IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

RODERICK JAMES PALMER, TRUSTEE OF THE 2501 MOODY BLVD. LAND TRUST AGREEMENT DATED FEBRUAR 7, 2025,

Appellant,

v.

FLAGLER SQUARE-JAX, INC.,

Appellee.
_____/

CASE NO. **5D2026-0270**
LT: Case No. 2025 CA 000524

ANSWER BRIEF OF APPELLEE, FLAGLER SQUARE-JAX, INC.

FRANK, WEINBERG & BLACK, P.L.
Attorneys for Appellee
7805 SW Sixth Court
Plantation, Florida 33324
Telephone No. (954) 474-8000

By /s/ David W. Black
DAVID W. BLACK, ESQ.
Florida Bar No. 365671

By /s/ Leanne B. Wagner
LEANNE B. WAGNER, ESQ.
Florida Bar No. 0057847

By /s/ Marc A. Silverman
MARC A. SILVERMAN, ESQ.
Florida Bar No. 144444

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PRELIMINARY STATEMENT

1. Appellant, **RODERICK JAMES PALMER, TRUSTEE OF THE 2501 MOODY BLVD. LAND TRUST AGREEMENT DATED FEBRUAR 7, 2025**, shall be referred to as **APPELLANT**, wherever it is appropriate to do so.

2. Appellee, **FLAGLER SQUARE- JAX, INC.**, shall be referred to as **APPELLEE**, wherever it is appropriate to do so.

3. "**TRIAL JUDGE**" or "**TRIAL COURT**" shall refer to **THE HONORABLE SANDRA UPCHURCH**, Circuit Court Judge for the Seventh Judicial Circuit Court, in and for Flagler County, Florida;

1.4. References to the Appellant's Appendix filed in support of his Initial Brief shall be made by the designation "**AA**-__", with the appropriate page number(s) of the document as referenced in the Appellant's Appendix.

4. References to the Appellant's Initial Brief shall be made by the designation "**IB -** _____" with the appropriate page number(s) of Appellant's Motion.

5. References to the Transcript of the proceedings before the Trial Court on January 14, 2026, shall be made by the designation

"A-0465-0520), Tr. P., _____", with the appropriate page number(s) of the Transcript.

6. References to the Appendix to Appellee's Answer Brief shall be made by the designation **"A-__"**, with the appropriate page number(s) of the appendix documents appended to this Answer Brief.

STATEMENT OF THE CASE AND FACTS

Appellee, while acknowledging that some of the facts contained in the Statement of Case and Facts presented by the Appellant are generally indicative of the nature of the proceedings in the Trial Court, assert that many of the facts as presented by the Appellant are not only irrelevant to this proceeding, they are both argumentative and misleading, and as such, requests that this Court disregard the argument disguised as fact as set forth in the Statement of Case and Facts presented in Appellant's Initial Brief, and invite the Court to consider the following additional facts.

Contrary to what the Appellant asserts, this is *not* a case about state action, or violations of Constitutional rights, or interference with the Appellant's free exercise of religion. Rather, it is based upon the enforcement of a covenant that runs with the land; Appellant purchased Unit 1 with actual and constructive knowledge of the covenant. The case at bar was initiated on August 28, 2025 when Appellee filed its two-count Complaint (A-0004-0126) seeking injunctive relief (Count I) and declaratory relief (Count II) (the "Action") seeking the enforcement of a covenant running with the

land. More specifically, Appellee sought to enforce that certain Declaration of Condominium for FLAGLER SQUARE, a Condominium (the "Declaration"), duly recorded on January 31, 2022 in the Official Records of Flagler County, Florida, at Official Records Book 2653, Page. (A-0018-0092). The Declaration subjects all Units (Appellant's Unit is Unit "1") within the Flagler Square Condominium Association, Inc. (the "Association") to certain restrictions on certain uses of the Units (as defined in the Declaration) within the Association. All of the Units which are managed by the Association comprise the Flagler Square Plaza (the "Shopping Center"). (A-0006-0007, 0091).

As alleged in the Complaint below, on or about February 11, 2025, the Appellant, entered into that certain Commercial Contract for the purchase of "Unit 1" within the Association, from Young & Pate II, Inc. (the "Seller" in the transaction). (A-0008-0011, 0093-0100). Per the terms of the Commercial Contract, the seller provided Appellant with a copy of the Declaration which contained the applicable use restriction as is acknowledged in the Addendum to Contract for Residential Sale and Purchase appended to the

Commercial Contract, in Paragraph 11 thereof[1]. (A-0008-0011, 0093-0100). Thereafter, on July 31, 2025, the Commercial Contract was assigned to Appellant pursuant to that certain Assignment of Contract for Sale and Purchase of the same date. (A-0008-0011, 0093-0100). Thus, it is beyond dispute at the time of the Appellant's purchase of Unit 1, he had actual knowledge of the use restrictions that Unit 1 was subject to for nearly six (6) months prior to the Appellant's closing on August 1, 2025. (A-0101-0105). That is, Appellant was **on both *actual* and *constructive* knowledge of all of the use restrictions that ran with the land that Unit 1 was bound by and subject to, for several months**. (A-0101-0105).

The specific Restriction(s) are unambiguously set forth in the Declaration in Section 10 thereof, to wit:

> a. **Sec. 10.1.1:** The use of each of the Units shall be restricted to commercial use…….
>
> b. **Sec. 10.12:** Unit 2 Dollar Tree Lease: Upon the recordation of this Declaration, there is an existing lease between the Declarant and DOLLAR TREE STORES,

[1] Paragraph 11 of the subject Addendum states, in prominent and bold type, that "**THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM. . .**" [emphasis original].

> INC., to operate a Dollar Tree Store in Unit 2 (the "Dollar Tree Lease"). "So long as Unit 2 operates as a Dollar Tree Store, all other Unit Owners shall not, without first obtaining the Unit Owner 2 written consent [note: Unit Owner 2 is Flagler Square-Jax Inc.], permit any other Unit Owner to operate or lease any portion of any other Unit within the Condominium as follows: . . .
>
> Sec. 10.12 (b) ..... **any of the uses described in Exhibit "9" attached hereto...**

(A- 0026-0030). Exhibit 9 includes the following specific defined Prohibited Use of the Units subject to the Declaration, restriction numbered "19[2]" which specifically prohibits the use of the Units within the Association as:

> 19. A banquet hall, auditorium ***or other place of public assembly.***

(A-0091). [emphasis added]. Again, Appellant purchased his Unit 1 with actual and constructive knowledge that Unit 1 could not be used as a "**banquet hall, auditorium or other place of public assembly"** well before he completed his purchase of Unit 1. It was also not disputed in the Action below, or in the Initial Brief that at all times material to this appeal and the Action, that despite the

[2] Restriction 19 (set forth in Exhibit "9" to the Declaration) is referred to herein as the "Restriction."

restrictive language of the Declaration, Appellant had the specific intention of utilizing Unit 1 as a church, as well as the intention of servicing the church's congregation of several hundred members, each and every week, as well as using the space for fundraisers, and similar activities that would involve hundreds of his congregants. This was undisputed.

As was advanced by Appellee in the Complaint and during the January 4, 2026 hearing, (the result of which Appellant appeals here), Section 3.06.04, of the municipal code of Flagler County Florida, in addressing parking requirements[3] for all districts within Flagler County, includes a specific definition of what is a place of public assembly, is as follows:

> **Place of public assembly** such as **auditoriums, churches**, theaters, and recreational facilities….

[emphasis added]. Thus, clearly, the Appellant's proposed operation of a church constituted a violative use of Unit 1 as a "place of public

[3] The Appellant's application for the sought after zoning exception from the municipal code was also evidence of Appellant's knowledge of the parking problem his operation would pose on the Shopping Center by using Unit 1 as a place of public assembly.

assembly," prohibited by the Declaration. (A-0091). Importantly, the Complaint alleged (and it is beyond dispute at this point as was acknowledged by the Appellant in the proceedings below) that the Declaration restricted the use of Unit 1 as a church or place of public assembly.

