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IN THE CIRCUIT COURT OF THE 1-31  
20TH JUDICIAL CIRCUIT IN AND  
FOR COLLIER COUNTY, FLORIDA 2:10 PM

CASE NO. 13-CA-314

951 LAND HOLDINGS, LTD. and  
GBFC DEVELOPMENT, LTD.,

Plaintiffs,

vs.

JAMES A. SCHUTT,

Defendant.

**CIVIL ACTION SUMMONS  
PERSONAL SERVICE ON  
AN INDIVIDUAL**

**IMPORTANTE  
En Espanol Al Dorso**

**IMPORTANTE  
Francais Au Versa**

**THE STATE OF FLORIDA**

**TO EACH SHERIFF OF THE STATE:** You are commanded to serve this Summons and a copy of the Complaint and Notice of Designation of Email Addresses in this lawsuit on the below-named Defendant.

To: **Mr. James A. Schutt**  
**8561 Pepper Tree Way**  
**Naples, FL 34114**

**IMPORTANT**

A lawsuit has been filed against you. You have **20** calendar days after this Summons is served on you to file a written response to the attached Complaint in this Court. A phone call will not protect you; your written response, including the above case number and named parties, must be filed if you want the Court to hear your case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court located at Collier County Courthouse, 3315 Tamiami Trail East, Naples, FL 34112.

You must also mail or take a carbon copy or photocopy of your written response to the Plaintiff/Plaintiff's Attorney, named below.

Ricardo A. Reyes, Esq.  
TOBIN & REYES, P.A.  
5355 Town Center Rd., Suite 204  
Boca Raton, Florida 33486  
Phone: (561) 620-0656; Fax: (561) 620-065

DATED on 1/30/2013

DWIGHT E. BROCK  
CLERK OF THE COURT

BY: [Signature]  
Deputy Clerk

### IMPORTANTE

Usted ha sido demandada legalmente. Tiene veinte (20) días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito y presentarla ante este tribunal. Una llamada telefónica no lo protegerá; si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas en dicho caso. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si la desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney." (Demandante o Abogado del Demandante).

### IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cet citation pur déposer une réponse écrite à la plainte ci-jointe auprès de ce Tribunal. Un simple coup de téléphone est insuffisant pur vous protéger; vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées, ici si vous souhaitez que le Tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre préavis ultérieur de Tribunal. Il y a d'autres obligations juridiques et vous pouvez réquerir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner a un service de référence d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie au carbone ou une photocopie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nommé ci-dessous.

### EXPLANATION

The summons form for personal service on individuals is to be used for service on individuals under the following provisions: Florida Statutes 48.031 (service of process generally), 48.041 (service on minors), 40.042 (service on incompetents), 40.051 (service on state prisoners), 40.103 (service of process in action for possession of residential premises), and 40.192 (personal service outside the state).

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the ADA Coordinator at (239) 774-8800 within a reasonable period of time prior to the proceeding at 3315 Tamiami Trail East, Naples, Florida 34112, or phone, or TDD 1-800-955-8771 or 1-800-955-8770 via Florida Relay Service.

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
COLLIER COUNTY, FLORIDA CIVIL ACTION

CASE NO: 13-CA-314

Petitioner(s),

vs.

Defendant(s).

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**STANDING ORDER IN CIVIL CASES IN THE TWENTIETH JUDICIAL CIRCUIT**

PURSUANT to Florida Rule of Civil Procedure 1.200(a), Florida Rule of Judicial Administration 2.545, and Administrative Order 1.13 entered by the Chief Judge of this Circuit, the parties are ordered to adhere to the following information and procedures applicable to civil lawsuits:

1. **SERVICE OF THIS ORDER.** The Plaintiff is directed to serve a copy of this order with each Summons issued in this case. One copy of this Order is to be filed with the Clerk of the Circuit Court with proof of service. The Plaintiff shall pay the appropriate statutory clerk's fees on copies for each Standing Order issued and attached to the Summons.

