



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NVR, INC.,	:	
	:	
Plaintiff	:	
v.	:	C.A. No.
	:	
OSPREY POINT PRESERVE, LLC,	:	
	:	
Defendants.	:	

VERIFIED COMPLAINT

Plaintiff, the home builder, NVR, Inc., by and through undersigned counsel, brings this Complaint to seek equitable relief against Defendant, the developer, Osprey Point Preserve, LLC.

NATURE OF ACTION

1. Plaintiff, the home builder, NVR, Inc. seeks specific performance of the Defendant developer's contractual obligation to apply for governmental approval and build the amenities that it agreed to install at the waterfront residential community, known as Osprey Point, based upon an engineered plan approved by NVR, Inc. In addition, NVR, Inc. seeks a declaration that all of the land containing these planned amenities, including the marina, bulkhead community beach, kayak launch and shelter, shall remain dedicated open space ultimately to be conveyed to the Homeowner's Association, pursuant to the approved development plan for this residential community. Accordingly, the Defendant developer has no right to retain

ownership of the land containing these amenities in order to thwart approval and installation of these contractually required amenities and exclusive use by the homeowners. Finally, Plaintiff requests that Defendant be enjoined from posting or causing signs to be posted throughout the community which flagrantly disparage NVR, Inc. and ordered to remove all such signs.

THE PARTIES

2. Plaintiff NVR, Inc. (“**NVR**”) is a corporation existing under Virginia law with a principal business located at 2 Christy Drive, Suite 301, Chadds Ford, Pennsylvania.

3. Defendant Osprey Point Preserve, LLC (“**Developer**”) is a Delaware limited liability company organized with a principal place of business located at 2979 Barley Mill Road, Oaklyn, Delaware.

4. Upon information and belief, Developer consists of members, Kathleen Horsey, Michael Horsey, Marna Whittington, and Thomas D. Whittington, Esquire.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims set forth herein pursuant to 10 *Del. C.* §§ 341 and 342 because NVR’s primary claims are equitable for which it seeks specific performance, declaratory judgment and injunctive relief.

6. This Court has personal jurisdiction over Defendant based upon its express consent to the jurisdiction of this Court in the agreements that serve as the basis for Plaintiff's claims and Defendant being a corporation of the State.

STATEMENT OF FACTS

A. The Property

7. On April 13, 2020, the Developer acquired an interest in land identified as Sussex County Tax Parcel number 334-18.00-83.00, containing approximately 132.31 acres, which excluded two out-parcels retained by the seller, Robert A. Marshall (“**Marshall**”) identified as (a) the “Shop and Maintenance Yard” Tax Parcel number 334-18.00-83.19 and (b) a certain approximately .38 acre outparcel Tax Parcel number 334-18.00-83.18 (collectively, “**Property**”).

8. The Property, with a street address of 20836 Old Landing Road in Lewes and Rehoboth Hundred, Sussex County, is located adjacent to Rehoboth Bay.

B. Prior Litigation

9. Previously, on June 4, 2018, NVR entered into an agreement of sale with Marshall to purchase the Property and assigned its right under the agreement of sale to the Developer on condition that neither Marshall nor the Developer sell the Property to anyone other than NVR (“**Assignment**”).

10. In breach of the Assignment, the Developer (a) entered into a separate purchase agreement with Marshall, without NVR's consent, and (b) intended to sell

lots to other builders in violation of the Developer's lot purchase agreements with NVR.

11. NVR was compelled to bring litigation seeking to rescind the Developer's new arrangement with Marshall and specific performance of the Developer's and Marshall's obligations to NVR under the agreement of sale, Assignment and two lot purchase agreements (No. 2020-0362-SG).

12. The parties settled the litigation by entering into a new lot purchase agreement discussed below.

C. The Record Plan

13. On April 16, 2020, the Recorder of Deeds for Sussex County recorded the "Record Plan" for the Osprey Point Subdivision prepared for Marshall by the engineers, Davis Bowen & Friedel, Inc., stamped and signed on June 20, 2017, showing a planned residential community restricted to 217 single family homes lots and certain amenities to be built solely for the use of the homeowners of the development ("**Record Plan**"). *See* Condition D listed on Sheet R-3 of the Record Plan, attached as **Exhibit A**.

14. The Record Plan depicts a marina to be built at the development and designates below the marina, a "Boat Dock – Parcel O," containing .72 acres to be developed with 16 parking spaces. *See* Sheet R-3 of the Record Plan.

