

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NUMBER:

ONE TEQUESTA POINT CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

vs.

BRICKELL KEY MASTER ASSOCIATION, INC.;
SWIRE PROPERTIES INC.;
ISOLA CONDOMINIUM ASSOCIATION, INC.;
ST. LOUIS CONDOMINIUM ASSOCIATION, INC.;
and THE CITY OF MIAMI,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF,
BREACH OF DECLARATION, VIOLATION OF SECTION 720.315,
AND OTHER RELIEF**

Plaintiff, One Tequesta Point Condominium Association, Inc. ("OTP" or "Plaintiff"), by and through its undersigned counsel, hereby sues Defendants Brickell Key Master Association, Inc. ("BKMA"), Swire Properties Inc. ("Swire"), Isola Condominium Association, Inc. (the "Isola"), St. Louis Condominium Association, Inc. (the "St. Louis"), and the City of Miami (the "City"), and states as follows:

PARTIES

1. Plaintiff One Tequesta Point Condominium Association, Inc. ("OTP") is a Florida not-for-profit corporation (Document No. N95000002957) governing the condominium community known as One Tequesta Point, located at 888 Brickell Key Drive, Miami, Florida 33131. OTP is

a member association of the BKMA, and OTP's members are members of the BKMA. Pursuant to Rule 1.221, Florida Rules of Civil Procedure, OTP files this Complaint on behalf of its members.

2. Defendant Brickell Key Master Association, Inc. ("BKMA") is a Florida not-for-profit corporation (Document No. 760954) organized pursuant to the Declaration of Covenants, Restrictions and Easements for Brickell Key, recorded on or about February 2, 1982, in the Miami-Dade County Official Records Book 11344 at page 1257 et seq., of the Public Records of Miami-Dade County, Florida (herein referred to as the "Master Declaration") (Exhibit A). (The Master Declaration does not appear to have been properly recorded and cannot be located by its book and page numbers; it instead appears to have been recorded and indexed as an attachment to the Declaration of Condominium for Brickell Key One, at Book 11344, Page 1079.) The BKMA is located at 701 Brickell Key Boulevard, CU-14, Miami, Florida 33131.

3. Defendant Swire Properties Inc. (and/or its predecessor or affiliate Swire Pacific Holdings Inc.) (collectively, "Swire") is, upon information and belief, organized and existing under the laws of Delaware and/or Florida. Swire is the developer of Brickell Key and the current Declarant under the Master Declaration. Swire holds the controlling Class B Voting Member rights under the Master Declaration. To the extent any of Swire's interests have been transferred to a Swire-affiliated entity, such entity is also named as a Defendant. Swire's predecessors, parents, subsidiaries, and affiliates include, without limitation, Swire Pacific Holdings Inc., Swire Brickell Key Hotel Ltd., Swire Jadeco LLC, and BK Parcel Holdings, LLC, each of which, upon information and belief, owns or has owned parcels or interests on Brickell Key. Swire Properties Inc. and each of the foregoing entities, together with any other Swire predecessor, parent, subsidiary, or affiliate, are referred to collectively herein as "Swire" for all purposes of this action. Swire has controlled the BKMA continuously since 1982.

4. Brickell Key, originally known as Claughton Island, is a man-made island that was dredged in the 1970s and developed beginning in the 1980s by a joint venture in which Swire acquired a majority interest. The approximately 44-acre island, which is now home to approximately eleven condominium buildings, each with its own condominium association, together with retail uses and the Courvoisier Centre office complex.

5. Defendant Isola Condominium Association, Inc. (the "Isola") is a Florida not-for-profit corporation (Document No. N04000007996) governing the Isola Condominium, located at 770 Claughton Island Drive, Miami, Florida 33131. The Isola is a member association of the BKMA. The Isola is named as a Defendant because the segment of seawall along the perimeter of the Isola is, as confirmed in writing by BKMA's counsel, property of the Isola; and OTP seeks declaratory relief that any costs attributable to the Isola seawall are not assessable under the Master Declaration.

6. Defendant St. Louis Condominium Association, Inc. (the "St. Louis") is a Florida not-for-profit corporation (Document No. N95000000863) governing the St. Louis Condominium, located at 800 Claughton Island Drive, Miami, Florida 33131. The St. Louis is a member association of the BKMA. The St. Louis is named as a Defendant because the segment of seawall along the perimeter of the St. Louis is, as confirmed in writing by BKMA's counsel, property of the St. Louis; and OTP seeks declaratory relief that any costs attributable to the St. Louis seawall are not assessable under the Master Declaration.

7. Defendant City of Miami (the "City") is a municipal corporation organized under the laws of the State of Florida. The City is joined as a defendant because the City is the owner of seawall along the perimeter of Brickell Key.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Section 86.011, Florida Statutes (Declaratory Judgment Act); and Section 26.012, Florida Statutes. The amount in controversy exceeds \$50,000, exclusive of interest, costs, and attorneys' fees. This Court also has equitable jurisdiction to order an accounting of BKMA's assessment funds and financial dealings with Swire and Swire-affiliated entities.

9. Venue is proper in Miami-Dade County, Florida, because all Defendants reside or conduct business in Miami-Dade County, the real property at issue is in Miami-Dade County, and all events giving rise to this action occurred in Miami-Dade County.

GENERAL ALLEGATIONS

I. BKMA's Power to Assess is Limited to "Common Properties"

10. The Master Declaration provides that the Declarant "has deemed it desirable, for the efficient preservation of the values and amenities of the aforesaid property known as 'BRICKELL KEY ON CLAUGHTON ISLAND' (hereinafter referred to as 'BRICKELL KEY'), to create a corporation not for profit under the laws of the State of Florida (herein referred to as the 'Association') to which should be delegated and assigned the powers of owning, maintaining, and administering those portions of BRICKELL KEY which may be designated as 'Common Properties' pursuant hereto ..." (See Master Declaration at p. 1, paragraph B.)

11. Article I, Definitions, Sections 3, 4, 5, and 6 of the Master Declaration exclusively define the purposes for which BKMA may assess its members. Article I, Sections 3, 5, and 6 authorize BKMA to assess its members for costs related to "the Common Properties," and Section 4 authorizes assessments to recover costs associated with enforcing the owner's obligations. Article I, Sections 3, 5, 6 provide:

Section 3. "Common Assessment" shall mean the charge against each Owner and his Unit, representing a portion of the total costs incurred by the Association in owning, maintaining, improving, repairing, replacing, insuring, managing and operating the Common Properties. ...

Section 5. "Reconstruction Assessment" shall mean a charge against each owner and his Unit, representing a portion of the cost incurred by the Association for reconstruction of any portion or portions of the Improvements located on the Common Properties pursuant to the provisions of this Declaration."

Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Unit, representing a portion of the costs incurred by the Association for installation or construction of any capital Improvements on any portion of the Common Properties which the Association may from time to time authorize."

