

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

TOWN OF LONGBOAT KEY, FLORIDA,
a municipal corporation,

Plaintiff,

vs.

Case No: 90-1996-CA-01

KEY CLUB ASSOCIATES, LIMITED
PARTNERSHIP, a Florida limited
partnership,

Defendant,

and

THE INN-ON-THE-BEACH ASSOCIATION,
INC.,

Intervening Defendant.

TOWN OF LONGBOAT KEY, FLORIDA,

Plaintiff,

vs.

Case No: 91-5762-CA-01

KEY CLUB ASSOCIATES, LIMITED
PARTNERSHIP, a Florida Limited
partnership, et al.,

Defendants.

STIPULATION AND ORDER

WHEREAS, the Plaintiff, Town of Longboat Key, Florida (herein Town), and the Defendants, Key Club Associates, Limited Partnership and Shannon Hotel Group, Inc. (herein jointly referred to as Key Club), desire to resolve the above-styled actions, including all

appeals, and resolve other related issues as referred to in this Stipulation; and

WHEREAS the Court in Case No. 90-1996-CA-01 has granted the Defendant's Motion for Summary Judgment by Order dated July 1, 1991, which the Town has appealed and which appeal has been resolved by entry of a PER CURIAM Opinion affirming the decision of the Trial Court; and

WHEREAS the Inn-On-The-Beach Association, Inc. is no longer a party in Case No. 90-1996-CA-01 as a result of the affirmance of the appeal; and

WHEREAS the parties desire to amicably resolve the pending Counterclaim in Case No. 90-1996-CA-01; and

WHEREAS the parties desire to amicably resolve the Complaint and Counterclaim pending in Case No. 91-5762-CA-01, and

WHEREAS the parties desire to amicably resolve the Complaint and Counterclaim pending in Case No. 91-1573-Civ-T-17B in the United States District Court, Middle District of Florida, Tampa Division, it is hereinafter,

STIPULATED AND AGREED as follows:

1. In order to provide a procedure so that Key Club can readily establish, and the Town may readily ascertain, that Key Club is in compliance with the membership requirements of Town Resolutions 80-21 and 81-13, it is agreed as follows:

- A. Key Club will maintain a membership list by category of type of membership;

B. The membership lists maintained by Key Club shall designate whether the member is a resident of Islandside GPD, Bay Isles PD, a resident of Longboat Key but not a resident of either the GPD or PD, or off-Key member (non-resident of Longboat Key).

C. Key Club shall maintain a waiting list designating the nature of membership requested and the residence location of the requesting person by category designated in "B" above;

D. Key Club will maintain a list of all prospective members who have submitted an application for membership and have been rejected:

E. The lists provided for herein may be reviewed at the offices of Shannon Hotel Group during regular business hours by a Town representative upon not less than two, nor more than five days notice. The lists shall not be copied by the Town, shall not be considered a Town record, but rather a private record of Key Club, and shall not be considered a public record open for inspection by the public. The provisions of this paragraph are not intended to prejudice rights, if any, which Town may have to request production of membership lists, if relevant, to issues in litigation between the parties hereto. If the Town's privilege to review these records as provided for in this Stipulation, is successfully challenged in a lawsuit by a third party as a basis to make the membership lists public records, then this privilege of review shall terminate.

2. The parties agree that Resolutions 75-27, 76-7, 80-21 and

81-13 are valid, binding and enforceable, and that the open space designated thereunder will be maintained as such in accordance with the Open Space Agreements recorded in Official Records Book 1309 at Page 1207 in and for the public records of Sarasota County, Florida for Islandside GPD, and in Official Records Book 1997 at Page 0011 in and for the public records of Sarasota County, Florida for Bay Isles PD.

3. Guests at Inn-On-The-Beach shall have the right to play golf on Harbourside golf course, as more specifically conditioned in this Paragraph. At Harbourside, tee times may not be reserved for guests at Inn-On-The-Beach from January 1 through April 30, more than one (1) day before the day of play. Additionally, tee times may not be reserved for guests at Inn-On-The-Beach before 10:00 A.M. from February 1 through March 31. This tee time scheduling rule applies to group bookings and non-group booking guests when reserving tee times at Harbourside. The advance tee time reservation practice for group bookings on Islandside shall not apply to Harbourside. The only exception to the limits on play by Inn-On-The-Beach guests at Harbourside will be to accommodate those guests (group and non-group bookings) when Islandside golf course is closed for required maintenance. In that event, Inn-On-The-Beach guests (group and non-group bookings) will be allowed to play Harbourside pursuant to the same tee time booking rules that apply to the Islandside course.

4. Notwithstanding anything herein to the contrary, the Town

reserves the right in the future, to challenge Key Club's right to have Inn-On-The-Beach guests play Harbourside, if the play as agreed to in Paragraph 3 hereof results in a level of use that violates the member use provisions of Resolution 81-13. In that event, the parties agree to provide notice pursuant to Paragraph 19, and attempt resolution pursuant to Paragraph 13, and if litigation results, neither party is prejudiced by the limited utilization of Harbourside allowed by Paragraph 3 hereof in seeking an interpretation of Resolution 81-13 which that party deems proper.

5. Except for guests at Inn-On-The-Beach Resort Condominium Hotel, no hotel guests at any of the hotel establishments or short-term rental facilities located on or off Longboat Key, will be allowed golfing privileges on either Islandside or Harbourside.

6. Key Club represents, and the Town acknowledges, without prejudice, that the Club Facilities cannot economically operate to full capacity at the present time without opening membership to non-Longboat Key residents pursuant to the provisions of Section 2.3.A.2 of Resolutions 80-21 and 81-13. The parties agree, if in the future circumstances exist to cause the Town to believe that the Club Facilities are economically operating to full capacity, then either party may serve notice contemplated in Paragraph 19 on the other, and attempt resolution pursuant to Paragraph 13 and if litigation results, then Key Club is released from the limitations on Inn-On-The-Beach play on Harbourside as provided in Paragraph 3

hereof, and the parties agree that neither party's right to seek interpretation of Resolution 81-13 and 80-21 relative to the issue of economic capacity/non-resident membership and the issue of Inn-On-The-Beach utilization of Harbourside, is prejudiced by this provision, and the parties may seek an interpretation they deem appropriate.

7. The Town agrees that Key Club may offer memberships to off-Key residents pursuant to Paragraph 6 and allow upgrades of membership of off-Key residents provided that Key Club does not deny any resident of Longboat Key the opportunity to join the Club because of unavailability of annual memberships.

