectfully submitted,

**GUNSTER, YOAKLEY & STEWART, P.A.**

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**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the was filed with the Florida E-portal system, which electronically serves all counsel of record, on this 18th day of January, 2024.

*/s/ William J. Schifino, Jr.*
William J. Schifino, Jr., Esq.