LEGACY OWNERS GROUP

P.O. Box 1021, Pittsboro, NC 27312-1021 *Email*: LegacyOwnersGroup@gmail.com

SENT BY USPS CERTIFIED MAIL

March 30, 2021

Jesse R. Baker, Principal
Thomas C. Tischer Jr., Principal
Freehold Capital Management, LLC
Freehold Communities
F-L Legacy Owner, LLC
500 Boylston Street, Suite 2010
Boston, MA 02116

Re: The Legacy at Jordan Lake, Chapel Hill, NC

Dear Mr. Baker and Mr. Tischer:

As representatives of a large group of property owners in The Legacy at Jordan Lake, a community under development by F-L Legacy Owner, LLC (hereinafter also referred to as "F-L Legacy", "Freehold", "Freehold Communities", "Declarant", or "Developer"), the undersigned Legacy property owners write:

A. to notify you of breaches of fiduciary duty, mismanagement, misrepresentations, unfair business practices, and negligent or fraudulent acts and omissions committed by Freehold and/or its agents including, but not limited to, those enumerated below, which resulted in harm and financial loss to the property owners in The Legacy at Jordan Lake and its Homeowners Association ("HOA");

B. to advise you that without such acts and omissions referred to in A. above and more completely described below, there would have been *no justification* for the yearly Developer Loans nor the homeowner monthly dues increase imposed by Declarant; and

C. to seek the remedies listed below.

I. WHEREAS:

In April 2014, F-L Legacy Owner, LLC purchased a large portion (316 acres) of The Legacy at Jordan Lake from RCC Land, and was assigned Declarant Rights to the community by Meritage Homes.

As Developer and Declarant of Legacy, F-L Legacy had and has a fiduciary obligation to act in good faith, in accord with federal and state law (including the NC Planned Community Act) and The Legacy at Jordan Lake governing documents (Covenants, Conditions and Restrictions, By Laws, ARB Guidelines, etc.), and in the best interest of the Legacy Homeowners Association (HOA) and individual property owners.

From April 2014 when Freehold became Declarant up to and including the present, Declarant had and has continuous, complete and exclusive control of the Legacy HOA, comprising the entire Board and unilaterally and solely making all decisions and taking all actions on behalf of the Legacy HOA.

A. Declarant failed to produce accurate HOA Budgets and Financial Statements in accordance with Generally Accepted Accounting Principles, which constituted an unfair or deceptive trade practice, as described below.

B. Declarant failed to comply with provisions of Section 8 of the CCRs, mischaracterized Developer Subsidies as Loans, and failed to correctly and timely inform current and prospective property owners of significant material facts regarding Developer Loans to the HOA, and 2021 pending dues increase.

C. Declarant failed to inform its selected Builders and their sales agents of material facts regarding the community and HOA, and/or failed to ensure that the builders and their agents properly informed prospective buyers of the correct financial status of the HOA, including Developer Loan balance and pending dues increase, as required by law.

D. Declarant failed to ensure that the necessary renewal of the wastewater effluent permit to irrigate the golf course was obtained from the NC State Department of Environmental Quality, Division of Water Resources (NCDEQ), resulting in a forced cessation of irrigation spray and subsequent costly golf course and irrigation system repairs and equipment replacements, including the temporary provision of expensive Chatham County Utilities potable water.

E. Declarant failed to properly maintain common property of the HOA, as expressly delineated in the 2013 Legacy Reserve Study, thereby causing later (and future) unnecessary, more costly repair and maintenance expenses or capital expenditures.

F. Declarant failed to oversee Developer's contractors to ensure that work was performed correctly before turning certain common areas over to the HOA. Declarant similarly failed to ensure that HOA-contracted work was done correctly, thereby necessitating costly re-dos of work already charged and paid for by the HOA.

G. Declarant improperly used HOA funds to pay for expenses properly borne by Declarant as a development or start-up expenditure.

H. Freehold misrepresented its authority and role in issues relating to Phases 1 and 2 of the community, after becoming Declarant, asserting incorrectly that these were under the control of Meritage Homes (the previous Declarant), and implying that Meritage was, in effect, a second Declarant (which would violate the CCRs and NC law.). Though Freehold purchased just 316 acres of the property, it was assigned Declarant Rights by Meritage on April 23, 2014, and in fact Freehold had the authority and duty to enforce the applicable CCRs in *all* phases of the community, including Phases 1 and 2.

Through all of the above, and more, Declarant and its agents breached their legal duties, mismanaged the funds of the HOA and, through negligent, intentional or fraudulent misrepresentations, acts or failures to act, violated N.C. Gen. Stat. § 75-1.1 governing unfair and deceptive trade practices, and have caused/will cause past and future financial harm to the HOA and individual owners.

Details on some of the above follow.

