**IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI**

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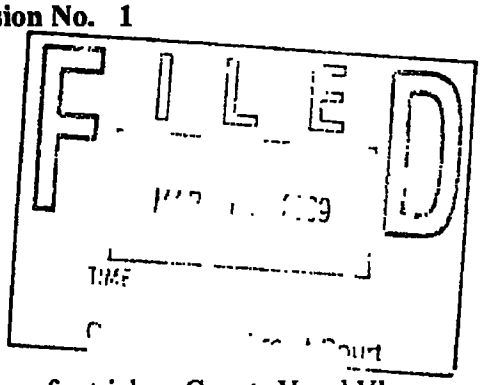
| **STALEY FARMS HOMEOWNER'S ASSOCIATION, et al.,** | ) | |
| **Plaintiffs,** | ) | **Case No. 08CY-CV06641** |
| **v.** | ) | **Division No. 1** |
| **PREMIER GOLF MISSOURI, LLC,** | ) | |
| **Defendant.** | ) | |




**JUDGMENT**

**Procedural History**

On the 23rd day of January, 2009, this cause came on for trial on Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims, including Defendant's request for permanent injunction. At trial, the parties agreed to submit the cause upon the record and evidence adduced at the hearing on Defendant's request for preliminary injunction, held October 30, 2008, as well as various other documents offered and admitted into evidence without objection on January 23rd. No additional testimony was offered. The parties otherwise agreed to stand on arguments made at the time of the hearing on the motion for preliminary injunction, and briefing filed in connection therewith. Having fully considered the evidence, arguments and briefing, and for reasons set forth more fully below, the Court now enters judgment in favor of Plaintiffs on Count V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims.

**Background**

This litigation involves three parties. Staley Farms Homeowner's Association (hereafter "Staley Farms HOA") is the original plaintiff. The Staley Farms HOA is a Missouri non-profit corporation, and is organized for the benefit of residents of a subdivision in Clay County generally referred to as Staley Farms. Defendant Premier Golf Missouri, LLC, is a Missouri limited liability corporation which owns and operates a private golf course and clubhouse adjacent to the Staley Farms subdivision. Premier Golf also operates and maintains a facility now known as the Sports and Rec Club which is located inside the Staley Farms subdivision. Also known as the Health and Fitness Club, this facility was named the Residents' Club when first constructed and will be referred to as such throughout the remainder of this Judgment because that is the name to which it is referred in the various documents signed by the parties to the lawsuit. Finally, Staley Land Company, LLC (hereafter "Developer"), was joined as a plaintiff at Defendant's request. It is the current developer of the Staley Farms subdivision.

The original Declaration of Covenants, Conditions, Restrictions, Easements and Disclosures for Staley Farms (exhibit 5) governing the Staley Farms subdivision were signed on October 8, 2001, by Steven Robl for Developer Intel Staley Farms and subsequently recorded in Clay County on November 5, 2001. Although it was defined and repeatedly referred to in the original CC&Rs, the Staley Farms HOA did not come into being until a little over a year later, on December 9, 2002, with the recording of the Supplementary Declaration and First Amendment to Declaration of Covenants, Conditions, Restrictions, Easements and Disclosures for Staley Farms (exhibit 25). This was signed by Gary Barnett for Developer Intell Staley Farms and contains the Staley

Farms Homeowners' Declaration as exhibit C. Both the original CC&Rs and the First Amended CC&Rs grant the Developer and/or the Staley Farms HOA the power to amend, modify, or terminate the provisions of either document (exhibit 5, section 21(a) and exhibit 25, exhibit C, sections 2.02, 9.01 and 9.02).

On March 1, 2005, Intel Staley Farms became Double 'O' Development, a company controlled by Defendant's owner, Marty Ostronic (Preliminary Injunction Hearing Transcript "Tr." Page 106). That same day Double 'O' Development sold the Staley Farms subdivision to Staley Land Company (id). Both Mark Simpson and Saul Ellis signed the Real Estate Sale Contract on behalf of Staley Land Company, while Marty Ostronic and Gary Barnett signed on behalf of Double 'O' Development. (Exhibit 30). Pursuant to the Real Estate Sale Contract (Exhibit 30, section 17(f)), the Developer and Premier Golf entered into a Golf Course Development Agreement (hereafter GCDA) on March 2, 2005 (Exhibit 4). Once again, Mark Simpson and Saul Ellis signed this agreement on behalf of Staley Land Company, and Marty Ostronic signed on behalf of Premier Golf.