8. The available annual memberships in the Club Facilities shall be made available to new applicants in the following priority:

A. Residents of Longboat Key shall have first priority for available annual memberships. Memberships held by residents of Longboat Key shall comply with the percentage requirements stated in Section 2.3.A.2 of Resolutions 80-21 and 81-13.

B. Off-Key residents shall have second priority for available annual memberships pursuant to Section 2.3.A.2 of Resolutions 80-21 and 81-13..

9. Key Club will make its course use statistics which are kept on a monthly basis, available for semi-annual review by the Town during the months of July and January, under the same conditions as stated in Paragraph 1E.

10. The provisions of Resolutions 80-21 and 81-13, section 2.e.A. do not prohibit Key Club from reviewing credit worthiness of new applicants and rejecting any such applications not meeting Key Club's credit qualifications.

11. The parties agree that the Memorandum of Understanding (MOU) of December 18, 1986 and the Amended Memorandum of Understanding of September 22, 1988 (AMOU) shall be deemed null and void and without any force and effect upon full execution of this Stipulation and entry of Order approving same.

12. In the event any third party shall challenge any provision of this Stipulation, the parties hereto agree to defend the validity of all provisions of this Stipulation. In the event any provisions of this Stipulation is ruled by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall continue in full force and effect.

13. In the event good faith disputes arise between the parties under this Stipulation, the parties agree that, prior to filing any litigation, the parties shall make a good faith effort to hold meetings and resolve such disputes. Upon failure to resolve any dispute, the matter shall be submitted to professional mediation as a condition precedent to the filing of an action in a court of competent jurisdiction for specific performance, injunction, termination of this Stipulation or such other relief that is permitted by law or equity.

14. This Stipulation shall inure to the benefit of, and be

binding upon, Key Club, their respective successors and assigns, and the Town.

15. The parties agree that upon full execution of this Stipulation and entry of the Order approving same, the Counterclaims filed by Key Club in Case No. 90-1996-CA-01 and Case No. 91-5762-CA-01, shall be deemed dismissed, without prejudice, each party to bear its own costs and attorneys' fees.

16. The parties agree that upon full execution of this Stipulation and entry of the Order approving same, the Complaint filed by the Town in Case No. 91-5762-CA-01 shall be deemed dismissed without prejudice, each party to bear its own costs and attorneys' fees.

17. Any item not specifically addressed in this Stipulation shall be conclusively deemed not to have been considered by the parties in this Stipulation, and said item shall be controlled by the terms and provisions of Resolutions 75-27, 76-7, 80-21 and 81-13.

18. Notwithstanding anything to the contrary contained herein, and particularly Paragraph 3, the terms and provisions of this Stipulation shall, in no way, prejudice the rights of the parties to seek interpretation of Resolutions 75-27, 76-7, 80-21 and 81-13. In the event the Town and Key Club differ as to the interpretation of the Resolutions and the Town legally seeks enforcement or interpretation of the Resolutions, Key Club reserves the right to raise all available defenses and counterclaims, including, but not

limited to, constitutional challenges to the resolutions as interpreted, applied and written, and said defenses and counterclaims are in no way prejudiced by the provisions and terms of this Stipulation. Consistent with Paragraph 3, Key Club agrees it will not initiate litigation to invalidate said Resolutions except as otherwise provided in this Paragraph as affirmative defenses or counterclaims.

19. If either party believes the other has violated the terms of this Stipulation, then written notice shall be delivered to that party to allow for cure by that party within thirty (30) days of the date of notice of the alleged violation. If not cured within thirty (30) days, then the parties shall proceed pursuant to Paragraph 13. Notice hereunder may be delivered by hand, or registered mail, return receipt requested to:

As to the Town:

Town Manager
Town of Longboat Key
501 Bay Isles Road
Longboat Key, Florida 342328

As to Key Club:

Shane Eagan or Tom Rasmussen
Shannon Hotel Group
444 Gulf of Mexico Drive
Longboat Key, Florida 34228

Notice contained herein shall be a condition precedent for invoking provisions of Paragraph 13 and bringing any action at law or in equity. Notice is deemed effective on date of receipt.

Names and addresses of notices may be changed by written notice given the other party under the above notice procedures.

20. This Stipulation, upon execution and entry of the Order approving same, shall be recorded in the public records of Sarasota County, Florida.

21. Key Club represents that it does not manage or control The Inn-On-The-Beach Association, Inc.

22. The parties agree that upon full execution of this stipulation and entry of the Order approving same, Key Club shall dismiss, with prejudice, its Complaint, and the Town, A. Hart Wurzburg and Albert Green shall dismiss, with prejudice, their Counterclaims in Case No. 91-1573-Civ-T-17B pending in the United States District Court, Middle District of Florida, Tampa Division.

Dated this 16th day of July, 1992.

SIGNED IN THE PRESENCE OF:



David P. Persson


Donna H. Spencer

TOWN OF LONGBOAT KEY, FLORIDA

By: 
As Mayor James P. Brown

SHANNON HOTEL GROUP, INC., as
general partner of
KEY CLUB ASSOCIATES, LIMITED
PARTNERSHIP

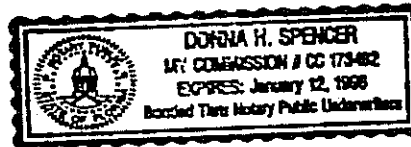
By: 
As President of Shannon
Hotel Group, Inc.
W. SHANE CRAGAN

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 16th day of July, 1992, by James P. Brown, as Mayor of the Town of Longboat Key, Florida, who is personally known to me or ~~who has~~ produced _____ as identification and who did (did not) take an oath.

Donna H. Spencer
Notary Public
501 Bay Isles Road, Longboat Key, FL
Deputy Town Clerk, Town Hall
Print Name: Donna H. Spencer

My Commission Expires:



STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 24th day of July, 1992, by W. Shore Eagan, as President of Shannon Hotel Group, Inc., is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

Mindy DiFrank
Notary Public
Mindy DiFrank
Print Name:

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MAY 18, 1993
BONDED THROUGH HUCKLEBERRY & ASSOCIATES

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

TOWN OF LONGBOAT KEY, FLORIDA,
a municipal corporation,

Plaintiff,

v.

Case No. 90-1996-CA-01
Division D

ARVIDA/JMB PARTNERS, a Florida
general partnership,

Defendant.