1. Developer Loan

a. Improper Granting

Declarants prior to F-L Legacy properly bore the initial and ongoing Legacy development costs and contributed the necessary capital to meet shortfalls in the budget until the community grew sufficiently to become self-sustaining, as shown by the line item *Developer Subsidy* on the financial statements. In 2013 there was an actual Developer Subsidy of $51,345, and no Developer Loan. The 2014 Budget presented at the fall 2013 HOA Meeting showed a $136,109 Developer Subsidy, and no Developer Loan. In addition, the HOA Income Statement dated 8/31/2014 showed an *Actual* Year-to-Date *Developer Subsidy* of $35,023.20, and the 10/31/2014 HOA Balance Sheet showed ***no*** *Developer Loan*. Yet, just five days later, in the 11/4/2014 Annual Meeting Notice to homeowners, the HOA's management company presented Financial Statements showing that same $136K budget number as a *Developer Loan.* End-of-Year financial statements showed the *Actual* Loan amount for 2014 as $65,000 – a new HOA liability.

Legacy CCRs Section 8.2 *Declarant's Obligation for Assessments* states that "Declarant may annually elect either to pay an amount equal to its regular assessment amount on all of its unsold Units or to pay the difference between the amount of Assessments levied on all other units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. *Unless the Declarant otherwise notifies the board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year*." (Emphasis added)

Applying this section of the CCRs, each of the 2014 and 2015 $65,000 Developer "Loans" must be re-categorized as a Developer Subsidy, and the 12/31/2020 $525,499 cumulative "Loan" balance must be reduced by $130,000. Subsequent years may also have to be re-categorized, and the loan balance further reduced.

b. Failure to Disclose/Advise

Declarant, which solely controlled the HOA and its management companies, failed to properly disclose its "loans" to the HOA to prospective and new home buyers or their agents, and failed to ensure that its selected Builders notify new home buyers of the significant material fact of the HOA's developer loan balance. In addition, Declarant's selected Builders and their Agents violated NC Real Estate Commission rules and regulations by failing to disclose these material facts. Declarant may have also violated *Article 8*. *Assessments* of the Legacy CCRs, and engaged in an unfair and deceptive business practice.

c. Improper Budgeted Repayment by HOA

In addition to the above, Freehold explicitly told Legacy homeowners on repeated occasions, including at their very first annual HOA meeting in fall 2014, that the Developer Loans *would not be repaid by the HOA until it was self-sufficient*. Indeed, year after year the actual Financial Statements presented at the HOA meetings state thus: "*Declarant Loan: Funds received from Freehold Communities to subsidize Association cash flow. All developer subsidy funds will be recorded as loan on the balance sheet and will be paid back to Freehold Communities at the point that the Association is self-sustaining."*

In the Q&A for the Oct. *2015* Annual Meeting, *this is reiterated*, with the following phrase added: *"as noted at the meeting held in 2014."*

Yet, the proposed 2021 Budget shows a Developer Loan Repayment by the HOA of $105,000.

In acting thus, Declarant made repeated misrepresentations to Legacy homeowners and engaged in unfair and deceptive business practices.

2. Golf Course

a. Failure to Ensure That Aqua NC Renewed Effluent Permit to Irrigate Golf Course

The three-hole Par-3 community golf course was designed to have its turf grass irrigated with reclaimed/effluent water from the on-site wastewater treatment plant operated by Aqua North Carolina (Aqua NC). NCDEQ requires an effluent water permit to supply such irrigation, and the fact that the previous permit had expired on February 26, 2014, was known or should have been known to Declarant Freehold (via their agent Andrew Smith). More than a year after Freehold became Declarant, on Aug. 27, 2015, a renewal application filed by Aqua NC was denied for failure to submit additional information. A year and a half later, on Jan. 19, 2017 NC DEQ issued a *Notice of Violation* to Aqua NC. More than year after that, on March 9, 2018, a second renewal application was filed and also denied for failure to submit additional information. Finally, a third application was submitted on Nov. 27, 2018 and a renewed permit was issued on May 6, 2019, more than five years after the previous permit expired.

At some time after the 2017 Notice of Violation, Legacy was required to immediately cease irrigating the golf course with effluent water, resulting in costly repairs and replacements to drought-damaged turf grass areas of the golf course as well as certain irrigation system components, and significant expenditures to switch over to and use expensive potable (Chatham County Utilities) water on a temporary basis, until sometime after the 2019 renewal permit was issued.