2. **CIVIL CASE MANAGEMENT SYSTEM.** The Supreme Court of Florida has established guidelines for the prompt processing and resolution of civil cases. This Court has adopted a case management system to help meet those guidelines. In contested cases (other than foreclosures, involuntary commitment of sexually violent predators and eminent domain cases), the parties are required to participate in the case management system. The case management system requires early consultation and cooperation among the parties for the preparation and submission of an Agreed Case Management Plan, early interaction with a Civil Case Manager and early involvement by the Court. The Agreed Case Management Plan requires the parties to identify a case track, confer in a good faith attempt to narrow the matters in controversy, identify the issues that require direct involvement by the Court, and establish a schedule for addressing those issues.<sup>1</sup> The Agreed Case Management Plan may be accessed at the Court's website at: [www.ca.cjis20.org].

Unless all of the Defendants have been served and have defaulted, an Agreed Case Management Plan will be submitted to the Civil Case Manager, John Carter, c/o Magistrate's Office (ATTENTION Sherry), Collier County Courthouse, 3315 Tamiami Trail E., Suite 509, Naples, FL 34112 on or before 150 days from the date of filing of the initial complaint. If the parties are unable to agree on an Agreed Case Management Plan, a case management conference will be scheduled by the Court. If a case management conference is scheduled, attendance by trial counsel and those parties who are not represented by counsel is mandatory.

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<sup>1</sup> Case Track options include Expedited, Standard or Complex. Case Tracks have been established in order to comply with the case disposition standards set forth in Florida Rule of Judicial Administration 2.250(a)(1)(B).

3. **ALTERNATIVE DISPUTE RESOLUTION (ADR)**. ADR provides parties with an out-of-court alternative to settling disagreements. The Court requires the parties to participate in ADR prior to trial. Mediation is mandatory unless the parties agree to another form of ADR. Mediation is a conference at which an independent third party attempts to arrange a settlement between the parties.

4. **RULES OF PROFESSIONALISM**. The Twentieth Judicial Circuit has adopted Administrative Order 2.20, which sets forth standards of professional courtesy and conduct for all counsel or pro-se litigants practicing within the Circuit. The Court requires that all familiarize themselves and comply with Administrative Order 2.20. Administrative Order 2.20 may be viewed on the Court's website at: [www.ca.cjis20.org].

**DONE AND ORDERED** in Chambers at Naples, Collier County, Florida, on this 15<sup>th</sup> day of February, 2011.

*Cynthia A. Pivacek (electronically signed)*

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**Administrative Circuit Judge**

**\*\*Original on file in the Office of Circuit Court Administrative Judge, Collier County**

IN THE CIRCUIT COURT OF THE  
20TH JUDICIAL CIRCUIT IN AND  
FOR COLLIER COUNTY, FLORIDA

CASE NO. 13-CA-314

FIDDLER'S CREEK FOUNDATION, INC.,

Plaintiff,

vs.

JAMES A. SCHUTT,

Defendant.

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**NOTICE OF DESIGNATION OF EMAIL ADDRESSES**

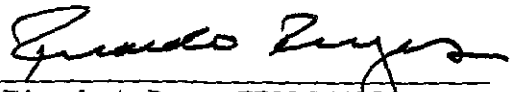
Undersigned counsel for Plaintiff, Fiddler's Creek Foundation, Inc., hereby files this Notice of Designation of Email Addresses pursuant to Fla. R. Jud. Admin. 2.516(b)(1)(A), designating the following email address to be used in the above referenced matter.

Primary:	eservice@tobinreyes.com
Secondary: Ricardo A. Reyes, Esq.	rar@tobinreyes.com
Secondary: Carrie Stolzer Robinson, Esq.	csrobinson@tobinreyes.com

All further documents required or permitted to be served in the above referenced matter shall be served to each of the above referenced email addresses.

Dated: January 24, 2013.

TOBIN & REYES, P.A.  
Attorneys for Plaintiff  
The Plaza - Suite 204  
5355 Town Center Road  
Boca Raton, Florida 33486  
Phone: (561) 620-0656  
Fax: (561) 620-0657

BY   
Ricardo A. Reyes, FBN 864056  
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IN THE CIRCUIT COURT OF THE  
20TH JUDICIAL CIRCUIT IN AND  
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CASE NO. 13-CA-314

FIDDLER'S CREEK FOUNDATION, INC.,

Plaintiff,

vs.