D. The Approved Revised Site Plan

15. On August 11, 2020, Sussex County enacted Ordinance 2475 approving a revised preliminary plan to develop the Property as a planned residential community restricted to the 217 single family lots and amenities for the community, including, without limitation, the marina (“**Revised Site Plan**”). A true and correct copy of the Revised Site Plan, dated May 20, 2020, prepared by LandDesign is attached as **Exhibit B**.

16. Under “Subdivision Notes,” the Revised Site Plan provides that it supersedes the Record Plan. *See* Revised Site Plan Sheet SD-1.

17. The Revised Site Plan no longer depicts the “Boat Dock – Parcel O,” depicted on the Record Plan; instead, the Revised Site Plan shows the marina with an adjacent 1.11 acres entitled “Marina.” *See* Sheet SD-2 of the Revised Site Plan.

18. In addition, the Revised Site Plan provides that the open space consists of (a) 64.69 acres and (b) the marina area of 1.11 acres. *See* Sheet SD-1 of the Revised Site Plan.

19. The Revised Site Plan includes both the (a) 64.69 acres of open space and (b) the marina open space of 1.11 acres in the calculation of open space impervious surface areas. *See* Sheet SD-1 of the Revised Site Plan.

20. Condition of Approvals “K” provides that a homeowner’s association for the community will ultimately be responsible for the maintenance of the open space:

The applicant shall cause to be formed a homeowner’s association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities.

Revised Site Plan at Sheet SD-1.

21. The Revised Site Plan does not carve out any parcels to be owned exclusively by the Developer or its assigns.

E. The Lot Purchase Agreement

22. In settlement of NVR’s litigation against the Developer, on February 5, 2021, NVR and the Developer entered into the current Lot Purchase Agreement (“LPA”) whereby (a) the Developer agreed to install the infrastructure, the community amenities and marina at the Property pursuant to the Revised Site Plan and (b) NVR would purchase the lots to build single family residences sized for its home designs. A true and correct copy of the LPA is attached as **Exhibit C**.

23. The LPA references and attaches the Revised Site Plan as Exhibit A.

24. Regarding the planned marina, the LPA provides:

WHEREAS, it is planned that a Marina will be located on and/or immediately adjacent to the Property. The “Marina” is an element of Ordinance 2475 which set the zoning of the Property on which this Agreement is based

and [Developer] has undertaken responsibility for and ownership of the Marina.

WHEREAS, [Developer] has explored the requirements that must be met in order to construct the Marina and it has retained an experienced design company to develop plans, but the requirements are not now fully known or understood and, in an abundance of caution, it will retain the areas adjacent to the Marina.

LPA pp. 1-2 (underline added). Thus, the Developer was to retain control of the Marina area until the requirements for the Marina were known.

25. NVR's obligation to purchase lots is conditioned on the Developer's obligation to promptly develop and improve the Property into fully improved and finished building lots, including building all infrastructure and amenities, at Developer's expense. LPA ¶3. *See also id.* ¶6.

26. Paragraph 3(j) requires the Developer to install the amenities including the Marina as follows in pertinent part:

[Developer] shall be responsible for the erection of all amenities required pursuant to the preliminary development plans for the Property (“Amenities”). [Developer] shall provide, as soon as available, copies of all plans relative to the Amenities (“Amenity Plans”). The Amenities shall be completed in accordance with the Amenity Schedule attached hereto and incorporated herein as Exhibit H-1 and the “**Amenity Renderings**” attached hereto and incorporated herein as Exhibit H-2 [relating to the clubhouse and pool]. In addition to the Amenities, [Developer] shall construct, to the extent permitted by applicable regulatory agencies, a marina (the “Marina”). The Marina will not be owned, leased or controlled by the Homeowners Association or [NVR]; however, to the

extent possible and permitted by applicable regulatory agencies, the Marina will include a storage area suitable for kayaks [Developer] shall provide [NVR] with a proposed design for the Marina at least thirty (30) days prior to the purchase of the Model Lot. The Marina design shall not be a Condition Precedent to Settlement. [NVR] shall have the right to approve any and all changes regarding the Amenities, Amenity Plans and Amenity Schedule, which such approval shall not be unreasonably withheld, conditioned or delayed. ...

LPA ¶3(j) (underline added).

27. Although NVR purchased the Model Lot on March 9, 2022 and the Developer was required to submit its proposed design for the Marina thirty days before, *i.e.*, February 9, 2022, the Developer failed to provide the proposed design for the Marina by that deadline or any time thereafter.