Mr. Smith negligently or intentionally failed to ensure that the permit was renewed in a timely manner. He later stated that it had "fallen through the cracks", and repeatedly stated that it was the HOA's (not Aqua NC's) failure. (As the entity in sole control of the HOA, Declarant Freehold was in fact responsible for that failure.) He also categorized the later replacement of some of the irrigation components as necessary to install "effluent spray-certified" components, but we have been unable to identify any irrigation components designated as "effluent-spray certified". Mr. Smith has stated that Freehold bore some of those costs, but we assert that others were improperly allocated to the HOA, rather than the Developer, including irrigation system repairs and upgrades, and potable water expenses resulting from Developer's failure to properly manage this issue.

b. Other Golf Course Expenditures Improperly Charged to HOA

In addition to the expenditures following the failure to renew the effluent water permit, greatly increased expenses for the golf course were caused by F-L Legacy's decision to market the community to builders and new homebuyers as having a top-notch three-hole golf course. From their website: "*Our short-iron golf course is truly unique to new living in the area. Enjoy premium golf on a perfectly manicured course surrounded by trees. Work on your game in solitude or invite a friend. Learn more about our robust collection of amenities.*" http://bit.ly/legacyliving

Prior to the effluent permit debacle, the golf course presented itself in a "practice-level condition". At some point Declarant unilaterally decided to upgrade the golf course, at considerable additional expense, which was particularly notable in that the golf course received very little use, and Declarant chose not to survey residents for their input. Contrast that unilateral decision with the Declarant's survey of owners about reopening the fitness center after Covid-19 closing, requiring a *dues surcharge* to cover that comparatively minor expense. (We would note that *many* more residents used the gym when it was open, than used or use the golf course.)

A close review of costs associated with the golf course work in both a. and b. above suggests that more than $200,000 was inappropriately charged to the HOA.

3. Roads

New-development heavy construction equipment has damaged many roads throughout the community, including those already dedicated to the HOA. The Developer and/or Builders of these new homes, not the HOA, must bear the expense of repairs.

The damage includes that caused on the community's main residential entrance road, despite the existence of a separate construction entrance off Big Woods Road. Developer's and Builders' contractors have repeatedly driven dump trucks, concrete trucks, and equipment trailers, as well as lumber, brick, and concrete block delivery tractor-trailers and the like, causing excessive wear and tear that the homeowners (HOA) should not have to pay to repair.

In addition, failure to timely and properly maintain the general road network (*e.g.*, sealing or repairing cracks/ruptures commonly known as slippage) has also resulted and will continue to result in increased future repair costs due to water penetration into the underlying structural substrate.

4. Irrigation Repairs & Capital Expenditures

In 2012 and 2013, the HOA financial statements showed operating irrigation system repairs as $0. But after F-L Legacy took over, irrigation repair expenses for 2014 to 2017 were $9,390, $24,562, $15,022, and $12,980 respectively, totaling $61,954. (The actual irrigation repair amounts for 2018 to 2020 were much lower than these, but the *budgeted* amounts considerably exceeded the *actual* amounts, and it appears that the expenses were re-categorized as "Golf Course Maintenance" expenses, in an undisclosed amount.)

Separately, *no* 2016 Capital Expenditure for Irrigation was included in the Budget handed out at the Nov. 9, 2016 HOA meeting ("2016 Budget-Projected Actual"). Yet the End-of-Year Financial Statement for 2016 shows $35,604 spent for this. Failing to timely disclose this material fact precluded any questioning or meaningful discussion about this expenditure by homeowners at the Annual Meeting. This is but one example of Declarant's pattern and practice of failing to timely disclose material facts.

5. Improper Attribution of Developer Expenses or Unnecessary (Discretionary) Expenses to HOA

We contend that, in addition to the numerous instances cited above, the HOA has paid or is paying for various other items that are rightfully the Developer's expense. A few examples are:

a. BMP Maintenance or Storm Water Basin Maintenance; Pond Maintenance

Costs to bring online (*i.e*., convert from temporary to permanent devices) BMP stormwater ponds and the like are a reasonable and customary development expense that should be borne by the Declarant. *In fact, this assertion is specifically made by a Professional Engineer in the 2019 Reserve Study.* Yet Declarant paid these expenses from the HOA account, as indicated on numerous budgets over the years. Despite requests from homeowners for a budget breakout of expenses for routine pond maintenance and inspections (legitimate HOA expenses) vs. conversion expenses, such a breakout has not been provided, and in fact there has been little consistency from year to year in categorizing these expenses (BMP, Stormwater pond management or maintenance). From 2014 through 2020, the BMP and pond expenses totaled $131,865, a portion of which is the Declarant's rightful responsibility, which a thorough audit will disclose.