JAMES A. SCHUTT,

Defendant.

---

**COMPLAINT**

Plaintiff, Fiddler's Creek Foundation, Inc. ("Foundation"), sues Defendant, James A. Schutt ("Schutt"), and states:

**The Parties**

1. The Foundation is a Florida not-for-profit corporation doing business in Collier County, Florida.
2. Schutt resides in Collier County, Florida, and is *sui juris*. Schutt owns a home located within the Fiddler's Creek community ("Fiddler's Creek").

**Venue**

3. Pursuant to Section 47.031, venue is proper in Collier County, Florida because the causes of action alleged herein accrued in Collier County and Schutt resides in Collier County.

**The Foundation**

4. The Foundation is a not-for-profit master homeowners' association responsible for the administration, maintenance, and repair of the common areas within Fiddler's Creek.

5. The purpose of the Foundation is to promote the recreation, health, safety, aesthetic enjoyment and social welfare of the owners and occupants of Fiddler's Creek, and to operate, maintain, and own the Fiddler's Creek common areas and other property. The Foundation serves to preserve property values, amenities, and opportunities within Fiddler's Creek.

6. The developer of the Fiddler's Creek community ("Developer") caused to be recorded a Declaration of General Covenants, Conditions and Restrictions for Fiddler's Creek in the public records of Collier County, Florida ("Declaration").

7. The Declaration sets forth the respective rights and obligations of the Foundation and the homeowners within Fiddler's Creek.

8. In accordance with the terms of the Declaration, membership in the Foundation is mandatory for homeowners. This membership includes access to the Club and Spa at Fiddler's Creek, which is an approximately 54,000 square foot resort-style, club house facility, consisting of a multi-pool swimming complex, lighted tennis courts, an outdoor restaurant known as the Gator Grille, an indoor fine dining restaurant known as Caxambas, a fitness facility and more. Homeowners are required to pay assessments to the Foundation as part of their membership.

9. The Foundation caused to be recorded its by-laws ("By-Laws") in the public records of Collier County, Florida. Pursuant to the By-Laws, the administration of the affairs of the Foundation is governed by a board of directors ("Board").

### **The Blog Site**

10. In or about January of 2007, certain residents of Fiddler's Creek, including Schutt, created a website on the worldwide internet known as the "Fiddler's Creek Homeowners

Blog Spot” which has an internet address of [www.fiddlerscreekhomeowners.blogspot.com](http://www.fiddlerscreekhomeowners.blogspot.com) (“Blog Site”).

11. For years, the Blog Site has been used by Schutt and others to disseminate false and defamatory statements about the Foundation which have been injurious to Fiddler’s Creek, damaging the reputation of the Foundation and its Board, adversely affecting home values, and interfering with future sales which impedes the Foundation’s ability to collect the necessary assessments under the Declaration.

12. The Blog Site can be found by any of the Foundation’s existing members, prospective home buyers, realtors, or the members of the public by simply typing the phrase “Fiddlers Creek Homeowners” in an internet “search engine.”

#### **Schutt’s Libel *Per Se* Published On The Blog Site**

13. Since the Blog Site’s creation, Schutt has published numerous defamatory remarks on the Blog Site which constitute libel *per se*. In fact, Schutt’s attacks on the Foundation and its Board have been relentless.

14. In recent years, however, Schutt’s libelous publications have increased in both frequency and intensity which has forced the Foundation to defend itself by bringing this action.

15. All of Schutt’s comments have been made maliciously with the express intent to interfere with the Foundation’s operations and management and to damage the Foundation’s reputation and subject it to hatred, distress, ridicule, contempt or disgrace among its members.

16. As more particularly discussed below, those defamatory statements include falsely accusing the Board of breaching its fiduciary duty, having a conflict of interest, acting illegally and unethically, and allowing the Developer to illicitly profit at the expense of the Foundation. Schutt has also made specific false allegations with respect to the election process



for a homeowner representative on the Board and the Foundation's recent purchase of park land from the Developer. Schutt has accused the Foundation, through its Board, of acting illegally, unethically and in violation of governing documents with respect to the election and purchase of the park land.

