

COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2472CV00032

DANA RUSSELL DEFURIA, JULIE A. DEFURIA,
JOHN J. GUSHUE, DENISE GUSHUE, ROBERT J.
KOWALEWSKI, JR., PATRICK T. O'REGAN, JR.,
CECILY ANNE O'REGAN, AND VALERIE A.
SAFFRON, Plaintiffs

v.

SEACOAST SHORES ASSOCIATION, INC.,
Defendant

PLAINTIFFS' SECOND MOTION TO AMEND COMPLAINT

Now comes the Plaintiffs pursuant to Massachusetts Rule of Civil Procedure 15 (a), and respectfully moves this Honorable Court for leave to file a Second Amended Complaint in the above-captioned matter. As grounds for this motion the Plaintiffs state as follows:

1. Plaintiff commenced this action by filing a Complaint on February 1, 2024.
2. Plaintiff previously amended the Complaint as of right on April 9, 2024.
3. The first amendment addressed issues of the original Plaintiff (Friends of Seacoast Shores, Inc. [FOSS]) having standing. The purpose of having FOSS as Plaintiff was to represent a large number (class) of plaintiffs. However, FOSS did not own (have) property rights to be decided by declaratory judgment. The amendment added individual property owners to meet the standing issue raised by the Defendant.
4. It has been argued in multiple filings that the declaratory judgment when rendered will impact every lot owner within the Seacoast Shores subdivision. The Defendant opposed accepting the first

amended complaint to serve as a class action complaint. Plaintiff sought to move to amend the complaint to comply with class action form requirements, but the motion was denied without prejudice due to the court having to determine an overall motion to dismiss filed by the Defendant. The court opined (from the bench) that if the motion to dismiss was allowed than the Plaintiff was free to file a new complaint and the motion to amend would be moot.

5. The Defendant's motion to dismiss was allowed in part (dismissing claims made by Foss) and denied in part, allowing the individual property owners claims to move forward.

6. The Plaintiffs now seek to amend the complaint to include the right to pursue a class certification and to address a change for one of the Plaintiffs due to the fact that it was learned recently that one of the Plaintiffs actually owns his property in trust, and therefore the amendment seeks to name the legal party (entity) holding the property rights.

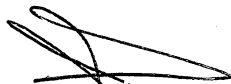
7. The Defendant will suffer no prejudice in this matter as it is early in the discovery stage, and further the majority of discovery responses from the named Plaintiffs will be similar to any potential further plaintiffs. The law in the Commonwealth is that leave to amend "shall be freely given when justice so requires." See *Merrill Lynch Credit Corp. v. Bishay*, 2016 Mass. App. Div. 56 (2016). (R. Civ. P. 15 (a) eliminates the once broad discretionary authority of a judge to deny a motion to amend a pleading. A motion to amend should be allowed unless some good reason appears denying it).

8. This motion seeks the right to amend the complaint and is not a motion to certify a class at this time.

WHEREFORE, Plaintiffs respectfully request that the Court allow the Plaintiffs to amend its complaint as attached hereto as Exhibit 1.

Dated: June 25, 2025

Plaintiffs, By their Attorney,



Jeremy M. Carter, Esq., BBO# 542118
300 Barnstable Road
Hyannis, MA 02601
508-771-4210
jmc@carterdeyoung.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon each other party or upon the attorney of record for each other party by email and regular 1st class mail pursuant to Rule 9A on June 25, 2025 to the following address(es):

John C. DeSimone, BBO #550142
jdesimone@mitchelldesimone.com
Ian Bagley, Esquire
ibagley@mitchelldesimone.com
Mitchell & DeSimone
6 Beacon Street, Suite 900
Boston, MA 02108
(617) 737-8300



Jeremy M. Carter, Esq.

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2472CV00032

DANA RUSSELL DEFURIA, JULIE A. DEFURIA,
JOHN J. GUSHUE, DENISE GUSHUE, ROBERT J.
KOWALEWSKI, JR. as Trustee of the
KOWALEWSKI REALTY TRUST, PATRICK T.
O'REGAN, JR., CECILY ANNE O'REGAN,
AND VALERIE A.
SAFFRON, Plaintiffs

v.

SEACOAST SHORES ASSOCIATION, INC.,
Defendant

**SECOND AMENDED COMPLAINT – CLASS ACTION FOR DECLARATORY
JUDGMENT, DAMAGES, AND INJUNCTIVE RELIEF**

INTRODUCTION

This is a class action brought by the representative Plaintiffs individually and on behalf of all persons the Court may determine to be appropriate for class certification, pursuant to Massachusetts Rule of Civil Procedure 23. Plaintiffs, in addition to themselves, seek to represent a class of persons preliminarily defined as:

“Those persons or legal entity that currently own residential property in the Seacoast Shores neighborhood of East Falmouth, Massachusetts, that have not contributed to the construction of a clubhouse and been designated Clubhouse Investment Members.”

The proposed class includes those non-clubhouse investment owners of the lots enclosed within the geographic boundaries of the Seacoast Shores subdivision, as shown on the approved subdivision plans (listed below in 2nd Amended Complaint, para. 22), and as shown on the attached three (3) Exhibits - Exhibit Q-1, Q-2 and Q-3 – created using the Town of Falmouth Public

Interactive GIS Site. The Exhibits show the north half of Seacoast Shores, the central portion, and the southern portion, respectively. The Assessors' lot numbers, the lot addresses, and the owners names and addresses are included in each Exhibit after each map. All lot owners as set forth in each exhibit are included in the class, excluding those who are currently members of the Defendant SSAI, as Investment Members.

All of the individual Plaintiffs and the proposed class members are property owners in the Seacoast Shores neighborhood of East Falmouth, and all have express (deeded) or implied easement rights to common areas in the neighborhood. In this action, Plaintiffs seek declaratory relief pursuant to Mass.R.Civ.P. 57 and G.L c. 231A, et. seq., relating to Defendant's claims (1) that they are obligated to join and pay \$375 in annual membership or association dues or fees to Defendant; and (2) that they owe \$300 per year in dues or fees to Defendant for each year 2014 through 2023.