(See Master Declaration at p. 2, Art. I, Sections 3, 5, 6.) Thus, BKMA may only levy assessments for costs it incurs for the "Common Properties." The Declaration does not authorize or permit assessments for other property.

12. Article I, Section 13 of the Master Declaration provides in relevant part as follows:

"Common Properties" shall mean those portions of BRICKELL KEY which are declared as being Common Properties in this Declaration or in any Supplemental Declaration hereafter made by Declarant. Said Common Properties are for the common use and enjoyment of the Owners, subject to the rights hereunder of the Declarant and others. Declarant hereby declares the property described in Exhibit "D" hereto to be Common Properties (except as provided to the contrary in portions of this Declaration). Common Properties shall also include (a) certain improvements located immediately outside the seawall, but contiguous to the Common Properties, including, but not limited to, such items as docks, pedestrian lookouts, seawall protection and other such improvements that may benefit the Owners, even if not capable of being legally described, (b) that portion of the main entrance road (i) owned by the City of Miami, but required to be maintained by the Declarant (which obligation is hereby assumed and shall be performed by the Association) ...

(See Master Declaration at p. 3, Art. I, Section 13.)

13. Article II, Owner's Property Rights, Section 7 of the Master Declaration further clarifies and limits the definition of "Common Properties" to property conveyed to the BKMA in fee simple:

Title to the Common Properties. After all Units anticipated to be constructed in BRICKELL KEY have been constructed and conveyed to purchasers, or sooner at the option of the Declarant, the Declarant shall convey to the Association the fee simple title to the Common Properties and the Association shall accept said conveyance. The Developer, and thereafter the Association, shall hold title to the Common Properties for the benefit of those persons entitled to use same under the provisions hereof. Declarant may mortgage the Common Properties to finance the original development and construction thereof, provided that (i) the lender recognizes the rights of the Owners hereunder, (ii) the Common Properties shall be free of mortgages at the time of conveyance to the Association, and (iii) the Association shall not be personally liable for payment of the debt secured by such mortgage(s). Title to portions of the Common Properties may be transferred to Brickell Key Section One Homeowners' Association, Inc., whereupon such portions shall cease to be Common Properties hereunder.

(See Master Declaration at p. 7, Art. II, Section 7.) Thus, any parcel of property that is not and will not be owned by BKMA is not Common Properties and may not be the subject of an assessment under Article I, Sections 3, 5, and 6 of the Master Declaration.

14. Article XV, General Provisions, Section 6 of the Master Declaration provides:

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

(See Master Declaration at p. 28, Art. XV, Section 6.) Thus, under Article XV, Section 6, property gifted or dedicated to the public, or for any public use is not Common Properties.

15. Article IX, Maintenance and Repair Obligations, Section 2 of the Master Declaration states, in part:

Section 2. Maintenance Obligations of Association. Subject to the provisions of Section 1 of this Article, the Association shall maintain, or provide for the maintenance of, all of the Common Properties and all Improvements thereon,
...

(See Master Declaration at p. 19, Art. IX, Section 2.) Thus, Article IX, Section 2, does not authorize BKMA to fund the maintenance of property that is not Common Properties.

II. Parcels on Brickell Key that are not "Common Properties"

a. The Outparcel/Baywalk owned by the City of Miami

16. By Warranty Deed dated January 10, 2001, recorded in Official Records Book 20587, Page 4815, Swire conveyed to the City of Miami a twelve-foot-wide strip of land along the western edge of Brickell Key, legally described as the "12 Foot Baywalk," including the westernmost seawall which is the western edge of the strip (herein the "Outparcel" or "Baywalk"). The City Commission accepted the conveyance pursuant to Resolution No. 01-125 (February 8, 2001).

17. Simultaneously with the Warranty Deed, Swire executed and recorded the Declaration of Covenants, Reservations and Restrictions in Official Records Book 20587, Page 4774 (the "Baywalk Declaration"), as a covenant running with the title to the Outparcel. The City of Miami executed and recorded a Joinder to the Baywalk Declaration in Official Records Book 20587, Page 4782.

18. Section 4 of the Baywalk Declaration expressly requires Swire, at its sole cost and expense, to: (a) insure, maintain, repair, and replace any improvements constructed upon the Outparcel (Section 4(a)); and (b) develop and perpetually maintain the Outparcel for use as a public park (Section 4(b)). The City Manager's memorandum submitted with Resolution No. 01-125 confirmed that the developer would improve and maintain the area at its sole cost and expense.

19. The City of Miami owns the Outparcel in fee simple; thus, the Declarant cannot and will never convey fee simple title to the Outparcel to the BKMA. Therefore, the Outparcel is not Common Properties and may not be subject of an assessment under the Master Declaration. Swire, not the BKMA, bears the perpetual duty to maintain, repair, and replace the improvements upon the Outparcel under Section 4 of the Baywalk Declaration.

b. The 3.5-Acre Linear Waterfront Park

20. In 2015, as a condition of City approval for an amendment to the Brickell Key Development of Regional Impact, Swire agreed under City of Miami Ordinance No. 13572 (approved October 22, 2015) to develop and perpetually maintain a 3.5-acre linear waterfront park on the perimeter of Brickell Key (the "Linear Park"). The recitals to Ordinance No. 13572 disclose that the transaction was for the benefit of Swire. The recitals state, in relevant part:

WHEREAS, on August 27, 2015, Swire Properties ("Swire"), owner of the property located at 750 Cloughton Island (as shown in Exhibit B), submitted an application to amend the Brickell Key DRI, pursuant to § 380.06, Florida Statutes (2015), for a decrease in Non-Residential uses by 676,116 square feet, the maintenance of a 3.5 acre linear waterfront park, and an increase in the number of permissible residential units by 668 (the "Brickell Key DRI Amendment"); and

WHEREAS, the Miami Comprehensive Neighborhood Plan contains Police PR-2.2.1 that establishes a no net-loss policy for public park land, and in compliance thereof, the maintenance of a 3.5 acre linear waterfront park and an additional 0.25 acre public park on Brickell Key, design and location to be determined by Swire, satisfies this policy; ...

(See City of Miami Ordinance No. 13572 at p. 1.)

21. The Linear Park is not Common Properties because it does not belong to BKMA and Swire will not transfer fee simple title to the Linear Park to BKMA. Therefore, any portion of seawall within the Linear Park is not Common Properties and BKMA may not assess its members for costs incurred in connection with that seawall.

c. The Isola Seawall

22. The Isola is a condominium association whose property includes the segment of seawall and baywalk along the Isola's perimeter.

23. Property that belongs to the Isola is not Common Properties.

24. Therefore, costs attributable to the Isola seawall are not assessable against OTP or its members under the Master Declaration. To the extent any portion of the Isola seawall requires

maintenance or replacement, that obligation runs to the Isola and its members, not to OTP and its members through a BKMA assessment.

d. The St. Louis Seawall

25. The St. Louis is a condominium association whose property includes the segment of seawall and baywalk along the St. Louis' perimeter.