Costs to clean up and/or repair retention ponds, storm sewers, roads, etc. that fill with silt runoff from Developer's construction work (clearing land, road building, etc.) for new phases of the community should be borne by the Developer. Most recently this includes work on Phase 6, where inadequate storm water management resulted in the deposit of large amounts of silt into the road, pollution of the pond at the main entrance to an extent still to be determined, and the overwhelming of the storm sewers, causing flooding which damaged the pavement (cracks, large potholes) and possibly the structural substrate in the vicinity of the main entry. Similar problems were noted for the ongoing work on the development of Phase 3, which has affected areas adjoining it.

b. Waterfall

The pond at the main entrance provides water to the manmade waterfall, and has been polluted with silt-containing surface runoff from Developer's upstream activities (Phase 6). Significant costs for cleaning and for repair or replacement of waterfall components (pumps, etc.) have been incurred, and are further projected ($8500 in 2021 Budget for Waterfall Maintenance). The waterfall structure has been repeatedly stained with mud/silt, and possible additional damage to the recirculating and replenishment pumps may have occurred. The Developer's share of both past and future expenses needs to be determined.

c. Spray Fields, Meadows, Greens and Other Common Areas

Common areas in newly developed portions of the property must be properly completed by the Developer and a walk-through conducted with homeowner representatives or an agreed-upon third party inspector before acceptance and turnover of the areas to the HOA. HOA should not be spending its funds to bring such areas up to par. Regarding the spray fields, we note that Aqua NC is responsible for the irrigation system for these, as stated in the 2013 Reserve Study.

6. <u>Landscape Installation/Maintenance</u>

Improper grading by the Developer's contractors has resulted in standing water and inadequate surface drainage in various common areas (ex/near clubhouse; trail from Phase 5 to clubhouse; various other trails, etc.). Additionally, low soil levels flanking some concrete sidewalks have resulted in a potential hazard for pedestrians on these walkways.

Also in common areas, climatically improper tree & shrub selections, and shoddy installation and/or maintenance procedures (lack of proper pruning, and prevention and treatment of plant diseases and pest

damage) have resulted in dead, dying, distressed and/or aesthetically unpleasing ornamental plant presentation. This has been brought up repeatedly to the developer-controlled HOA.

7. Mismanagement of Other Infrastructure Construction, Repairs and Maintenance including but not limited to: Clubhouse/Pool/Gym/TennisCourts/Playground/GateHouse/Waterfall/Sidewalks/Walking Trails/Retention Ponds/Green Spaces-Meadows/Landscape/Wastewater Treatment/ Storm Sewers/ Site Lighting

On occasions over the years too numerous to list here, various concerned Legacy residents have notified Freehold directly and/or through one of the HOA management companies (Professional Property Management Inc., Charleston Management, Inc., or Elite Management Professionals, Inc.) of various construction defects, or installation or maintenance issues pertaining to the common property that needed attention.

Through mismanagement, oversight, negligence, neglect, or lack of construction expertise Declarant failed to properly and timely address and/or failed to oversee execution of such work, resulting in unnecessary and/or increased HOA expenses, including the necessity to address problems a second or even third time, or to address them later, after further deterioration or damage, at an increased cost.

8. Improper and Unwarranted Increase in Homeowner Monthly Dues

Since Freehold's agent, Andrew Smith, took control of the Legacy HOA in 2014, and changed the Developer Subsidy each year to a Loan, he has said that he planned no increase in HOA dues. Just one such instance was at the October 29, 2015 annual HOA meeting, when he stated that Freehold projected no rise in the HOA dues for 15 years. Mr. Smith also stated that the interest-free loan would be paid back *when the HOA has sufficient funds, as indicated in 1c above*.

Yet, without discussion or meaningful advance notice to either existing or prospective homeowners, Declarant did increase the dues, in an amount that appears to be designated to repaying the Developer Loan. An estimated $94,000 dues increase [~ 302 houses x $26/mo. x 12 mos.] for 2021 comprises 89% of the projected 2021 $105K Loan Repayment to the developer. *With the implementation of appropriate cost-saving measures, correction of financial records (re-categorization of loans to subsidies, correct attribution of certain expenses to Developer vs. HOA, etc.) there is no need for an increase in the HOA dues.*

Separately, the deleterious effect of higher homeowner dues on Legacy home sales/resales and values contradicts one of Freehold's expressly stated goals, *to protect property values*. Instead, the increase in dues is likely to have the opposite effect. Even the previous $174/mo. dues were uncharacteristically high for this area, and dissuaded many potential buyers. Legacy dues of $200/mo. will act to dissuade even more potential Legacy buyers.

In the best interest of the entire community, including homeowners and builders, the decision to increase the dues must be reversed.

By including a loan repayment by the HOA to Declarant in the 2021 budget, and raising the HOA dues beginning Jan. 1st, 2021 in effect to cover that loan repayment, Declarant has acted contrary to repeated representations to the homeowners. In doing so, Declarant has breached its fiduciary duty to them, and engaged in an unfair and deceptive business practice.