Plaintiffs also seek damages and losses resulting from the Defendant's infringement of their easement rights, and injunctive relief pursuant to Mass.R.Civ.P. 65 to enjoin Defendant from seeking to compel them to become members and pay annual dues or fees to Defendant.

PARTIES

1. Plaintiffs Dana Russell DeFuria and Julie A. DeFuria are married and they own the property at 307 Edgewater Dive East in the Seacoast Shores neighborhood of East Falmouth.

2. Plaintiffs John J. Gushue and Denise Gushue are married and they own and reside at 77 Ellsworth Drive in the Seacoast Shores neighborhood of East Falmouth.

3. Plaintiff Robert J. Kowalewski, Jr. is the Trustee and beneficiary of the Kowalewski Realty Trust which own the real property at 10 Ellsworth Drive, in the Seacoast Shores neighborhood of East Falmouth.

4. Plaintiffs Patrick T. O'Regan, Jr. and Cecily Anne O'Regan, formerly known as Cecily Anne Snyder, are married and they own and reside at 69 Ovington Street in the Seacoast Shores neighborhood of East Falmouth.

5. Plaintiff Valerie A. Saffron is an individual who owns and resides at 61 Pine Rock Road in the Seacoast Shores neighborhood of East Falmouth.

6. Defendant Seacoast Shores Association, Inc. ("SSAI") is a private, non-profit corporation organized in August 1951, and having its principal place of business at 7 Farview Lane, East Falmouth, Massachusetts.

CLASS ACTION ALLEGATIONS

7. This case is properly maintainable as a class action pursuant to and in accordance with Rule 23(a) of the Massachusetts Rules of Civil Procedure in that:

- a. The class includes approximately 663 members, and is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the class;
- c. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- d. The representative parties will fairly and adequately protect the interests of the class;
- e. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- f. The relief sought in this class action will effectively and efficiently provide relief to all members of the class; There are no unusual difficulties foreseen in the management of this class action; and,
- h. Plaintiffs, whose claims are typical of those of the Class, through their experienced counsel, will zealously and adequately represent the Class.

8. The proposed class is "ascertainable" in a manner that satisfies the requirements of Rule 23.

9. All of the proposed class members are readily identifiable by objective criteria, in that all class members can be identified from public records – Barnstable Registry of Deeds records and Town of Falmouth Assessors' records. The Club Investment Members are readily identifiable as they have a certificate recorded in their chain of title that identifies the owner as a Club Investment Member.

10. The proposed class consists of the owners of approximately 663 to 748 residential properties.

11. The alternative process of joining all class members as individual plaintiffs, or even a substantial subset of all potential class members, is impracticable within the meaning of Rule 23 and would add significant expense and complexity to this lawsuit with no offsetting advantage.

The claims in the case will be determined based on questions of fact and law that are common to all members of the proposed class, and all claims can be determined uniformly for all or most of the proposed class members, including these claims:

- a. That property owners in Seacoast Shores, by virtue of being property owners, are not obligated to join and pay annual membership or association dues or fees to Defendant SSAI;
- b. That the conditional HOA clause found in the first 10 deeds issued by the developer or grantor from November 1947 to June 1951 are not applicable or enforceable against any properties whose title derives from the 5/27/48 root deed from Seacoast Shores, Inc. to Sailcoast Shores, Inc;
- c. That no HOA was formed by any developer or grantor pursuant to those first 10 deeds issued from November 1947 to June 1951;
- d. That Defendant SSAI is not the property owner's association referenced in the first 10 deeds issued by the developer or grantor;
- e. That property owners in Seacoast Shores, by virtue of the 1948 Beach and Recreation Area Clause, have the right to use and enjoy in common with other owners the clubhouse land and clubhouse facilities land the Defendant has developed;

- f. That Defendant SSAI's construction and operation of members-only clubhouse facilities since 2012 have deprived property owners in Seacoast Shores of their easement rights to the clubhouse;
 - g. That the clubhouse land, and the clubhouse facilities thereon, are "recreation areas" within the meaning of the 1948 Beach and Recreation Area Clause easement language;
 - h. That Defendant SSAI's ownership of the beach, and the clubhouse land, including the clubhouse building and related facilities, and its purported ownership of the ROWS, is subject to and servient to the dominant easement rights of all property owners;
 - i. That Defendant SSAI is in violation of its corporate charter by obtaining liquor licenses and selling alcoholic beverages at its members-only clubhouse facilities since 2013;
 - j. That Defendant SSAI's members-only clubhouse facilities, for all practical purposes, occupy the entirety of the common clubhouse to which all property owners have affirmative easement rights to use in common;
 - k. That Defendant SSAI's occupation and use of the clubhouse facilities on the common clubhouse land on a members-only basis has infringed on valuable easement rights of property owners who choose not to be members of Defendant SSAI;
 - l. That Defendant SSAI's total occupation of the common clubhouse land for its own member-only facilities constitutes an unlawful exercise of private eminent domain;
 - m. That Defendant SSAI's investment members-only operation of the clubhouse facilities on the common clubhouse land has unreasonably and wrongfully increased the burdens on the property owners in their use and enjoyment of their easement rights to use the clubhouse land; and,
 - n. That all property owners have suffered and are entitled to damages resulting from Defendant SSAI's unreasonable and wrongful infringement of their easement rights, in an amount to be determined at trial, plus interest and costs.
12. In relation to these claims, and to potential damages, whether Defendant SSAI is liable to the proposed class members may reasonably be resolved on a class basis.

13. There is a substantial relationship between the injury to the named Plaintiffs and Defendant's conduct affecting the class, and the claims of the named Plaintiffs and those of the class are based on the same legal theories.

14. Defendant SSAI has acted consistently toward all putative class members by asserting that all property owners are obligated, by virtue of such ownership, to join and pay \$375 (2024 amount) in annual membership or association dues or fees.