26. Property that belongs to the St. Louis is not Common Properties.

27. Therefore, costs attributable to the St. Louis seawall are not assessable against OTP or its members under the Master Declaration. To the extent any portion of the St. Louis seawall requires maintenance or replacement, that obligation runs to the St. Louis and its members, not to OTP and its members through a BKMA assessment.

III. 2006 FEMA Covenant

28. On August 11, 2006, Gregg E. Toland, then acting as Vice President of BKMA while simultaneously serving as a Swire representative, signed a document titled "Covenant to Run with the Land" (CFN 2006R0986502, recorded in Official Records Book 24908, Page 2475) (the "FEMA Covenant") purporting to bind BKMA, as "Covenantor," with the City of Miami, in connection with BKMA's application to FEMA for a Letter of Map Revision pursuant to 44 C.F.R. Section 65.10(d). To obtain the Letter of Map Revision, an entity subject to governmental jurisdiction was required to assume ultimate responsibility for maintenance of the seawall. The City agreed to provide FEMA with such assurances of ultimate maintenance responsibility, conditioned on BKMA's covenants in the FEMA Covenant.

29. Notably, the sixth and seventh recitals of the FEMA Covenant state:

WHEREAS, the obligation to and responsibility for inspecting, maintaining, repairing and insuring the Seawall has been delegated to COVENANTOR by each condominium association responsible for the operations of the condominium developments benefited by the Seawall; and

WHEREAS, COVENANTOR wishes to give the City assurances that it will be responsible for the required maintenance of the Seawall as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time, and has been granted authority by the condominium associations for the condominium developments benefited by the Seawall to give such assurances to the City.

(See FEMA Covenant at p. 2.) The sixth recital is false insofar as OTP (or any other member association of BKMA) never delegated to BKMA the obligation and responsibility to inspect, maintain, repair, and insure any portions of seawall that are not Common Properties. Likewise, the seventh recital is false insofar as OTP (or any other member association of BKMA) never granted authority to BKMA to give assurances to the City of Miami that BKMA would be responsible for the maintenance of any portions of seawall that are not Common Properties. Accordingly, the FEMA Covenant is ultra vires BKMA, and null and void, insofar as it purports to apply to non-Common Properties.

30. Under the FEMA Covenant, BKMA purportedly agreed, among other things, to maintain the seawall pursuant to Section 29-95 of the City of Miami Code, to conduct annual inspections, and to make repairs as recommended by a registered professional engineer. By its terms, however, the FEMA Covenant addressed only the limited portion of the seawall adjacent to the Brickell Key property for which BKMA represented it had constructed certain improvements, and not the entire perimeter seawall around Brickell Key.

31. The FEMA Covenant does not and cannot expand the BKMA's assessment authority beyond the express limits of the Master Declaration. Four principles confirm this:

a. The FEMA Covenant is a covenant between BKMA and the City of Miami; it does not amend the Master Declaration, which is the governing instrument establishing BKMA's assessment authority. A contract with a third party cannot expand an association's assessment authority over its members beyond what the governing documents permit.

b. The FEMA Covenant does not reference, modify, or supersede the Master Declaration's limit of assessments to costs associated with Common Properties. Any BKMA maintenance obligation under the FEMA Covenant that relates to non-Common-Properties must be funded from sources other than assessments on OTP and its members.

c. To the extent the seawall requires replacement along the Outparcel, that cost is independently obligated to be borne by Swire under the Baywalk Declaration. BKMA cannot use the FEMA Covenant to shift Swire's sole-cost obligation onto OTP and its members.

d. The federal regulation that the FEMA Covenant was designed to satisfy, 44 C.F.R. Section 65.10(d), confirms that ultimate responsibility for seawall maintenance rests with a governmental entity, not with BKMA's members. Section 65.10(d) requires that all maintenance activities be "under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance." The City of Miami, as the NFIP community participant, bears that ultimate responsibility. Neither the regulation nor the FEMA Covenant authorizes BKMA to levy assessments on OTP and its members for seawall that is not Common Properties. To the extent any seawall on or contiguous to the Outparcel or the Linear Park requires maintenance or replacement, the obligation to fund that work rests with Swire under the Baywalk Declaration and Ordinance No. 13572, and with the City as fee simple owner of the Outparcel, not with OTP and its members.

IV. The Purported Seawall Assessment

32. In April 2025, the BKMA published a Memorandum dated April 17, 2025, regarding "BKMA Board of Directors Considers Landmark Shoreline Resiliency Initiative: Brickell Key Seawall Replacement." The Memorandum describes the project as,

A New Fortified Seawall: Engineered to address the current seawall conditions as well as rising sea levels and increasingly severe weather events, the project consists of building a new seawall over the existing structure and raising its height by 1-2 feet on the eastern face of the island, and 2-3 feet on the western face, ensuring consistent elevation island-wide. The seawall replacement will extend from the Brickell Key Center office building, around the northern and eastern face of the island up to the St. Louis Condominium. The seawall at the Southern parcel of the island at the construction site of The Residences at Mandarin Oriental, Miami, will also be replaced, with this portion funded entirely by Swire Properties.

33. In April 2025, BKMA published a document entitled "BKMA FAQ: Shoreline Resiliency Initiative and Seawall Replacement April 2025" ("FAQ"). FAQ 1 states, in part:

1. Who Owns the Seawall and Who is Responsible for Maintaining and Replacing It? The Seawall is a vital element of Brickell Key, built over 50 years ago to protect and enhance our island community. It is owned by the Brickell Key Master Association ("BKMA"), to which all residents contribute. BKMA has the responsibility to maintain and repair the seawall as contained in our governing documents, a Covenant to Run with the Land agreement signed with the City of Miami in 2006, and the City Ordinance Sections 29-89(a)(4) & (5), which govern repair thresholds and minimum elevations. ... While we are committed to exploring potential funding options from outside sources, it's important to understand that the City of Miami is not legally responsible for maintaining privately-owned seawalls. The duty falls to us, and by acting now, we are demonstrating the reliance and self-reliance that have always defined Brickell Key. ...

FAQ 1 is false and misleading insofar as not all the seawall belongs to BKMA, and "our governing documents" (the Master Declaration) do not obligate BKMA to maintain and repair seawall that is not Common Properties.

34. FAQ 4 states, in part:

4. Why is the Baywalk Open to the Public if we Pay to Maintain It? And Why Isn't There Public Funding for the Seawall? We understand this concern. The Seawall and Baywalk are separate structures. The Baywalk's public access is a permanent agreement made during Brickell Key's original development which was later amended and does not obligate the City to fund seawall maintenance. ...

FAQ 4 is false and misleading because whether the seawall and the Baywalk are separate structures is irrelevant. BKMA may not assess its members for any seawall that is not Common Properties.