Turning to the Complaint, the allegations asserted were:

a. Appellant purchased his Unit with full, actual, and constructive knowledge of the use restrictions contained within the Declaration and its exhibits; in particular, that stated in restriction number "19[4]" which specifically prohibits the use of Unit 1 as "[a] banquet hall, auditorium or other place of public assembly;" (A-0091)

b. That Appellant, despite the clear restriction against Appellant's intended use of Unit 1, knowingly and willfully violated the Declaration of Condominium by which Appellant was, and is, bound; (A-0008-0012)

[4] It should be noted that despite the Appellant's filings (in its Initial Brief and in its Motion for Stay filed in this Court) making frequent assertions that the Appellant presented "unrebutted evidence" during the January 14, 2026 hearing, the transcript from the hearing reveals otherwise. (A-0465-0520) Specifically, no evidence was proffered by Appellant, nor was any received into evidence by the Court.

c. That despite the clear and unambiguous Restriction 19, Appellant moved ahead and sought an exception to Flagler Beach's zoning code[5] to accommodate his intended use of Unit 1 as a church to accommodate hundreds of patrons, and to use Unit 1 as a "place of public assembly;" (A-0008-0012) and constructed auditorium-style improvements within Unit 1's space; (A-0011-0115).d. That only a month or so after the execution of the Commercial Contract (prior to his completion of his purchase from the seller Young & Pate II, Inc.) Appellant entered into a pre-purchase occupancy agreement with the Seller. Appellant was warned, in writing, by said Seller, via its legal representatives, that Unit 1, could not be used as a church or other place of assembly to conduct church services in Unit 1 because such use was violative of Restriction 19; (A-0121-0122, 0242-0244);

e. That the written warning from the Seller's legal counsel after it was discovered that Appellant conducted of a fundraising

[5] On August 21, 2025, Appellant submitted to the Building Department for the City of Flagler Beach a building permit application in which the intended work was described as "interior alteration from retail to church." (A-0004-0126, Ex. 5)

event attended by approximately 400 people at the Premises (Unit 1) within 3 days of the pre-occupancy agreement having been entered into (to wit: on or about March 22nd or 23rd 2025) that this had occurred, despite Appellant's actual and constructive knowledge of the Declaration and its Restriction, nonetheless Appellant conducted a church service/fundraising event on the Premises and/or the Common Elements of the Association (as that term is defined in the Declaration) was in direct, willful violation of the Declaration and the Dollar Tree lease Restriction. (A-0121-0122);

f. In the written admonishment from Seller, during the pre-purchase period (during the preoccupancy agreement), counsel for Young & Pate II, Inc., specifically objected to the use of Unit 1 during the pre-purchase period. Seller categorically warned Appellant that he could not, under any circumstances, use Unit 1 as a place of public assembly (i.e. as a church) on March 24, 2025 (the written warning dated March 24, 2025 was attached to the Complaint as Exhibit "10"). The written warning states that Appellant conducted a public gathering of approximately 400 people in connection with Unit 1. It went on to warn Appellant that that use of Unit 1 was

specifically and expressly prohibited by the Declaration and constituted a material and direct violation of the Declaration, as stated in the letter addressed from Seller's legal counsel to Appellant dated April 11, 2025 (attached to the Complaint as Exhibit "9"); (A-0121-0122);

g. The Appellant's planned use of the Premises would overwhelm the available parking at all times as there are presently 315 parking spaces available for all of the Owners and their tenants, business invitees, employees and/or customers in the entire Shopping Center. (A-0001-0017).

h. Appellants use of the parking facilities in the manner which it intended to would/will impede the other Owners (the Owner of Units 2 and 3) planned development of Phase II of the Shopping Center as there will not be sufficient parking under current Flagler Beach zoning; (A-0001-0017).

The Complaint alleged that notwithstanding all of the aforementioned actual and constructive knowledge of the use restriction (restriction 19) and the explicit warnings prior to the completion of his purchase from the Seller that such uses were

prohibited, Appellant **ignored** all of the aforementioned and forged ahead with its plan to convert Unit 1 to a place of public assembly (his church) and unabashedly violate the Declaration, despite such knowledge and warning. (A-0111-0015, 0004-0126).

The condominium Unit owned by Appellant is absolutely subject to covenants running with the land. What is equally obvious is despite the fact that Appellant purchased Unit 1 with actual and complete knowledge of the restrictions, Appellant now wishes to free himself of those obligations.

In response to the Complaint, Appellant did not plead, but rather filed a Motion to Dismiss[6] the Complaint (A-0137-0159) which was pending as of January 14, 2025, the date of the temporary injunction hearing.

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[6] The argument that the Trial Court failed to consider the Appellant's "affirmative defenses" as part of the Motion to Dismiss and/or the Verified Motion for Injunctive Relief, despite the record below clearly evidencing that at the time of the hearing on January 14, 2026, *Appellant had not yet filed any answer nor interposed any purported affirmative defenses*. The affirmative defenses were ultimately filed by Appellant on or about February 6, 2026 (A-__). This occurred after the date on which the Trial Court issued the Temporary Injunction Order – to-wit, January 23, 2026 – which gave rise to this appeal. To suggest otherwise is disingenuous.

After Appellee filed the Complaint, it filed its Verified Motion[7] for Temporary Injunction Relief on September 24, 2025 (A-0127-0136), seeking to enjoin the Appellee from continuing to use Unit 1 as a place of public assembly in contravention of the Declaration during the pendency of the action. As stated above in response to the Complaint, on October 14, 2025, Appellant filed his Motion to Dismiss (A-0137-0159) as well as his written Response[8] to Plaintiff's Verified Motion for Temporary Injunctive Relief (A-0160-0191). A two (2) hour special set hearing was set on the Verified Motion for January 14, 2026. (A-0194-0195).

During the hearing on January 14, 2026, counsel for the Appellant openly admitted that the Premises was being operated as a place of public assembly in the form of a church (A-0465-0520), Tr. 8: 7-12). Appellee, on the other hand, argued that the Appellant

[7] Appellee also filed, in support of its Verified Motion, a Notice of Filing Documents in Support of Plaintiff's Verified Motion for Temporary Injunctive Relief (A-0223-0252).

[8] Appellants filed a supplemental Response in Opposition to the Verified Motion for Temporary Injunctive Relief on January 13, 2026 just prior to the hearing held by the Court on Appellee's Verified Motion (A-0253-0464).

purchased the Premises with full knowledge of the restrictive covenants running with the land which prevented him from utilizing the Premises as a church, yet he proceeded with the purchase anyway. (A-0465-0520), Tr.8:7-10, 17-20; 24:23).

It was the Appellee's position, then and now, that the Appellant had been operating a church from the Premises in contravention of the restrictive covenants running with the land, in blatant disregard for the Declaration by which he is bound. (A-0465-0520), Tr. PP.13-24).

The Trial Court agreed with the Appellee's position and after the Parties made their presentations, the Trial Court granted the Verified Motion and also denied the Appellant's Motion to Dismiss. (A-0521-0524,0525-0526). Thereafter, on January 22, 2026, the Trial Court entered the Order Granting Plaintiff's Motion for Temporary Injunctive Relief (A-0521-0524) and setting a bond amount of $50,000 and entered an Order Denying Appellant's Motion to Dismiss (A-0525-0526).

The affirmative defenses were ultimately filed by Appellant on or about February 6, 2026 (A- 0533-0540), after the Court had ruled

on both Appellee's Verified Motion and after Appellant's Motion to Dismiss was denied. (A- 0525-0526; 0533-0540).

Thereafter, on January 29, 2026, the Appellant filed his Notice of Non-Final Appeal in the Trial Court and the instant appeal ensued. (A-0527-0532).

SUMMARY OF THE ARGUMENT

The Appellee's lawsuit should have come as no great surprise to Appellant. Not only did he have actual and constructive notice of the provisions of the Declaration (or that he was violating them), but he had notice at every turn! Appellant was notified at the time of entering into the purchase agreement for the Premises that his ownership would be subject to the Declaration. At the time of signing the purchase agreement, the Appellant acknowledged receiving a copy of the Declaration. After holding a fundraising event at the Premises with approximately 400 people in attendance prior to the purchase, Appellant was affirmatively notified in writing by counsel for the Seller of the Premises that he could not utilize the Premises as a place of public assembly. None of this mattered to Appellant. He proceeded, full steam ahead, with knowledge of the fact that he was flagrantly breaching the Declaration.

Notwithstanding the arguments made by the Appellant in the Initial Brief, the Trial Court did not err in entering the subject TIO, as it was based upon a neutral (as written and as applied) Declaration Restriction that was at all times material hereto a covenant that ran

with Unit 1. Further, and despite the contentions of the Appellant, the TIO is not: (a) an unconstitutional "prior restraint" on appellant's religious speech, assembly and religious exercise, (b) an unconstitutional "total prohibition" on religious exercise, assembly and speech, nor (c) "impermissibly and unconstitutionally vague" nor "overbroad."