15. The currently named Plaintiffs and their counsel will fairly and adequately protect the interests of the class. The named Plaintiffs have shown they are suitable class representatives through their active involvement in neighborhood issues and in this case to date. Plaintiffs' counsel has substantial experience handling easement rights actions involving common interest communities, including cases similar to this one that involved common areas and homeowners' association assessment.

16. There are no individual issues in the instant case that will overwhelm the critical common questions of liability. The common liability issues predominate over questions that might affect only individual class members, such that Plaintiffs' claims are "sufficiently cohesive" to warrant adjudication by class representatives.

17. In the instant case, a class action is superior to other available methods for the fair and efficient adjudication of the matters in controversy. There are hundreds of potential class members who have complained about Defendant SSAI's mandatory membership claims and incessant dues collection tactics. The disputed issues have been festering the neighborhood for over 10 years. All of these claims should be addressed and managed in a class action rather than on a piecemeal, or individual basis. In the circumstances, a class action is a proper and efficient

way to proceed as it will aggregate hundreds of potential claims into a single proceeding where they may be resolved economically.

18. The prosecution of separate actions by or against individual members of the class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the class, which could establish incompatible standards of conduct for the party opposing the class; and (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

19. Notice can be provided to members of the class by U.S. Mail and/or by publication.

FACTS

Background: 1947 Creation of Seacoast Shores Neighborhood

20. The Seacoast Shores subdivision as set forth on 5 subdivision plans recorded at the Barnstable Registry of Deeds in Book 77, Page 113 and Book 78, Pages 11, 13, 15 and 79 between 4/15/47 and 6/18/47.

21. The original subdivision developer, Raymond H. Stotter, acquired the approx. 300-acre undivided property by deed from Ovington Point Trust. See attached **Exhibit A** [Deed, Book 640 Page 145]. This is the root deed for Stotter's title to the property.

22. The 1947 subdivision plans divided an approx. 1.5-mile long, 300-acre peninsula into approx. 1,000 residential lots and several common areas, including:

- a. two areas labelled "Beach";
- b. 31 unlabeled rights-of-way (the "ROWS") between named streets providing water access on the east and west sides of the peninsula; and,

- c. approx. 2-acres of land (the "clubhouse land") in 3 contiguous areas labelled "Reserved for Yacht Club", "Reserved for Parking" and "Reserved for Recreation and Playground Area."

See attached **Exhibit B** [1947 "Yacht Club Section" plan recorded in Plan Book 78, Page 11].

1947 Stotter to Seacoast Shores, Inc.

23. In July 1947, after the subdivision plans were recorded, Stotter filed articles of organization for Seacoast Shores, Inc. ("Seacoast"), a Massachusetts business corporation, of which he was the President.

24. Seacoast is unrelated to the Defendant SSAI.

25. On 8/1/47, before any lots were sold, Stotter conveyed the approx. 300-acre property to Seacoast. See attached **Exhibit C** [Deed, Book 675, Page 29]. This is the root deed for Seacoast's title to the property.

26. Seacoast was the successor to Stotter as the developer or grantor of the subdivision.

27. There is no mention of an Homeowner Association (hereinafter "HOA") in the deed from Stotter to Seacoast.

The First Ten Deeds

28. From November 1947 to June 1951, Seacoast conveyed 14 lots by 10 deeds, each of which contained a conditional requirement that the grantees become members of an HOA "... in the event that . . . a property owner's association is formed . . .", and to pay "... up to \$20 per annum . . ." See attached **Exhibit D** [List of Deeds issued by Seacoast containing HOA Clause, and copy of Deed, Book 786, Page 520, last deed from Seacoast containing HOA Clause].

29. Those 10 deeds also granted "right(s) in common . . . to make the customary use of the beach, beaches, or boat basin, as designated on said plans . . . for boating, bathing and fishing, in accordance with the regulations thereof."

30. After 1951, Seacoast issued 2 more single-lot deeds, with no mention of an HOA or easements.

31. No HOA was ever formed by Seacoast.

32. Those first 10 deeds out of Seacoast are the only deeds in Seacoast Shores containing any reference to an HOA. No other deeds for other lots in the neighborhood contain any HOA clause or reference.

33. Defendant SSAI is not the prospective “property owner’s association” referenced in the first 10 deeds.

1948 Seacoast Shores, Inc. to Sailcoast Shores, Inc.

34. On 5/20/48, articles of organization for Sailcoast Shores, Inc. (“Sailcoast”), a Massachusetts business corporation, were filed.

35. On 5/27/48, Seacoast conveyed the entire subdivision to Sailcoast, excepting the 16 lots conveyed or retained by Seacoast as described above.

36. Sailcoast was the successor to Seacoast as a developer or grantor of the subdivision.

37. There is no HOA clause in the deed from Seacoast to Sailcoast. See attached **Exhibit E** [Deed, Book 695, Page 83].

38. No homeowner’s association was ever formed by Sailcoast.

39. There is no HOA clause or reference in any deeds issued by Sailcoast.

Subsequent Deeds, 1948-1988, 1948 Beach and Recreation Area Clause

40. Beginning in June 1948, Sailcoast revised the language of the individual lot deeds, eliminating the conditional HOA membership paragraph entirely, and eliminating the grant of rights to “beaches. . . or boat basin”, while adding that “[B]uyer acquires no riparian rights but is

entitled to all other privileges such as boating, bathing and fishing.” See **Exhibit F** [Deed, Book 696, Page 500].

41. Sailcoast issued 13 deeds (for 15 lots) with this language from 6/16/48 to 8/10/48.

42. Thereafter, deeds from Sailcoast were further revised, and approx. 455 deeds conveying approx. 553 lots, were issued by Sailcoast from 8/18/48 to 12/17/70 containing the following clause (the “1948 Beach and Recreation Area Clause”):

“[t]he Grantee shall have the right to use and enjoy in common with other owners of property on the premises known as Seacoast Shores, any and all beaches and recreation areas established by the grantor on said Seacoast Shores.” See attached **Exhibit G** [Deed, Book-Page 700-544].