35. The Covenant to Run with the Land referenced in FAQ 1 (the FEMA Covenant) is void and unenforceable insofar as it purports to shift Swire's obligations to maintain and repair the seawall to BKMA and its members. The Master Declaration limits BKMA's members' liability for assessments to costs attributable to Common Properties; and this limitation of liability vested before Swire ceded the Outparcel and the Linear Park to the City of Miami. Indeed, the Master Declaration's limitation of BKMA's members' liability to pay assessments to costs attributable to Common Properties vested when each condominium's members first became liable to pay assessments.

36. On October 7, 2025, BKMA provided notice to its members that on November 7, 2025, at 4:00 p.m., BKMA's Board of Directors would meet "for the purpose of voting to adopt a special assessment to fund replacement of the Seawall and associated infrastructure elements."

37. By letter dated November 4, 2025, OTP's President Dwayne Williams notified the BKMA board and all Brickell Key association presidents of BKMA's legal objections, requesting that all legal issues be resolved before any assessment vote.

38. By email dated November 6, 2025, from BKMA's legal counsel, Michael Chapnick, Esq. (the "Chapnick email"), BKMA responded to OTP's letter dated November 4, 2025. As to BKMA's alleged obligation to repair and replace any part of the seawall included in the Outparcel, Mr. Chapnick wrote:

With respect to BKMA's rights and obligations to repair and replace the seawall, ownership is irrelevant. The Declaration, recorded on the same day as the referenced deed [for the Outparcel], gives the Declarant the right to do or cause to be done, the listed obligations. The Declarant has caused the BKMA to fulfill those obligations and the BKMA has accepted that charge for the last 25 years.

(See Chapnick email, at paragraph 1.) Thus, according to Mr. Chapnick, BKMA is responsible to repair and replace seawall that belongs to the City of Miami and is not Common Properties because

Swire shifted its obligations to BKMA, and the BKMA (which Swire controls) has not objected. As to the ownership of the Linear Park, Mr. Chapnick advised that Swire and the City of Miami own parts of the linear park, with the City owning the Outparcel; and he wrote,

In addition, (i) BKMA owns the portion of the linear park adjacent to Brickell Key 1 and 2, and (ii) the baywalk along Isola and the St. Louis is included in their respective condominiums.

(Id., at paragraph 2.) Mr. Chapnick wrote that the only portion of the Linear Park that may contain seawall is the Outparcel. (Id., at paragraph 3.) Mr. Chapnick did not, however, explain how Swire could cede property belonging to BKMA, the Isola, and the St. Louis, to the City of Miami to serve as a park in perpetuity.

39. On or about November 7, 2025, the board of BKMA met and purported to pass an assessment in the amount of \$32,285,899.95 "for the purpose of ... Funding replacement of approximately 4600 linear feet of the Association's Seawall not including the Mandarin section, and repair of any impacted upland infrastructure" (herein referred to as the "Seawall Assessment"). Swire, the sole Class B member of the board, and seven Class A members voted for the assessment. OTP and five other Class A members voted against the assessment and the St. Louis abstained. Thus, a majority of the Class A members of the board did not vote for the assessment.

40. The Seawall Assessment is ultra vires BKMA, illegal, unlawful, and unenforceable insofar as it purports to assess BKMA's members for costs related to fund the replacement of seawall that is not Common Properties, including seawall located on: (i) the Outparcel; (ii) the Linear Park; (iii) the Isola seawall; and (iv) the St. Louis seawall.

41. The Chapnick email's ownership disclosures are significant in three respects. First, BKMA's own counsel has now confirmed in writing that the Outparcel is City-owned, eliminating any genuine dispute on that threshold fact. Second, the alleged ownership structure of the Linear Park confirms OTP's position that the City-owned Outparcel and other non-BKMA portions are

not Common Properties. Third, the Chapnick email's confirmation that the Isola and St. Louis baywalk segments are the property of those condominiums establishes that those seawalls are not Common Properties of the BKMA.

42. BKMA's defense that ownership is "irrelevant" because of a 25-year course of dealing is legally untenable. A course of dealing cannot override an express, recorded covenant running with the land, nor can it expand assessment authority beyond the limits established by the governing documents. BKMA's assertion that ownership is irrelevant is itself a concession that BKMA has no textual basis in the governing documents for assessing OTP and its members for non-Common Properties.

43. The assessment threatens OTP and its members with unlawful financial obligations and potential liens on unit owners' properties. OTP has a bona fide, actual, present need for declaration of its rights.

Swire's Transfer of Seawall to Affiliated Entity

44. Compounding Swire's misconduct, upon information and belief, in 2023 Swire Pacific Holdings Inc. and Swire Properties, Inc. jointly executed a Quitclaim Deed conveying part of the seawall and baywalk surrounding Brickell Key to BK Parcel Holdings, LLC, a Swire-related entity, recorded in Official Records Book 33773, Page 1378, Miami-Dade County Public Records. Property deeded to a Swire affiliate in 2023 has never been and will never be Common Properties of the BKMA.

45. The 2023 transfer to BK Parcel Holdings, LLC further confirms the self-dealing scheme alleged herein: Swire transferred ownership of the majority of the seawall to its own affiliate, thereby ensuring that any seawall replacement project would benefit a Swire-related entity rather than BKMA's members, while simultaneously causing BKMA's developer-controlled board to

levy a \$32,285,899.95 assessment on those same members to fund the replacement. Notably, BK Parcel Holdings, LLC, the owner of part of the seawall and baywalk, is not being assessed under the Seawall Assessment. The self-dealing scheme is further reflected in the engineering opinions on which the Seawall Assessment rests. Upon information and belief, for nearly two decades BKMA's retained engineers conducted annual inspections of the seawall and found no significant issues, repeatedly concluding that no immediate structural repairs were required. Only later, in 2024, after Swire had submitted a permit application to replace the seawall at the Mandarin Oriental parcel and as Swire prepared to redevelop that parcel into a high-rise residential tower, did BKMA's and Swire's engineers reverse course and opine that the seawall was at risk of imminent failure and that repairs were no longer feasible. This about-face coincided with Swire's contemplated construction schedule, and the resulting characterization of the seawall as an urgent, island-wide problem was used to justify the Seawall Assessment. Upon information and belief, to the extent the seawall requires repair or replacement, that need was caused or materially exacerbated by Swire's own demolition of the existing Mandarin Oriental hotel and its related excavation, vibration, dewatering, and construction activities, and would not exist but for that work. Swire's own engineers acknowledged that such activities could impact or damage the existing seawall, and that the seawall bulkheads around the construction site would be modified or replaced as part of Swire's project. The 2024 engineering about-face thus served to recharacterize damage caused by Swire's own redevelopment as a pre-existing, island-wide deterioration emergency, so that the cost of repairing that damage could be shifted onto OTP and the other members of BKMA rather than borne by Swire, which caused it.