On May 1, 2005, Plaintiff Developer and Defendant entered into a lease regarding the Residents' Club, with Plaintiff Developer being the landlord and Defendant Premier Golf being the tenant. (Exhibit 27). This lease was mandated by Section 4A of the GCDA and, as with the Real Estate Sale Contract and the GCDA, was signed by Mark Simpson on behalf of Plaintiff Developer and by Marty Ostronic on behalf of Defendant Premier Golf. On May 20, 2005, Plaintiff Developer filed a document entitled "Amendment to Amended and Restated Staley Farms Homeowners' Association Declaration" in Clay County. (Exhibit 28) Whether or not this document satisfies the requirements of the

GCDA is at least part of the subject of contention in the above-described lawsuit and as such will be discussed more fully below. However, the document does contain provisions concerning the lease signed by the parties and grants certain powers to Defendant Premier Golf concerning Social Member dues. (Exhibit 28, sections 2.01A and 2.03A, respectively)

As described in the lease (Exhibit 27, section 1.4), Plaintiff Developer conveyed title to the Residents' Club to Plaintiff Staley Farms HOA in May 2005, thereby making the HOA the new landlord for the property. (Tr. 155) In December 2006, Defendant Premier Golf raised the Social Member dues from $600.00 per year to $650.00 per year. (Tr. 68) In January 2007, Defendant began extensive renovations to the Residents' Club, completing them in April of that year. (Tr. 68-69) The relationship between the Staley Farms HOA and Defendant, however, had already begun to sour, with lawsuits filed between the parties in February and April of 2007. (Case numbers 07CY-CV01502 and 07CY-CV04453, respectively)

In May, 2007, Staley Farms residents began circulating a petition throughout the development, complaining about new rules implemented by Defendant regarding the Residents' Club and seeking a greater voice in future decisions concerning it. (Tr. 129-134, 137-139). Eventually, well over one hundred residents signed the petition. (Exhibit 31) Although Defendant did meet with them, the residents felt their concerns went largely unanswered and turned to the Staley Farms HOA for help. (Tr. 140-41) In March 2008, Defendant raised the Social Member dues to $900 per year. (Tr. 70) On July 10, 2008, Plaintiff Staley Farms HOA filed the above-styled lawsuit. In response to an increasing amount of complaints by homeowners regarding the Residents' Club, Plaintiff Staley

Farms HOA met in the fall of 2008 and amended the HOA Declaration in the CC&Rs, rescinding some of Defendant's authority with respect to Social Member dues as described in the May 20, 2005, amendment. (Exhibit 29, filed September 24, 2008, and entitled "Amendment No. 3 to Amended and Restated Staley Farms Homeowners' Association Declaration", section 2.02A)

In response, Defendant filed his First Amended Answer, Affirmative Defenses and Counterclaims on October 14, 2008. Seeking injunctive relief with regard to the above amendment, Defendant added the new counts V and VI to his previously filed Answer, which are the subject of this Judgment. Specifically, in Count V of his Counterclaim, Defendant seeks a permanent injunction regarding the following:

> 1. Enjoining Plaintiff Staley Land Company from voting to amend the Staley Farms Homeowners' Association Declaration inconsistent with the provisions of the Golf Course Development Agreement;
>
> 2. Enjoining Plaintiff Staley Farms Homeowners' Association from interfering with the payment of social or golfing member dues to Defendant;
>
> 3. Enjoining any legal effect of the amendment filed under instruments numbered 2008033253 in Book 6048 page 188 and 9124108 in Book 6048 page 188;
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> 4. Enforcing Section 4B of the Golf Course Agreement by ordering Plaintiff Staley Land Company to record an appropriate amendment to the CC&Rs to implement the social dues requirement of the Golf Course Development Agreement; and
>
> 5. Canceling the amendment described in number 3 above.

In Count VI of his Counterclaim, Defendant seeks an order

> 1. Stopping Plaintiff Staley Land Company from voting to amend the Staley Farms Homeowners' Association Declaration such that they are inconsistent or contradictory to Section 4B of the Golf Course Development Agreement;

2. Ordering Plaintiff Staley Land Company to record an appropriate amendment to the CC&Rs to implement the social dues requirement of the Golf Course Development Agreement; and

3. Canceling the amendment referenced above.

Since the relief requested in each count is similar, they will be jointly addressed below.