43. In 1952, Sailcoast conveyed title to the clubhouse land to Defendant SSAI, subject to the following easements and restrictive clauses in the deed:

“...subject to the use of said premises for recreational purposes only, and no building or structure shall be erected, constructed or placed thereon other than a clubhouse, boathouse or bathhouse to be used for the purposes as set forth in the Charter granted to ...[SSAI] ... from the Commonwealth of Massachusetts only.” [and]

“Said premises are also conveyed subject all easements and restrictions of record which may be in force and applicable....” [and]

“The foregoing restrictions shall be deemed and considered covenants running with said premises and shall be binding on the grantee’s successors and assigns.”

See attached **Exhibit H** [Deeds, Book 820, Page 114 and Book 820, Page 115 (8/26/52), and Book 824, Page 3 (10/9/52)].

1957 Sailcoast Shores, Inc. to Gateway Development Corp.

44. On 6/18/57, Gateway Development Corp. (“Gateway”), a Massachusetts business corporation, was organized.

45. On 6/25/57, Sailcoast conveyed the remaining subdivision land to Gateway, excepting lots previously conveyed, and excepting 35 lots retained by Sailcoast. See attached **Exhibit I** [Deed, Book 977, Page 31].

46. Gateway was the successor to Sailcoast as a developer or grantor of the subdivision.

47. There is no HOA clause in the deed from Sailcoast to Gateway.

48. No homeowner's association was ever formed by Gateway.

49. Between 1957 and 1976, Gateway issued approx. 257 deeds (for approx. 270 lots) containing the 1948 Beach and Recreation Area Clause.

50. There is no HOA clause or reference in any deeds from Gateway.

1970 Gateway Development Corp. to Joseph H. Joubert

51. On 9/30/70, Gateway conveyed the remaining subdivision land to Joseph H. Joubert ("Joubert"), excepting lots previously conveyed, and excepting 35 lots retained by Gateway. See attached **Exhibit J** [Deed, Book 1485, Page 1146].

52. Joubert was a successor developer or grantor of the subdivision.

53. There is no HOA clause in the deed from Gateway to Joubert.

54. No homeowner's association was ever formed by Joubert.

55. Between 1970 and 1978, Joubert issued 98 deeds for 135 lots, including 118 lots with the 1948 Beach and Recreation Area Clause.

56. There is no HOA clause in any deeds from Joubert.

57. In August 1975, Milton Savings Bank foreclosed on the titles of both Gateway and Joubert, and the remaining subdivision land was acquired by said bank. See attached **Exhibit K** [Deed, Book 2223, Page 86].

1975 McCartin Leisure Industries, Inc.

58. On 10/31/69, McCartin Leisure Industries, Inc. (McCartin), a Massachusetts business corporation, was organized.

59. From 1971 to 1975, McCartin acquired lots in Seacoast Shores from Joubert and other parties.

60. McCartin was a successor developer or grantor of the subdivision.

61. There is no HOA clause in any deeds from Joubert or other parties to McCartin.

62. No homeowner's association was ever formed by McCartin.

63. In December 1975, McCartin acquired the remaining subdivision land from Milton Savings Bank. See attached **Exhibit L** [Deed, Book 2271, Page 001].

64. Between 1971 and 1988, McCartin issued 69 deeds, 30 of which contain the 1948 Beach and Recreation Area Clause.

65. There is no HOA clause or reference in any deeds from McCartin.

66. On 11/17/76, McCartin conveyed title to the Bayside Beach land to Defendant SSAI. See attached **Exhibit M** [Deed, Book 2340, Page 81].

67. Said beach deed is "... subject to ... the rights of other owners of property in ... Seacoast Shores to use said premises ... for recreational purposes."

68. During McCartin's ownership, 10 deeds conveying 25 ROWs were also issued, including a deed to Defendant SSAI on 11/27/81 for 17 ROWs. See attached **Exhibit N** [Deed, Book 3401, Page 65].

69. McCartin also issued 15 deeds to waterfront owners conveying all abutting beach, flats and shorefront area, primarily in the Yacht Club Section of Seacoast Shores.

70. In 1975, the Town of Falmouth took a public easement on all of Bayside Drive to the water, including the portion of Bayside Beach within the limit of the Town's easement. This portion of the beach is open to the public.

71. From 1947 to 1986, there were six (6) different developers (grantors) involved in sale of lots in Seacoast Shores, beginning Stotter (1947-1948). Successor developers were Seacoast Shores, Inc. (1947-1951; plus one lot sold in 1985); Sailcoast Shores, Inc. (1948-1957); Gateway Development Corp. (1957-1976); Joseph Joubert (1968-1978); and McCartin Leisure Industries, Inc. (1971-1986).

72. No homeowner's association (HOA) was ever formed by Stotter or any successor developers of the subdivision.

73. In total, the deeds to approx. 962 lots in Seacoast Shores contain the affirmative easement language referred to herein as the "1948 Beach and Recreation Area Clause" ("[t]he Grantee shall have the right to use and enjoy in common with other owners of property on the premises known as Seacoast Shores, any and all beaches and recreation areas established by the grantor on said Seacoast Shores").

74. With many single lots having been combined, the Seacoast Shores neighborhood presently consists of approx. 875 residential lots, including approx. 38 vacant lots, of which approx. 821 have express affirmative easement rights to the beach and recreation areas.

75. Seacoast Shores is a common-interest community as to beaches and recreation areas, such that the beach and recreation area easement rights are implied as to all lots in the neighborhood.

76. The easement rights owned by Plaintiffs to use the beach, the ROWS and the clubhouse land and facilities are affirmative and valuable property rights that are not conditional upon membership in or payment of dues or fees to Defendant SSAI.

Defendant Seacoast Shores Association, Inc. (SSAI)

77. Defendant SSAI was formed as a private, non-profit corporation under G.L., c.180 on 8/1/51. See attached **Exhibit O**.