COUNT I
Declaratory Judgment Against BKMA: Limits on the BKMA's
Assessment Authority Under the Master Declaration
(Fla. Stat. Section 86.011)

46. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.
47. A bona fide, actual, present, and practical need exists for a declaration of OTP's rights under the Master Declaration.
48. OTP contends that:
- a. the BKMA's assessment authority under the Master Declaration is limited to costs associated with "Common Properties," as that term is defined in Article I, Section 13 and Article II, Section 7 of the Master Declaration;
 - b. "Common Properties" is limited to property owned in fee simple by BKMA and property the Declarant shall convey to BKMA in fee simple at turnover and so designated by the Declarant in the Master Declaration or in a recorded Supplemental Declaration; and
 - c. the FEMA Covenant does not amend, expand, or supersede the BKMA's assessment authority under the Master Declaration.
49. BKMA disputes these contentions. The dispute is between adverse parties with actual, antagonistic interests.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment declaring that pursuant to Article I, Sections 3, 5, and 6 of the Master Declaration, BKMA may assess its members only for costs attributable to Common Properties as defined in the Master Declaration, the BKMA may not assess its members for costs attributable to other property; pursuant to the Master Declaration, Common Properties is limited to property owned in fee simple by BKMA and property the Declarant shall convey to BKMA in fee simple at turnover, and so designated by the Declarant in the Master Declaration or in a recorded Supplemental Declaration;

the FEMA Covenant does not expand the BKMA's assessment authority; awarding OTP its attorneys' fees and costs; and granting such other and further relief as this Court deems just and proper.

COUNT II

Declaratory Judgment Against BKMA: The City-Owned Outparcel Is Not Common Properties (Fla. Stat. Section 86.011)

50. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

51. A bona fide dispute exists between OTP and BKMA as to whether the City-owned Outparcel is Common Properties under the Master Declaration.

52. OTP contends that the Outparcel is not Common Properties because: (a) it is owned in fee simple by the City of Miami; (b) it has never been designated as Common Properties by the Declarant in the Master Declaration or in any recorded Supplemental Declaration; (c) the Declarant cannot convey fee simple title to the BKMA because the City holds that title; (d) BKMA's own counsel has confirmed in writing that the City owns the Outparcel; and (e) Swire is independently obligated under Section 4 of the Baywalk Declaration to insure, maintain, repair, and replace any improvements on the Outparcel at its sole cost and expense.

53. BKMA disputes these contentions and asserts that the Outparcel is properly subject to its assessment authority.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment declaring that the City-owned Outparcel is not Common Properties under the Master Declaration; that costs attributable to the Outparcel may not be assessed against OTP or its members; that the November 7, 2025 special assessment is null and void to the extent it purports to assess OTP's members for costs attributable to the Outparcel; ordering restitution and disgorgement of all amounts paid by OTP or its members for such costs, with prejudgment interest; awarding OTP its

attorneys' fees and costs; and granting such other and further relief as this Court deems just and proper.

COUNT III
Declaratory Judgment Against BKMA: the 3.5 Acre Linear Waterfront Park is Not
Common Properties
(Fla. Stat. Section 86.011)

54. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

55. A bona fide dispute exists between OTP and BKMA as to whether the the 3.5 Acre Linear Waterfront Park is Common Properties under the Master Declaration.

56. OTP contends the Linear Park (including the City-owned Outparcel and segments of the Linear Park owned by the Isola and the St. Louis) are not Common Properties because: (a) the Linear Park is not owned in fee simple by the BKMA; (b) the Linear Park has never been designated as Common Properties by the Declarant in the Master Declaration or in any recorded Supplemental Declaration; (c) Swire's perpetual maintenance obligation under City of Miami Ordinance No. 13572 is a maintenance obligation only and does not transfer fee simple title or operate as a Declarant designation; and (d) BKMA's own counsel has confirmed the layered ownership structure in writing.

57. BKMA disputes these contentions and asserts that the entire Linear Park is properly subject to its assessment authority.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment declaring that the 3.5 Acre Linear Waterfront Park referenced in City of Miami Ordinance No. 13572 is not Common Properties under the Master Declaration; that costs attributable to the Linear Park may not be assessed against OTP or its members; that the November 7, 2025 special assessment is null and void to the extent it purports to assess OTP's members for costs attributable to the Linear Park; ordering restitution and disgorgement of all amounts paid by OTP or its

members for such costs, with prejudgment interest; awarding OTP its attorneys' fees and costs; and granting such other and further relief as this Court deems just and proper.

COUNT IV
Declaratory Judgment Against BKMA and Isola: The
Isola Seawall Is Not Common Properties
(Fla. Stat. Section 86.011)

58. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

59. A bona fide dispute exists between OTP and BKMA as to whether the Isola seawall is Common Properties under the Master Declaration. The Isola is named as a Defendant because the relief sought directly affects whether the Isola seawall is, or is not, the financial responsibility of the Isola and its members under the Master Declaration.

60. OTP contends that the Isola seawall is not Common Properties because: (a) it is the property of the Isola condominium; (b) BKMA's own counsel has confirmed in writing that the baywalk segment along the Isola is included within the Isola condominium; (c) the Isola seawall has never been designated as Common Properties by the Declarant in the Master Declaration or in any recorded Supplemental Declaration; and (d) the BKMA does not hold fee simple title to the Isola seawall.

61. BKMA disputes these contentions and asserts that the Isola seawall is properly subject to its assessment authority over OTP and its members.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment declaring that the Isola seawall is not Common Properties under the Master Declaration; that costs attributable to the Isola seawall may not be assessed against OTP or its members; that the November 7, 2025 special assessment is null and void to the extent it purports to assess OTP's members for costs attributable to the Isola seawall; ordering restitution and disgorgement of all amounts paid by OTP or its members for such costs, with prejudgment interest; awarding OTP its

attorneys' fees and costs; and granting such other and further relief as this Court deems just and proper.

COUNT V
Declaratory Judgment Against BKMA and St. Louis: The
St. Louis Seawall Is Not Common Properties
(Fla. Stat. Section 86.011)

62. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

63. A bona fide dispute exists between OTP and BKMA as to whether the St. Louis seawall is Common Properties under the Master Declaration. The St. Louis is named as a Defendant because the relief sought directly affects whether the St. Louis seawall is, or is not, the financial responsibility of the St. Louis and its members under the Master Declaration.

64. OTP contends that the St. Louis seawall is not Common Properties because: (a) it is the property of the St. Louis condominium; (b) BKMA's own counsel has confirmed in writing that the Baywalk segment along the St. Louis is included within the St. Louis condominium; (c) the St. Louis seawall has never been designated as Common Properties by the Declarant in the Master Declaration or in any recorded Supplemental Declaration; and (d) the BKMA does not hold fee simple title to the St. Louis seawall.