_____ /

ANSWER TO SECOND AMENDED COMPLAINT

Intervening defendant, The Inn on the Beach Association, Inc., a Florida corporation not for profit, ("The Inn") hereby answers plaintiff's second amended complaint and states:

1. Without knowledge.
2. Admitted.
3. Without knowledge.
4. Without knowledge.
5. Without knowledge.
6. Without knowledge.
7. Without knowledge.
8. Without knowledge.
9. Without knowledge.
10. Without knowledge.
11. Without knowledge.

12. Denied as an incomplete summary of the Town Commission meeting. Without knowledge as to whether the quotation of the minutes is accurate.

13. Without knowledge.

14. Without knowledge.

15. Without knowledge.

16. Denied.

17. Denied.

18. Without knowledge.

19. Without knowledge.

20. Without knowledge.

21. Without knowledge.

22. Without knowledge.

23. Denied that a new class of unlimited sports members has been created. Without knowledge as to the remaining allegations of paragraph 23.

24. Without knowledge.

25. The Inn reasserts and incorporates herein by referenced its responses to paragraphs 1 through 16 and 18 through 23 of Count I above.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Without knowledge.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

32. The Town of Longboat Key, Florida, a municipal corporation, ("The Town") is estopped from asserting or has waived its right to assert its claim that the current tee time practice is in violation of either the The Town's ordinances or the first amended memorandum of understanding. The Town was aware of, agreed to, and acquiesced to the current tee time practice. The owners of The Inn on the Beach units have relied to their detriment upon The Town's actions.

SECOND AFFIRMATIVE DEFENSE

33. Plaintiff's second amended complaint fails to state a cause of action in that the first amended memorandum of understanding upon which plaintiff relies expressly permits group bookings for golf.

THIRD AFFIRMATIVE DEFENSE

34. Plaintiff's second amended complaint fails to state a cause of action because the first amended memorandum of understanding upon which plaintiff relies is unenforceable because paragraph 16 of the first amended memorandum of understanding allows either party to modify or terminate the memorandum, and in fact the memorandum has been terminated.

FOURTH AFFIRMATIVE DEFENSE

35. Resolution 80-21, as interpreted and applied by plaintiff in its cause of action:

A. Violates defendant's constitutional right of due process of law for failure to give defendant notice that said Resolution prohibits an otherwise lawful private business activity, that being group bookings, a common industry practice under §2.3.A.1, rendering said Resolution unconstitutional and inapplicable as to this defendant;

B. Constitutes a business activity regulation that exceeds the police powers of the plaintiff to regulate business activity and land use, and bears no reasonable relationship to any valid public purpose and as such, renders such Resolution unconstitutional as applied;

C. Constitutes an unlawful taking by land use regulation without compensation because it exceeds public necessity and as such, renders said Resolution unconstitutional as applied;

D. Constitutes an abuse of plaintiff's police powers, in that said Resolution is unrelated to health, safety, welfare and morals of the public, and as such, renders such Resolution unconstitutional, void, invalid or otherwise inapplicable as to this defendant. The group booking of tee times for guests at Inn on the Beach under §2.3.A.1 of Resolution 80-21 does not endanger the health, safety or welfare of the general public. The Town's police power does not authorize such interference in the operation of a privately owned golf club by its owner.

E. Constitutes the taking of private property for the use of other private citizens rather than for use of the public.

36. The MOU as interpreted and applied by plaintiff in its cause of action:

A. Exceeds the plaintiff's legitimate authority and is an unconstitutional attempt to exercise regulatory police power by contract, thus rendering said MOU unconstitutional, invalid, and void;

B. Is unconstitutional for violation of defendant's constitutional right of due process for failure to give defendant notice on its face of prohibition of Key Club's constitutionally protected right to conduct its business, that being advanced scheduling of tee times for group bookings at Inn on the Beach, a common industry practice, and a practice used for group bookings at Inn on the Beach since approximately 1982;

C. Is unconstitutional because it constitutes a private business activity regulation that exceeds the legitimate regulatory police powers of plaintiff because it bears no reasonable relationship to any valid public purpose;

D. Is an unconstitutional and unlawful taking of business and property rights through police power regulation because said memorandum exceeds public necessity;

E. Is an unconstitutional abuse of plaintiff's police powers because said attempted regulation of this commercial business operational activity in this privately owned gold club is unrelated to health, safety, welfare and morals of the general public.

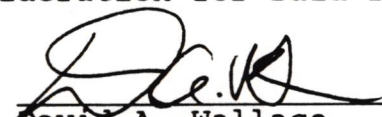
F. Constitutes the taking of private property for the use of other private citizens rather than for use of the public.

FIFTH AFFIRMATIVE DEFENSE

37. The Town's complaint fails to state a cause of action due to laches. The Town did not commence this action within a reasonable time after the current tee time practice was known to the Town.

SIXTH AFFIRMATIVE DEFENSE

38. Resolution 80-21 in §2.3.A. and B provide that the Town will give certain credits to open space requirement of Ordinance 80-1 and 80-9, as a condition precedent to membership restrictions in Resolution 80-21, §2.3.;a., 1-6. The Town alleges that it gave credit to Arvida pursuant to the requirements of Resolution 80-21, §2.3.A. and B. The Town failed and refused to apply the fifty percent credit to the amount of land required under Ordinances 80-1 and 80-9 as evidenced by the Land Donation Agreement dated October 7, 1985, Ordinance No. 85-19, and Resolution 86-1. Said credits were the sole consideration for the restrictions imposed in §2.3.A.1-6, the Town failed to give the credits; therefore, there is a failure of consideration for said restrictions.



David A. Wallace
FB# 0608386
**WILLIAMS, PARKER, HARRISON,
DIETZ & GETZEN**
1550 Ringling Boulevard
Sarasota, Florida 34230
(813) 366-4800
Attorneys for The Inn On The
Beach


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing answer to second amended complaint was sent by first class, U.S. mail this 25 day of February 1991, to:

Jim Syprett, Esq.
Syprett, Meshad, et al.
P.O. Box 1238
Sarasota, Florida 34230

John I. Van Voris, Esq.
Shackleford, Farrior, et al.
501 East Kennedy Boulevard
Tampa, Florida 33601

David Perssons, Esq.
City Attorney
Town of Longboat Key
2033 Main Street
Sarasota, Florida 34236



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

TOWN OF LONGBOAT KEY, FLORIDA,
a municipal corporation,

Plaintiff,

vs.