28. Further, under paragraph 10(g), the Developer agreed that it:

shall concurrently with any such amendment to the Community Association Documents obtain [NVR's] consent in the event any modifications are contemplated to the Community Association Documents or the amenities or other facilities within the Property which affect [NVR] or [NVR's] homebuyers' monetary obligations, such consent not to be unreasonably withheld. The parties acknowledge that the [Developer's] performance of this obligation is important to [NVR's] ability to market and sell Lots. ...

LPA ¶10(g).

29. Moreover, under paragraph 11(e), NVR has the right to review and approve or disapprove, which approval shall not be unreasonably withheld, any and all changes to the development documents:

Purchaser shall have the right to review and approve or disapprove, which approval shall not be unreasonably withheld, conditioned or delayed, any and all changes made to the proposed, submitted and/or approved development documents, including, but not limited to, the Community Association Documents, any plans, designs and drawings, including site plans, construction (all types), landscape improvements (trees, shrubs, fences and walls) and covenants, restrictions and easements of record. The parties acknowledge that the approval of the Marina may create changes to the various development documents and matters to be constructed in the vicinity of the Marina and the adjacent lots. [NVR] shall respond, in writing, within ten (10) business days of [NVR's] receipt of the applicable document that attempts to change such documents, whether [NVR] approves said proposed changes, such approval not to be unreasonably withheld. [NVR] shall have no right to object to any such changes if [NVR] fails to respond within the ten (10) business day period. [Developer] shall meet and confer with [NVR] on a regular basis to review the anticipated schedule and sequence of development of the Property.

LPA ¶11(e).

30. Because the Developer failed to provide to NVR the proposed design plans for the Marina, which it was required to supply by February 2022, the Developer further failed to support any changes required to be made to “the matters to be constructed in the vicinity of the Marina.” Quoting LPA ¶11(e).

31. If the Developer transferred any lots to persons other than NVR, as it had attempted to do in the past resulting in the prior litigation, NVR was entitled to assert all remedies against the Developer under paragraph 8(c) of the LPA.

32. The Developer represented to NVR under paragraph 9(h) of the LPA:

(i) [Developer] is the contract purchaser and equitable owner of the Lots to be sold by it under this Agreement (vii) other than the rights of Marshall as legal owner of a portion of the Property or under its purchase money mortgage, no person has any contract or other right to the use of any portion of the Lots or to the furnishing or use of any facility or amenity on, or relating to, the Lots; ...

LPA ¶9(h) (underline added).

33. Under the LPA, the Developer is required to provide available lots to NVR on a regular schedule as follows:

At all times after [Developer] has provided to [NVR] the Initial Completion Notice, [Developer] shall continue to meet the Conditions Precedent to Settlement for no fewer than the number of Lots equal to the minimum number of lots [NVR] is to purchase over two (2) quarters (the “**Available Lots**”). ...Should [the Developer] not meet the minimum Available Lot offering [NVR] may (i) declare [the Developer] to be in default of this Agreement.

LPA ¶2(b).

34. The Developer and NVR agreed that time was of the essence:

Time is hereby declared to be of the essence in the performance of each of the parties’ respective obligations hereunder.

LPA ¶11(j).

F. The First Amendment to the LPA

35. On January 7, 2022, NVR and the Developer entered into the First Amendment to the LPA whereby NVR agreed to increase the purchase price it would pay going forward for each lot by \$17,000 in exchange for which, the Developer

agreed to install, among other things, the bulkhead community beach, the Marina, kayak launch and shelter as set forth in the plan attached to the First Amendment (collectively, “**Amenities**”). A true and correct copy of the First Amendment with exhibits is attached as **Exhibit D**.

36. Paragraph 3 of the First Amendment provides:

In consideration of the increase in the Purchase Price, [Developer] will complete the enhancements to the Amenities and common areas as shown on the Enhancement Exhibit attached hereto as Exhibit “T” (the “**Enhancement Exhibit**”).

