

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

PALM COAST HOLDINGS, INC. and
FLORIDA LANDMARK COMMUNITIES, LLC

Plaintiffs,

CASE NO.: 2025 CA 000670

v.

CITY OF PALM COAST, a Florida
municipal corporation,

Defendant.

_____ /

PLAINTIFFS' REPLY TO DEFENDANT'S AFFIRMATIVE DEFENSES

Plaintiffs, Palm Coast Holdings, Inc. and Florida Landmark Communities, LLC, by and through their undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.100(a), hereby reply to Defendant's first, second, third, fourth, fifth, sixth, seventh, eighth and ninth affirmative defenses served March 24, 2026, as follows:

1. Defendant's first affirmative defense is denied. Sovereign immunity is waived if a claim of promissory estoppel is proven against a municipality. *Dep't of Health & Rehab. Servs. v. Law Offices of Donald W. Belveal*, 663 So. 2d 650, 653 (Fla. 2d DCA 1995).

Section 768.28, Florida Statutes, applies to waiver of sovereign immunity in tort actions. Count II is not a tort claim, so section 768.28 is inapplicable.

2. Defendant's second affirmative defense is denied. Plaintiffs filed a petition for vested rights determination on August 19, 2025—the only administrative remedy available. Despite several requests by Plaintiffs to be heard on the petition, they received no hearing and, in fact, no response from the City for six months until February 13, 2026, three months after this

action was commenced. The City's response was untimely, not provided by the proper city official, and relied on a frivolous argument manufactured by litigation counsel for this case.

Furthermore, this court may excuse the exhaustion requirement when resorting to administrative remedies would be futile or the remedy inadequate. *Igwe v. City of Miami*, 300 So. 3d 279, 282 (Fla. 3d DCA 2019). One reason to excuse exhaustion of administrative remedies is where, as here, the Defendant's actions "are so egregious or devastating that proposed administrative remedies are too little or too late" such as refusing to afford a hearing or ignoring Plaintiffs' petition for vested rights in the instant case. *Communities Financial Corp. v. Florida Dept. of Environmental Protection*, 416 So.2d 813 (Fla. 1st DCA 1982) (citing *State ex rel. Dept. of General Services v. Willis*, 344 So. 2d 580 (Fla. 1st DCA 1977) (futility demonstrated where agency ignores requests or refuses to provide a hearing)). Moreover, the administrative remedy of a vested rights determination is inadequate because Defendant has asserted that vesting does not guarantee utility capacity despite the express guarantee contained in the DRI Development Order.

3. Defendant's third affirmative defense is denied. DRI Development Orders govern large, complex developments and therefore contain both regulatory rulings and negotiated agreements. While *some* development agreements and orders are unilateral regulatory approvals, Florida courts have also expressly recognized that some development agreements are contracts. *Pres. Palm Beach PAC v. Town of Palm Beach*, 50 So. 3d 1176, 1179 (Fla. 4th DCA 2010) ("[A] 'development agreement' has been defined as 'a contract between a [local government] and a property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulations applicable to a property in exchange for public benefits.'"). "[A]n order, by definition, is often unilateral and non-negotiable," but "development orders are often the product of negotiation between a developer and a municipality." *Pres. Pam Beach PAC*, 50 So. 3d at 1179;

Osborne v. Walton Cnty., 410 So. 3d 37, 61 (Fla. 1st DCA 2025) (Winokur, J., concurring) (discussing “the culmination of the typical give-and-take process whereby a developer successfully obtains modification of a development order”). The intention of the parties, not the document title, governs the interpretation of the instrument. *Barr v. Schlarb*, 314 So. 2d 609, 610 (Fla. 1st DCA 1975). Here, the DRI Development Order is a contract and contains contractual guarantees.

4. Defendant’s fourth affirmative defense is denied. As previously clarified to the Court in Plaintiffs’ Response to the Motion to Dismiss and at the Motion to Dismiss Hearing, Plaintiffs have no interest in preventing annexations of property into the City. Rather, Plaintiffs seek to prevent additional harm to their vested rights as a result of the City continuing to guarantee or provide water and wastewater capacity to properties ahead of Plaintiffs’ vested rights. [Compl. ¶¶ 104–05]. An injunction is the proper remedy to be invoked to prevent a continuous breach of a contract. *Manatee Cnty. Growers Ass’n v. Fla. Power & Light Co.*, 152 So. 181, 182 (1934). The harms caused to Plaintiffs by Defendant’s breach will continue infinitely as long as the City is permitted to give away the next available water and wastewater capacity to anyone other than Plaintiffs.

5. Defendant’s fifth affirmative defense is denied. This affirmative defense is legally insufficient and fails to plead sufficient facts—or any facts—under Florida law to support the defense that Plaintiffs’ entitlements are “outside Phase 1.” [Def.’s Answer, p. 8]; *see Cady v. Chevy Chase Sav. and Loan, Inc.*, 528 So. 2d 136, 137–38 (Fla. 4th DCA 1988); *see also S. Fla. Coastal Elec., Inc. v. Treasures on Bay II Condo Ass’n*, 89 So. 3d 264, 267 (Fla. 3d DCA 2012) (“A properly plead affirmative defense includes ultimate facts sufficient to provide notice of the proof the defendant intends to rely upon to defeat the plaintiff’s claim.”).

6. Defendant's sixth affirmative defense is denied. A claim for an injunction can be both a cause of action and a remedy in Florida. *Weekley v. Pace Assembly Ministries*, 671 So. 2d 220 (Fla. 1st DCA 1996). Alternatively, Plaintiffs have alleged two separate independent causes of actions in Counts I and II. The Court may treat Count III as a request for remedy related to those claims.

7. Defendant's seventh affirmative defense is denied. This affirmative defense is legally insufficient and fails to plead sufficient facts under Florida law to support the defense. *Cady*, 528 So. 2d at 137–38; *see also S. Fla. Coastal Elec.*, 89 So. 3d at 267. Defendant's allegations are entirely conclusory and do not allege sufficient ultimate facts (or any facts whatsoever) to demonstrate a factual basis as to how Plaintiffs could have mitigated damages. Defendant is the sole provider of water and wastewater utilities in the area of Plaintiffs' DRI. Plaintiffs cannot obtain these utilities from any other provider. Further, Plaintiffs pled that their remaining landholdings are "nearly worthless" without provision of such utilities. [Compl. ¶ 7]. Accordingly, this defense should be stricken.

Date: April 13, 2026

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CERTIFICATE OF SERVICE

I certify that on April 13, 2026, I filed the foregoing through the Florida Courts E-Filing Portal system, which will serve a copy via electronic mail to all counsel of record in this matter.

/s/ D. Kent Safriet
Attorney