9. Failure to Enforce CC&Rs and ARB Guidelines

By failing to uniformly and consistently apply and enforce the applicable restrictions and regulations of the Legacy Covenants, Conditions & Restrictions (CCRs), including the ARB Design Guidelines, Declarant has caused harm to the overall Legacy community through the diminishment of its appearance and perceived value. For example, homeowners in Phases 1 and 2 are subject to the original Design Guidelines which, among other things, requires the installation of specific species and size of shade trees in the front yard, which were carefully chosen by a landscape architect to provide aesthetically pleasing tree-lined streets, temperature-reducing shade, cleaner air, and more.

Though the former Declarant Meritage Homes was specifically exempted via the 5th Amendment from Article 9 of the CCRs (*Architectural Standards*, which include ARB Design Guidelines), all Phase 1 and 2 homebuyers are subject to the CCRs and ARB Design Guidelines for any subsequent changes they make (*e.g.*, replacement shade trees in front yards, fences, front yard ornaments, etc.). Declarant has failed to apply these guidelines in numerous cases over the years, whether Meritage homes or not, to the lasting detriment of these neighborhoods and the living environment they present.

***II. CONCLUSION*:** Freehold breached its fiduciary duty to the Legacy at Jordan Lake HOA and individual Legacy homeowners, mismanaged the Legacy property and funds, and committed negligent and purposeful acts and omissions that resulted in financial harm to the HOA and property owners.

III. WHEREFORE, Legacy owners seek the following **REMEDIES** from Declarant Freehold:

1. Elimination or forgiveness of entire "Developer Loan" to HOA in the current amount, or $525,498.97 as shown on the Dec. 31, 2020 Balance Sheet, whichever is greater, plus any loan repayment already made to Declarant.

2. Reversal of HOA monthly dues increase of $26, to reinstate $174/mo. dues.

3. Future proper adherence to General Accounting Principles in the operation of the HOA and preparation of budgets and financial statements, and compliance with all governmental laws and regulations as well as The Legacy at Jordan Lake governing documents.

4. Cessation of practice of attributing expenses to the HOA that are properly Developer expenses, including but not limited to the repair of roads damaged by construction traffic, and any marketing expenses to attract builders or buyers of new homes.

5. Undertaking, at Freehold's expense and at the appropriate times, repair and ongoing maintenance of roadways in the community *previously dedicated to the HOA* that have been or are being damaged by Developer-related construction and construction vehicles.

6. Undertaking, at Freehold's expense, the necessary restoration and repair of other common areas that were in noticeably flawed condition *when conveyed to the HOA,* including but not limited to meadows, greens, trails, ponds, spray fields, and specifically to include those cited above. These areas will be identified, described and located by one or more knowledgeable homeowners during a walk-through with Developer, followed by a written remedial report provided to Developer.

7. Undertaking, at Freehold's expense, prior to a homeowner representative walk-through and *future conveyance to the HOA*, the necessary restoration, repairs and maintenance of common areas, including but not limited to roads, meadows, ponds, trails, spray fields, storm water sewers. This shall specifically include, but not be limited to, the common area beyond Legacy Club Drive (behind Phase 4 Lots #275 – 282 on Stone Bridge Crossing, currently being used as a dump area for site work related rubbish -- rocks, boulders, etc.), which shall be properly graded, supplied with a suitable growth medium, and seeded to permit future recreational use.

8. Undertaking, at Freehold's expense, similar-size replacement of street trees that are partially dead, misshapen or out-of-plumb as a result of improper installation by Freehold's contractors, including but not limited to those along Legacy Club Drive and Legacy Falls Drive South adjacent to the pond.

9. Effective oversight of HOA landscape maintenance, including but not limited to:
   - Proper care of all regularly mowed lawn areas (*e.g.,* wet spots, elimination of voids/low spots/sinkholes);
   - Horticulturally recommended dead- and live-wood pruning of existing plant materials;
   - Prevention and treatment of plant diseases and insect damage;
   - Proper care of trails, *effectively* addressing consistently wet and/or eroded areas, low spots, clogged drainage culvert pipes, wood footbridges, loose footing, etc.; and
   - Correction of grading (*e.g.,* where the ground drops off sharply adjacent to sidewalks).

10. Scheduling and effective oversight of routine preventive maintenance and repairs of common areas by the HOA, including an annual written detailed assessment of the asphalt roads and walking trails.

11. Proper administration and enforcement of HOA CCRs and Architectural Review Board guidelines.

While many of the concerns addressed above are serious and may even violate the law, we prefer to resolve these matters without resorting to formal legal action. We propose:

(A) A detailed walk-through of the community led by two or three knowledgeable Legacy residents, one or more Freehold Management principals and a Legacy HOA management company representative, to help you better understand some of the on-site issues mentioned above;

(B) Freehold's careful consideration of the above suggested remedies, and a written response addressing each item;

(C) A meeting with Freehold and the homeowner representative signatories to discuss how Freehold will address and remedy these concerns; and

(D) Ongoing monthly check-ins by Freehold with HOA Representative and selected Legacy Homeowners until each proposed remedy is fully implemented.