65. BKMA disputes these contentions and asserts that the St. Louis seawall is properly subject to its assessment authority over OTP and its members.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment declaring that the St. Louis seawall is not Common Properties under the Master Declaration; that costs attributable to the St. Louis seawall may not be assessed against OTP or its members; that the November 7, 2025 special assessment is null and void to the extent it purports to assess OTP's members for costs attributable to the St. Louis seawall; ordering restitution and disgorgement of all amounts paid by OTP or its members for such costs, with prejudgment interest; awarding OTP

its attorneys' fees and costs; and granting such other and further relief as this Court deems just and proper.

COUNT VI
Breach of the Master Declaration Against BKMA

66. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

67. The Master Declaration as amended constitutes a binding covenant running with the land and a binding contract between the BKMA and its member associations and unit owners, including OTP.

68. The Master Declaration limits the BKMA's assessment authority to costs associated with Common Properties.

69. By levying the November 7, 2025, special assessment for costs attributable to the City-owned Outparcel, the Linear Park, the Isola seawall, and the St. Louis seawall, none of which is Common Properties under the Master Declaration, the BKMA materially breached the Master Declaration.

70. By levying any and all assessments for costs attributable to the City-owned Outparcel, the Linear Park, the Isola, and the St. Louis, none of which is Common Properties under the Master Declaration, the BKMA materially breached the Master Declaration.

71. OTP has complied with all conditions precedent to bringing this action, or such conditions have been waived or excused.

72. As a direct and proximate result of BKMA's breach, OTP and its members have suffered damages, including being subjected to an unlawful financial obligation and the threat of liens on their property.

WHEREFORE, OTP demands judgment against BKMA for: (a) compensatory damages for any amounts paid by OTP or its members pursuant to the November 7, 2025 special assessment,

together with prejudgment interest; (b) compensatory damages for any and all monies paid by OTP to BKMA for any and all assessments attributable to the Outparcel, the Linear Park, the Isola, and the St. Louis; (c) attorneys' fees and costs pursuant to the Master Declaration and applicable Florida law; and (d) such other and further relief as this Court deems just and proper.

COUNT VII
Injunctive Relief Against BKMA

73. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

74. Unless restrained and enjoined, BKMA will continue to demand payment of the unlawful special assessment, threaten enforcement action, and impose or record liens against unit owners' properties for failure to pay.

75. OTP has a clear legal right to be free from an assessment expressly prohibited by the Master Declaration. OTP and its members are threatened with irreparable harm including liens against their properties, damage to credit, and financial harm not adequately compensable by money damages alone.

76. The balance of equities strongly favors OTP. Issuance of an injunction is in the public interest as it upholds the integrity of recorded instruments governing real property and protects unit owners from unlawful assessments.

WHEREFORE, OTP respectfully requests that this Court enter a preliminary and permanent injunction: (a) enjoining BKMA from collecting or enforcing the November 7, 2025 special assessment to the extent it covers costs attributable to the Outparcel, the Linear Park, the Isola seawall, or the St. Louis seawall; (b) enjoining BKMA from placing or recording any lien against OTP or its members' properties based on the unlawful portion of the assessment; (c) requiring BKMA to segregate and hold, and to refrain from disbursing, all assessment proceeds collected or to be collected that are attributable to the Outparcel, the Linear Park, the Isola, and

the St. Louis, pending final judgment; (d) appointing a receiver pendente lite, pursuant to this Court's equitable or statutory authority and Florida Rule of Civil Procedure 1.620, with authority limited to receiving, holding, and preserving those segregated assessment proceeds pending final judgment; (e) imposing a constructive trust over those segregated assessment proceeds; (f) enjoining BKMA and Swire from using any monies, assessments, dues, or other funds collected from the members of BKMA to pay any attorneys' fees, costs, or expenses incurred by BKMA or Swire in connection with this litigation; (g) ordering Swire and BKMA to turn over and relinquish control of BKMA to OTP and the other members of BKMA in accordance with the Master Declaration and applicable law; (h) ordering BKMA and Swire to disgorge and return to OTP and its members any and all monies paid by OTP or its members for the seawall attributable to the Outparcel, the Linear Park, the Isola, and the St. Louis, and for any and all assessments attributable to property that is not Common Properties under the Master Declaration; (i) awarding OTP its attorneys' fees and costs; and (j) granting such other relief as this Court deems just and proper. OTP further reserves the right to seek the appointment of a receiver pendente lite over the segregated assessment proceeds by separate verified motion.

COUNT VIII
Declaratory Judgment Against Swire: Seawall Replacement Obligations
Under the Baywalk Declaration and Ordinance No. 13572
(Fla. Stat. Section 86.011)

77. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.
78. A bona fide dispute exists between OTP and Swire as to whether Swire bears financial responsibility for: (1) seawall replacement costs attributable to the Outparcel under the Baywalk Declaration; and (2) seawall replacement costs attributable to the 3.5Acre Linear Waterfront Park under Ordinance No. 13572.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment: (a) declaring that Swire is solely responsible, at its own cost and expense, for the repair and replacement of the seawall on the Outparcel under the Baywalk Declaration; (b) declaring that Swire's perpetual maintenance obligation under Ordinance No. 13572 includes the obligation to fund seawall repair and replacement along the Linear Park; (c) declaring that OTP and its members bear no obligation to contribute to such costs; (d) awarding OTP attorneys' fees and costs pursuant to Section 9 of the Baywalk Declaration; and (e) granting such other relief as this Court deems just and proper.

COUNT IX
Declaratory Judgment Against the City of Miami
(Fla. Stat. Section 86.011)

79. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

80. The City of Miami is the fee simple owner of the Outparcel, having accepted title by Warranty Deed pursuant to Resolution No. 01-125. A bona fide dispute exists as to whether the City, as fee simple owner, bears responsibility for the seawall on or constituting the western boundary of the Outparcel, or whether the BKMA may properly pass those costs to its member associations. As a party to both the Baywalk Declaration (through its Joinder) and the FEMA Covenant, the City's rights and obligations are directly implicated by this action.

WHEREFORE, OTP respectfully requests that this Court enter a Declaratory Judgment: (a) declaring that the City of Miami, as fee simple owner of the Outparcel, has an ownership interest in the seawall located on or constituting part of the Outparcel; (b) declaring that OTP and its members bear no obligation to fund seawall replacement costs attributable to the Outparcel through any BKMA assessment; (c) awarding OTP its attorneys' fees and costs to the extent permitted by law; and (d) granting such other relief as this Court deems just and proper.

COUNT X
Unjust Enrichment Against Swire (In the Alternative)

81. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

82. In the alternative, should this Court determine that any portion of the assessment is collectible notwithstanding OTP's objections, to the extent BKMA collects assessment funds from OTP and its members and uses those funds to repair or replace seawall on the Outparcel, the the Linear Park, or the Isola or St. Louis seawalls, Swire will receive a benefit (the discharge of Swire's own contractual and covenantal obligations under the Baywalk Declaration and Ordinance No. 13572) at the direct expense of OTP and its members.