Further, neither Florida's Marketable Record Titles to Real Property Act (§712.065, Fla. Stat.), nor Florida's Religious Freedom Restoration Act (§§ 761.01, Et. Seq., Fla. Stat.) bars the Trial Courts (and the Appellee's) enforcement of the use Restrictions contained in the Declaration which are both content neutral and non-discriminatory, both as written and as applied.

Finally, as to the arguments contained in Sections IV, V, VI, and VII of the Initial Brief, the Trial Court did not abuse her discretion in any manner in entering the TIO as the findings made therein were supported by substantial competent evidence, in all respects, and well within the wide discretion vested in her pursuant to Florida law.

As such, this Court is urged to affirm the January 22, 2026 Order Granting Plaintiff's Motion for Temporary Injunctive Relief (A-

0521-0524) in all respects.

APPLICABLE STANDARD OF REVIEW

The Appellee agrees with the Appellant that typically, the standard of review applicable to an appellate court's review of an injunction order is a mixed or "hybrid" one where the trial court has made conclusions as a matter of law as well as conclusions based upon factual findings.

To the extent that instant appeal is based upon the Appellant's assertion that the Trial Court erred as a matter of law **in refusing to find**: (a) that Restriction 19 (as contained in Exhibit "9" to the Declaration) violated the First and Fourteenth Amendments to the U.S. Constitution; (b) that §712.065, Fla. Stat. (known as the Marketable Record Title Act), rendered Restriction 19 "void *ab initio*" and unenforceable; (c) that the Trial Court's issuance of the temporary injunction constituted "state action" which violated §761.03, Fla. Stat. (as part of the Florida Religious Freedom Restoration Act of 1998). Thus, as to challenges to the Trial Court's legal conclusions as to the applicability of the aforementioned, are treated differently than those conclusions based upon factual

matters.

"The standard of review of trial court orders on requests for temporary injunctions is a hybrid. To the extent the trial court's order is based on factual findings, we will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review." *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017) (quoting *Fla. High Sch. Athletic Ass'n v. Rosenberg ex rel. Rosenberg*, 117 So. 3d 825, 826 (Fla. 4th DCA 2013)). *See Also*, *Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021) (appellate courts review a trial court's factual findings on the elements of a claim for a temporary injunction for competent, substantial evidence, and abuse of discretion and review its legal conclusions on a *de novo* basis). *See Also, Briceño v. Bryden Invs., Ltd.*, 973 So. 2d 614, 616 (Fla. 3d DCA 2008) (trial courts have wide discretion to grant or deny a temporary injunction and an "appellate court will not interfere with the exercise of such discretion unless the party challenging the grant or denial clearly shows an abuse of that discretion." (quoting *Perry & Co. v. First Sec. Ins. Underwriters, Inc.*, 654 So. 2d 671, 671 (Fla. 3d DCA 1995)).

Thus, to the extent that the temporary injunction order in the instant case was based upon legal conclusions (as identified above and as set forth in Arguments I, II, and III of the Initial Brief) said matters are entitled to *de novo* review; the remainder of the issues raised in the Initial Brief (Arguments IV, V, VI, and VII) based upon the factual findings of the Trial Court should be reviewed based upon the "abuse of discretion" standard of review.

ARGUMENT OF APPELLEE

I.
THE TRIAL COURT DID NOT ERR IN ENTERING THE TEMPORARY INJUNCTION ORDER BASED UPON THE RESTRICTIVE COVENANT CONTAINED IN THE DECLARATION OF CONDOMINIUM.

In the Initial Brief, the Appellant advances various constitutional challenges to the Trial Court's TIO as well as the subject Restriction (set forth in the Declaration in Exhibit "9" thereto, to wit: Restriction 19), claiming that: the Trial Court's TIO dated January 22, 2026 (A-0521-0524), was unconstitutional pursuant to both the First and Fourteenth Amendments to the U.S. Constitution, describing the TIO (and later the subject Restriction itself) as being: (a) a "presumptively unconstitutional prior restraint on Appellant's religious speech, assembly and religious exercise;" an "unconstitutional total prohibition on religious exercise;" and that the TIO is unconstitutionally vague and overbroad. These arguments (some of which are being advanced in this Court for the very first time) miss the mark, as the TIO was constitutionally correct in all respects.

Interestingly, the Appellant disingenuously makes no mention whatsoever of the fact(s) that he had actual and constructive knowledge of the subject Restriction, was warned about it in advance of his purchase of Unit 1 by counsel for the Seller who, after learning about the March 22-23 fundraiser flatly prohibited him from conducting the same "assemblies" at Unit 1, while he was subject of the pre-occupancy agreement that was in existence for nearly 5 months prior to his closing on the purchase in July of 2025. (A-0101-0105). This was not lost on the Trial Court. Thus, make no mistake about it – the current status quo (which is what the TIO was meant to preserve prior to trial), was entirely of Appellant's creation.

As such, Appellee urges this Court to affirm the January 22, 2026 Order Granting Plaintiff's Motion for Temporary Injunctive Relief (A-0521-0524) in all respects.

A. The Trial Court's TIO Does Not Constitute an Unconstitutional "Prior Restraint" on Appellant's Religious Speech, Assembly and Religious Exercise.

Appellant, in the Initial Brief goes to great lengths to advance the argument that the TIO entered by the Trial Court is somehow a "prior restraint" on Appellant's constitutionally protected religious

speech, assembly and religious exercise, in violation of both the First and Fourteenth Amendments to the U.S. Constitution. However, it is clear that the Trial Court's enforcement of the subject Restriction contained within the Declaration had nothing to do with religion or protected activity. For the following reasons, this argument must fail and the Court should affirm the TIO.

Beginning on Page 18 of the Initial Brief, the Appellant attempts to advance several U.S. Supreme Court authorities to "support" his argument that the TIO is an unconstitutional "prior restraint" on religious speech. However, an examination of those cases reveal the obvious flaws in the various arguments advanced by the Appellants – that the TIO was not a restraint on "speech, assembly and religious exercise," let alone a prior restraint on said rights. The Appellant argues that he and *"his" congregants* and their religious activities are "protected activities" and that the TIO prohibits them. The TIO does not. The TIO does not prohibit the Appellant from speaking about nor practicing his religion. In fact, the Trial Court only restricted Unit 1's use as a "place of public assembly." No other uses were enjoined whatsoever as is clear on

the face of the TIO itself. (A-).

Nonetheless, Appellant cites to a series of U.S. Supreme Court precedents to advance their argument to the contrary. For example, the Appellant cites to *Organization For a Better Austin v. Keefe*, 91 S.Ct. 1575 (1971) for the proposition that a "prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." However, the Appellant makes no mention of the underlying facts that brought the *Keefe* case before the Supreme Court, which are distinguishable in nearly all respects from that in the instant case. In *Keefe*, the Supreme Court was addressing the practice of residential "blockbusting" and "panic peddling" activities that were specifically considered derogatory and geared towards "not to address alleged private wrongs, but to suppress, on the basis of previous publications, distribution of literature "of any kind" in a city of 18,000." *Id.* At 419. The Court held in that instance that the Respondent had a "heavy burden" to justify ***prior*** restraint of such speech. In instructing that "[n]o prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in

pamphlets or leaflets warrants use of the injunctive power of a court," *Id.* At 421. The Court did not, despite the argument of the Appellant, address the situation in the instant case.

In the instant case, the Appellee did not seek the TIO, and the Trial Court did not enter the TIO in connection with the Appellee's religious activities. Rather the TIO and the subject Restriction were related to **private restrictions on private property** that were well-known to Appellant prior to his purchase. The Restriction was meant to support the operations of the Shopping Center, to further the continued development and expansion of the Shopping Center and to prevent the parking facilities[9] from being overwhelmed by **ANY** form of public assembly within the real property (the Shopping Center) managed by the Association. That is, ***neither the TIO nor the subject Restriction prevent, in any way, the free exercise of religion***. Rather, the Restriction has a legitimate business purpose as was articulated by the Trial Court below which the TIO

[9] The Association's parking facilities located on the Common Elements are also necessary for the anticipated continued development of the Shopping Center as Phase II development is being undertaken.

advanced and protected.