**Findings of Fact and Conclusions of Law**

"An injunction is an extraordinary and harsh remedy and should not be employed where there is an adequate remedy at law. In order to show entitlement to injunctive relief, the petition must affirmatively show on its face by the facts pleaded that 1) the plaintiff has no adequate and complete remedy at law, and 2) irreparable harm will be done if the status quo is not maintained." *Walker v. Hanke*, 922 S.W.2d 925, 933 (Mo. App. W.D. 1999, citing *Harris v. Union Electric Co.*, 766 S.W.2d 80, 83 (Mo. banc. 1989)). Furthermore, permanent injunctions "should be granted sparingly in clear cases only." *Metmor Financial, Inc. v. Landoll Corp.*, 976 S.W.2d 454, 463 (Mo.App.W.D.1998). As opposed to a temporary restraining order or preliminary injunction, a permanent injunction is a final disposition on the merits of the case. *Id.* Thus, a "permanent injunction will not issue where the party seeking relief . . . is not legally entitled to the relief sought." *Id.* For the reasons discussed below, the Court finds that not only has Defendant failed to meet either of the elements required for injunctive relief, but that neither of the Plaintiffs violated the Golf Course Development Agreement with respect to either failing to file a required amendment to the Staley Farms CC&Rs or by the passage and filing of the amendment to the Staley Farms HOA Declaration dated September 24, 2008.

To begin with, injunctive relief should not be granted in this situation because an adequate and complete remedy at law does exist. The remedy lies within the language of section 4A of the Golf Course Development Agreement, which reads in part

> Golf Course Owner shall be responsible to operate and maintain the Residents' Club *subject to Developer's obligation to fund any shortfall between the social member dues of homeowners and the maintenance and operating costs of the Residents' Club.* (emphasis added)

This provision appears to make Developer obligated to make up whatever difference there might be between amount of social member dues and Defendant's cost of operating and maintaining the Resident's Club. Therefore, no matter what action is taken by the Staley Farms HOA with regard to the amount each resident pays in social member dues, section 4A states where Defendant is turn for relief: the Developer. If Defendant is not satisfied with Developer's response, he can pursue an action against Developer for the lost revenue. This provision makes it unnecessary to grant the second, third, fourth and fifth requests for relief by Defendant in his Count V and all of the relief requested his Count VI. Furthermore, Defendant not only *may* pursue this course, he *is* doing exactly that in Count IV of his First Amended Answer, Affirmative Defenses and Counterclaims. Thus, not only is there an adequate remedy at law, but Defendant is already actively pursuing it in this case, making the requested injunctive relief inappropriate.

Next, even though failure to satisfy the first element means Defendant's claim for injunctive relief must fail, the Court will address the second element and Defendant's failure to meet that requirement as well. In his Counts V and VI, as well as during the preliminary injunction hearing, Defendant has claimed that actions taken by both Plaintiffs have caused and are causing irreparable harm to Defendant in two ways:

directly, through lost revenue, and indirectly, by damaging Defendant's relationship with Staley Farms residents. As indicated above, whatever the direct financial harm may be, it is not "irreparable" in that a precise figure can be ascertained and Defendant has a definite course through which to seek it. With regard to Defendant's second allegation, that the Plaintiffs are causing "irreparable" harm to his relationship with the Staley Farms residents, the Court finds that the overwhelming evidence simply does not support such a claim. To the contrary, it is apparent to the Court that, based on the testimony of two Staley Farms residents, in addition to the petition signed by 121 other residents (exhibit 31), any damage to the relationship between Defendant and the residents is due largely to actions taken by Defendant.

The evidence before the Court indicates that Defendant, not either of the Plaintiffs, began poisoning the relationship with Staley Farms homeowners years before this lawsuit was filed as a result of two decisions made by Defendant. The first was Defendant's apparently unilateral decision to make vast "improvements" to the Residents' Club. While this massively expensive project may have increased amenities available to the homeowners, it also dramatically changed the structure itself, for example by eliminating areas frequently used by the homeowners for social gatherings. Defendant also unilaterally enacted new, more restrictive rules regulating areas such as the swimming pool which severely limited the ability of homeowners with small children to make use of those facilities. Apparently these actions were taken without consulting anyone in the community, without so much as a survey let alone a vote, and understandably lead to great deal of frustration on the part of the homeowners. This frustration turned to anger when the homeowners found out, through increased fees, that

not only did they have no input into what was happening to the Residents' Club, they now had to pay for "improvements" to it for which they were not consulted and did not desire.