37. Exhibit T referenced in paragraph 3 of the First Amendment provides:

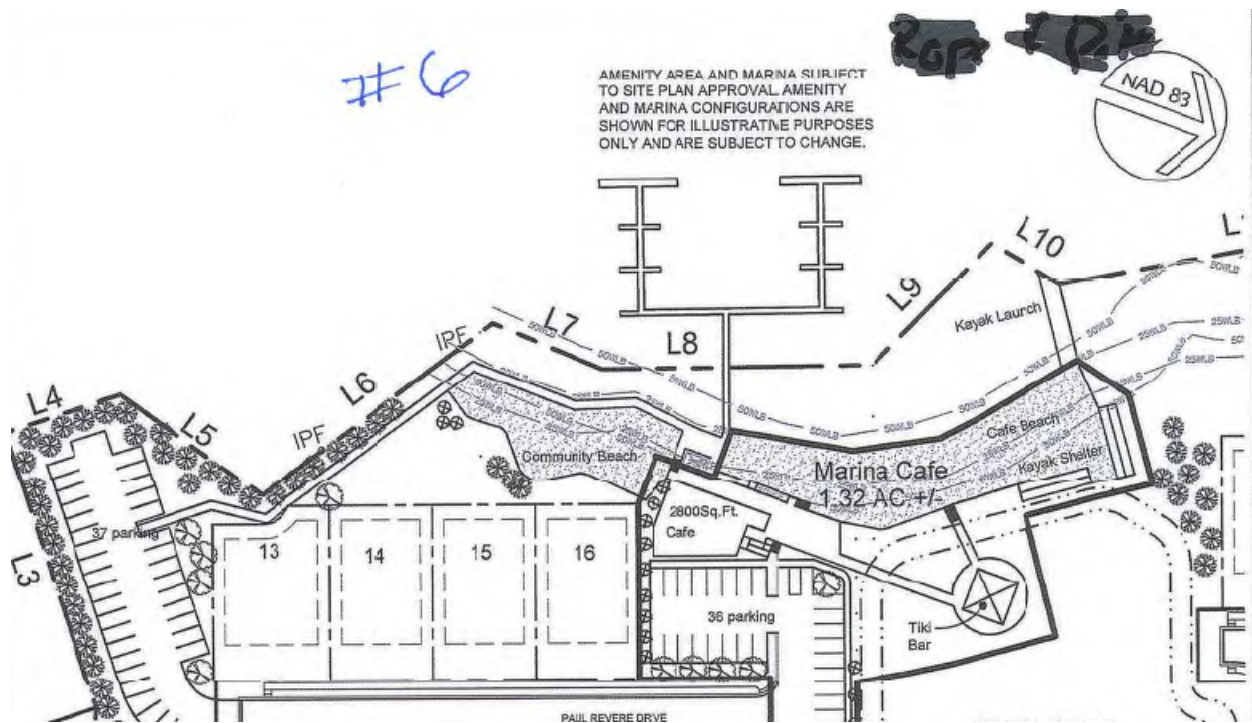
A bulk headed beach area will be installed as depicted.
(#6)

There will be a clear delineation on the private HOA area vs. the public area.

Seller will apply for permits for a 24 slip marina.

Assuming permits are issued the HOA will have the ability to lease one slip for a kayak launch.