Further, and equally interesting, the Appellant cites to a series of cases that posit "examples" of prior restraints on protected activity, without any reference to the applicability of same to the instant case. For example, citation is made to the Supreme Court's decision in *Alexander v. United States*, 509 U.S. 544, 550, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993) (describing temporary and permanent injunctions that forbid speech activities as "classic examples of prior restraints") is inapplicable to the case at bar. The presumption that Appellant refers to repeatedly is meant to cure the problem of "[p]rior restraints on speech and publication" which the Court identified as "the most serious and the least tolerable infringement on First Amendment rights." Yet, the Appellant misses the mark – there is no restriction in the TIO as to speech and free exercise of religion whatsoever. In fact, the only thing that the TIO does is prohibit, during the proceedings below, the use of Unit 1 as a place of public assembly as prohibited by the recorded Declaration. It is content neutral in all respects and does not attempt to curb or limit speech or free exercise of religion, despite

the argument of Appellant, then and now.

In fact, a critical reading of *Alexander* and its holdings therein, actually support the position of the Appellee, as the Supreme Court (which was a RICO case where the government brought charges against the Defendant in that case in connection with obscenity laws. In that case, the Petitioner argued that "the forfeiture in this case, which effectively shut down his adult entertainment business, constituted an unconstitutional prior restraint on speech, rather than a permissible criminal punishment." *Alexander* at 2771.

The *Alexander* court **actually** held that the forfeiture complained of and posited as an impingement on the defendant's right of free speech and expression, was a "permissible criminal punishment" and not a "prior restraint on speech." The Court made the distinction between prior restraints and subsequent punishments which is solidly grounded in the Supreme Court's precedents. The Court noted that the term "prior restraint" describes orders ***forbidding*** certain communications that are issued before the communications occur." [emphasis original]. Applying that logic to the instant case, as the Court in *Alexander*

found, this case poses a situation where "the order . . . imposes no legal impediment to petitioner's ability to engage in any expressive activity." *Id.* At. 551.

The Court in *Alexander* stated that:

> By contrast, the RICO forfeiture order in this case does not ***forbid*** petitioner from engaging in any expressive activities in the future, nor does it require him to obtain prior approval for any expressive activities. It only deprives him of specific assets that were found to be related to his previous racketeering violations.

[emphasis original]. Interestingly, the exact issue arising out of the instant appeal was addressed by the Supreme Court in *Arcara v. Cloud Books, Inc.*, 106 S.Ct. 3172 (1986). In that case, the Supreme Court was asked to review a New York statute that authorized the closure of a building, found by the government to be a public health nuisance because it was being used as a place for prostitution and lewdness. The Supreme Court differentiated between a regulation that has the "incidental effect of burdening expression" rather than directly regulating "conduct" or "expression" and noted that the complained of statute did not "carry a message" of opposition to expressive conduct and noted that despite the Supreme Court's

holding in *United States v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), wherein the Court held that

> a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

Id. At 391.

Clearly, the TIO in the instant case does not offend the "O'Brien Test" (as it is referred to). Further, notwithstanding the "O'Brien test," the Court in Arcara held that (like in the instant case) where Respondent argued that the "effect" of a closure under the New York statute was effectively an impermissible burden on Respondent's First Amendment Activity, where the restriction itself (in this instance, whether it be the TIO or the Restriction) was not being enforced due to a restraint on expressive element of speech, and was based upon "non-expressive activity" the Court upheld the New York restriction stating "This case involves neither situation, and we conclude the First Amendment is not implicated by the enforcement

of a public health regulation of general application against the physical premises in which respondents happen to sell books," essentially, indicating that the New York statute was not "pretext" for the prohibition of protected activity. *Arcara* at 706.

Further, in *Arcara*, the Supreme Court noted that "[t]he severity of this burden is **dubious** at best, **and is mitigated by the fact that respondents remain free to sell the same materials at another location."** *Id.* At 706. [emphasis added]. Similar to situation presented in the instant case, the Appellant **chose to purchase the building with full knowledge of the restrictions** that the Unit was subject to.

While Appellant cites to other precedents to advance the concept that "prior restraints" come with a presumption of unconstitutionality, none of the examples posited in the Initial Brief is comparable to the facts of the case at bar.

For example, Appellant cites to this Court's decision in *Post–Newsweek Stations Orlando, Inc., v. Guetzloe*, 968 So.2d 608 (Fla. 5th DCA 2007), despite the fact that Post-*Newsweek* has absolutely nothing in common with the instant case factually. In *Newsweek*,

the Court struck down a court order which restricted a television station broadcaster from broadcasting the content of private documents – essentially prohibiting the television station from reporting the news. The instant case, however, does not restrict any speech or religious exercise.

Succinctly, there **are no such prior restraints in the TIO below** as can be seen on its face– there is nothing that prohibits the Appellant from practicing his religion – or from expressing his religious beliefs, whatever they may be. The TIO simply prohibits the assembly of people in Unit 1 for any purpose. The specific language of the TIO in this regard states succinctly that

> Until the resolution of this case Defendant is enjoined effective immediately from utilizing Unit 1 as a place of public assembly and is prohibited from allowing public assemblies put on by any entity to occur there. **Defendant may elect to allow the property to be used for administrative purposes or for office space so long as the restrictive covenants are being followed.**

(A-0521-0524). [emphasis added]. Thus, the TIO itself does not prohibit church activities, expression of religion or speech of any kind or nature. The Appellant is free to use the space so long as that does not involve using Unit 1 as a place of public assembly. Although the

authorities cited by the Appellant generally discuss the concept of what a "prior restraint" is, these precedents are easily distinguishable from the restrictions contained in the TIO in the instant case, which do not restrict, in any way, any form of speech, whether religious or otherwise.

Appellant's citation to *New York Times Co. v. United States*, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822, (1971) is equally unavailing, and does nothing to advance the Appellant's argument. It stands only for the restatement of the legal maxim that 'Any system of prior restraints **of expression** comes to this Court bearing a heavy presumption against its constitutional validity.' Id. At 214. [emphasis added]. However, *New York Times Co.*, a case involving an injunctive order prohibiting newspapers from publishing classified historical study of Viet Nam policy, does nothing to demonstrate its application to the TIO or the Restriction in the case at bar. Further, Appellant's citation to *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976); *Butterworth v. Smith*, 494 U.S. 624; 110 S.Ct. 1376, 108 L.Ed.2d 572, (1990); *Vance v. Universal Amusement Co., Inc.*, 445 U.S. 308 (1980); and

Vrasic v. Leibel, 106 So.3d 485 (Fla. 4th DCA 2013) are all inapplicable to the questions presented in the case at bar as they do nothing to demonstrate that the TIO is a "prior restraint" on protected speech or activity. Rather, the cases cited by Appellant demonstrate examples of government action that are put in place to prevent speech but are not demonstrative of anything else that would relate to the TIO, which was put in place to preserve the status quo and uphold a valid restriction in a commercial condominium declaration; dealing with non-communicative activity on the part of the Appellant – his use of Unit 1 in direct violation of a covenant running with the land as to the number of people who can be invited to occupy Unit 1.

As such, even applying the *de novo* standard, this Court must reject the Appellant's argument that the TIO was a "prior restraint" on Appellant's speech and religious exercise in any respects and affirm the Trial Court's TIO in all respects.

B. The TIO Does Not Represents an Unconstitutional "Total Prohibition" on Religious Exercise, Assembly and Speech.

Appellant argues to this Court that "'[o]n its face,'" the TIO in

this case 'reaches the universe of expressive activity, and, by prohibiting all protected expression, purports to create a 'First Amendment Free Zone" at the Shopping Center. The absurdity of this proposition is self-evident, however. Again, this Court need only look at the subject Restriction (Ex. 9, Paragraph 19 appended to the recorded Declaration) and the language of the TIO itself to see that this proposition is wholly contrived to meet the Appellant's conclusion rather than his conclusion having any basis in reality. The TIO does not, in any way, shape, size or form, prevent the Appellant from engaging in religious speech or exercising his religion.

Appellant cites to *Int'l Soc. for Krishna Consciousness v. Rochford*, 585 F.2d 263 (7th Cir. 1978), as well as *Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.* 482 U.S. 569 (1987), as supportive of Appellant's position stated above (and in Section II of the Initial Brief). However, once again, these cases are totally distinguishable from the facts of the instant case. The TIO does not prohibit speech and certainly does not prohibit any activity in publicly owned and operated facilities as in these two cases. This

Court is reminded that the Shopping Center is not publicly owned real property, such as the public airport as cited to by Appellant in *International Soc. for Krishna Consciousness* (public regulation requiring registration by persons wishing to distribute literature or solicit contributions in 3 municipal public airports held to be unconstitutional) and *Bd. of Airport Comm'rs of City of L.A.* (airport board of commissioners adoption of resolution banning all "First Amendment activities" within the public space of "Central Terminal Area" at Los Angeles International Airport held to be unconstitutional). Neither of these cited cases have any bearing on the instant case. The Shopping Center is a privately owned commercial condominium, which is owned by its Unit owners, of which Appellant is only one.