CASE NO: 90-1996-CA-01

KEY CLUB ASSOCIATES, LIMITED
PARTNERSHIP, a Florida
limited partnership, et al.,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES AND
COUNTERCLAIM TO SECOND AMENDED COMPLAINT**

Defendant, KEY CLUB ASSOCIATES, LIMITED PARTNERSHIP, a Florida limited partnership, by and through its undersigned counsel, answers Plaintiff's Second Amended Complaint as follows:

COUNT I.

1. Without knowledge so deny.
2. Admit.
3. Admit.
4. Admit.

5. Admit the TOWN amended its zoning code to create the GPD district, and adopted Resolution 76-7 approving the initial Outline Development Plan known as "Longboat Key Club" for the GPD district. Deny all other allegations.

6. Resolution 76-7, together with the initial Outline

Development Plan dedicated acreage to private open space which the owner may use only for a golf course and related facilities, which was confirmed to be in perpetuity, i.e., for 99 years by agreement recorded at Official Record Book 1309, Page 1207 of the Public Records of Sarasota County, Florida.

7. Without knowledge so deny.

8. Deny.

9. Admit the Club Facilities were operated as a private membership club, with commercial enterprise use open to the various hotels then located in the TOWN, general public, and to rental condominium units throughout the TOWN. Admit the private memberships included "unlimited golf", "unlimited tennis", and unlimited combination tennis and golf" types. Deny all other allegations.

10. Deny.

11. Admit Resolution 80-21 was adopted by the TOWN on December 3, 1980. Deny all other allegations.

12. Deny.

13. Deny all allegations except admit Arvida Corporation signed the Consent of Developer on Resolution 80-21 on December 8, 1980.

14. Deny all allegations and affirmatively state the guests at Inn On The Beach used the Club Facilities under §2.3.A.1 as the activity permitted and described as "Commercial enterprise not open to the general public."

15. Deny.

16. Admit Arvida began the "group booking" practice (a/k/a Tee Time Practice) of advanced bookings in approximately 1982, which said practice continues to the present time as an operational practice of the Club Facilities necessary in the "commercial enterprise" aspect of the Club's operation. Deny all other allegations.

17. Deny.

18. Admit Arvida continued its Tee Time Practice of advance reservations of tee times for group bookings, limited to the last five tee times in the morning and afternoon on the front and back nine holes until its sale to KEY CLUB closed on or about April 30, 1990. Admit Arvida received the TOWN's letter dated November 30, 1989. Deny all other allegations.

19. Admit.

20. Deny all allegations except admit that KEY CLUB ASSOCIATES assigned its contract rights to KEY CLUB before the closing.

21. Admit the TOWN had a right of first refusal which it did not exercise. Deny all other allegations.

22. Admit.

23. Admit KEY CLUB follows the practice of advanced reservations of tee times for Inn On The Beach group bookings limited, when possible, to the last five morning and afternoon tee

times on the front and back nine holes as an operational practice under the "commercial enterprise not open to the general public" authorized in §2.3.A.1 of Resolution 80-21, which is the practice used by Arvida for years. Deny all other allegations.

24. Without knowledge so deny.

WHEREFORE, Defendant, KEY CLUB, prays this Court will deny the relief requested.

COUNT II.

25. Defendant, KEY CLUB, adopts the answers heretofore given to the paragraphs alleged herein.

26. Deny.

27. Deny.

28. Deny.

29. Without knowledge so deny.

30. Deny.

31. Deny.

WHEREFORE, Defendant, KEY CLUB, prays this Court will deny the relief requested.

32. Defendant, KEY CLUB, denies each and every allegation of the Second Amended Complaint unless specifically admitted herein.

AFFIRMATIVE DEFENSES

33. Resolution 80-21, as interpreted and applied by Plaintiff

in its cause of action:

A. Violates Defendant's constitutional right of due process of law for failure to give Defendant notice that said Resolution prohibits an otherwise lawful private business activity, that being group bookings, a common industry practice under §2.3.A.1, rendering said Resolution unconstitutional and inapplicable as to this Defendant;

B. Constitutes a business activity regulation that exceeds the police powers of the Plaintiff to regulate business activity and land use, and bears no reasonable relationship to any valid public purpose and as such, renders such Resolution unconstitutional as applied;

C. Constitutes an unlawful taking by land use regulation without compensation because it exceeds public necessity and as such, renders said Resolution unconstitutional as applied;

D. Constitutes an abuse of Plaintiff's police powers, in that said Resolution is unrelated to health, safety, welfare and morals of the public, and as such, renders such Resolution unconstitutional, void, invalid or otherwise inapplicable as to this Defendant. The group booking of tee times for guests at Inn On The Beach under §2.3.A.1 of Resolution 80-21 does not endanger the health, safety or welfare of the general public. The TOWN's police power does not authorize such interference in the operation of a privately owned golf club by its owner.

34. The MOU as interpreted and applied by Plaintiff in its cause of action:

A. Exceeds the Plaintiff's legitimate authority and is an unconstitutional attempt to exercise regulatory police power by contract, thus rendering said MOU unconstitutional, invalid, and void;

B. Is unconstitutional for violation of Defendant's constitutional right of due process for failure to give Defendant notice on its face of prohibition of KEY CLUB's constitutionally protected right to conduct its business, that being advanced scheduling of tee times for group bookings at Inn On The Beach, a common industry practice, and a practice used for group bookings at Inn On The Beach since approximately 1982;

C. Is unconstitutional because it constitutes a private business activity regulation that exceeds the legitimate regulatory police powers of Plaintiff because it bears no reasonable relationship to any valid public purpose;

D. Is an unconstitutional and unlawful taking of business and property rights through police power regulation because said Memorandum exceeds public necessity;

E. Is an unconstitutional abuse of Plaintiff's police powers because said attempted regulation of this commercial business operational activity in this privately owned golf club is unrelated to health, safety, welfare and morals of the general

public.

35. Resolution 80-21, was adopted by the TOWN on December 3, 1980. Resolution 80-20, approved the site plan and the condominium documents for Inn On The Beach, as a resort condominium hotel. (Attached Exhibit "A"). The TOWN, upon approving Resolution 80-20, affirmatively provided:

"Unit Owners at Inn On The Beach and their guests, will have the facilities and services of Longboat Key Golf and Tennis Club available for use upon acquisition of appropriate membership, if membership is available, or upon payment of user fees."