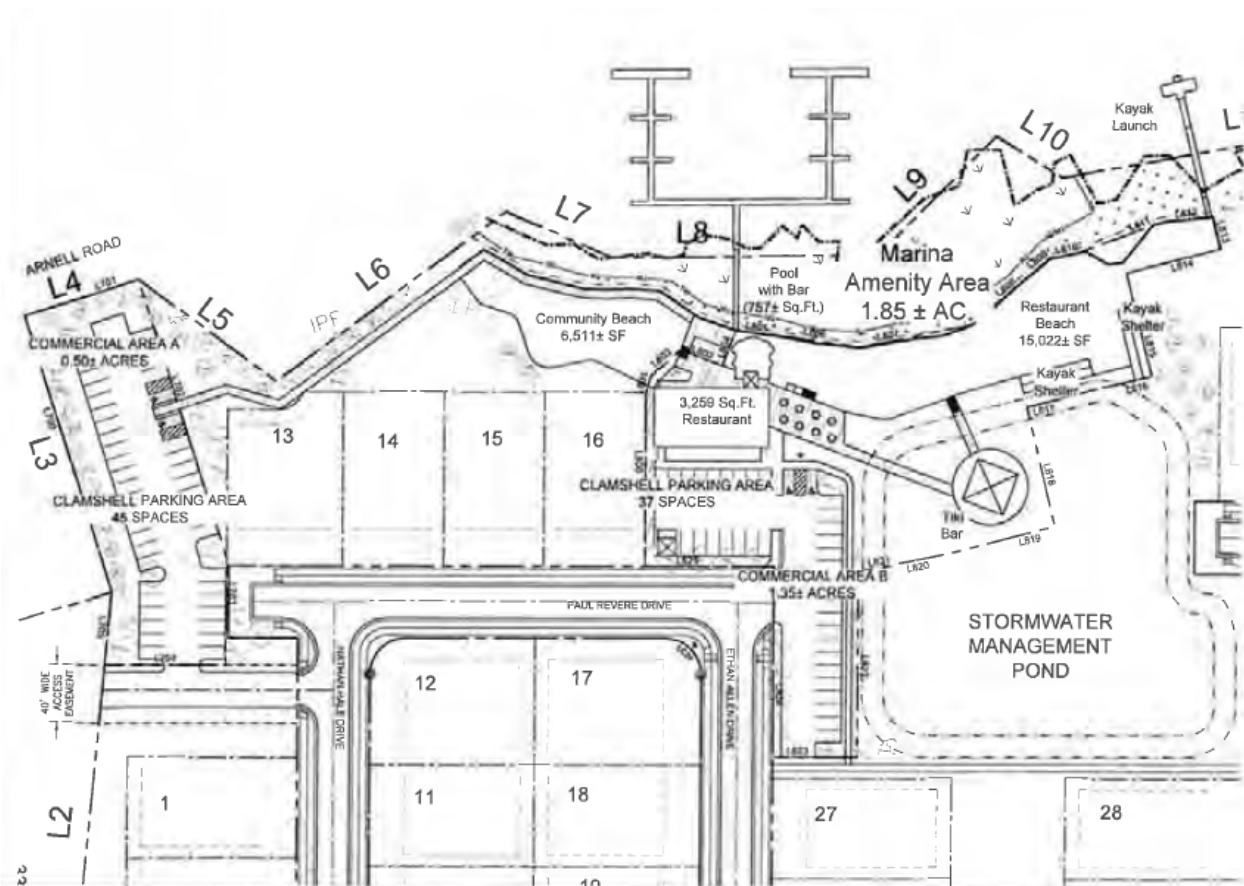
38. Plan number 6 referenced and attached to the First Amendment is dated June 6, 2021, entitled “Marina Concept Plan,” and includes, among other things, the bulkhead Community Beach, the Marina, the kayak launch and kayak shelter:



G. Land Development Application

39. On February 14, 2022, the Developer applied to the Sussex County Council to adopt an Ordinance to modify the Ordinance that zoned the property to allow the Development “to include a 1.85 acre Marina and Restaurant.”

40. The plan dated December 2021 prepared by LandDesign depicts:



A true and correct copy of the submitted December 2021 Plan is attached as **Exhibit E**.

41. Thus, the Developer expanded the Marina area from (a) 1.11 acres as shown on the Revised Site Plan to (b) 1.32 acres as shown on plan no. 6 attached to the First Amendment to now (c) 1.85 acres on the December 2021 Plan submitted to the County.

42. Regardless of the expanded configurations that the Developer unilaterally showed for the Marina area, that area was to remain open space pursuant

to the Revised Site Plan and to be conveyed to the Homeowner's Association as a condition of approval.

43. In addition, the Developer expanded the café shown on the First Amendment's Exhibit T to a restaurant with a pool complex, which NVR had not approved.

44. On November 7, 2023, the Sussex County Council voted to reject the Developer's application on the basis that a restaurant was an improper commercial use in Osprey Point.

45. Nonetheless, Sussex County Council approved construction of the Marina through Ordinance 2959 providing:

This marina shall be an amenity for the property owners within Osprey Point and use of the marina shall be limited to use by boats owned by property owners within Osprey Point.

No slips shall be bought, sold, leased, or occupied by anyone other than owners of residential units within Osprey Point.

There shall be no more than 25 boat slips within the marina.

No boats shall be repaired or refueled at the marina.

There shall not be any pump-out location on the docks or within the marina.