Turning to the instant case, the Trial Court's TIO does **nothing** to restrict the Appellant from free exercise of his religion, nor does it restrain his speech in any way. It only restricts the use of Unit 1 as a place of public assembly (again, the Flagler Beach municipal code is instructive as to what constitutes a "place of public assembly" and includes the operation of a "church"). The TIO does

not, however, prevent the Appellant from prayer or speech [10] of any kind. While Appellant advocates that the "TIO expressly applies to all "public assembly" and that "the words of the TIO 'simply leave no room for a narrowing construction' (citing *Bd. of Airport Comm'rs of City of L.A. v. Jews for Jesus, Inc.* 482 U.S. 569 (1987)), again, the Appellant does not cite to any case where a Court has found that the same applies to privately held property as in the instant case.

All of the cases cited by the Appellant are again of no moment – neither the TIO nor the Declaration's Restriction could be even remotely described as a "total ban" on free speech, as both involve **totally non-communicative action** on the part of the Appellant – his use of Unit 1 as a place of public assembly in direct violation of a covenant running with the land. It is undisputed that the United States Constitution protects individuals from infringement by the government upon their freedom of religion. It does not, however, prohibit private parties from enforcing contractual provisions to

[10] For example, there is nothing contained in the TIO that would prevent the Appellant from setting up an online broadcast of religious speech from within Unit 1's premises.

which the party to be bound voluntarily agreed, and it is mere pretext for Appellant to couch as "First Amendment rights" his blatant disregard for the Declaration.

As such, even applying the *de novo* standard, this Court must reject the Appellant's argument that the TIO was a "Total Prohibition" on Religious Exercise, Assembly and Speech" on Appellant's speech and religious exercise in all respects, and affirm the Trial Court's TIO in all respects.

C. The TIO is Neither "Impermissibly and Unconstitutionally Vague" nor "Overbroad," as Advanced by Appellant.

VAGUENESS

In the Initial Brief, Appellant advances the argument that the TIO is "impermissibly vague" and "overbroad." These arguments should also be rejected by this Court for the following reasons. It is well-settled that "one against whom [an injunction] is directed should not be left in doubt about what he is to do." *4UOrtho, LLC v. Practice Partners, Inc.,* 18 So.3d 41 (Fla. 4th DCA 2009) (citing *Pizio v. Babcock,* 76 So.2d 654, 655 (Fla.1954)). However, the Appellant takes this principal and distorts it beyond its intended meaning.

This Court in *Clark v. Allied Associates, Inc.*, 477 So.2d 656 (Fla. 5th DCA 1985), instructed that an injunction order "should be adequately particularized, especially where some activities may be permissible and proper" (citing *Moore v. City Dry Cleaners and Laundry, Inc.*, 41 So.2d 865, 871 (Fla.1949). This Court further instructed that an injunction order should be "confined within reasonable limitations and phrased in such language that its requirements can be met, without resort to portions of the record or facts outside the "four corners" of the injunction itself." Id. See Also, *Angelino v. Santa Barbara Enterprises, LLC,* 2 So.3d 1100 (Fla. 3d DCA 2009). Appellant cites to *Wayne's Aggregate and Materials, LLC v. Lopez,* 391 So.3d 633 (Fla. 5th DCA 2024) and various other authorities for the same proposition.

However, an examination of the language [11] of the TIO, demonstrates that despite the argument of the Appellant, the TIO **is**

[11] "In the absence of a statutory definition of a term, we look to the common usage of words for their meaning." *Jackson v. State Bd. Of Pardons & Paroles,* 331 F.3d 790, 795 (11th Cir. 2003) (quoting *CBS Inc. v. PrimeTime 24 Joint Venture,* 245 F.3d 1217, 1211 (11th Cir. 2001) [emphasis added].

not vague in any respect. The Appellant is not required to resort to anything outside of the TIO to understand what he is precluded from doing. The language of the TIO is quite specific as to each element of the requirements of Rule 1.610, despite the unsupported argument of the Appellant.

Pursuant to Florida law, a party seeking a temporary injunction must establish four elements: (1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent issuance of an injunction, and (4) the injunction would serve the public interest. *See Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021) at 1110. Notwithstanding the assertions of the Appellant, the Trial Court satisfied these requirements, as is set forth in her findings articulated in the TIO, (A-0521-0524), as required by *Housman v. Housman*, 370 So. 3d 1006, 1009 (Fla. 5th DCA 2023), which hold that the injunction order "must contain [c]lear, definite, and unequivocally sufficient factual findings to support each of the four elements." *Housman v. Housman*, 370 So. 3d 1006, 1009 (Fla. 5th DCA 2023).

The TIO meets these standards. As to what activity is

enjoined, the TIO states, in pertinent part, that:

> Until the resolution of this case Defendant is enjoined effective immediately **from utilizing Unit 1 as a place of public assembly and is prohibited from allowing public assemblies put on by any entity to occur there**. Defendant may elect to allow the property to be used for administrative purposes or for office space so long as the restrictive covenants are being followed. Also effectively immediately, Defendant is **enjoined from proceeding with any construction or modification to Unit 1 one which would facilitate public assemblies**.

Notwithstanding all of Appellant's rhetoric, the Trial Court's injunction demonstrates that **it relates to only one singular thing,** despite the Appellant's argument that it is somehow "left guessing" as to what he cannot do. The argument that the Appellant cannot determine "what activity might be enjoined" is nonsensical. The TIO is clear.

Further, the Appellant openly admitted during the hearing that it was operating a church on the Premises. (A-0465-0520), Tr. pp. 8, 29). The photos attached to Appellee's Notice of Filing Documents in Support of Plaintiff's Verified Motion seeking the TIO as Exhibit "E" (A-235-237) clearly depict Appellant's construction and renovations on the Unit 1 Premises as that of an auditorium with

seating in excess of 500 seats. Thus, the Appellant's argument that it is unaware what constitutes a place of public assembly should be rejected by this Court outright. Clearly, the Appellant was and remains capable of understanding what is required by the TIO which is "phrased in such language that its requirements can be met, without resort to portions of the record or facts outside the "four corners" of the injunction itself" as per this Court's holdings in *Wayne's Aggregate and Materials, LLC v. Lopez*, 391 So.3d 633 (Fla. 5th DCA 2024), *Housman v. Housman*, 370 So. 3d 1006 (Fla. 5th DCA 2023), and *Clark v. Allied Associates, Inc.*, 477 So.2d 656, 658 (Fla. 5th DCA 1985). This court should reject the Appellant's assertions in Section I, C of the Initial Brief, as the TIO satisfied the requirements elucidated in these precedents in all respects.

OVERBREADTH

Appellant's argument in relation to his claim that the TIO is overbroad, is equally unavailing. In Section I, D of the Initial Brief, Appellant next argues that the TIO is "impermissibly and unconstitutionally overbroad" (IB-30-37), citing the very same authorities (e.g., *Clark v. Allied Associates, Inc.*, 477 So.2d 656 (Fla.

5th DCA 1985); *Angelino v. Santa Barbara Enterprises, LLC*, 2 So.3d 1100 (Fla. 3d DCA 2009)) for the proposition that "[i]njunctions must be specifically tailored to each case and they must not infringe upon conduct that does not produce the harm sought to be avoided." *See Angelino* At 1104; *Clark* at 657.

Thereafter, Appellant engages in a series of questions about the "breadth" of the obviously narrowly tailored dictates as to "scope" of the activity enjoined by the TIO in an effort to manufacture doubt as to the TIO's scope, which is obvious from its plain language. However, and despite the bare assertions made by Appellant, the narrowly tailored TIO **prohibits 2 things** during the pendency of the Action below:

(1) from utilizing Unit 1 as a place of public assembly and is prohibited from allowing public assemblies put on by any entity to occur there; and

(2) from proceeding with any construction[12] or modification to Unit 1 one which would facilitate public assemblies.

[12] At the time of the entry of the TIO, the second item (construction/modifications to Unit 1 to facilitate public assemblies) had already been substantially completed. However, nothing in the TIO required the Appellant to demolish the construction already undertaken.