Compounding this undercurrent of residential frustration and anger is a second, ongoing, decision made by Defendant: his expansive definition of the term "social member" as it relates to the above facility. That each of the Plaintiffs and Defendant have dramatically different views of the Residents' Club's purpose and who should be a "social member" of it was readily apparent to the Court during the course of the preliminary injunction hearing on this matter. Plaintiffs, on the one hand, see the Residents' Club as being exclusively for the use and enjoyment of the Staley Farms residents and their families. Defendant, on the other hand, believes the Residents' Club must be considered a part of the golf course as a whole, a for-profit enterprise with the cash flow generated by it being vital to the support of the golf course and its clubhouse. It follows, therefore, that Defendant sees the term "social member" as merely (and mandatorily) *including* Staley Farms residents, not limited to them. For Defendant, the term "social member" means all residents *plus* anyone else willing to pay the membership fee. This vision essentially transforms the Residents' Club into an upscale community center, and the GCDA may be just vague enough to allow that interpretation. Whether it does or not, however, is not a question before the Court.

What is pertinent, though, is the negative impact Defendant's interpretation of term "social member" has on his relationship with the Staley Farms residents. Clearly, none of them are informed, upon purchasing a home in the exclusive Staley Farms subdivision, that they are required to join the local upscale community center. Instead,

they believe they are joining something as exclusive as the subdivision itself. Based on the large amount of money they paid for their home, and the money they continue to pay through various dues and fees, that belief is quite understandable. When they find out otherwise, their visceral reaction toward Defendant is equally understandable.

According to the residents' testimony during the preliminary injunction hearing, efforts early on by many homeowners to have some level of meaningful input with regard to these and other decisions regarding the Residents' Club were met, at best, largely with indifference and inaction from Defendant. Even worse, from the standpoint of Defendant's relationship with the residents, Defendant appears to have threatened many homeowners, caught in the middle of his various disputes with Plaintiffs, with either the public humiliation of having their names posted on some sort of delinquency list in the Residents' Club for failure to pay social member dues as set by him, or with outright expulsion from the Residents' Club. Setting aside for a moment the lack of wisdom in threatening so many members of his customer base, and the debatable point of whether or not Defendant even has the authority to act on either of those threats, at an absolute minimum Defendant's threats only serve to increase residential resentment towards him.

Failing to receive a satisfactory response from Defendant regarding their concerns about the Residents' Club, the Staley Farms residents turned to the Developer and to their home owners association for help. This, in turn, ultimately led to Amendment No. 3 to the HOA Declaration as described above. Based on the evidence before the Court, there seems to a continuing theme in Defendant's relationship with the Staley Farms residents: Defendant simply does not see himself for what he is with regard to the Residents' Club: a *tenant*. He is not the owner, yet his behavior towards the residents clearly indicates that

he does not understand that they are the landlords of the property, not him. So contrary to what Defendant asserts, the Court finds that Plaintiffs have not created animosity on the part of the homeowners toward Defendant, they have merely responded to animosity created by Defendant. Whether or not this animosity is "irreparable" is up to Defendant.

Finally, in his request for injunctive relief, Defendant makes two claims that should be specifically addressed by the Court: 1) Developer failed to file an "appropriate" amendment to the CC&Rs implementing Section 4B of the GCDA, as required by section 5A of the GCDA, and 2) that both Developer and Staley Farms HOA violated the GCDA (specifically, section 4B) when the HOA Declaration was amended on September 24, 2008. A closer look, however, at both of the above GCDA sections, as well as section 4A of the GCDA, the two earlier amendments to the CC&Rs, and the Residents' Club lease reveals this simply is not the case.

To start off with, since it was incorporated as section C of the First Amendment to the CC&Rs on December 9, 2002, the Staley Farms Home Owners' Declaration is a part of the CC&Rs, therefore any amendment to the former is by necessity an amendment to the latter. Moving on to the GCDA, sections 4A and 4B together comprise a portion of the agreement entitled "Facilities Sharing." Although the heart of the dispute revolves around section 4B of the GCDA, one should first look to section 4A in order to view 4B in its proper context. Section 4A reads as follows:

> The homes association and Developer will lease to the Golf Course Owner the existing Residents' Clubhouse and surrounding common area (the "Residents' Club") for the joint benefit and use of golf members and homeowners within the Residential Community for a term of 99 years. Nominal rent of $1.00 per year will be charged, but Golf Course Owner shall be responsible for all insurance, taxes and maintenance. Developer and Golf Course Owner shall diligently prepare and execute said 99-year lease as soon as possible but in any event not later than sixty (60) days after the date hereof. Golf Course Owner shall be responsible to operate and maintain the Residents' Club

subject to Developer's obligation to fund any shortfall between the social member dues of homeowners and the maintenance and operating costs of the Residents' Club. Developer shall not transfer the Residents' Club without Golf Course Owner's prior written consent. Developer shall use its best efforts to cause the CC and R's (hereafter defined) to be amended to conform with this paragraph and provide Golf Course Owner with evidence thereof with sixty (60) days of the date hereof.