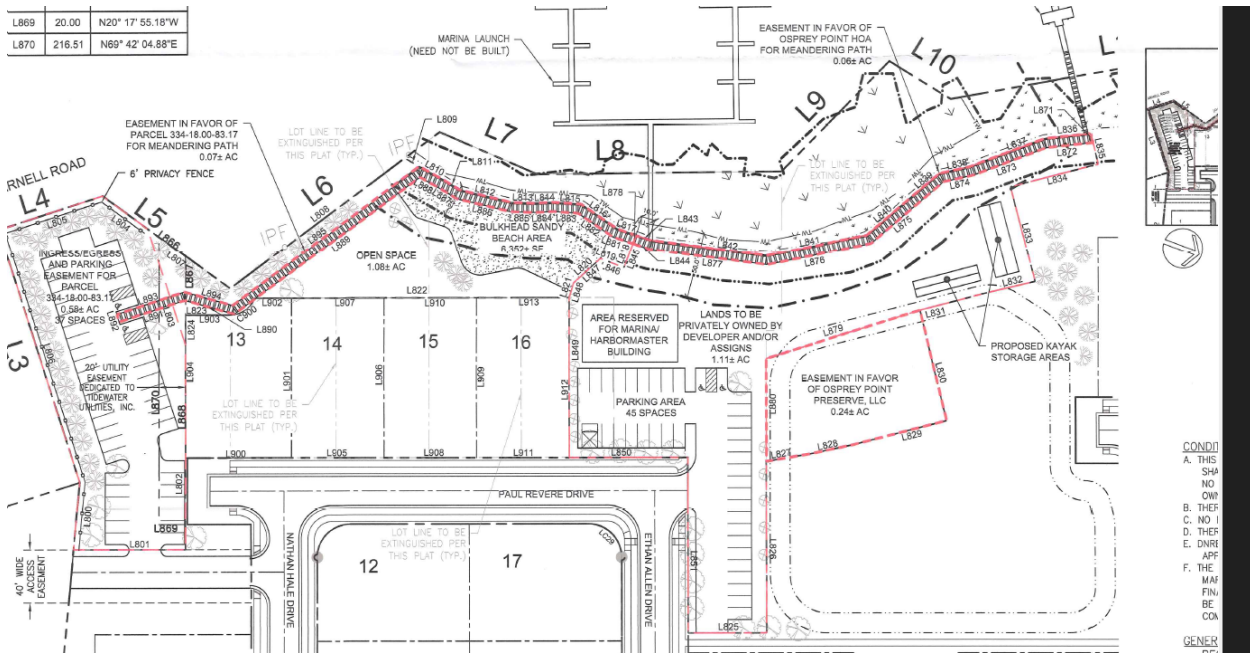
DNREC approval shall be obtained for marina use prior to Final Site Plan approval.

The existing Final Site Plan for Osprey Point shall be revised to include this marina as an amenity for the property owners within the development. The revised Final Site Plan shall include Condition A above. The Revised Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commissions.

46. Thus, under the enacted Ordinance 2959, the Marina must be designed and built for the Osprey Point homeowners' exclusive use.

47. Moreover, under Ordinance 2959, the Developer should have been able to also secure approval for the bulkhead community beach, the kayak launch and shelter, as part of the final site plan for the Marina since each of these Amenities is intended for the homeowner's exclusive use and in close vicinity to the Marina.

48. Notwithstanding the Sussex County Council's rejection of the December 2021 Plan, over a year later, on January 16, 2025, the Developer submitted to Sussex County Zoning and Planning a revised plan, dated December 2024, prepared by LandDesign, entitled "Revised Final Site Plan Beach Amenity," which continued to seek approval to subdivide the Property for reserved facilities, in addition to the bulkhead community beach, the Marina and kayak storage:



A true and correct copy of the Revised Final Site plan is attached as **Exhibit F** (“January 2025 Plan”).

49. The Developer did not submit a copy of the January 2025 Plan to NVR for approval as required under paragraphs 3(j) and 11(e) of the LPA.

50. The January 2025 Plan includes the following new features to which NVR never approved: (a) lot thirteen’s reduction in size and reconfiguration and the repositioning of lots fourteen through sixteen; (b) the changed configuration and location of the Marina and new designation as “Lands to be privately owned by Developer and/or assigns”; (b) the nine additional parking spaces to be owned exclusively by the Developer; (c) the area reserved for a purported marina/harbormaster building; and (d) the easement to the Developer of approximately .24 acres over the stormwater detention basin.

51. Although the January 2025 Plan depicted the Marina area as once again consisting of 1.11 acres, it designated the Marina area as “owned exclusively by Developer and/or assigns,” in breach of the approval of the Revised Site Plan which depicts the Marina area as open space and conditions approval on conveying all open space to the Homeowner’s Association. *See* Condition of Approval “K” (Exhibit B).

52. The Developer did not provide a copy of the January 2025 Plan to NVR because the Developer knew that NVR would not approve this Plan and Developer wanted to continue to receive the additional per lot purchase price, notwithstanding that it had not obtained approval to install the Amenities and Marina in breach of its obligations under the First Amendment.

53. Upon learning of the January 2025 Plan, on February 13, 2025, NVR sent an email to the Developer that NVR did not approve that Plan.