Construction of Inn On The Beach was completed in approximately 1982. Thereafter, Arvida, as part of its "commercial enterprise" operation under §2.3.A.1 began the operational practice of advanced scheduling of tee times for group bookings at Inn On The Beach. The TOWN was aware of this practice and by its actions consented to and ratified the practice. On December 18, 1986, the TOWN adopted the first MOU, which contained Paragraphs 5 and 6 in the form alleged in the TOWN's Complaint. The TOWN continued to consent to and ratify the advanced tee time reservations for group bookings at Inn On The Beach. On September 22, 1988, the TOWN adopted the MOU which specifically adopted, consented to and ratified the group booking practice in Paragraph 15 stating:

"Group bookings for golf and tennis for the Inn On The Beach guests will be scheduled for afternoon play whenever possible".

This paragraph clarified Paragraphs 5 and 6 did not apply to the practice of advanced scheduling of tee times for group bookings at Inn On The Beach, which is obviously part of the "commercial enterprise" under §2.3.A.1, since these players pay user fees and have no membership privileges. At the September 22, 1988, Town Commission meeting, Arvida announced its intention to use the last five tee times in the morning and afternoon for the advanced tee time scheduling for group bookings as the method to most effectively comply with the intent and purpose of Paragraph 15 of the MOU. The TOWN did not formally object to the practice and did not demand Arvida stop the practice until November 30, 1989 (Attached Exhibit "B"). KEY CLUB relied upon the consent, approval and ratification by the TOWN of the advanced tee time scheduling practice for group bookings at Inn On The Beach which Arvida had used since approximately 1982.

Based upon the above facts:

A. The TOWN is estopped to challenge said practice under Resolution 80-21, after having consented to, ratified and allowed the practice since Inn On The Beach opened in approximately 1982;

B. The TOWN is estopped to challenge said practice under the MOU, after having specifically approved the practice in Paragraph 15 and consented to it until November, 1989;

C. The TOWN waived its rights to challenge said practice under Resolution 80-21, after having consented to, ratified and

allowed the practice since Inn On The Beach opened in approximately 1982;

D. The TOWN has waived its rights to challenge said practice under the MOU, after having specifically approved the practice in Paragraph 15 and consented to it until November, 1989;

E. The TOWN is guilty of laches in not commencing this action within a reasonable time after said practice was known to the TOWN.

36. Count I. seeks injunctive relief under Section 10.99(c) of the Town Code to enjoin a violation of its ZONING REGULATION. Count I is based in part on Section 6 of the MOU dated September 22, 1988, which is a contract. The relief as sought, to the extent the TOWN relies on the MOU, should be denied because:

A. The MOU is an unconstitutional attempt to regulate land use (business activity) by contract zoning because the TOWN has no authority to enter into a contract with an owner to amend a zoning resolution;

B. Section 6 of the MOU, as interpreted and applied, limits KEY CLUB's constitutionally protected right to engage in "commercial enterprise", and as such, conflicts with §2.3.A.1 and per Paragraph 17, the Resolution would control; and

C. The clear, definite and certain terms of Resolution 80-21 do not prohibit the tee time practice. Section 2.3.A.1 authorizes such "commercial enterprise" use for Inn On The Beach,

a resort hotel. The TOWN must rely on the MOU to amend and restrict §2.3.A.1 of Resolution 80-21 in order to prohibit the group booking practice under its regulatory police power. An ordinance so vague that its precise meaning as applied cannot be ascertained is invalid, even though it may otherwise be constitutional.

37. Paragraph 16 of the MOU provides:

"The provisions of this Agreement shall be reviewed at least annually at the request of either party."

There are no other express provisions in the MOU as to duration. The MOU was adopted September 22, 1988. On March 8, 1990, Arvida requested review of the MOU pursuant to Paragraph 16. (Attached Exhibit "C"). The TOWN, by letter dated April 5, 1990, agreed to the review, then changed its mind on April 12, 1990, and refused to review the MOU. On April 17, 1990, Arvida advised the TOWN it considered the TOWN's actions to be a repudiation and termination of the MOU, and accordingly repudiated and rescinded the MOU. (Attached Exhibit "D"). KEY CLUB closed on its purchase from Arvida April 30, 1990. As of that date the MOU became null and void. If constitutional, the MOU, by its terms, was renewable annually only if neither party requested review. In that event, it did not automatically renew, and would continue only if the parties successfully completed the review by reaching a new agreement. The

MOU of September 22, 1988, is null and void and of no force and effect.

38. Resolution 80-21 in §2.3.A. and B provide that the TOWN will give certain credits to open space requirement of Ordinance 80-1 and 80-9, as a condition precedent to membership restrictions in Resolution 80-21, §2.3.A.,1-6. The TOWN alleges that it gave credit to Arvida pursuant to the requirements of Resolution 80-21, §2.3.A. and B. The TOWN failed and refused to apply the fifty percent credit to the amount of land required under Ordinances 80-1 and 80-9 as evidenced by the Land Donation Agreement dated October 7, 1985, Ordinance No. 85-19, and Resolution 86-1. (Attached Exhibits "E", "F" and "G"). Said credits were the sole consideration for the restrictions imposed in §2.3.A.1-6, the TOWN failed to give the credits; therefore, there is a failure of consideration for said restrictions.

39. KEY CLUB adopts the factual allegations of Paragraph 38. The TOWN failed to comply with the condition precedents of §2.3.A and B of Resolution 80-21, therefore the conditions in §2.3.A.1-6 are invalid, non-binding and unenforceable.

40. Exercise of tee time scheduling rights by the Owner of the Club Facilities do not by definition create a new class of membership with rights equal or superior to existing year-round or seasonal sports memberships, as the TOWN contends. The special advanced tee time reservations for the Women's Golf Association

every Tuesday morning and the Men's Golf Association every Wednesday (all day from December 15 to April 30; half days May 1 to December 14) which excludes all other golf members from those tee times on the Harbourside Golf Course during those times, is the same type operational activity, in that the owner is exercising this operational right to best utilize the Club Facilities. The Men's and Women's Golf Associations special tee time scheduling for last year utilized 8.2% of the total available tee times for year-round members.