Section 4B, in turn, reads as follows:

All homeowners in the Residential Community will be social members of the Golf Course and will pay $600.00 per year to Golf Course Owner for such status (to be adjusted to increase to be comparable with social members dues at clubs with comparable amenities and benefits). All income from rental of the facilities at the Resident's Club shall be applied against the operating costs of the Resident's Club. For Purposes of this Agreement, a social member is a member who has access to and use of the Resident's Club facilities and social and dining privileges at the clubhouse, but not use of or privileges for the Golf Course or golfing facilities.

Section 4A deals with the lease of the Residents' Club and its surrounding property by Plaintiffs to Defendant. It provides for a term of the lease (99 years), the amount of rent ($1.00 per year), when the lease itself must be executed (within 60 days), and outlines some basic responsibilities of the parties. It also discusses an amendment to the CC&Rs: "Developer shall use its best efforts to cause the CC and R's (hereafter defined) to be amended *to conform with this paragraph* and provide Golf Course Owner with evidence thereof with sixty (60) days of the date hereof." (emphasis added)

By contrast, Section 4B, deals with membership issues. It implements a mandatory membership (all homeowners will be social members), a minimum dues fee ($600) and to whom this money will be paid (Golf Course Owner). However, it does not say *how* the money will be paid (directly or through another entity such as the HOA) or *when* it will be paid (monthly, quarterly, semiannually or annually) It also does not say *when or how* theses dues are to be increased, or even who gets to decide, only that any

such increase must be "comparable with social members dues at clubs with comparable amenities and benefits." Finally, this section makes no mention whatsoever of an amendment to the CC&Rs.

Next, section 5 of the GCDA should be examined. Section 5 is entitled "DEVELOPMENT ISSUES". It has two subsections: "A", which is entitled "Covenants, Conditions, and Restrictions", and "B", which is entitled "Infrastructure Construction." For purposes of this action, only subsection "A" is pertinent. It reads as follows:

> Developer will prepare an amendment to the covenants, conditions, and restrictions ("CC&Rs") which affect all property within the Residential Community, subject to the reasonable approval of Golf Course Owner with respect to items related to the Golf Course.

Amazingly, GCDA Section 5A appears to mandate an amendment to the CC&Rs but doesn't refer to *anything* – apparently *any* amendment by Developer satisfies this section. Perhaps another way to view this section is that it merely states who gets to make amendments to the CC&Rs (i.e. Developer), but that any amendment with respect to items related to the golf course is subject to the reasonable approval of the Golf Course Owner (Defendant). In any event, it certainly does not *require* Developer to amend the CC&Rs in conformity with section 4B.

As noted above, the Residents' Club lease was signed by Developer and Defendant on May 1, 2005. The lease specifies both the term of the lease and the annual rental fee, as well as responsibility for taxes, maintenance and insurance, all as described in section 4A of the GCDA. In this lease, Defendant, as Tenant, agreed to "comply with Article II-A of the [Staley Farms HOA] Declaration." (Exhibit 27, section 3.1)

Later that month, on May 20, 2005, Developer recorded an amendment to the Staley Farms HOA (and, by extension, the CC&Rs), implementing major portions of the

GCDA in a section entitled "Article II-A. Golf Club Membership." (Exhibit 28) In particular, section 2.01 outlines the basic terms of the Residents' Club lease – the term and annual rental fee – as previously described in both section 4A of the GCDA and section 3.1 of the lease. Thus, by the end of May 2005, Developer had satisfied both commitments made in section 4A in that both the lease and the CC&Rs amendment were completed in well under sixty days.