Our mutual overriding concern is the physical and financial well-being of Legacy at Jordan Lake, and it is to the benefit of all parties that the reputation of Legacy as a premium community not be tarnished. Threats to its reputation include possible actions by the NC Real Estate Commission against Realtors, which might end their support of this community, and similar actions against Builder Agents (and Builders), which could halt sales and result in lawsuits. Additionally, Legacy homeowners might choose to file complaints with the

NC Consumer Protection Division or pursue legal action, including a class-action suit, for the period 2014 to present 2021.

In fairness and with the shared goal of avoiding these potential consequences, we request that you give every serious consideration to the remedies that we have proposed. Please respond by email within two weeks of receipt to LegacyOwnersGroup@gmail.com, and/or by mail to Legacy Owners Group, P.O. Box 1021, Pittsboro, NC 27312-1021. Thank you.

Sincerely,

Legacy Owners Group by:

_____

Dana Wicker Cantrell
498 Legacy Falls Drive North
2018-Lot 23, Phase 1 Resale (Meritage)

_____

Eileen Gavin McKenna
40 Rolling Meadows Lane South
2011-Lot 32, Phase 1 lot from bank

_____

Terence Oliver
35 Rolling Meadows Lane
2015-Lot 60, Phase 1 from Meritage

_____

Atul Peres-da-Silva
103 Village Walk Drive
2019-Lot 226, Phase 3 from M/I Homes

_____

Marcelo Valdes
412 Stoney Creek Way
2015-Lot 73, Phase 1 from Meritage

cc: Andrew Smith, Freehold Communities, 352 Paseo Reyes Dr, Saint Augustine, FL 32095
via USPS Certified Mail

LEGACY OWNERS GROUP

P.O. Box 1021, Pittsboro, NC 27312-1021 *Email*: LegacyOwnersGroup@gmail.com

By Email and Certified Mail

June 4, 2021

Russell B. Killen, Esq.
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601

RussellKillen@ParkerPoe.com

Re: F-L Legacy Owner, LLC – The Legacy at Jordan Lake HOA

Dear Mr. Killen:

In your May 17, 2021 letter to us, you indicated that you represent F-L Legacy Owner, LLC (Freehold) and are providing a response to our March 30, 2021 letter. You also indicated that we should direct all future correspondence in this matter to you. We would like to point out that a number of the statements in your letter are simply untrue. *We stand behind our letter* and offer the following, in the hope that it may add clarity to our points.

In our responses to your letter, we will use the following abbreviations:

Freehold: F-L Legacy Owner, LLC
HOA: The Legacy at Jordan Lake Homeowners Association
CCRs: Declaration of Covenants, Conditions and Restrictions for the Legacy at Jordan Lake filed with the Chatham County Register of Deeds on April 20, 2006
CCROD: Chatham County Register of Deeds
LOG: Legacy Owners Group
Freehold Response: Your May 17, 2021 letter with page number

First, we have learned of an important issue that was not raised in our March 30 letter, namely, that Freehold has violated NC state law by failing to hold an election of homeowners to the HOA Board of Directors *by December 31, 2020*, the date their Class "B" declarant control ended. The NC Planned Community Act contains the following provision:

> §47F-3-103(e) *Not later than the termination of any period of declarant control*, the lot owners shall elect an executive board of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election. (Italics added)

You might counter that the Legacy By-Laws contain the following language:

> 3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:
> … (b) *Not later than the first annual meeting occurring after the termination of the Class "B" Control Period*, the Board shall be increased to five (5) directors and the Association shall hold an election at which the Class "A" Members shall be entitled to elect all five (5) directors…. (Italics added)

However, Section 6.3 ("Conflicts") of the By-Laws specifically states that *state law prevails* over the community provisions. *Since Declarant has already missed the Dec. 31, 2020 deadline, we hereby demand immediate measures be taken to hold election of five homeowners to the Board as soon as possible.*

We are further responding to just a few of the statements you made in your May 17th letter.

A. EXECUTIVE SUMMARY (Pages 1 &2 of Freehold Response)

- **LOG Reply**: We agree and are happy that F-L Legacy completed the community amenities (fitness center, swimming pool, clubhouse, tennis courts, etc.), and installed the final layer of asphalt on Phase 1 roads. We would point out that when they were granted Declarant rights in 2014 by the former Declarant, Meritage Homes, *Freehold signed an Amenity and Funding Agreement with Meritage in which they contractually agreed to do both of these things* (see Memorandum of Contract dated April 23, 2014 at CCROD Book 1739, Page 0395).