COUNTERCLAIM

Defendant/Counter-Plaintiff, KEY CLUB ASSOCIATES, LIMITED PARTNERSHIP, a Florida limited partnership (KEY CLUB), by and

through its undersigned counsel, counterclaims against Plaintiff/Counter-Defendant, TOWN OF LONGBOAT KEY, FLORIDA (TOWN), a municipal corporation, and in support thereof alleges:

1. This is an action for declaratory relief.
2. KEY CLUB is a Florida limited partnership and is the present owner and operator of the golf and tennis facility known as Longboat Key Club (hereinafter "Club Facilities") located within the city limits of the Town of Longboat Key, Florida, having purchased said "Club facilities" on April 30, 1990.
3. The TOWN is a municipal corporation, existing under the laws of the State of Florida, located in both Manatee and Sarasota

County, Florida.

4. The TOWN adopted Resolution 76-7 amending its zoning code to create the GPD zoning district, and approving the outline development plan for Longboat Key Club, GPD project submitted by Arvida Corporation (Key Club's predecessor in title). Said Resolution required that certain portions of the GPD district, as specified in the Plan, be set aside as private, open space in perpetuity. A copy is attached hereto marked Exhibit "H".

5. In 1980, the TOWN adopted Resolution 80-21, amending Resolution 76-7, approving a new Outline Development Plan and agreeing to give certain credits for open space requirements set forth in §2.3.A. & B in exchange for certain restrictions on memberships and "commercial enterprise" activities set forth in §2.3.A.1-6.

6. On December 18, 1986, the TOWN and Arvida entered an agreement entitled Memorandum of Understanding and Agreement for Longboat Key Club (First MOU) (attached Exhibit "I"). Thereafter on September 22, 1988, the TOWN and Arvida entered the First Amended Memorandum of Understanding and Agreement for Longboat Key Club (MOU of 9-28-88) (attached Exhibit "J"). Both documents provided:

"ARVIDA/JMB PARTNERS (hereinafter "Arvida" and the TOWN OF LONGBOAT KEY (hereinafter "The Town") hereby agree to this Amended Memorandum of Understanding and Agreement for Longboat Key Club providing procedures in Order that

Arvida may readily establish and The Town may readily ascertain that Arvida is in full compliance with the membership requirements of Town Resolution No. 80-21 (as respects "Islandside").

The "MOU of 9-22-88" has essentially the same paragraphs one through six, as the "First MOU" entered December 18, 1986. The following paragraphs, among others, were added to the "MOU of 9-22-88":

15. Group bookings for golf and tennis for The Inn On The Beach guests will be scheduled for afternoon play whenever possible.

16. The provisions of this Agreement shall be reviewed at least annually at the request of either party.

17. Any conflict between this Memorandum of Understanding and Agreement and any relevant Ordinance or Resolution of the Town of Longboat Key shall be resolved in favor of the Ordinance or Resolution.

7. The TOWN has interpreted and attempts to apply the "MOU of 9-22-88", to impose regulatory restrictions on KEY CLUB's property rights in the operation of its privately owned "Club facilities", to wit: to prohibit the advance tee time scheduling practice for group booking guests of Inn On The Beach.

8. Resolution 80-21, §2.3.A.1 provides:

"1. The Club facilities shall continue to be operated as private membership clubs and shall not be operated primarily as commercial enterprises open to the general public."

The "commercial enterprise" activity of the Club is limited to the guests that stay at Inn On The Beach. These guests pay user fees to play golf, rent carts, etc. Non-group booking guests are allowed to schedule tee times beginning 2 1/2 days before the day of play. Guests who are part of a "group booking" have tee times reserved at the time the reservation is made at the Inn On The Beach which may be weeks or months before the actual reservation date. This is a customary business practice in the resort hotel industry. This guarantees availability of tee times, not necessarily the exact time. If the availability of golf tee times cannot be guaranteed at the time of the booking, then most, if not all, customers of group bookings will refuse to come and the "Club facility" will lose a substantial percentage of its "commercial enterprise" revenues. If the designated times are not utilized for a "group booking" then the times are available to members beginning three days before date of play and 2 1/2 days before day of play for non-group booking guests at Inn On The Beach.

9. Resolution 80-21 does not limit or restrict owners "commercial enterprise" activities except as provided in §2.3.A.1 which states:

- A. Commercial enterprise shall not be the primary operation;
- B. Commercial enterprise shall not be open to general public.

10. The advanced scheduling of tee times for group bookings

has been standard operating practice for the owners of the "Club facilities" since Inn On The Beach was completed in approximately 1982. The practice did not change after the First MOU. The MOU of 9-22-88, retained Paragraphs 5 and 6, and for clarity added Paragraph 15, referencing the "group booking" practice. On September 22, 1988, during discussion leading to approval of the MOU of 9-22-88, Arvida announced it was changing the practice by limiting the "group bookings" to the last five morning and afternoon tee times, to comply with the spirit and intent of Paragraph 15 of the MOU of 9-22-88. The TOWN did not object to the procedure.

11. On November 30, 1989, the TOWN served notice on Arvida of its interpretation that indiscriminate blocking of ten morning tee times violated Resolution 80-21 and Section 6 of the MOU of 9-22-88; this letter did not serve notice that the TOWN challenged the basic practice of advanced scheduling of tee times for group bookings.

12. The tee time practice in effect in November, 1989, and that is currently utilized, is as follows:

"Tee time reservations are made for group booking guests at Inn On The Beach when the reservation is made. These reservations are limited to the last five tee times on the front and back nine holes in the morning and in the afternoon, when possible. If these times are not booked, then three days before the date of play the times become available to regular club members. Non-group booking

guests at Inn On The Beach cannot schedule tee times until 2 1/2 days before the date of play."

13. Said "commercial enterprise" group booking practice for guests at Inn On The Beach does not violate Resolution 80-21, nor the MOU of 9-22-88 because:

(A) It is not the primary operational activity of the Club facilities as demonstrated by the following data compiled in the calendar year of 1990:

i) the percent of total available tee times on Islandside Golf Course used by the group booking guests from Inn On The Beach was approximately 6.5%;

ii) the percent of total available tee times for members (includes Harbourside and Islandside) used by the group booking guests from Inn On The Beach was approximately 2.6%.

(B) is not open to the general public (as the Club facilities were before 1980).

14. The tee time practice for group bookings does not create a class of unlimited sports memberships with rights equal or superior to existing members. Said group booking guests pay green fees, do not get club member discounts, may play only while the group is at Inn On The Beach, do not get to select their tee times; do not have the right to select their tee times, and do not have

any of the privileges of membership. The scheduling of tee times for group bookings is a right exercised by the owner of the "Club facilities" as part of the "commercial enterprise".