Again, it defies logic to suggest that enjoining the Appellant from "***utilizing Unit 1 as a place of public assembly and is prohibited from allowing public assemblies put on by any entity to occur there***" is somehow overbroad, let alone constitutionally overbroad (which is not even addressed other than to say that the TIO "enjoins constitutionally protected activity," which is addressed in Appellee's arguments *supra*). The singular activity that Appellant is enjoined from engaging in is "specifically tailored" to the violation of the Restriction subject of the Action below. This court should roundly reject any argument that the TIO, as to its clarity and breadth as specious and affirm the Trial Court's TIO in all respects.

II.

FLORIDA STATUTORY LAW DID NOT RENDER *VOID AB INITIO* THE USE RESTRICTIONS CONTAINED IN THE DECLARATION OF CONDOMINIUM, AND THE TRIAL COURT, AFTER CONSIDERATION OF SAID STATUTORY PROVISIONS, DID NOT ERR BY REJECTING APPELLANT'S ARGUMENT OR BY ENTERING THE TEMPORARY INJUNCTION ORDER.

A. Florida's Marketable Record Titles to Real Property

Act (§ 712.065, Fla. Stat.) does not bar the enforcement of the Use Restrictions contained in the Declaration which are neutral and non-discriminatory, both as written and as applied.

Appellant states that Appellee has somehow violated the Marketable Record Titles to Real Property Act, Chapter 712, Fla. Stat., which operates to prevent Appellee from enforcing the provisions of the Declaration. Appellant believes that the Declaration's restrictions – by which he voluntarily and willfully bound himself when he purchased the Premises – constitute religious discrimination. Fla. Stat. §712.065(1) provides that:

> (1) As used in this section, the term "discriminatory restriction" means a provision in a title transaction recorded in this state which **restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held**, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court **to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.**

[emphasis added]. Hence, contrary to the Appellant's assertions, this provision of the Statute is completely inapplicable. The Appellant is the Trustee of a Trust – not a "natural person" as contemplated by

the Statute[13] – and the restriction against utilizing the Premises as a church or other place of public assembly is a restrictive covenant that is equally applied to all occupants. This is not, and cannot be construed as, a "discriminatory restriction" imposed on the basis of race, color, national origin, religion, gender or physical disability. It is a covenant running with the land set forth in a recorded Declaration that applies to commercial property. This is the covenant by which the Appellant is bound. The restrictive covenant was not created to discriminate against churches. It is equally applied to nightclubs, auditoriums, bowling alleys, and other places of public assembly. It precludes numerous uses (specifically 22 of them, most of which have subparts). The imposed by the

[13] The definition of a "natural person" is well established under both Federal and State common law, and is interpreted to be a flesh-and-blood human being (as opposed to a corporation, limited liability company, partnership, or trust). A land trust – though represented by an agent (i.e. the trustee) – is not a "natural person" who can experience discrimination on the basis of race, color, national origin, religion, gender, or physical disability. *See A.C. c/o V.R., Appellant, v. Agency for Health Care Administration*, 322 So.3d 1182 (Fla. 3d DCA 2019) (noting that V.R.'s status before the Court as a minor child's parent " … is as an individual, natural person – not in some special or limited capacity as a trustee, personal representative, or corporation, for example.")

Declaration's Restriction is designed for a legitimate business purpose, not for some nefarious discriminatory reason. It is not a restriction based on content; it is based on the volume of people present.

In evaluating why this provision was included in Chapter 712, Fla. Stat. one must review the Chapter in its entirety in order to discern that this specific section was incorporated in order to address discriminatory clauses in covenants and restrictions governing property owners associations and homeowners associations. The whole purpose of Chapter 712, Fla. Stat. is to ensure that restrictive covenants are not extinguished after a period of thirty (30) years – which is the standard length of time a title examiner must go back in reviewing the root of title – so as not to require title to be examined all the way back to the Spanish King's original land grants. The inclusion of the subsection cited above is to make certain that discriminatory restrictive covenants are not perpetuated by virtue of preservation or revitalization under the Statute.

Appellant's reliance upon §712.065(1), Fla. Stat., is wholly misplaced because the purpose of the cited Statute, is to address the

necessity of preserving or revitalizing covenants and restrictions. Here, the subject Declaration is less than thirty (30) years old, and it is not being otherwise preserved or revitalized, nor does it discriminate against natural persons on the basis of race, color, national origin, religion, gender, or physical disability.

At the risk of being overly repetitive, this is not a matter of discrimination in any way, shape or form. The restriction against operation of a place of public assembly has become a simple matter of enforcing a covenant running with the land set forth in a recorded instrument, of which Appellant was abundantly aware and voluntarily and knowingly availed himself.

B. Florida's Religious Freedom Restoration Act (§§ 761.01, et. seq., Fla. Stat.), Does not bar the enforcement of the Use Restrictions Contained in the Declaration.

Appellant contends that the Declaration's subject Restriction also violates the terms of §§761.01, et. seq., Fla. Stat., known as Florida Religious Freedom Restoration Act (the "FRFRA"). The Appellant asserts that by granting the TIO, the Trial Court has engaged in state action that substantially burdens religious exercise and freedom, and violates the FRFRA, which was enacted to provide

broad protection against the suppression of religious freedom.

The Appellant has further suggested that enforcement of the express provisions of the Declaration, which are neutrally written and prohibit any portion of the Shopping Center from being used as a "place of public assembly," via the TIO, somehow violates the FRFRA. In doing so, he makes a quantum leap: that merely because he operates a church (in violation of the covenants and restrictions contained in the Declaration), the Restriction "must be" discriminatory.

The Appellant has asserted that the Trial Court's entry of the TIO has caused his right to religious exercise (and that of his congregants) to be substantially burdened. Appellant argues that the FRFRA prevents and precludes the government from substantially burdening an individual's exercise of religion; however, this position is entirely inapplicable to the case at bar. Appellee is not a governmental agency. It filed this action as a private entity, benefitting from and equally burdened by the Declaration, in order to enforce the Declaration as a covenant running with the land. The Court must flatly reject any attempt by Appellant to justify his

argument that, by granting the TIO, the Trial Court imposed a substantial burden on the Appellant's religious exercise. There is a vast difference between a "compelling government interest" and the "private interests" at stake in enforcing the Declaration that binds both of the parties to the underlying lawsuit.

C. Florida's Religious Freedom Restoration Act (§§ 761.01, Et. Seq., Fla. Stat.), Does Not Bar the Enforcement of The Use Restrictions Contained in the Declaration.

Surprisingly, Appellant's argument relies on the U.S. Supreme Court's holding in *Shelley v. Kraemer,* 341 U.S. 1 (1948) for the proposition that judicial enforcement of racially discriminatory covenants and restrictions may be considered state action for the purpose of equal protection under the law analysis by a court.

Interestingly, the Initial Brief is devoid of any reference of any kind to *Loren v. Sasser*, 309 F. 3d 1296, 1303 (11th Cir. 2002), which stated, in pertinent part, that "Appellant's argument, that the threat of judicial enforcement of the deed restriction constitutes state action, is unavailing. Although the Supreme Court has held that the enforcement of a racially restrictive covenant constitutes state action, *Shelley v. Kraemer,* 334 U.S. 1, 19-20, 68 S.Ct. 836, 845, 92

L.Ed. 1161 (1948), *Shelley* has not been extended beyond race discrimination, *Davis v. Prudential Secs., Inc.,* 59 F.3d 1186, 1191 (11th Cir. 1995). This argument gained no traction whatsoever in the Trial Court, and it must be disregarded here, as well.

Aside from the fact that the *Shelley* case has been applied solely to racially discriminatory covenants – which is clearly not the case at hand – in response to the argument that enforcement of the deed restrictions in a homeowners association's governing documents constituted state action (and infringement upon certain Constitutional rights), the *Loren* court further stated that in order to succeed on such a claim, there must be a showing that the conduct complained of "was committed by a person acting under the color of state law" and that the "conduct deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States" *Id.,* (quoting *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)). Thus, Appellant's claim that the TIO – and enforcement of the covenants and restrictions contained within the Declaration – constitutes a violation of any Constitutional rights is wholly unavailing in the context of restrictions between private parties; there

is no state action, so there is no Constitutional violation of Appellant's First or Fourteenth Amendment rights. This argument must be wholly disregarded.

Appellant asserts that the TIO imposes a substantial burden on the free exercise of the sincerely held religious practices of Appellant's congregants. This argument wholly ignores the fact that there are options available to Appellant, including broadcasting religious services from the Premises, or selling the Premises and purchasing a suitable location without valid and binding use restrictions. The TIO does not impose any burden on the Appellant, other than operating to enforce the covenants and restrictions by which Appellant freely and voluntarily availed himself. It does not escape notice that Appellant chose to completely and utterly ignore the express provisions of the Declaration when purchasing the Premises. Following the basic principles of contract construction, Appellant is bound by the covenants encumbering the Shopping Center (including the Premises), and enforcement of the provisions by which Appellant agreed to be bound when purchasing the Premises cannot, and must not, be construed as a "substantial burden" on religious exercise.