Regarding the recurrent issue of costs to maintain, repair, or finish property previously deeded to the HOA, we disagree with the suggestion that prior or future deeding over of property to the HOA absolves Freehold of its obligations as Developer and Declarant. Property such as the Phase 1 roads was deeded to the HOA before the final layer of asphalt was laid, but the Developer properly bore the cost of that finish work. Similarly, we maintain that the cost of stormwater pond conversion from temporary to permanent devices is properly a Developer expense, and the HOA should be refunded amounts it has paid for such. Likewise, any damages to HOA property caused by Developer's activities (or their selected Builders and Contractors) should be repaired at their cost, not the HOA's.

You might counter that previous developers used HOA funds for such purposes, but there is one huge difference to the HOA and homeowners: *Every* developer *before Freehold* subsidized the HOA with a *contribution*, not a *loan* (as Freehold has done), thus assuming at least a part of (and perhaps all of) these costs.

B. EXECUTIVE SUMMARY, Page 2 of Freehold Response: "A modest dues increase – from $174 a month to $200 – was approved for the 2021 budget year. Home sales so far this year have tripled from the previous two years, a sign that Association fees are not deterring prospective buyers from Legacy at Jordan Lake."

- **LOG Reply**: Home sales were and are influenced by many different factors, including the state of the overall economy, COVID-19 restrictions, and many more. One cannot say how many more homes would have sold had the dues been lower, but a number of realtors have advised that they've had clients who won't even come to look at Legacy after hearing of the disproportionately high monthly homeowner dues. The 14% dues increase for 2021 was approved by the HOA/Board, controlled solely by Freehold's agent Andrew Smith, while *92% of the homeowners* who voted on the 2021 budget (72 of 78) *disapproved* it.

C. EXECUTIVE SUMMARY (Page 2 of Freehold Response). **LOG Reply**: Regarding irrigation of the golf course, contrary to your assertion, an effluent spray permit *was in place* and expired on Feb. 26, 2014, shortly before Freehold became declarant (on April 23, 2014). Once it became Declarant, it was *Freehold's* duty to ensure that a replacement/new permit was obtained, but by on-the-record admissions of Freehold's agent, Andrew Smith, the issue "fell through the cracks". A new permit was not issued until *five years later*, in May 2019. The developer, not the Legacy homeowners, should bear all costs resulting from the developer's failure.

D. Developer Loan: Improper Granting (Pages 2-3 of Freehold Response)

i. **LOG Reply**: We disagree with your interpretation of Sections 8.2 and 8.3 of the Legacy CCRs, and continue to maintain that the 60-day notice requirement of Section 8.2 *Declarant's Obligation for Assessments* applies. Your response did not indicate that Freehold notified the board in writing at least 60 days before the beginning of any fiscal year that it intended to discontinue paying on the same basis as the preceding fiscal year, and we have seen no such notification. Therefore, we reiterate what we stated in our March 30th letter: "Applying this section of the CCRs, each of the 2014 and 2015 $65,000 Developer "Loans" must be re-categorized as a Developer Subsidy, and the 12/31/2020 $525,499 cumulative "Loan" balance must be reduced by $130,000. Subsequent years may also have to be re-categorized, and the loan balance further reduced."

ii. Freehold Response: "All loans were disclosed in various financial statements prepared by the Association management company and made available to Unit owners."

- **LOG Reply**: For years, there have been inconsistencies and irregularities in the financial statements. Two examples, looking just at the Developer Loans: The HOA documents and accompanying notes showed *no* developer loan for 2015. As late as 2017, the financial statements showed a *loan balance* of $65,000 at the beginning of the year, reflecting just the *2014* loan amount, and nothing for 2015. (The additional $65K was mysteriously incorporated in later statements without explanation.) The 2017 documents also showed an *end-of-year* loan balance of $105,000, indicating a $40,000 loan made *in* 2017. Yet the *income* statement indicates that the HOA only received $30,000. Which was it? Specific bank records must be made available to determine the correct amounts and explain these discrepancies.

iii. Freehold Response: Declarant has decided that the financial status of the community is stable enough to begin repayment.

- **LOG Reply**: Had the Declarant properly executed its duties while in complete control of the HOA, the HOA would be in a much better financial position than it is today. (See the numerous specific points made in our March 30th letter.) The "stability' you cite is due largely to the 14% HOA dues increase of $26/month beginning 1/1/2021, which comprises almost 90% of the scheduled $105K loan repayment in 2021. In effect, the Declarant has raised the dues in order to repay itself, contrary to its prior representations.

E. Failure to Disclose/Advise, Page 3 of Freehold Response: "When builders close on lots, they become Association members and receive the same notices and access to financial information that other members do. In summary, all subsidies (including all loans) provided by Declarant to the Association have been fully disclosed in the Association financials as required by the CCR."