15. Resolution 80-20, approving the site plan and condominium documents for Inn On The Beach, as a resort condominium hotel, specifically provided the Longboat Key Golf and Tennis Club facilities were available for use for the resort hotel operation, upon payment of user fees by the guests. The TOWN's interpretation and application of the MOU of September 22, 1988 and Resolution 80-21 (adopted at the same meeting as Resolution 80-20), violates the constitutionally protected business and property rights of KEY CLUB as owner of the Club facilities, as protected and provided for in Resolution 80-20 and 80-21.

COUNT I.

(DECLARATORY JUDGMENT)

16. This is an action for Declaratory Judgment pursuant to Chapter 86, of Florida Statutes.

17. KEY CLUB realleges and readopts Paragraphs 1 through 15 hereof.

18. There is a bona fide, actual, present practical need for the declaration relating to the validity and constitutionality, if any, of the MOU of 9-22-88, and validity and constitutionality of Resolution 80-21, as interpreted and applied by the TOWN, because:

A. As interpreted and applied by the TOWN, the MOU of 9-

22-88 is an attempt to impose business and land use regulations under its police powers by contract which is ultra vires;

B. As interpreted and applied, the TOWN uses the MOU of 9-22-88 and Resolution 80-21 to prevent the long-standing practice of "group bookings" at the Club facilities owned by KEY CLUB, a customary practice which violates the clear, plain, and concise language of the MOU of 9-22-88, and adds words and prohibitions not clearly stated in Resolution 80-21;

C. As interpreted and applied by the TOWN, the MOU imposes restrictions and regulations that exceed the regulations adopted in Resolution 80-21;

D. As interpreted and applied by the TOWN, the MOU conflicts with Resolution 80-21 and said conflict shall be resolved in favor of the Resolution;

E. As interpreted and applied, the MOU of 9-22-88 and Resolution 80-21, are liberally interpreted by the TOWN to take away constitutionally protected rights, rather than strictly interpreted to protect those rights;

F. As written, the MOU is an unconstitutional attempt to regulate business and land use by contract which is ultra vires and for which the TOWN has no authority.

19. On March 8, 1990, Arvida requested the TOWN review the MOU of 9-22-88, pursuant to the provisions of Paragraph 16. The TOWN refused. Arvida notified the TOWN on April 17, 1990, that it

considered the TOWN's refusal a repudiation of the MOU of 9-22-88, and declared the MOU of 9-22-88 null and void. Paragraph 16 is the only durational paragraph in the document establishing it to be renewable automatically annually unless a review is sought by either party.

20. KEY CLUB has constitutionally protected property rights which the TOWN is attempting to violate with the MOU of 9-22-88, and its interpretation of Resolution 80-21.

21. The TOWN has a position, that is an actual, present, adverse and antagonistic position to KEY CLUB as owner and operator of the Club facilities. Namely, the attempt by the TOWN to exercise control over the owner's operation of the Club facilities under the provisions of the MOU of 9-22-88; and by its expansive interpretation of the membership provision of § 2.3.A.6 of Resolution 80-21 to regulate owner's commercial enterprise operation, without alleging any unreasonable interference with members access to use of Club facilities (i.e., some need to protect the health, safety or welfare of the public).

22. The antagonistic and adverse interests are all before the Court by proper process by virtue of the TOWN's institution and prosecution of its action seeking injunctive relief relating in part to Paragraph 6 of the MOU of 9-22-88 and §2.3.A.6 of Resolution 80-21, and their application, if any, to management and operation of the Club Facilities by KEY CLUB as owners.

23. Based upon the facts, as alleged, the Court should determine the MOU of 9-22-88, to be invalid, null, void, and/or unconstitutional for the following reasons:

A. The MOU is an unconstitutional attempt by the TOWN to impose police power regulation by private contract on KEY CLUB's constitutionally protected business and property rights. Thus, the MOU of 9-22-88 is ultra vires;

B. As interpreted and applied the MOU of 9-22-88 exceeds the Plaintiff's legitimate authority and is an unconstitutional attempt to exercise regulatory police power by contract, and is unconstitutional, invalid, and void, and ultra vires;

C. As interpreted and applied the MOU violates KEY CLUB's constitutional right of due process for failure to give notice to KEY CLUB by clear, plain language of the alleged prohibited commercial enterprise operational practice;

D. As interpreted and applied the MOU of 9-22-88 exceeds the TOWN's police powers because it bears no reasonable relationship to any valid public purpose, and exceeds the public necessity;

E. As interpreted and applied the MOU of 9-22-88 attempts to regulate constitutionally guaranteed business and property rights when this operational activity does not threaten public health, safety, welfare or morals;

F. The duration of the MOU was for one year,

automatically renewable annually, unless either party requested review. Arvida requested review, the TOWN rejected the request, thus repudiating the MOU, and Arvida gave notice of rescission;

G. The interpretation and application of the MOU is contrary to Resolution 80-21, exceeds the regulation imposed by 80-21, and is contrary to the plain language of Paragraph 15, 17 and the purpose statement of the opening paragraph.

WHEREFORE, KEY CLUB prays:

A. that this Court assert jurisdiction over the parties and the subject matter;

B. that this Court enter a declaratory judgment declaring the MOU of September 22, 1988, be unconstitutional, invalid, void and/or ultra vires as written;

C. that this Court enter a declaratory judgment declaring the MOU of September 22, 1988, be unconstitutional, invalid, void and/or ultra vires as applied;

D. that this Court grant such other relief as this Court deems proper and just.

COUNT II.

24. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes.

25. KEY CLUB realleges Paragraphs 1 through 15, and 18 through 22 hereof.

26. The TOWN has attempted and attempts to apply Resolution 80-21, such as to enjoin or otherwise prohibit the long-standing practice of advance tee time schedules for group bookings of Inn on the Beach guests. Such attempts to prohibit or otherwise restrict such booking practice under the guise of enforcement and application of Resolution 80-21 as interpreted by the TOWN is an expansive, not restrictive interpretation, that unreasonably and unconstitutionally restricts the property rights and business rights of Key Club Associates, as private owner and operator of the Club Facilities.