### **Homeowner's Assessments and The Foundation's Payment of Management Fees**

#### The Facts

17. On January 2, 2002, the Foundation and Fiddler's Creek Management, Inc. ("Manager"), an affiliate of the Developer, entered into a Management Agreement ("Management Agreement") under which the Manager provided management services to the Foundation.

18. Pursuant to the Management Agreement, the Foundation agreed to pay the Manager an annual management fee equal to 3.5% of the gross receipts of the Foundation, including assessments, plus any excess revenues to the extent the same exceeded all costs and expenses of the Foundation.

19. The Manager provides services to the Foundation in exchange for the compensation under the Management Agreement.

20. The terms of the Management Agreement have always been available and disclosed to the homeowners.

21. On February 21, 2012, the Management Agreement was amended ("First Amendment") to, in pertinent part, establish a reserve account for the deposit of excess revenues to be used for the following purposes at the recommendation of the Finance Advisory Board of the Foundation and approved by the Board: (i) to cover expenses and obligations arising from and associated with any natural disaster effecting the Foundation and its property; (ii) to cover

any shortages in the Foundation's reserve fund; (iii) to mitigate the amount of any assessments by the Foundation of its members; and/or (iv) to be used for any unanticipated obligation or expense of the Foundation.

22. Pursuant to the First Amendment, the Foundation remained obligated to pay to the Manager an annual management fee equal to 3.5% of the gross receipts of the Foundation, including assessments, but revenues over and above expenses were to be deposited in the Foundation's reserve account.

23. At all times material hereto, the Foundation has paid the Manager in accordance with the governing documents, including the Management Agreement and First Amendment.

24. The Foundation has never set nor increased assessments to homeowners for the purpose of increasing management fees or excess revenues to the Manager. In fact, assessments have not been raised in almost eight (8) years.

25. Moreover, from the creation of the Foundation to the present, the Developer has contributed funds to the Foundation significantly in excess of the amount of management fees and excess revenues paid to the Manager for the purpose of funding capital reserves and budget deficits.

#### Schutt's Lies

26. Schutt has repeatedly stated that the Board has breached its fiduciary duties by intentionally charging excessive dues to Foundation members and allowing the Developer to "skim profits" under the Management Agreement between the Foundation and the Developer.

27. Schutt has also falsely stated that the Management Agreement was essentially the result of self-dealing whereby the members of the Board created a mechanism allowing the Developer to be paid management fees without providing services to the Foundation.

28. Schutt has falsely stated that the Foundation has increased and collected assessments to maximize payments of management fees under the Management Agreement.

29. For example, Schutt published the following defamatory statements<sup>1</sup> on the Blog Site about the Foundation:

- Schutt's January 24, 2011 Comment to *The "AD Hoc" Committee*:

*. . . I disagree with your objective of preserving the status quo. The status quo includes excessive dues for the [Club & Spa]. The status quo includes skimming profits from the [Club & Spa]. The status quo includes paying a management fee for no discernible benefit. The status quo includes a Board of Directors that treats residents with arrogance and contempt. The status quo includes a Board of Directors that recognizes no fiduciary responsibility to the residents. . . .*

*The residents are paying all costs of operation of the [Club & Spa]. They are in fact overpaying by virtue of the management fee and profit sweep.*

- Schutt's May 8, 2012 Article: *So Much For Transparency*:

*As a result of the "infamous" management agreement between the Foundation and the Developer, the dues increases eventually turned the [Club & Spa] into a significant profit center by taking "excess revenues" from the Club and delivering them to the Developer. These excess revenues were generated by resident's yearly dues, not through innovative management. Any taxing authority can generate a profit, just raise the taxes. The pot will continue to increase as the community expands and more "taxes" are collected.*

- Schutt's September 27, 2012 Article: *The Contractor*:

*. . . . consider the record of the [Foundation] . . . raised Club dues until the Club became a major profit center for the Developer, who then received the excess revenues . . . undermined the Official Unsecured Creditors Committee by forming the Ad Hoc Committee, . . . buys parks that have little or no value for*