78. By its Articles of Organization, Defendant SSAI was formed for the following purposes:

“To maintain and promote the social and civic welfare and social contacts of the residents and real estate owners in the section of Falmouth known as Seacoast Shores; to organize and promote water and land sports among the members and their families; to engage in all activities which shall serve to improve the appearance and residential desirability of this section; to aid in securing betterments and improvements. Also, to purchase, lease, sell, hold, develop, convey, or otherwise acquire and dispose of any real and personal property necessary and proper for carrying out the purposes of this Corporation, and to erect, equip and maintain social buildings, floats and appropriate structures or buildings for the use and enjoyment of the members of the Corporation, upon and under such terms and conditions, and subject to such rules, regulations and restrictions, as the Officers, Directors and Committee members may, from time to time, determine. These purposes shall not include the right to apply for seasonal or yearly license to sell alcoholic beverages.” Art. of Org, 8/1/51.

79. The corporate charter of Defendant SSAI does not override or diminish the easement rights of property owners to use the clubhouse land.

80. In 1986, Defendant SSAI was dissolved by state law for failure to file Annual Reports.

81. In 1992, a new Seacoast Shores Association, Inc. ("SSAI 2") formed “to hold legal title to certain rights of way and to run and operate a clubhouse in Seacoast Shores and to promote activities that will enhance social and civic well-being of the residents in that area known as Seacoast Shores.” (ID No. 000405239)

82. In April 2010, Defendant SSAI was revived upon filing of Articles of Revival with the Massachusetts Secretary of State.

83. In June 2010, SSAI 2 was merged into Defendant SSAI upon filing of Articles of Merger. Defendant SSAI (ID No. 000006458) is the surviving corporation, and the SSAI Articles of Organization of 8/1/51 remain in force and effect today.

84. The Articles of Organization of Defendant SSAI precludes it from having a license to sell alcoholic beverages, but SSAI nevertheless sells alcoholic beverages in the new clubhouse restaurant and bar. Defendant SSAI was formed 4 years after the conveyance of the entire subdivided property on 8/1/47 from Stotter to Seacoast.

85. When Defendant SSAI was formed in August 1951, approx. 181 deeds had been issued for 209 lots. The deeds for approx. 180 lots contained the 1948 Beach and Recreation Area Clause, and as noted above, only 10 deeds for 14 lots contained the conditional HOA Clause.

86. None of Defendant SSAI's incorporators were owners of lots subject to the HOA clause.

87. None of Defendant SSAI's incorporators were members or stockholders of the developer (grantor) at that time, which was Sailcoast.

88. There are no documents recorded in the Barnstable Registry or on file with Massachusetts Secretary of State establishing that Defendant SSAI is the "property owner's association" referenced in the first 10 deeds issued by Seacoast between November 1947 and June 1951.

89. Defendant SSAI is not successor developer or grantor of the Seacoast Shores subdivision.

90. Defendant SSAI has never acquired individual house lots within Seacoast Shores for development or resale in the ordinary course of its business.

91. Defendant SSAI has never installed or maintained any roads, utilities, or other infrastructure in the subdivision.

92. Defendant SSAI's title to the Bayside Beach property is "subject to . . . rights of other owners . . . to use the said premises for recreational purposes."

93. When Defendant SSAI acquired the clubhouse land in August 1952, approx. 245 deeds had been issued for 290 lots. The deeds for approx. 261 lots contained the 1948 Beach and Recreation Area Clause, and as noted above, the deeds for only 14 lots contained the HOA Clause.

94. There was no clubhouse building on the clubhouse land from 1947 to 1953.

95. In 1953-54, Defendant SSAI constructed a single-story clubhouse building (the "old clubhouse").

96. From 1954 to 2011, the old clubhouse was used for annual neighborhood meetings, cookouts, bingo, spaghetti dinners, weddings, and other social activities.

97. All of the common areas of the neighborhood - Bayside Beach, 17 of the 31 ROWs, and the clubhouse land upon which the clubhouse is located, – are subject to the affirmative easement rights of all Seacoast Shores property owners "to use and enjoy in common with other owners . . . any and all beaches and recreation areas . . . on . . . Seacoast Shores."

98. Defendant SSAI does not own any land in Seacoast that is not servient to the dominant deeded rights of property owners.

99. The easement rights of all Seacoast Shores property owners to use common areas are affirmative, expressly deeded rights, not prescriptive easement rights defined by the scope of their prior use.

100. Any recreational amenities established on the common areas on Seacoast Shores, including the clubhouse facility, are subject to the deeded easement rights of property owners to use them.

Membership In Defendant SSAI Is Voluntary, Not Mandatory

101. Defendant SSAI's bylaws have not and do not now provide for "automatic" lot owner membership.

102. Membership in Defendant SSAI is completely voluntary.

103. Defendant SSAI's bylaws state that voting membership in SSAI is restricted and reserved only for landowners "of good moral character" who apply for and are accepted for membership by an SSAI membership committee, and pay an annual membership fee ("dues").

104. The annual membership fee or dues for being a member of Defendant SSAI was \$300.00 per year from 2013 through 2023. In January 2024, the annual fee was increased to \$375.00.

105. Defendant SSAI no authority to assess or collect association dues or fees from landowners who do not voluntarily join SSAI.

106. Defendant SSAI has no authority to demand payment of dues or fees, past or present, from any landowner in Seacoast Shores who is not a member of SSAI.

107. Defendant SSAI may only demand payment of dues or fees, past or present, from a subset of landowners in Seacoast Shores who have recorded a voluntary Clubhouse Investment Member (IM) certificate in the chain of title to their property.

108. A recorded IM Certificate obligates the IM, or any successor owner of the IM's property, to perpetually pay annual membership dues to Defendant SSAI, and gives Defendant SSAI broad power to enforce and collect dues, including the right to foreclose on the property.

109. Through the date hereof, approximately 237 IMs have recorded an IM Certificate.

110. Approximately 38 IMs have refused to sign and record a perpetual dues IM certificate.

111. All other property owners in Seacoast Shores may elect voluntarily join and pay dues or fees to Defendant SSAI as general members on a yearly basis.

112. On information and belief, in 2023, there were a total of 400 members of Defendant SSAI, including approximately 235 IMs and 165 general members.