83. It would be inequitable and unjust for Swire to retain the benefit of OTP's members' payments without compensating OTP. OTP and its members will have conferred a benefit on Swire by funding the repair and replacement of improvements that Swire is expressly obligated to maintain and replace at its own cost.

WHEREFORE, OTP demands judgment against Swire for restitution of all amounts paid by OTP and its members for assessments attributable to property other than BKMA Common Properties, together with attorneys' fees, costs, and such other relief as this Court deems just and proper.

COUNT XI
Breach of Fiduciary Duty Against Swire

84. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

85. Swire, as the holder of Class B Voting Member rights under the Master Declaration, exercised and continues to exercise voting control over the governance and financial decisions of the BKMA, including the approval of special assessments. By virtue of this controlling authority over an entity whose actions directly and materially affect the property rights, financial obligations,

and lien exposure of OTP and its members, Swire occupies a fiduciary relationship toward OTP and its members with respect to the exercise of that control.

86. Swire's fiduciary duty to OTP and its members requires Swire, at a minimum, to exercise its controlling voting authority in a manner consistent with the governing documents of the BKMA, to refrain from using that authority to advance Swire's own financial interests at the direct expense of unit owners, and to disclose and abstain from votes in which Swire holds a material adverse financial interest.

87. Swire breached its fiduciary duty through a paradigmatic act of self-dealing: Swire is independently obligated under the Baywalk Declaration to maintain, repair, and replace, at its sole cost and expense, improvements on the City-owned Outparcel (including the seawall within that parcel) and is similarly obligated under Ordinance No. 13572 to perpetually maintain the Linear Park. Notwithstanding these obligations, Swire exercised its controlling Class B Voting Member authority to cause the BKMA to levy the November 7, 2025, special assessment, which allocates a portion of the seawall replacement costs attributable to the Outparcel and the Linear Park to OTP and its members. By doing so, Swire used its governing authority over the BKMA to shift its own contractual and covenantal obligations onto the very unit owners to whom it owes a fiduciary duty, directly benefiting itself at their expense and in violation of the Master Declaration.

88. Swire's self-dealing is further demonstrated by the confluence of its interests: (a) Swire is the Declarant and Class B Voting Member, holding controlling governance authority over BKMA; (b) Swire is the obligor under the Baywalk Declaration, solely responsible for Outparcel maintenance costs at its own expense; (c) Swire is the developer with a financial interest in completing the seawall replacement without bearing the cost attributable to its own obligated parcels; and (d) Swire voted or caused its controlling vote to be cast in favor of the very assessment

that discharges its own obligations at the expense of OTP members. No independent or disinterested business purpose justifies this use of Swire's governing authority.

89. Swire further breached its fiduciary duty by causing BKMA to execute the 2006 FEMA Covenant with the City of Miami, through which Swire's agent Gregg E. Toland purported to bind BKMA to seawall maintenance obligations extending beyond BKMA's Common Properties. Swire, as the owner of the seawall parcels and the entity independently obligated to maintain the Outparcel seawall, had a direct financial interest in causing BKMA to assume those obligations in its place. Swire's fiduciary duty expressly prohibited it from using its controlling authority to transfer its own maintenance obligations to BKMA's members. The FEMA Covenant was the instrument by which Swire accomplished precisely that transfer, cloaking an act of self-dealing in the form of a regulatory compliance measure.

90. Swire's breach of fiduciary duty is further demonstrated by the inequitable and self-serving character of the burden it has imposed. Through the FEMA Covenant and its exercise of controlling authority over BKMA, Swire has caused BKMA's members to bear the financial cost of maintaining what is in substantial part a publicly dedicated park and publicly owned waterfront strip, namely the Outparcel conveyed in fee simple to the City of Miami, and the 3.5 Acre Linear Waterfront Park, while members of the general public enjoy unrestricted access to those same improvements at no cost. Swire's fiduciary duty required it to refrain from causing BKMA to saddle its members with this inequitable and disproportionate burden; by doing the opposite, Swire breached that duty. Swire's breach of fiduciary duty is further demonstrated by its use of controlling authority over BKMA to shift onto BKMA's members the cost of repairing seawall damage caused by Swire's own demolition and redevelopment. Upon information and belief, the seawall required no immediate repair until Swire undertook to demolish the existing Mandarin

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Oriental hotel and redevelop that parcel, and Swire's own engineers acknowledged that the demolition and related excavation, vibration, and construction activities could impact or damage the existing seawall. Swire nonetheless caused BKMA's engineers to reverse their long-standing conclusion that the seawall required no immediate repair and to declare an island-wide replacement urgent, so that the cost of remediating damage attributable to Swire's own construction would be borne by OTP and the other members rather than by Swire. A fiduciary may not manufacture an emergency in order to externalize onto its beneficiaries the cost of harm the fiduciary itself caused; by doing so, Swire breached its fiduciary duty to OTP and the other members of BKMA.

91. Swire's breach of fiduciary duty further includes the impairment of vested rights held by OTP and its members. Each member condominium at Brickell Key was created and its unit owners purchased their units in reliance upon the Master Declaration as then in effect, which expressly limited BKMA's authority to costs associated with Common Properties. These rights, including the right not to be assessed for non-Common Properties and the right to have assessment obligations defined by the recorded governing documents, vested when each condominium's members first became liable to pay assessments to BKMA. Swire's fiduciary duty required it to protect, not impair, those vested rights. By causing BKMA to execute the FEMA Covenant and to levy the Seawall Assessment, Swire violated that duty.

92. As a direct and proximate result of Swire's breach of fiduciary duty, OTP and its members have suffered and will continue to suffer damages, including the imposition of an unlawful financial obligation, the threat of liens on their properties, the cost of this litigation, and the loss of the benefit of the assessment protections bargained for and secured under the Master Declaration.

WHEREFORE, OTP demands judgment against Swire for: (a) compensatory damages for all losses caused by Swire's breach of fiduciary duty, including all amounts paid or obligated by OTP and its members attributable to the Outparcel, the Linear Park, the Isola, and the St. Louis; (b) disgorgement of all benefits Swire obtained through its self-dealing, including the value of seawall maintenance obligations discharged at OTP members' expense; (c) a declaration that the FEMA Covenant is ultra vires and void as a product of Swire's breach of fiduciary duty; (d) restitution of all assessment amounts collected in violation of OTP members' vested rights; (e) ordering Swire to turn over and relinquish control of BKMA to OTP and the other members of BKMA in accordance with the Master Declaration and applicable law; (f) attorneys' fees and costs; and (g) such other and further relief as this Court deems just and proper.

COUNT XII
Constructive Fraud
(Against BKMA and Swire)

93. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

94. By virtue of its role in administering the covenants and restrictions of the Master Declaration and its authority over assessments and the Common Properties, BKMA stood in a fiduciary and confidential relationship with its members, including OTP and OTP's members. Swire, through its controlling Class B Voting Member rights and its control of BKMA's board and officers, likewise held a position of trust, superiority, and influence over the members of BKMA.