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<sup>1</sup> True and correct copies of the articles together with posted comments wherein Schutt published defamatory statements about the homeowner assessments and the Foundation's payments to the Manager are attached hereto as **Composite Exhibit "A."**

*\$550,000, basis a questionable appraisal commissioned months after striking the deal, refuses to reveal the salaries of Foundation employees, flouting Florida law, stonewalls the residents when asked questions it does not want to answer, threatened the CDD Board and then used C&S resources to mount a campaign against the Board,*

*What further outrageous conduct must we see from the Foundation before it is recognized that they only do that which is in their own self interest?*

- Schutt's October 1, 2012 Comment to *The Contractor*:

*Rather than hiding behind your blanket accusation of my negativity, why don't you state your position on some of the initiatives that I have championed?*

*My first ever was in 2007 when I accused the Developer of using the Foundation as a personal ATM machine. At that time the dues were \$2000/yr. having started at \$1200/year. They are now \$2820/yr. In 2008 and 2009 the Developers take was \$100,000 for the two years combined. Are you for or against?*

*The 3.5% management fee + excess revenues agreement was negotiated between DiNardo and Ferrao, an employee and his boss dividing up your money. Conflict of interest? For or against?*

*Florida law says I have the right to know the salary of any Foundation employee. I have been denied access. For or against?*

*The parks were purchased for \$550,000 based upon a suspect appraisal commissioned months after the deal was set.*

- Schutt's November 29, 2012 Comment to *Fiddler's Creek Foundation Meeting*:

*. . . . Recall that for 2008 and 2009 the Developer took over \$1,100,000 out of the C&S in combined management fees and "excess revenues" (the numbers are fuzzy for 2010 ad 2011). Obviously the dues were over inflated making the C&S a significant profit center for the Developer, while creative for him, not so creative for the residents.*

\* \* \*

. . . *This Board does not have a good record for addressing issues that reflect on their lack of fiduciary responsibility to the members.*

### **The Election of a Homeowner Representative to the Board**

#### The Facts

30. In January, 2012, the Board established qualifications for the election of a homeowner representative to the Board. One of these qualifications provided that, to be nominated for election, the candidate could not be a current member of a CDD Community Development District Board or a Village Association Board.

31. On February 20, 2012, the Foundation amended the By-Laws (“By-Laws Amendment”) to, in pertinent part, incorporate the qualifications for the election of a homeowner representative to the Board.

32. Additionally, as part of its election process, the Foundation caused to be published a written document entitled, *Election Process (2012)* which explained these qualifications.

33. In accordance with the By-Laws Amendment and its specified election process, the Foundation’s Nominating Committee received several applications for nomination, including one from Schutt.

34. As a current member of a Village Association Board, Schutt did not meet all of the required qualifications for nomination, and was therefore, not eligible for nomination.

35. Thereafter, all qualified applicants for nomination were nominated by the Board, the same were included on the ballot for the April 17, 2012 election, and Donna Ohye from Mulberry Row was elected to the Board.

#### Schutt’s Lies

36. Schutt falsely stated that the Foundation’s process to elect the homeowner representative to the Board violated Florida law.

37. Schutt falsely stated that the Foundation included in the qualifications for the homeowner representative that the nominated candidates not be current members of a Community Development District board nor a Village Association board as a way to avoid electing Schutt or any other homeowner representative adverse to the Developer.

38. Schutt also published a parody about the Foundation Board falsely implying that the Foundation did not intend to honor the obligation to elect a homeowner representative. Schutt implied that instead, the Foundation was establishing qualifications to target Schutt and to keep him from being elected.