113. On information and belief, in 2023, there were approx. 500 property owners who declined to pay any dues or fees to Defendant SSAI.

114.

The New Clubhouse

115. The “new” members-only clubhouse, with a restaurant and bar, was opened in June 2012.

116. The Clubhouse is located is on the common “yacht club and recreation and playground area” shown on the original Seacoast Shores plans. See Exhibit B.

117. Prior to 2012, there was a single-story clubhouse building used for neighborhood association meetings, cookouts, bingo, spaghetti dinners, etc. See attached **Exhibit P** [2010 Aerial Photo].

118. The old clubhouse was razed and the new clubhouse was built on the common clubhouse land after a vote in 2007 of approximately 85 members of Defendant SSAI, constituting less than 10% of the neighborhood’s property owners, to replace the old clubhouse.

119. The new clubhouse project was financed by approx. 212 IMs who pledged and paid funds for its design and construction.

120. Today, the clubhouse is a members-only \$2.0-\$2.5+ million 2-story facility with a restaurant and bar, a large outdoor pool and a tennis court.

121. Access to the common clubhouse property is now restricted during July and August to less than 27% of Seacoast Shores' property owners, despite all owners having deeded rights to the neighborhood's recreation areas.

Defendant SSAI's Claim That All Property Owners Must Pay \$300 Per Year

122. Since 2014, Defendant SSAI has claimed that all property owners in Seacoast are obligated to pay annual dues or fees to Defendant SSAI, in the amount \$300 from 2014-2023, and now \$375 in 2024 and continuing.

123. Since there are approximately 925 property owners in Seacoast Shores, Defendant SSAI's \$375/year/lot claim equates to a claim of entitlement to receive approximately \$346,875 or more per year from the neighborhood.

124. Each January, Defendant SSAI sends invoices with unique account numbers to some but not all property owners, including both members and non-members.

125. Until 2021, invoices sent by Defendant SSAI were for \$300 in "Association Dues" or for "Annual Membership Fee[s]".

126. In 2021, invoices sent by Defendant SSAI were for \$300 in "Annual Maintenance Fee[s]".

127. In 2022, invoices sent by Defendant SSAI were for \$300 in "SSAI Association Fee[s]."

128. Until 2022, invoices sent by Defendant SSAI contained a notation on them stating "\$300. Required for all Residents of Seacoast Shores."

129. In January 2022, the notation was changed to state "Please check with SSAI on the status on your account balance (if any) prior to 2022."

130. In January 2024, invoices sent by Defendant SSAI were for \$375 in "SSAI Association Fee[s]."

131. On information and belief, Defendant SSAI is maintaining individual account records for both members and non-members in its accounting records.

132. On information and belief, Defendant SSAI is maintaining accounting records for non-member property owners as "accounts receivable" assets in its records.

133. General membership dues in Defendant SSAI were \$100 in 2009 and \$130 in 2010.

134. In 2012, the year the new clubhouse facility opened, general membership dues were increased to \$250.

135. In 2013, general membership dues were increased to \$300 in 2013, and remained at that figure until the increase to \$375 in January 2024.

136. Since 2013, even general members of Defendant SSAI who voluntarily paid the \$300 membership dues, have had very limited access to the new clubhouse facilities during July and August, being allowed only to attend the annual meeting in July, a barbeque, and a lobster dinner in August.

137. From 2013 - 2023, access to the new clubhouse facilities during July and August has been restricted to IMs, who have been required to make added payments of from \$1,300 to \$1,625 in Clubhouse Member ("CHM") "recreation and food minimum" fees.

138. In January 2024, the added summer CHM fees were increased to from \$1,600 to \$1,825.

139. Defendant SSAI's claim that all property owners in the neighborhood must pay \$375 per year is patently false, unsubstantiated, and unenforceable.

Defendant SSAI's Campaign to Collect Dues and Fees From Non-Members

140. Since 2018, several buyers, sellers or refinancing owners of property in Seacoast Shores, all of whom who were not members of Defendant SSAI, have been pressured or coerced by Defendant SSAI into paying current and past dues or fees to Defendant SSAI in connection with the closing of their real estate transactions.

141. Representatives of Defendant SSAI, including several of its Officers and Directors, have circulated misinformation to unsuspecting owners, buyers and sellers in order to obtain the payment of dues and fees.

142. Several newer Seacoast Shores' residents and owners have been told they are obligated to pay \$300 (now \$375) in annual "dues" or "maintenance fees" to SSAI.

143. Real estate listings for Seacoast Shores have erroneously included HOA dues as a mandatory obligation, and one sales agent went so far as to include it in a purchase and sale agreement, which the buyer refused to sign unless the HOA dues clause was removed.

144. SSAI has demanded payments of up 8 years of so-called "past dues" or "past fees" from several property owners selling or refinancing their properties, including elderly owners.

145. As a result of Defendant SSAI's interference, several properties in Seacoast Shores have been incorrectly designated by lenders as being within a planned unit development (PUD) community named "Seacoast Shores Association, Inc."

146. Under federal Housing and Urban Development (HUD) guidelines, a PUD is "a residential development that contains, within the overall boundary of the subdivision, common areas and facilities owned by a Homeowners' Association (HOA), to which all homeowners must

belong and to which they must pay lien-supported assessments.” [Ref. HUD Single Family Housing Policy Handbook 4000.1]

147. As of the date hereof, there are seven (7) mortgages on property in Seacoast Shores that have been incorrectly designated by the lender as being within a planned unit development (PUD) community.

148. None of the properties owned by any officers or directors of Defendant SSAI officers have recorded mortgages in which their properties are declared to be within a PUD.

COUNT I

DECLARATORY JUDGMENT AS TO MEMBERSHIP IN AND PAYMENT OF DUES OR ASSOCIATION FEES TO SSAI

149. Plaintiffs incorporate by reference paragraphs 1-130 of this Complaint, as if restated herein.

150. There is a dispute between Plaintiffs and proposed class and Defendant as to whether property owners in Seacoast Shores, by virtue of being property owners, are obligated to join and pay annual membership or association dues or fees to Defendant SSAI.