This Court must flatly reject any attempt by the Appellant to justify this argument.

Appellant is free to evangelize wherever he wishes. There is no attempt to interfere with his personal exercise of the freedom of religion, nor that of his congregants. But the Appellant cannot operate a place of public assembly (in this case a church) in the Premises. To permit him to do so undermines the principles of contract law and renders the Declaration's restrictions a nullity. The Trial Court's findings and the TIO must be left undisturbed.

C. The Circuit Court's TIO is Neither Based on a Compelling Interest nor is it the Least Restrictive Means.

The Appellant argues that there is no compelling interest to justify entry of the TIO. This flies in the face of the express language of the TIO, which states "[a] temporary injunction is appropriate as it serves the public interest, specifically the interest of those owners and tenants in the subject [Shopping Center] who are impacted by the violation many of whom may have acquired their interest in the [Shopping Center] because of the restrictive covenant which appears to favor multiple tenancies to improve retail opportunities and

appears to attempt to protect parking for the good of all of the owners/tenants." (A-0521-0524;¶15). Thus, the Trial Court clearly considered compelling interests when entering the TIO.

With respect to Appellant's position that the TIO is not the least restrictive means of enforcing the Declaration, nothing could be further from the truth. Appellant was advised prior to purchasing the Premises that it could not be used as a place of public assembly. Appellant disregarded these instructions and, even before the actual date of purchase, held a fundraiser for some 400 people. He was again advised after the fundraiser, he could not utilize the Premises as planned, and again disregarded this instruction, seeking building permits and a parking variance from the City of Flagler Beach so as to operate a church. Rather than filing an action for declaratory relief as to his rights and obligations under the Declaration, he instead forged ahead to operate the Premises as a church facility. At what point should Appellee or the Trial Court have believed that Appellant would voluntarily comply with the use restrictions, absent entry of a TIO? It is absurd to suggest that a lesser alternative would have curbed Appellant's ongoing violations of the Declaration. This

argument, too, must be wholly rejected, and the Trial Court's decisions must remain undisturbed.

IV.

NOTWITHSTANDING THE ARGUMENTS MADE BY APPELLANT IN SECTIONS IV, V, VI AND VII THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ENTERING THE TIO EMPORARY INJUNCTION ORDER, WHICH WAS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE, ALL OF WHICH WAS UNREFUTED BY THE APPELLANT.

In entering the TIO, the Trial Court relied on competent and substantial evidence in support of Appellee's application for injunctive relief. Specifically, the Trial Court issued findings of fact to the extent that (i) Appellant was aware at all times appurtenant hereto of the restrictive covenants running with the land which were binding upon him, and which prevented operation of the Premises as a place of public assembly; (ii) Appellant was notified in advance and in writing that the Restriction precluded use of the Premises as a place of public assembly; (iii) Appellant nonetheless acquired the Premises with the prior knowledge that the Premises could not be used as a place of public assembly; (iv) Appellant admitted to affirmatively conducting public assemblies at the Premises in the

form of church services; (v) there is a likelihood that the Appellee will prevail on the merits of the underlying action, as it is undisputed that the covenants and restrictions running with the land mandate that the Premises not be used as a place of public assembly; (vi) the admitted violation of the covenants and restrictions by which Appellant is bound constitutes a prima facie case of irreparable harm; (vii) the ongoing harm to Appellee outweighs the potential harm to Appellant as he chose to operate a church at the Premises in violation of the restrictive covenants; and (viii) a temporary injunction serves the public interest, specifically the owners and tenants in the shopping plaza who are impacted by Appellant's ongoing violation of the covenants and restrictions. The TIO is well-reasoned, explicit, and is supported by law.

In the instant case, this Court must determine whether in fact the Trial Court abused its discretion by entering the TIO, when the record below clearly indicates that the TIO was not a restraint on Appellant's First Amendment rights. Appellant fails to differentiate between restrictions on speech versus restrictions on non-communicative activity. One form of expression is protected by the

U.S. Constitution; the other is not. The TIO does not prevent Appellant's operation of a church simply because it is a church. It does not infringe in any manner on Appellant's Constitutional rights. Rather, it prevents Appellant's operation of a church because it directly violates the declaration, negatively impacting the Shopping Center, and causes injury to other owners and their tenants. In the simplest sense, the sole issue before this Court is whether Appellant's operation of a church violates the Declaration's restriction against use of the Premises as a place of public assembly. Clearly and undisputedly it does. The Trial Court's affirmative determination of the foregoing question does not constitute error. Consequently, this Court must reject Appellant's arguments.

A. The Trial Court's Decision to Enter the TIO Was Based on Competent Substantial Evidence, and Must Be Left Undisturbed.

In granting Appellee's application for injunctive relief, the Trial Court heard, and based its decision upon, competent substantial evidence that Appellant knew of the restrictions in place which prevented the use of the Premises as a place of public assembly and nonetheless opted to utilize the Premises in a manner wholly

inconsistent with the Declaration. Therefore, the TIO – which sets forth specific findings of fact based upon such competent substantial evidence – must stand.

Generally, courts have wide discretion to grant, deny, or modify injunctive relief. *Allied Universal Corp. v. Given*, 223 So.3d 1040, 1042 (Fla. 3d DCA 2017). Competent substantial evidence must support any factual determinations made by the court. *Planned Parenthood of Greater Orlando, Inc. v. MMB Props*, 211 So.3d 918, 926 (Fla. 2017). "Competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred .... [S]uch relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *Sch. Dist. of Indian River Cnty. v. Fla. Pub. Employees Relations Com'n*, 64 So. 3d 723, 727 (Fla. 4th DCA 2011) (quoting *J.S. v. Fla. Dep't of Children & Families*, 18 So. 3d 1170, 1175 (Fla. 1st DCA 2009)) (internal quotation marks omitted). In determining whether an injunction is supported by competent substantial evidence, the key is whether such evidence is legally sufficient, as opposed to evaluating its evidentiary weight. *Lopez v. Regaldo*, 257 So.3d 550, 554 (Fla. 3d

DCA 2018). Hence, evidence sufficient to support Appellee's position was all that was needed for entry of the TIO.

In evaluating the evidence presented before her, the Trial Court deemed the evidence sufficient to reasonably support Appellee's position, to-wit: that the Appellant had violated, and continued to violate, the Declaration; that Appellant's use of the Premises as a place of public assembly had, and would continue to have, a detrimental impact on Appellee and other owners and occupants of the Shopping Center; and that absent the entry of injunctive relief, there would be no adequate remedy to prevent ongoing and future harm to Appellee and others. Simply put, the Trial Court was clear and explicit in setting forth the rationale behind the TIO. Accordingly, it must remain undisturbed.

Given that the Trial Court relied on competent substantial evidence in entering the TIO, there was no abuse of discretion and, as such, this Court should affirm the Trial Court's decision in all respects.

B. The Trial Court Could Not Have Considered the Appellant's Affirmative Defenses, as They Were Not Before the Trial Court at the Time of the Subject Hearing (and, in fact, Such

Affirmative Defenses Were Not Filed Until February 2, 2026 – Some 19 Days After the Hearing).

The facts of this case speak for themselves. The hearing resulting in the Temporary Injunctive Order was held on January 14, 2026. The Appellant's affirmative defenses – which, he argues, were ignored by the Trial Court and this constituted an abuse of discretion – were filed on February 2, 2026. It defies logic to assert that the Trial Court did, or even could have, abused its discretion by failing to consider affirmative defenses that were not filed nor asserted at the time of the hearing. While Florida law may be clear that affirmative defenses should be considered at temporary injunction hearings, those affirmative defenses must have been raised in order to be considered.