39. For example, Schutt published the following defamatory statements<sup>2</sup> on the Blog Site about the election process:

- Schutt's February 19, 2012 Article: *Where Will It Go?:*

*. . . the obstacle course called the Election Process . . . .*

*\* \* \**

*. . . The process being contemplated by the Foundation restricts nominees to one per village in addition to excluding CDD and Village Board members and further empowers the nominating Committee to screen/select candidates by a majority vote. This effectively eliminates over 99% of the residents.*

*\* \* \**

*. . . that the Election Process, as it is currently constituted, conflicts with Florida State law. If the Foundation is truly worried about a conflict of interest, as opposed to merely putting obstacles in the way of potential candidates, that conflict would be eliminated by any candidate who resigned whatever positions he held after he was elected. All the candidates that are not elected obviously are contributing to the organizations in which they*

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<sup>2</sup> True and correct copies of the articles together with posted comments wherein Schutt published defamatory statements about the election process are attached hereto as **Composite Exhibit "B."**

*held/hold office. Nothing is gained by forcing them to resign prior to being, elected to the Foundation Board.*

- Schutt's March 16, 2012 Comment to *It Is Official!!!!*:

*. . . The real conflict of interest is with the sitting board which is made up of two Developer employees and their primary outside attorney. They show no concern for that conflict.*

*The election rules were made up on the fly. There were no by-laws in place that defined the election of a resident representative because they had not anticipated having to do so. In the January notice there was no provision about resigning currently held positions; those provisions were added to the February notice.*

*When I suggested in my application for nomination that they were in violation of state statutes, they then revised the by-laws.*

- Schutt's March 18, 2012 Article: *Humor Is The Best Medicine-An Imaginary Conversation*:

*Hey, we have to elect a resident member to the Foundation Board.*

*Why?*

*We promised the residents as part of the bankruptcy exit plan.*

*Can't we just forget about it?*

*No, if we did that people might get the idea that we can't be trusted and don't keep our promises. Besides, the Judge might object if someone brought it to his attention.*

*Oh, right.*

*Ok, let's make an announcement*

*Right.*

*Later:*

*Hey, we forgot the part about conflict of interest.*

*Which conflict, ours or theirs?*

*Theirs, dummy.*

*Ok, let's make another announcement.  
Right.*

*Who do we want to exclude?*

*How about COD Board members and Village board members?*

*Don't they already work for the best interests of the residents?*

*That's the point dummy, but they don't always work in our best interests.*

*Didn't we tell them that our interests and their interests were the same?*

*Are you simple? Of course we told them that, but that was just propaganda subject to change without notice.*

*Right*

*How are we going to word this?*

*Let's have them resign all their current positions before they can be a nominee.*

*Why not have them resign those positions after they get elected?*

*I think we might exclude some undesirables if we ask them to resign ahead of the election.*

*Right*

*How about members of Foundation committees? Won't some residents think they have conflicts also?*

*Maybe, but those are conflicts with the residents not conflicts with us, we can ignore those dissenters. We've already vetted our committee members and they are friendly.*

*Right.*

*Later:*

*Hey, we forgot to amend the by-laws.*



*Darn! Write an amendment.*

*Ok*

*I think we have it covered now*

*Right.*

*How many applicants do you think that we will get.*

*Well, we have limited it to one per Village, but I expect most Villages will each submit one which would mean over 20 applicants. I would think that there a lot of residents that would want to work with a classy group like us.*

*Right.*

*End of conversation.*

- Schutt's March 19, 2012 Comment to *Humor Is The Best Medicine-An Imaginary Conversation*:

*. . . Whether we like it or not, and I certainly do not, we live in a mini-autocracy. The Developer (autocrat) makes the rules and we, his subjects, are obliged to follow them.*

\* \* \*

*. . . My natural reaction when I am a target of someone's abuse of power is to resist.*

\* \* \*

*The issue in this instance is whether the election rules recently crafted (piecemeal) by the Developer are appropriate and whether I have the right to disagree with them and express that disagreement publically.*

## **The Foundation's Purchase of the Park Land**

### The Facts

40. On December 1, 2011, the Foundation entered into a written agreement ("Purchase Agreement") for the purchase of certain improved property zoned for parks (the "Park Land") within the Fiddler's Creek community from FCC Marsh, LLC, an affiliate of the Developer, for the purchase price of \$550,000.

41. The Park Land consists of two parcels – one of which is improved with a boardwalk and is used by the members of the Foundation as a nature trail and the other is also improved and is used by the members of the Foundation as a park. These valuable improvements were constructed by the Developer at a cost of \$582,000, over and above the price paid by the Developer to purchase the Park Land itself.