151. Plaintiffs and proposed class are entitled to a declaration that membership in and payment of dues or fees to Defendant SSAI is voluntary and is not required of property owners in Seacoast Shores by virtue of their property ownership.

WHEREFORE, Plaintiffs and proposed class pray for judgment against the Defendant and requests that this Honorable Court declare that membership in and payment of annual dues or fees to Defendant is completely voluntary and is not required of property owners in Seacoast Shores by virtue of their property ownership.

COUNT II
DECLARATORY JUDGMENT AS TO THE
HOA CLAUSE IN THE FIRST 10 DEEDS

152. Plaintiffs incorporate by reference herein paragraphs 1-133 of this Complaint as if restated herein.

153. There is a dispute between Plaintiffs and the proposed class and Defendant SSAI as to the status and applicability of the HOA clause found in the first 10 deeds issued by Seacoast from November 1947 to June 1951.

154. Plaintiffs and proposed class are entitled to a declaration that no HOA was formed by any developer or grantor pursuant to those first 10 deeds from Seacoast.

155. Plaintiffs and proposed class are entitled to a declaration that the HOA clause was eliminated from the development plan by Sailcoast Shores, Inc., the grantor after June 1951, and that the HOA clause is not applicable or enforceable against any properties whose title derives from the 5/27/48 root deed from Seacoast Shores, Inc. to Sailcoast Shores, Inc.

156. Plaintiffs and proposed class are entitled to a declaration that Defendant SSAI is not the property owner's association referenced in the first 10 deeds issued by Seacoast Shores, Inc.

WHEREFORE, Plaintiffs and proposed class pray for judgment against the Defendant and requests that this honorable Court declare that the HOA clause was eliminated from the development plan of the neighborhood by Sailcoast Shores, Inc., the grantor after June 1951; that the HOA clause is not applicable or enforceable against any properties whose title derives from the 5/27/48 root deed from Seacoast Shores, Inc. to Sailcoast Shores, Inc.; and that Defendant

SSAI is not the property owner's association referenced in the first 10 deeds issued by Seacoast Shores, Inc.

COUNT III

DECLARATORY JUDGMENT AS TO DEFENDANT SSAI'S LEGAL AUTHORITY

157. Plaintiffs incorporate by reference paragraphs 1-138 of this Complaint as if restated herein.

158. The deeds to approximately 824 lots in Seacoast Shores contain the 1948 Beach and Recreation Area Clause: "[t]he Grantee shall have the right to use and enjoy in common with other owners . . . any and all beaches and recreation areas established by the grantor on said Seacoast Shores." See Exhibit G.

159. There is a dispute as to whether Defendant SSAI, in developing and operating the new members-only clubhouse facilities (including the restaurant/bar, outdoor swimming pool, and tennis court) on the common clubhouse land, was acting solely as a private corporation on behalf of only its members, or was acting as a "grantor" on behalf of all property owners within the meaning of the 1948 Beach and Recreation Area Clause.

160. Plaintiffs and proposed class are entitled to a declaration as to whether Defendant SSAI, in developing and operating the new clubhouse facilities, was and is now acting solely as a private corporation on behalf of only its members.

161. Plaintiffs and proposed class are entitled to a declaration as to whether Defendant SSAI, in developing and operating the new clubhouse facilities, was and is acting as a "grantor" on behalf of all property owners within the meaning of the 1948 Beach and Recreation Area Clause.

162. Plaintiffs and proposed class are entitled to a declaration that they must be afforded equal access and use of the Clubhouse facilities without an obligation to become a member of Defendant SSAI.

163. Plaintiffs and proposed class are entitled to a declaration that Defendant SSAI lacked the authority to construct an exclusive, members-only clubhouse (including the restaurant/bar), outdoor swimming pool, and tennis court on the common clubhouse land, where the decision to do so was made by a vote of only SSAI members comprising less than 10 percent of the property owners in the neighborhood.

WHEREFORE, Plaintiffs and proposed class pray for judgment against the Defendant and requests that this honorable Court declare whether Defendant SSAI, in developing and operating the new clubhouse facilities, was and is now acting solely as a private corporation on behalf of only its members; whether Defendant SSAI, in developing and operating the new clubhouse facilities, was and is acting as a "grantor" on behalf of all property owners within the meaning of the 1948 Beach and Recreation Area Clause; that Plaintiffs must be afforded equal access and use of the Clubhouse facilities without an obligation to become a member of Defendant SSAI; and that, if Defendant SSAI was and is acting solely as a private corporation on behalf of only its members in developing and operating the new clubhouse facilities, then Defendant SSAI must compensate property owners who choose not to be members of Defendant SSAI for the loss of their affirmative easement rights to use the clubhouse land. Further, that this Honorable Court declare that Defendant SSAI lacked the authority to construct an exclusive, members-only clubhouse (including the restaurant/bar), outdoor swimming pool, and tennis court on the common clubhouse land, where the decision to do so was made by a vote of only SSAI members comprising less than 10 percent of the property owners in the neighborhood.

COUNT IV
DECLARATION FOR COMPENSATORY DAMAGES
DUE TO UNLAWFUL CONDUCT

164. Plaintiffs incorporate by reference paragraphs 1-145 of this Complaint as if restated herein.

165. Homeowners in the Seacoast Shores subdivision by virtue of the 1948 Beach and Recreation Area Clause have the right to use and enjoy in common with other owners the land where the Defendant has developed for their new clubhouse.

166. Defendant acted as a private corporation for profit in constructing and operating the new clubhouse facilities deprived homeowners in the Seacoast Shores subdivision the loss of easement rights to the land where the clubhouse is situated.