95. BKMA and Swire abused that relationship and took unconscionable advantage of BKMA's members by causing BKMA to levy the November 7, 2025 Seawall Assessment for costs attributable to property that is not Common Properties under the Master Declaration, by using Swire's controlling authority to discharge Swire's own obligations under the Baywalk Declaration and Ordinance No. 13572, and by shifting those costs onto OTP's members and the other members

of BKMA. BKMA and Swire further abused that relationship, and took unconscionable advantage of BKMA's members, by causing BKMA's engineers to reverse their long-standing findings that the seawall required no immediate repair and to recharacterize the consequences of Swire's own demolition and construction as a pre-existing, island-wide emergency, so as to compel OTP and the other members to fund the repair of damage caused by Swire's redevelopment.

96. OTP and its members reasonably relied on BKMA's and Swire's exercise of authority in purported conformity with the Master Declaration and applicable law and paid or believed they were obligated to pay the Seawall Assessment in reliance on that conduct.

97. As a direct and proximate result, OTP and its members have been damaged, including by exposure to liability and liens for amounts they do not owe and impairment of their ability to sell or transfer their property. Proof of an intent to deceive is not required to establish constructive fraud.

98. Because the assessment proceeds were collected through BKMA's and Swire's abuse of their fiduciary and confidential position and, on information and belief, are segregated and earmarked for replacement of the seawall, a constructive trust over those proceeds and other equitable relief, including the appointment of a receiver to receive and preserve them, are appropriate to prevent BKMA and Swire from retaining or disbursing funds to which they have no right.

WHEREFORE, OTP respectfully requests that this Court: (a) enter judgment against BKMA and Swire for constructive fraud; (b) impose a constructive trust over the Seawall Assessment proceeds attributable to the Outparcel, the Linear Park, the Isola, and the St. Louis; (c) appoint a receiver pendente lite, pursuant to this Court's equitable authority and Florida Rule of Civil Procedure 1.620, with authority limited to receiving, holding, and preserving those

proceeds pending final judgment; (d) order Swire and BKMA to turn over and relinquish control of BKMA to OTP and the other members of BKMA in accordance with the Master Declaration and applicable law; (e) award OTP its attorneys' fees and costs; and (f) grant such other and further relief as this Court deems just and proper. OTP further reserves the right to seek appointment of a receiver pendente lite by separate verified motion.

COUNT XIII

Violation of Section 720.315, Florida Statutes: Seawall Assessment Imposed Without Required Non-Developer Member Approval

99. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

100. Section 720.315, Florida Statutes, provides that before turnover, a board of directors controlled by the developer may not levy a special assessment unless a majority of parcel owners other than the developer has approved the special assessment by majority vote at a duly called special meeting of the membership at which a quorum is present.

101. At all times relevant to this action, BKMA has been and remains under the governance control of Swire as developer. Swire, as the holder of the Class B Voting Member rights under the Master Declaration, has the sole authority to appoint the BKMA board of directors and has continuously appointed Swire representatives to control the BKMA's governance and financial decisions.

102. On November 7, 2025, the developer-controlled BKMA board voted to levy the Seawall Assessment in the amount of \$32,285,899.95. The Seawall Assessment is a special assessment within the meaning of Section 720.315, Florida Statutes.

103. A majority of parcel owners other than the developer did not approve the Seawall Assessment by majority vote at a duly called special meeting of the membership at which a quorum was present. No such meeting was held and no such vote was taken.

104. The imposition of the Seawall Assessment by the developer-controlled BKMA board without the required non-developer owner approval violated Section 720.315, Florida Statutes, and renders the Seawall Assessment invalid, void, and unenforceable.

105. OTP and its members have suffered and will continue to suffer damages and irreparable harm unless the Seawall Assessment is declared invalid, and its collection is enjoined.

WHEREFORE, OTP respectfully demands judgment in its favor and against BKMA and Swire, and requests that this Court: (a) declare the Seawall Assessment invalid, null and void, and unenforceable as levied in violation of Section 720.315, Florida Statutes; (b) enjoin BKMA from collecting, enforcing, liening, or otherwise acting upon the Seawall Assessment; (c) require return of all amounts collected pursuant to the Seawall Assessment; (d) require that any future special assessment comply with Section 720.315, Florida Statutes, including by obtaining the required majority approval of non-developer parcel owners at a duly called meeting at which a quorum is present; and (e) award OTP its attorneys' fees and costs where authorized by law.

COUNT XIV
Accounting Against BKMA and Swire

106. OTP re-alleges and incorporates paragraphs 1 through 45 as if fully set forth herein.

107. As developer and Class B Voting Member, Swire has exercised exclusive control over BKMA's governance, finances, and assessment decisions since BKMA's inception. OTP and its members have no independent ability to audit, inspect, or verify how BKMA's assessment funds are collected, held, allocated, or disbursed, including funds collected or anticipated from the November 7, 2025, Seawall Assessment.

108. OTP has a right to an accounting of: (a) all amounts collected or to be collected from BKMA's members pursuant to the November 7, 2025 Seawall Assessment; (b) the allocation of those funds among the various seawall segments, including those not constituting Common

Properties; (c) any funds already expended and the purposes for which they were expended; (d) the extent to which assessment proceeds have been or will be directed to seawall segments owned by Swire, BK Parcel Holdings, LLC, or other Swire-affiliated entities; and (e) all financial dealings between BKMA and Swire or any Swire affiliate related to the seawall project.

109. Without an accounting, OTP and its members cannot determine the full extent of the unlawful assessment, cannot trace funds paid to Swire-benefiting purposes, and cannot obtain complete relief in this action.

WHEREFORE, OTP respectfully requests that this Court order a full and complete accounting by BKMA and Swire of: (a) all assessment funds collected or to be collected pursuant to the November 7, 2025 Seawall Assessment; (b) the allocation and expenditure of those funds by seawall segment and property owner; (c) all financial transactions between BKMA and Swire or any Swire affiliate related to the seawall project; and (d) all other BKMA financial records necessary to determine the full scope of the unlawful assessment and provide complete relief to OTP and its members. OTP further requests that, pending the accounting and final judgment, the Court direct BKMA to segregate and preserve, and to refrain from disbursing, the assessment proceeds attributable to the disputed seawall segments.

DEMAND FOR ATTORNEYS' FEES

OTP reserves the right to seek attorneys' fees and costs pursuant to: (i) the Master Declaration; (ii) Section 9 of the Baywalk Declaration; (iii) Section 720.305, Florida Statutes; and (iv) any other applicable authority.

JURY DEMAND

OTP demands a trial by jury on all issues so triable as a matter of right.

Respectfully submitted,

/s/ Robert Twombly

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