42. Pursuant to the Foundation Declaration, the Foundation had the authority to acquire additional property within Fiddler's Creek, including the Park Land.

43. The Purchase Agreement was approved by resolution of the Board as permitted under Florida law and the governing documents.

44. The Foundation obtained an appraisal confirming that the value of the Park Land with improvements was \$550,000.00.

### Schutt's Lies

45. Schutt falsely stated that the Board's approval of the purchase of the Park Land from the Developer violated Florida law, and that the members of the Foundation were "cheated," "scammed," and "raped" by the purchase price.

46. Schutt falsely stated that the land and improvements on the Park Land had no value and the appraisal supporting the purchase price contained numerous errors. Schutt also

lied and claimed the Board was stonewalling or denying homeowners information regarding he purchase.

47. Schutt falsely accused the Board of a conflict of interest and acting solely for the benefit of the Developer in the purchase of the Park Land. In fact, Schutt went so far as to author and publish another parody that implied the Board violated its fiduciary duties by approving the Park Land-transaction to benefit the Developer.

48. For example, Schutt published the following defamatory statements<sup>3</sup> on the Blog Site about the Park Land purchase:

- Schutt's April 17, 2012 Article: *Fiddler's Creek Foundation, Inc Annual meeting of the Board of Director's April 17, 2012:*

*. . . According to the 2012 Audited Financials of the Club and Spa, the agreement to purchase the parks was reached and a deposit of \$270,000 paid in December without benefit of the required and open meeting of the members. The Board must have met (without us) to arrive at a decision to buy the parks. I read this a clear violation of the Florida Statutes.*

- Schutt's April 19, 2012 Comment to *Fiddler's Creek Foundation, Inc. Annual meeting of the Board of Director's April 17, 2012:*

*You have forgotten that the Foundation is run by the Developer. He negotiated with himself.*

*One can almost Imagine the conversation.*

*We need some more money.*

*Let's shear the sheep*

*How? We have already emptied the golf escrow account and negotiated away the excess revenues from the C&S so we can no longer skim that pot.*

*We will sell them the parks.*

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<sup>3</sup> True and correct copies of the articles together with posted comments wherein Schutt published defamatory statements about the Park Land purchase are attached hereto as **Composite Exhibit "C."**

*What parks?*

*Marsh Point and Isla Del Sol.*

*I didn't know those were parks.*

*Yep. Remember when our appointees were running CDD#1 we got them to sign an agreement to maintain the parks.*

*Those were the days! That group did everything we wanted without argument.*

*How much should we charge?*

*Get a friendly soul to give us an appraisal.*

*Should we tell the residents what we are going to do?*

*Naw, we never have in the past. why start now, the residents will never sue us.*

*Do it!*

- Schutt's May 15, 2012 Comment to *So Much For Transparency*:

*Phil raises a couple of good points that beg the question (s), were the parks worth \$550,000(?) and to whom else could the Developer sell them? Those two questions further beg the question, did the Board fulfill their fiduciary responsibility to the members by paying the best price for the parks?*

*My opinion(s):*

*Answering the last question first, the Board has again demonstrated a conflict of interest favoring the Developer.*

*As Phil pointed out, "in reality, the Foundation is the only entity they could "sell to." No one, I repeat, no one would have paid a dime for those parks.*

*Our esteemed Board paid \$550,000!!!!!!*

*When there is only one buyer, who has the leverage? The parks have no value to anyone outside of Fiddler's and relatively little value to the residents. I will wager few people knew about the Isla*

*Del Sol park and the Marsh Point park is good for a five minute visit.*

*This deal is almost as egregious as the management contract.*

*The value of any item is what the marketplace will give you for it, unless, as in this instance; the buyer and the seller are the same person and the money comes out of some other account.*

- Schutt's June 23, 2012 Comment to *Crossing the line*:

*. . . There was no market heard from on this transaction, the buyer and seller were essentially one entity.*

*You have accepted this purchase as a fait accompli, but unlike other forms of rape, it can be reversed, as it should be. The final payment is not due until 2013: Will, the Foundation "fess up" to its error and get a valid appraisal. I have no clue. If they do not, I believe that we should keep hammering away at the issue. because it stinks to high heaven.*