WHEREFORE, Plaintiffs and proposed class pray for judgment against the Defendant and requests that this honorable Court declare that property owners in Seacoast Shores have affirmative deeded easements rights to use and enjoy the clubhouse land and the clubhouse facilities; that such easement rights are not contingent upon membership in Defendant SSAI or any homeowner's association, nor upon the payment of any membership dues or fees to Defendant SSAI or any homeowner's association; that the ROWS in Seacoast Shores are recreation areas within the meaning of the 1948 Beach and Recreation Area Clause easement language; that the clubhouse land, and the clubhouse building and related facilities thereon are "recreation areas" within the meaning of the 1948 Beach and Recreation Area Clause easement language; and that their deeded rights include the right to use the common clubhouse land and the clubhouse building and related facilities thereon without becoming a member of Defendant SSAI.

COUNT V

**DECLARATORY JUDGMENT AS TO AFFIRMATIVE EASEMENT RIGHTS TO
COMMON AREAS AND FACILITIES**

167. Plaintiffs incorporate by reference paragraphs 1-148 of this Complaint as if restated herein.

168. There is a dispute between Plaintiffs and proposed class and Defendant as to the status, scope, rights, duties, responsibilities, obligations and limitations of property owners' easement rights to use the private beach, the ROWs, the clubhouse land and the clubhouse facilities in the Seacoast Shores neighborhood.

169. Plaintiffs and proposed class are entitled to a declaration that all similarly situated Seacoast Shores property owners have affirmative and equal deeded easement rights to use and enjoy in common with all other owners the beach, the ROWs, the clubhouse land and the clubhouse facilities.

170. Plaintiffs and proposed class are entitled to a declaration that such easement rights are valuable property interests that are not contingent upon membership in Defendant SSAI or any homeowner's association, nor upon the payment of any membership dues or fees to Defendant SSAI or any homeowner's association.

171. Plaintiffs and proposed class are entitled to a declaration that the ROWs in Seacoast Shores are recreation areas within the meaning of the easement language.

172. Plaintiffs and proposed class are entitled to a declaration that the rights to use the ROWs include all uses customarily made of water-access easements, including unobstructed pedestrian access to the water, storage, loading and unloading of small watercraft such as dinghies, kayaks, paddleboards and the like, and other similar water-related activities.

173. Plaintiffs and proposed class are entitled to a declaration that the clubhouse land, and the clubhouse building and related facilities thereon, are "recreation areas" within the meaning of the 1948 Beach and Recreation Area Clause easement language.

174. Plaintiffs and proposed class are entitled to a declaration that Defendant SSAI's ownership of the beach, and the clubhouse land, including the clubhouse building and related facilities (swimming pool and tennis court) thereon, and its purported ownership of the ROWS, is subject to and servient to the dominant easement rights of all property owners.

WHEREFORE, the Plaintiffs and proposed class pray for judgment against the Defendant and requests that this honorable Court declare that property owners in Seacoast Shores have affirmative deeded easement rights to use and enjoy the clubhouse land and the clubhouse facilities; that such easement rights are not contingent upon membership in Defendant SSAI or any homeowner's association, nor upon the payment of any membership dues or fees to Defendant SSAI or any homeowner's association; that the ROWS in Seacoast Shores are recreation areas within the meaning of the 1948 Beach and Recreation Area Clause easement language; that the clubhouse land, and the clubhouse building and related facilities thereon are "recreation areas" within the meaning of the 1948 Beach and Recreation Area Clause easement language; and that their deeded rights include the right to use the common clubhouse land and the clubhouse building and related facilities thereon without becoming a member of Defendant SSAI;

COUNT VI

DAMAGES FOR INFRINGEMENT OF EASEMENT RIGHTS

175. Plaintiffs incorporate by reference paragraphs 1-174 of this Complaint as if restated herein.

176. Defendant SSAI's new members-only clubhouse facilities, for all practical purposes, occupy the entirety of the common clubhouse to which all property owners have affirmative easement rights to use in common.

177. Defendant SSAI's occupation and use of the clubhouse facilities on the common clubhouse land on a members-only basis has infringed on valuable easement rights of property owners who choose not to be members of Defendant SSAI.

178. Defendant SSAI's total occupation of the common clubhouse land for its own member-only facilities constitutes an unlawful exercise of private eminent domain

179. Defendant SSAI's investment members-only operation of the clubhouse facilities on the common clubhouse land has unreasonably and wrongfully increased the burdens on the property owners in their use and enjoyment of their easement rights to use the clubhouse land.

180. Plaintiffs and proposed class have suffered and are entitled to damages resulting from Defendant SSAI's unreasonable and wrongful infringement of their easement rights, in an amount to be determined at trial, plus interest and costs.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendant and requests that this honorable Court award damages against Defendant SSAI resulting from Defendant SSAI's unreasonable and wrongful infringement of easement rights, in an amount to be determined at trial, plus interest and costs and/or that this honorable Court order the removal of the Defendant SSAI's clubhouse facilities from the common clubhouse land."

COUNT VII

INJUNCTIVE RELIEF

184. Plaintiffs incorporate by reference paragraphs 1-180 of this Complaint as restated herein.

181. Plaintiffs and proposed class have a reasonable likelihood of success on the merits of the claims against Defendant SSAI.

182. There is a clear danger, based on Defendant SSAI's past and ongoing dues/fees collection activity, that the Defendant SSAI will continue to seek payment of annual membership dues or fees or association dues or fees from property owners.

183. Plaintiffs and proposed class are entitled to a temporary restraining order, a preliminary injunction, and a permanent injunction enjoining and restraining Defendant SSAI, by invoicing or otherwise, from demanding that non-member property owners pay past, present, or future annual membership dues or fees or association dues or fees allegedly owed with respect to their ownership of property in Seacoast Shores, until further order of this Court.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendant and that this honorable Court temporarily, preliminarily, and permanently enjoin Defendant SSAI from invoicing or otherwise pursuing non-member property owners for payment of past, present, or future annual membership dues or fees or association dues or fees allegedly owed with respect to ownership of property in Seacoast Shores, until further order of this Court.

Respectfully Submitted,
Plaintiffs,
By Their Attorney,



Jeremy M. Carter, Esquire
CARTER DEYOUNG
300 Barnstable Road
Hyannis, MA 02601
(508) 771-4210
BBO# 542118

Dated: June 25, 2025