To the extent Appellant is attempting to assert his claims of selective enforcement and waiver as "equitable" defenses, the Trial Court not only addressed this in the TIO; she rejected it (A-0521-0524). The Trial Court expressly stated, "There are several tenants/owners at the commercial property which uses do violate the aforementioned restrictive covenant however those uses predate the

subject restrictive covenant." Unless a party otherwise agrees to be bound by covenants and restrictions imposed after the date on which the party took title to real property, it cannot be obligated to comply with such covenants and restrictions. Only future purchasers of the parcel would be bound by the restrictive covenants, once recorded. Therefore, to the extent owners of units within the Shopping Center took title to their condominiums prior to the date of the Declaration, or otherwise entered into lease and occupancy agreements prior to the date of the Declaration, there is no obligation to adhere to the restrictions in the Declaration. During the hearing, Appellant did not present any evidence as to whether the other Owners and their tenants came after the recording of the Declaration, nor did the make any presentation to rebut Appellee's presentation that the others did not "pre-exist" the recordation of the Declaration. Thus, Appellant's arguments of selective enforcement and waiver are wholly unavailing in this regard. They are flatly contradicted by the plain language of the TIO. The Trial Court did not abuse its discretion and, as such, this Court should affirm the Trial Court's decision in all respects.

C. Due to the Nature of the Claim – that the Appellant Breached the Restrictive Covenants Binding the Premises – the Trial Court Need Not Find That There Was Irreparable Harm or an Inadequate Remedy at Law, and the TIO Was Supported by Competent Evidence.

By alleging that there has been a violation of the restrictive covenants, as Appellee has done here, Appellee established a prima facie case of irreparable harm. *Autozone Stores, Inc. v. Ne. Plaza Venture, LLC.*, 934 So. 2d 670, 673 (Fla. 2d DCA 2006) (stating that "Florida law has long recognized that injunctive relief is available to remedy the violation of a restrictive covenant without a showing that the violation has caused an irreparable injury—that is, an injury for which there is no adequate remedy at law."). This was recognized by the language of the TIO, in which the Trial Court stated that Appellant established a prima facie case for violation of the restrictive covenants, citing *Mooney v. Color Le Palais of Boynton Beach Homeowners Assoc. Inc.*, 419 So.3d 1078 (Fla. 4th DCA 2025) and *Killearn Acres Homeowners Ass'n v. Keever*, 595 So. 2d 1019 (Fla. 1st DCA 1992).

Simply put, in cases such as this in which a condominium association seeks injunctive relief for a breach of governing

documents, there is simply no requirement to demonstrate that there has been irreparable harm or that there is an inadequate remedy at law. It is instead sufficient to demonstrate that there has been a violation of the covenants and restrictions affecting the condominium association and, as such, there is a presumption[14] that there exists both irreparable harm and an inadequate remedy.

The Florida Supreme Court in *Stephl v. Moore*, 114 So. 455 (Fla. 1927) held that when there is a violation of restrictive covenants, the plaintiff's failure to allege irreparable harm did not preclude injunctive relief; further, it was sufficient for the plaintiff to allege that the defendant violated the restrictive covenants. Likewise, *Stephl's* progeny have established that just as proof of irreparable harm is not required when seeking to enforce restrictive covenants, proof that there is no adequate remedy at law for such violations is

[14] "Injunctive relief is normally available to redress violations of restrictive covenants affecting real property without proof of irreparable injury or a showing that a judgment for damages would be inadequate." *Autozone Stores, Inc. v. NE Plaza Venture, LLC,* 934 So.2d 670 (Fla.2d DCA 2006) (cleaned up). "[I]rreparable injury is not required to be shown to enjoin a violation of a restrictive covenant affecting real property ..." *Blue Reef Holding Corp. v. Coyne,* 645 So.2d 1053, 1055 (Fla. 4th DCA 1994).

also not required. *Blue Reef Holding Corp. v. Coyne*, 645 So. 2d 1053 (Fla. 4th DCA 1994); *Chick-Fil-A, Inc. v. CFT Dev., LLC*, 652 F. Supp. 2d 1252 (M.D. Fla. 2009); *Fowler v. Burnham*, 408 So. 3d 834 (Fla. 1st DCA 2025); *Jack Eckerd Corp. v. 17070 Collins Ave. Shopping Ctr., Ltd.*, 563 So. 2d 103, 105 (Fla. 3d DCA 1990); *Europco Mgmt. Co. of Am. v. Smith*, 572 So. 2d 963, 968–69 (Fla. 1st DCA 1990).

Despite the fact that Appellant's counsel admitted that the Premises are being used as a church (which is but one example of a place of public assembly (A-0465-0520), Tr. pp. 8, 29) Appellant nevertheless seeks to persuade this Court that the Trial Court erred, ignoring the Trial Court's acknowledgment of the impact of the violation of the covenants by Appellant upon other owners and tenants of the Shopping Center (TIO-¶15). No matter how much Appellant wishes to ignore the express language of the TIO, it speaks for itself. The Trial Court did not abuse its discretion and, as such, this Court should affirm the Trial Court's decision in all respects.

D. Notwithstanding the Fact That the Amount of the Bond Set by the Trial Court Was Not Nominal, it is Nevertheless Within the Discretion of the Trial Court to Set Such Amount. The Trial Court Did Not Abuse its Discretion by Setting Bond at $50,000.

The Appellant has now taken the position that the bond amount entered by the Trial Court is nominal and was not based on competent evidence; however, when Appellee requested that bond be set in a nominal amount, the record below is devoid of any evidence whatsoever that Appellant opposed this request. In fact, this argument – that bond was nominal and insufficient – has been raised for the first time upon appeal. As such, this argument has been waived and should not be considered by this Court. *Burke v. Sunco Title & Escrow Co.*, 219 So.3d 967 (Fla. 4th DCA 2017) (stating " … at no time during the proceedings in the trial court did appellants in this case request an opportunity to present evidence on the bond amount. They neither raised the bond issue during the injunction hearing nor in their proposed order. They also failed to either submit objections to Sunco's proposed order or file a post-order motion. … We do not read our cases as holding a party may challenge an injunction bond as insufficient on appeal notwithstanding failure to

raise the issue in the trial court. *Cf. Offshore Marine Towing, Inc. v. Sea Tow Services Intern., Inc.*, 778 So.2d 510, 511 (Fla. 4th DCA 2001); see also *Palm Beach Polo Holdings, Inc. v. G & G Marine, Inc.*, 889 So.2d 173, 174 (Fla. 4th DCA 2004) (reversing portion of order setting $1000 injunction bond where the trial court "abruptly terminated the hearing without affording appellants an opportunity to object to the amount of the bond").

Appellee failed to respond to Appellant's request for a nominal bond. Appellee filed neither a motion for rehearing, nor a motion for clarification, nor a challenge to the bond amount. He has waived any argument that could be made in this proceeding as to the sufficiency of the bond. It was within the purview of the Trial Court to establish the amount of the bond, which was not nominal, and which was posted by the Appellee. The Trial Court did not abuse its discretion and, as such, this Court should affirm the Trial Court's decision in all respects.

CONCLUSION

For all of the foregoing reasons, the Appellee urges this Court to affirm the Trial Court's Order Granting Plaintiff's Verified Motion for Temporary Injunctive Relief (A-0521-0524) in all respects, as Appellee was and is entitled to injunctive relief under the circumstances of this case. The Trial Court did not abuse her discretion and the TIO was fully supported by substantial competent evidence.

APPELLEE'S CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2), Fla. R. App. P.

Appellee, by and through its undersigned counsel, certifies that the font requirements of Rule 9.210(a)(2), Fla. R. App. P., have been satisfied herein, and that this Answer Brief was computer-generated utilizing a 14 point Bookman Old Style font.

FRANK, WEINBERG & BLACK, P.L.
Attorneys for Appellee
7805 SW Sixth Court
Plantation, Florida 33324
Telephone No. (954) 474-8000

By /s/ David W. Black
DAVID W. BLACK, ESQ.
Florida Bar No. 365671

By /s/ Leanne B. Wagner
LEANNE B. WAGNER, ESQ.
Florida Bar No. 0057847

By /s/ Marc A. Silverman
MARC A. SILVERMAN, ESQ.
Florida Bar No. 144444

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on this 1st day of April, 2026, and via email at: court@LC.org, hmihet@LC.org, ahill@LC.org, to: MATHEW D. STAVER, ESQ.; HORATIO G. MIHET, ESQ.; AVERY B. HILL, ESQ.; Liberty Counsel, Post Office Box 540774, Orlando, FL 32854.

FRANK, WEINBERG & BLACK, P.L.
Attorneys for Appellee
7805 SW Sixth Court
Plantation, Florida 33324
Telephone No. (954) 474-8000

By /s/ David W. Black
DAVID W. BLACK, ESQ.
Florida Bar No. 365671

By /s/ Leanne B. Wagner
LEANNE B. WAGNER, ESQ.
Florida Bar No. 0057847

By /s/ Marc A. Silverman
MARC A. SILVERMAN, ESQ.
Florida Bar No. 144444