27. Based on the facts as alleged, the court should determine that the interpretation and application of Resolution 80-21, as advanced by the TOWN, as it pertains to group bookings for guests of Inn on the Beach, should be declared invalid, null, void, and unconstitutional for the following reasons:

A. It violates Defendant's constitutional right of due process of law for failure to give Defendant notice that said Resolution prohibits an otherwise lawful private business activity, that being group bookings, a common industry practice under §2.3.A.1, rendering said Resolution unconstitutional and inapplicable as to this Defendant;

B. It constitutes a business activity regulation that exceeds the police powers of the Plaintiff to regulate business activity and land use, and bears no reasonable relationship to any

valid public purpose and as such, renders such Resolution unconstitutional as applied;

C. It constitutes an unlawful taking of KEY CLUB's business and operational rights by land use regulation without compensation because it exceeds public necessity and as such, renders said Resolution unconstitutional as applied;

D. It constitutes an abuse of Plaintiff's police powers, in that said Resolution is unrelated to health, safety, welfare and morals of the public, and as such, renders such Resolution unconstitutional, void, invalid or otherwise inapplicable as to this Defendant. The group booking of tee times for guests at Inn On The Beach under §2.3.A.1 of Resolution 80-21 does not endanger the health, safety or welfare of the general public. The TOWN's police power does not authorize such interference in the operation of a privately owned golf club by its owner.

WHEREFORE, KEY CLUB prays:

A. That this Court assert jurisdiction over the parties and the subject matter.

B. That the Court enter a declaratory judgment declaring that Resolution 80-21 does not grant the TOWN the authority, directly or indirectly, to control or otherwise regulate the private commercial enterprise activities or day-to-day operations of the Club Facilities now owned and operated by KEY CLUB;

C. That this Court enter a declaratory judgment declaring that the "group booking" practice is an operational activity and procedure which is part of the commercial enterprise;

D. That this Court enter a declaratory judgment that the "group booking" practice does not violate Resolution 80-21;

E. That this Court enter a declaratory judgment that the membership provisions do not apply to the "comercial enterprise" operation;

F. That this court grant such other relief as this court deems proper and just.

COUNT III.

(DECLARATORY JUDGMENT)

RE: RESOLUTION

28. This is an action for declaratory judgment pursuant to Chapter 86, F.S.

29. KEY CLUB realleges paragraphs 1 through 15.

30. Resolution 80-21, Section 2.3.A provides as follows:

"That upon adoption of Ordinance 80-9, amending Ordinance 80-1, as set forth in Paragraph B below, and application of a fifty percent (50%) credit thereunder to the Longboat Key Club GPD district, the golf and tennis properties and facilities, hereinafter referred to as 'Club Facilities', shall be restricted as follows:"

31. The TOWN has failed or refused to apply the 50% credit in the amount of land required under Ordinance 80-1 and Ordinance 80-9, as evidenced by the Land Donation Agreement dated October 7,

1985, Ordinance 85-19 and Resolution 86-1. (See Exhibits E, F and G.) As noted above, said Resolution specifically provided that the restrictions imposed in Section 2.3.A.1-6, are applicable only upon application of a 50% credit to the Longboat Key Club GPD district.

32. The TOWN now attempts to utilize and enforce the restrictions enumerated in Section 2.3.A.1-6 of Resolution 80-21 in an attempt to prohibit or otherwise restrict group bookings practice for Inn on the Beach guests.

33. There is a bona fide, actual, present and practical need for the declaration relating to the enforceability and validity of the restrictions set for the in Section 2.3.A.1-6 of Resolution 80-21, as follows:

A. The TOWN has failed and refused to apply the 50% credit to the amount of land required under Ordinance 80-1 and Ordinance 80-9, as evidenced by the Land Donation Agreement dated October 7, 1985, Ordinance 85-19 and Resolution 86-1.

B. KEY CLUB contends that application of the 50% credit as aforementioned, As a condition precedent to application of said restrictions, has not occurred and as such KEY CLUB is not bound by the restrictions as set forth in Resolution 80-21, Sec. 2.3.A.1-6, as it pertains to the Club Facilities.

C. KEY CLUB contends failure of the TOWN to give the 50% credit constitutes a failure of the consideration which Resolution 80-21 called for as a condition precedent to the

restrictions in Section 2.3.A.1-6.

34. There is a present ascertained or ascertainable state of facts or present controversy as to the state of facts as follows:

A. By virtue of the notice dated November 30, 1989, as aforementioned and the written notice to KEY CLUB dated March 23, 1990, and instituting an action for injunction, the TOWN is attempting to enforce the restrictions set forth in Resolution 80-21, Section 2.3.A.1-6.

B. The TOWN has failed to comply or satisfy the conditions precedent under Resolution 80-21 as set forth in Section 2.3.A and B of said resolution.

C. The TOWN failed to give the consideration to owner required by Section 2.3.A and B.

35. KEY CLUB, as owner of the CLUB FACILITIES, has a privilege or right that is dependent upon the facts and the law applicable to the facts, namely, the right to own, operate and manage the Club Facilities without unreasonable or impermissible interference from the TOWN, or applications of the restrictions in Sections 2.3.A.1-6.

36. The TOWN has taken an actual, present, adverse or antagonistic interest in the subject matter, either in law or in facts; namely, the TOWN is attempting to enforce restrictions enumerated in Section 2.3.A.1-6, Resolution 80-21, as it applies and pertains to the Club Facilities owned and operated by KEY CLUB.

37. The antagonistic and adverse interests are all before the court by proper process by virtue of the TOWN'S institution and prosecution of its claim which is injunctive relief relating, in part, to enforcement of the restrictions enumerated in Resolution 80-21 as aforementioned.

38. Based on the facts as alleged, the court should determine that the restrictions enumerated in Resolution 80-21, Section 2.3.A.1-6, are invalid, inapplicable or otherwise enforceable for failure of the TOWN to satisfy all conditions precedent, enumerated and required under operation of Resolution 80-21.

WHEREFORE, KEY CLUB prays:

A. That this court assert jurisdiction over the parties and the subject matter;

B. That this court enter a declaratory decree, declaring that the restriction set forth in Resolution 80-21, Section 2.3.A.1-6 are inapplicable and unenforceable to the Club facilities for failure of the TOWN to satisfy all conditions precedent as set forth in Resolution 80-21;

C. That this court enter a declaratory decree, declaring the restrictions in Section 2.3.A.1-6 of Resolution 80-21 unenforceable by the TOWN for failure of the TOWN to give the consideration required in Section 2.3.A and B.

D. That this court grant such other relief as this court deems proper and just.