Developer, however, went a step farther, and included in this amendment to the HOA Declaration many of the provisions of section 4B of the GCDA. Specifically, Article II-A, section 2.02, mandates that each homeowner sign a social membership agreement with the Golf Club. Section 2.03 then sets the annual membership dues at $600, to be paid by each homeowner to the Golf Club on January 15th of each year. Significantly, this section also grants the power to determine any increase in these dues to the Golf Club. Therefore, with this amendment, Developer voluntarily answered many of the above-described ambiguities in GCDA section 4B.

The key word is "voluntarily" – nothing in the GCDA, not section 4B, not section 5A, nor any other provision in any other controlling document, made this grant of power and authority mandatory. What was voluntarily granted by Developer can be taken back, either by Developer or, as the current landlord of the Residents' Club, by the Staley Farms HOA. This is exactly what occurred with the September 24, 2008, amendment to the Staley Farms HOA Declaration (and by extension the Staley Farms CC&Rs). Signed by Mark Simpson on behalf of both Plaintiffs, and by Kevin Green as the Townhome Developer, the amendment is essentially a complete revision of Article II-A, beginning with the title of the article (changing it from "Golf Club Membership" to "Residents'

Club Facilities Operation By Golf Club"). In pertinent part, this amendment changes the social membership dues to $165.00 per quarter, requires each homeowner to pay the Staley Farms HOA directly (which will then pay Defendant), and transfers the authority to alter the dues amount to the Staley Farms HOA. (Section 2.02A) Defendant complains that these changes violate section 4B of the GCDA, but, as indicated above, nothing in section 4B mandates that Defendant have any of those powers. The only thing mandatory in section 4B with respect to either of those issues is the minimum dues amount ($600.00 per year) and that it be payable to Defendant, and this amendment does not violate either restriction. By setting the dues amount at $165.00 per quarter, Plaintiffs have simply returned the annual dues to what they were before Defendant's latest increase ($660.00 per year) and it is still being paid to Defendant, albeit after being collected by the Staley Farms HOA. Thus, the Court finds that the September 24, 2008 amendment to the Staley Farms HOA Declaration is not at all inconsistent with the provisions of the GCDA. This finding, along with the Court's earlier findings, as indicated above, that 1) Plaintiff Developer did file and amendment to the Staley Farms CC&Rs implementing section 4A of the GCDA (as required by the GCDA), and 2) that there is simply no requirement, either in section 4B or section 5A of the GCDA, that the Staley Farms CC&Rs be amended to implement section 4B of the GCDA (and thus neither Staley Land Company nor Staley Farms HOA is contractually obligated to do so), makes all off the relief requested by Defendant in Counts V and VI of his First Amended Answer, Affirmative Defenses and Counterclaims either unnecessary or improper.

**Judgment**

WHEREFORE, in accordance with the foregoing, the Court hereby determines the following:

1. Injunctive relief sought by Defendant in Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims is improper in that an adequate and complete remedy at law exists for Defendant to seek compensation for the difference between social member dues paid by Staley farms residents and the cost of operating and maintaining the Residents' Club;

2. Injunctive relief sought by Defendant in Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims is improper in that no irreparable harm, either financial or to Defendant's relationship with Staley Farms residents, has occurred due to any action taken by either Plaintiff Developer or Plaintiff Staley Farms HOA;

3. Injunctive relief sought by Defendant in Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims is improper in that Plaintiff Developer did not violate the Golf Course Development Agreement by failing to file an amendment to the Staley farms CC&Rs specifically implementing section 4B of the Golf Course Development Agreement in that nothing in sections 4B or 5A of the Golf Course Development Agreement requires Plaintiff Developer to make such an amendment;

4. Injunctive relief sought by Defendant in Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims is improper because Developer did satisfy the requirements of section 5A of the Golf Course Development Agreement in that Plaintiff Developer did file an amendment to the Staley Farms CC&Rs

on May 20, 2005, implementing section 4A of the Golf Course Development Agreement; and

5. Injunctive relief sought by Defendant in Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims is improper because the amendment to the Staley Farms Homeowners Association Declaration on September 24, 2008, does not violate the Golf Course Development Agreement in general or section 4B in particular in that section 4B of the Golf Course Development Agreement does not stipulate who has the right to set social membership dues, when those dues are paid, or how they are paid (as long as the dues are ultimately paid to the Golf Course Owner).

IT IS THEREFORE ORDERED that Judgment be entered in favor of Plaintiffs and against Defendant on Counts V and VI of Defendant's First Amended Answer, Affirmative Defenses and Counterclaims.

Costs are assessed against Defendant.

So Ordered this 16th day of March, 2009.

Judge