- Schutt's August 28, 2012 Article: *Parkgate – Lest We Forget*:

*. . . the Foundation is stonewalling [park land] issue . . .*

*\* \* \**

*Belatedly, apparently, they decided that an appraisal was needed to back up the purchase price, so they commissioned an appraisal in February of 2012. Was that just poor planning or merely typical arrogance?*

*That appraisal has more errors in it than my first kindergarten spelling test.*

*\* \* \**

*Mark Woodward, the "client", commissioned the appraisal, not the Foundation. The Foundation is therefore a "third party" and cannot "rely on" the appraisal. The Foundation paid \$550,000 for property based upon an appraisal that it cannot "rely on". How funny is that?*

*One other question has been troubling me. What was the hurry to put \$270,000 into the Developers pocket in December of 2011? The parks have been in existence for years. Why the need to sell them in December 2011, basically "in the dark of night" without a*

*meeting to discuss the purchase “before the fact” with the residents. Was the money needed to pay the interest on the C&S loan?*

49. All conditions precedent to the filing of this lawsuit have been performed, satisfied, or waived.

### **Count I - Defamation**

50. This is an action for damages in excess of \$15,000.00, exclusive of interest and costs, for defamation.

51. The Foundation incorporates and re-alleges the allegations in paragraphs 1 through 49 above, as if set forth fully herein.

52. The statements written by Schutt and published on the Blog Site about the Foundation were false.

53. Schutt knew or should have known that these statements about the Foundation were false when made and published.

54. The statements written by Schutt and published on the Blog Site for the world to see are defamatory and libelous, and injurious to the reputation of the Foundation.

55. The statements written by Schutt on the Blog Site are libel, *per se*, because, by their nature, the statements subject the Foundation to distrust, ridicule, and contempt and injured the Foundation’s reputation.

56. Schutt published these defamatory and libelous statements to third parties.

57. Schutt deliberately, and with actual malice, wrote and published the defamatory statements concerning the Foundation with the intent to injure the Foundation’s reputation and to create ill will and hostility toward the Foundation.

58. The Foundation has been damaged by the publication of the defamatory statements.

WHEREFORE, Plaintiff, Fiddler's Creek Foundation, Inc., demand judgment against Defendant, James A. Schutt, together with an award of interest and costs, and any such other and further relief this Court deems just and proper. The Foundation reserves the right to demand punitive damages upon a proffer of record evidence pursuant to Florida Statutes.

**Count II - Defamation - (Injunction)**

59. This is an action for mandatory and prohibitive injunctive relief.

60. The Foundation incorporates and re-alleges the allegations in paragraphs 1 through 49 above, as if set forth fully herein.

61. Schutt knowingly, willfully and continuously published inaccurate and defamatory statements regarding the Foundation on the Blog Site.

62. As a result, the Foundation has suffered, and will continue to suffer irreparable harm unless Schutt is required to remove these inaccurate and defamatory statements from the Blog Site.

63. Moreover, the Foundation has suffered, and will continue to suffer irreparable harm unless Schutt is enjoined from republishing these inaccurate and defamatory statements on the Blog Site or otherwise.

64. The Foundation does not have an adequate remedy at law.

65. The threatened injury to the Foundation far outweighs any possible harm to Schutt if an injunction is entered to require him to remove the inaccurate and defamatory statements from the Blog site and prevent him from republishing the same. Accordingly, the granting of an injunction will serve the public interest.

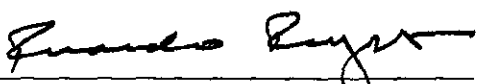
WHEREFORE, Plaintiff, Fiddler's Creek Foundation, Inc., requests this Court grant a permanent injunction against Defendant, James A. Schutt, directing him to remove all false statements and defamatory opinions on the Blog Site and to cease and desist from republishing these false statements or defamatory opinions regarding the Foundation, together with any such other and further relief this Court deems just and proper.

### **Jury Trial Demand**

The Foundation demands a trial by jury on all issues so triable.

Dated: January 24, 2013.

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