54. In addition, by March 17, 2025 letter, NVR sent notice, through counsel, that NVR did not approve the January 2025 Plan. A copy of the March 17, 2025 letter is attached as **Exhibit G**.

55. Since entering into the First Amendment, NVR purchased 140 lots at the increased purchase price of \$17,000, for a total additional payment of \$2,380,000, based on the Developer’s contractual commitment to secure approval and build the Amenities and the Marina under the First Amendment.

H. The Developer Engages in Concerted Acts to Pressure NVR

56. On March 18, 2025, the day after receiving NVR's March 17, 2025 notice disapproving the January 2025 Plan, the Developer offered, through Michael Horsey, to sell the 1.11-acre Marina open space to NVR for an exorbitant \$9,000,000 purchase price.

57. The Developer has no authority to sell the Marina open space because it is contractually committed under the LPA and the First Amendment to build the Marina and other Amenities on the Property and under the Revised Site Plan to convey all open space, including the Marina open space to the Homeowner's Association.

58. Furthermore, because the Marina area is to remain open space pursuant to the approved Revised Site Plan, that parcel has nominal market or retail value.

59. Thus, the Developer has devised an artificial claim to the Marina open space in order to extract greater concessions from NVR than to which it is entitled.

60. A small but vocal band of homeowners in Osprey Point, who are disappointed that the Amenities and the Marina continue not to be built, have joined in the Developer's demand that NVR pay the Developer \$9,000,000 to acquire the Marina area.

61. In addition, homeowners posted lawn signs disparaging NVR, which signs were later removed as a violation of the community bylaws.

62. However, the Developer allowed a billboard to be erected on the Marina open space, which it purports to own, to flagrantly disparage NVR:



63. The Developer is acting in concert with disgruntled residents to extort NVR to pay \$9,000,000 for the Marina area when it is designated as open space, has no independent market value, and the Developer is obligated to build the Marina and other Amenities on that parcel exclusively for the community's use under the LPA, First Amendment and the Revised Site Plan.

64. Since March 3, 2025, the Developer failed to meet the requirement to maintain at least thirty Available Lots, in material breach of paragraph 2(b) of the LPA.

65. For over a month, NVR has repeatedly asked the Developer to meet to discuss the plans to design and install the Amenities and Marina, but the Developer has declined all such requests to meet.

I. The Notices of Default

66. On April 14, 2025, NVR sent its first default notice to the Developer for breach of its material contractual obligation to submit to NVR for approval plans seeking development approval and for approval of the Amenities and the Marina. A true and correct copy of the first default notice is attached as **Exhibit H**.

67. On May 16, 2025, NVR sent its second default notice to Developer for breach of its material contractual obligations including (a) the Developer's failure to apply for approval of and install the Amenities and Marina in breach of paragraph 2(c) of the First Amendment; (b) the Developer's unilateral change to the size and configuration of the Marina open space area, without NVR's approval, in further breach of paragraph 10(g) of the LPA; (c) the Developer's failure to provide Available Lots for NVR to purchase in breach of paragraph 2(b) of the LPA; and (d) the Developer granting its "permission" to erect the billboard sign on the Marina open space area to disparage NVR, which sign remains installed on the open space in breach of the Community Guidelines and bylaws. A true and correct copy of the May 16, 2025 default notice is attached as **Exhibit I**.

68. The Developer has wrongfully and materially breached its commitments under the LPA, First Amendment and the Revised Site Plan, entitling NVR to specific performance under paragraph 8(c) of the LPA.

69. The Developer has “unclean hands” as a result of its prior acts of trying to sell lots to third parties in breach of its lot purchase agreements with NVR, purported takeover of the Marina open space area to extort even greater concessions from NVR, and concerted actions to disparage and harm NVR to current and prospective homeowners in the community.

COUNT I
BREACH OF CONTRACT – SPECIFIC PERFORMANCE

70. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as though set forth at length herein.

71. The LPA at paragraph 8(c) entitles NVR to pursue specific performance of the LPA and First Amendment by the Developer.

72. The LPA and First Amendment are valid, binding contracts with definite terms, including detailed obligations concerning the development of the Marina and Amenities.

73. NVR has not breached and is not in default of any of the material obligations under the LPA or First Amendment and has fulfilled its obligations ahead of schedule by purchasing more lots than required.

74. NVR remains ready, willing, and able to complete its obligations under the LPA and First Amendment, notwithstanding the Developer's material breaches of these contracts.