- **LOG Reply**: Re "full disclosure" of the loans, see our reply above (#1), which refutes this claim. Also, while we agree with your response's suggestion that builders have a duty to notify potential buyers about the HOA debt, the evidence shows that this has not occurred; it also does not relieve the Declarant of its responsibilities for full disclosure of material facts.

F. Improper Budgeted Repayment by HOA, Page 4 of Freehold Response: At this point, Declarant has not received any repayments on any of its loans. "However, the financial information prepared by the Association indicates that the Association will be self-sustaining in 2021, and therefore, a partial repayment of the loan balance has been budgeted."

- **LOG Reply**: Raising the HOA monthly dues to $200 *to achieve the HOA's "self-sufficiency"* is disingenuous. See LOG Reply in D (iii) above.

G. Golf Course: Failure to Ensure that Aqua NC Renewed Effluent Permit to Irrigate Golf Course, Page 4 of Freehold Response: "At the time that F-L Legacy became the Declarant, Aqua NC did not have a permit to spray effluent water onto the golf course. Declarant did not become aware of this fact until it was informed on May 17, 2018.... Declarant now understands that the previous developer had sprayed effluent onto the golf course without a permit.... In addition to the lack of a permit, it was discovered that the irrigation system installed by the previous developer was not adequate for effluent spray.... The charges related to the watering of the golf course and modification of the irrigation system were therefore appropriately paid by the Association."

- **LOG Reply**: This section of the Freehold Response appears to be based on alternative facts. To provide necessary site irrigation, the previous Declarants used *stormwater retention pond* water, which was pumped to the treatment facility's large pond to be distributed as irrigation water. No wastewater effluent was used prior to Freehold becoming Declarant. (Nonetheless, there *was* an effluent spray permit in place which expired shortly before Freehold became Declarant.) Freehold should have been aware of this expired permit by performing its due diligence in the purchase of Legacy, or its management thereafter. If they were truly not aware until 2018, as you claim, it is yet another manifestation of their gross negligence in managing the property. We also refer you back to

our Reply above under C. Executive Summary, and our statements of fact in our March 30 letter, which we re-assert here.

H. Other Golf Course Expenditures Improperly Charged to HOA, Page 4 of Freehold Response: None of the measures can fairly be categorized as an upgrade of the golf course. "Rather they are all reasonable and necessary measures to ensure the longevity of the golf course and to reduce future repair and/or replacement expenses. Accordingly, there is nothing improper about the Board's decision to implement them."

- **LOG Reply:** We maintain that Freehold made the upgrades to justify its marketing strategy that Legacy has a "top-notch, three-hole golf course" — clearly a developer expense. Moreover, Freehold has not responded to requests to survey homeowners on the continued need for a free golf course or to ascertain how frequently the golf course was used.

I. Roads (Page 4-5 of Freehold Response). **LOG Reply**: We agree that the developer and its chosen builders and contractors are entitled to use the community roads, but maintain that the damages *caused by such use* must be repaired at the expense of the developer and/or builders, not the homeowners. As to Freehold's having "implemented a second lift" of Phase 1 roads after it became Declarant in 2014, we reiterate that Freehold was contractually required to do so.

J. Failure to Enforce CCRs and ARB Guidelines (Page 7 of Freehold Response). **LOG Reply**: The response indicates that the Declarant has consistently enforced the guidelines. However, a simple drive around the neighborhood shows otherwise, with numerous instances of CCR-prohibited items (*e.g.*, solid fences, trampolines, whirligigs) in view. Similarly, there has been at least a partial failure to enforce ARB regulations requiring, for example, prescribed shade trees in the front yards of new homes in Phase 1, or replacement of existing dead trees with prescribed shade trees in Phases 1 and 2.

In summary, we disagree with many of the assertions you make in your May 17th letter, including ones not addressed in this limited reply, and stand by the points we brought up in our March 30th letter. We do hope we can reach a fair resolution of our disputes, however, and propose to meet with you and a Freehold representative at the Legacy Clubhouse, 225 Legacy Club Drive, Chapel Hill, NC 27517 on any morning next week, June 7th – 11th (except Tuesday the 8th, when we have a scheduling conflict). We intend to have three Legacy homeowners attend, including the current Homeowner Representative (HR) to the Board, Rick Gist, former HR Eileen Gavin McKenna, and one other owner to be determined. Please advise of a date and time that is acceptable to you. Thank you.

Sincerely,

Legacy Owners Group
PO Box 1021
Pittsboro, NC 27312-1021
Email: LegacyOwnersGroup@gmail.com

PS Your May 17, 2021 letter came through via both email and mailed printed copy without a letterhead. Will you please email us a copy with the letterhead, or render an explanation? We assume we can mail you a copy of this letter to the Parker Poe address included with your name as addressee above.