75. The balance of the equities weighs heavily in NVR's favor.

76. NVR materially relied on the Developer's commitment to deliver the Marina and Amenities as an integral part of the approved planned residential development and marketed lots to home buyers based upon NVR's representations and contractual commitments.

77. Conversely, the Developer has acted in bad faith by seeking to sell the Marina open space to NVR for \$9,000,000 and then coordinating efforts with homeowners to disparage NVR to pressure it to pay the ransom and to prevent future sales by NVR.

78. The Court should order the Developer to specifically perform its obligations under the LPA and First Amendment to (a) promptly submit an engineered plan to build the Marina and Amenities for NVR's approval; (b) promptly followed by submitting the NVR approved plan to the Sussex County Council, the Planning and Zoning Committee, DNREC, and all applicable authorities with jurisdiction; and (c) upon approval, install the Marina and Amenities in the open space to be used exclusively by the homeowners pursuant to the approved Revised Site Plan.

79. NVR has no adequate remedy at law to redress the harm caused by the Developer to NVR's property rights and reputation.

COUNT II
DECLARATORY JUDGMENT

80. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as though set forth at length herein.

81. The Court is empowered to issue a declaratory judgment as follows:

Except where the Constitution of this State provides otherwise, courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

Del. Code Ann. tit. 10 §6501.

82. The Revised Site Plan unambiguously provides that (a) the Marina area is open space and (b) approval was conditioned on the Developer's agreement to convey all open space to the Homeowner's Association.

83. The approved Revised Site Plan nowhere carves out open space or any other area of the Property to be exclusively owned by the Developer or its assigns.

84. The approved Revised Site Plan, the LPA and First Amendment establish that the Marina is a community amenity (a) to be built by the Developer at its sole cost, and (b) used exclusively by the homeowners.

85. The LPA references Ordinance 2475 which requires the Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, and stormwater management facilities.

86. The LPA and First Amendment require the Developer to complete the Marina and Amenities in consideration for NVR's obligation to pay an additional \$17,000 per lot.

87. The Developer has breached these contractual obligations and has sought to reclassify the Marina parcel as private property in direct violation of Ordinance 2529 and the approved Revised Site Plan.

88. NVR seeks the Court's determination as to whether the Developer is entitled to carve out the Marina open space area to sell to NVR when (a) the approved Revised Site Plan provides that the Marina area is open space to be conveyed to the Homeowner's Association; (b) the LPA and First Amendment require the Developer to build the Marina and Amenities in the open space; and (c) Ordinance 2529 requires that the Marina be limited to use by the residents of Osprey Point.

89. NVR seeks an Order rescinding all actions that the Developer has taken to carve out the Marina area for its sole use, including, without limitation, any such provisions in the Homeowner's Declaration.

WHEREFORE, Plaintiff NVR, Inc. respectfully requests that this Court:

- a. Order the Developer to promptly prepare an engineered plan depicting the proposed Marina and Amenities for NVR's approval;
- b. Order the Developer, to promptly submit the engineered plan approved by NVR ("**Plan**") to all governmental authorities with jurisdiction to review and approve the Plan, including, without limitation, Sussex County Council, the Sussex County Planning & Zoning Committee and DNREC.
- c. Order the Developer to diligently prosecute the Plan and give regular updates to NVR of the status of the governmental authorities' review and approval of the Plan;
- d. Order the Developer to build the Marina and Amenities pursuant to the applicable governmental approvals, at Developer's sole expense, pursuant to the Revised Site Plan, LPA and the First Amendment;

- e. Declare that upon construction of the Marina and Amenities, the Developer is required to convey the Marina and Amenities as part of the open space to the Homeowner's Association pursuant to the approved Revised Site Plan and Ordinance 2959;
- f. Rescind all steps taken by the Developer to carve out the Marina open space area as its exclusive property, including, without limitation, all such provisions in the Declaration to the Homeowner's Association;
- g. The Developer enjoined from conspiring with third parties to disparage and harm NVR's standing in the community, including
 - (i) ordered to remove the billboard sign on the Marina parcel and
 - (ii) enjoined from installing or causing to install any other signs disparaging NVR in the community;
- h. Order the Developer to resume making Available Lots to NVR in compliance with paragraph 2(b) of the LPA;
- i. Alternatively, award Plaintiff compensatory damages, pre and post judgment interest;
- j. Award Plaintiff reasonable attorneys' fees and costs as permitted by the LPA at paragraph 12; and
- k. Award such other relief as the Court deems proper and just.

GIORDANO & GAGNE, LLC

/s/ Scott G. Wilcox

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