

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

SEMINOLE TRIBE OF FLORIDA, for Case No. 2025-003574
itself and for the benefit of its tribal
members,

Plaintiff,

v.

LENNAR HOMES, LLC,

Defendant,

**PLAINTIFF, SEMINOLE TRIBE OF FLORIDA'S RESPONSE TO LENNAR
HOMES, LLC'S MOTION TO COMPEL ARBITRATION**

Plaintiff, Seminole Tribe of Florida ("STOF"), files its Response to Lennar Homes, LLC's ("Lennar") Motion to Compel Arbitration.

INTRODUCTION

STOF, as a Tribal sovereign entity, carries the legal and moral responsibility to ensure that every Tribal member has a safe, habitable home and provided proper healthcare. That responsibility is not abstract. It means when roofs fail, walls rot from water intrusion, or air systems pump mold into bedrooms, the Tribe must immediately step in to protect its families.¹ And that is exactly what has happened.

¹ Lennar's reliance on *Lennar Homes, LLC v. Martinique at Oasis Neighborhood Ass'n, Inc.*, 332 So. 3d 1054 (Fla. 3d DCA 2021), and *Pulte Home Corp. v. Vermillion Homeowners Ass'n, Inc.*, 109 So. 3d 233 (Fla. 2d DCA 2013), is as baffling as it is offensive. Both cases involved voluntary homeowners associations—private membership organizations governed by covenants running with the land—not sovereign governments possessing inherent immunity from suit under federal law. Equating STOF, a federally recognized sovereign nation whose rights and immunities derive from the United States Constitution and centuries of jurisprudence, with a

Like a community hit by a major hurricane, entire neighborhoods across multiple reservations have been left with homes unfit for human habitation. The Tribe has already deployed inspectors, environmental engineers, and contractors to document the damage, relocate displaced families, and prepare demolition and reconstruction plans. Forensic reports reveal staggering defects—structural failures, pervasive mold, unsafe wiring, leaking plumbing, collapsing roofs—that make hundreds of homes unlivable.

The human, financial, and health toll is immense. Dozens of families have been constructively evicted, forced out of homes that now sit gutted or abandoned. Entire streets require full roof replacements, new HVAC systems, and mold remediation rivaling post-disaster cleanup efforts. Children and elders exposed to toxic mold face respiratory illness, worsening asthma, and other serious health complications. The Tribe has already been forced to cover mounting healthcare costs for members sickened by unsafe living conditions—costs that will continue for years. Preliminary estimates already exceed \$200 million in direct property damage alone, not counting medical care and temporary housing, and that number rises daily as new hazards are uncovered. Every dollar for these repairs, relocations, healthcare needs, and rebuilds is being paid by the Tribe to protect its members' safety and dignity. Yet Section 15.02 of the CDA leaves no doubt: Lennar agreed to indemnify and hold the Tribe harmless for exactly this kind of catastrophic loss. The Tribe is fulfilling its obligations to its

voluntary HOA governed by boilerplate subdivision covenants demeans the Tribe's legal status and ignores binding precedent demanding strict construction of any purported waiver of tribal sovereign immunity. The Tribe's sovereignty is not a neighborhood covenant, and Lennar's suggestion to the contrary borders on frivolous.

people as if responding to a natural disaster. Lennar must fulfill its own obligation to pay for the damage it caused.

Lennar's motion to compel arbitration fails as a matter of law for three independent reasons, each grounded in the controlling documents and settled precedent.

First, three binding documents exclusively govern how and where disputes between Lennar and STOF must be resolved: (1) the Community Development Agreement ("CDA") between STOF and Lennar; (2) Tribal Ordinance C-01-95; and (3) Tribal Council Resolution No. C-557-19.

The parties entered into the first binding document, the CDA, to govern Lennar's design and construction of new homes on STOF reservations throughout the State of Florida. Section 13.04 of the CDA could not be clearer: it expressly rejects arbitration and requires all disputes to proceed first through good-faith mediation—which all parties agree has been exhausted—and, if mediation fails, through litigation in either this Court or the U.S. District Court for the Southern District of Florida. STOF filed this action in this Court over seven months ago, fully consistent with that framework.

The second binding document, Tribal Ordinance C-01-95, requires any waiver of STOF's sovereign immunity to be expressly enacted by formal Tribal Council resolution. Under Section 13.04(H) of the CDA, Lennar expressly agreed that STOF did not waive or otherwise limit its sovereign immunity absent a Tribal Council resolution complying with Tribal Ordinance C-01-95.

The third binding document, Tribal Council Resolution C-557-19, satisfies the requirements of Tribal Ordinance C-01-95 for a limited waiver of sovereign immunity, but strictly limits any waiver to the litigation fora identified in Section 13.04.

In summary, neither the CDA, nor the Ordinance, nor the Resolution authorizes arbitration—and Lennar cannot point to a single provision from the CDA or Tribal law that does. Courts uniformly hold that tribal sovereign immunity waivers must be strictly construed and cannot be expanded by implication, post-execution documents, or unilateral conduct. These undisputed facts foreclose arbitration here and require denial of Lennar’s motion.

Second, arbitration provisions are strictly creatures of contract, and courts refuse to infer arbitration obligations absent clear, express, and mutual agreement. *Kantner v. Boutin*, 624 So. 2d 779, 781 (Fla. 4th DCA 1993); *Temple Emanu-El v. Tremarco Indus.*, 705 So. 2d 983, 984 (Fla. 4th DCA 1998). No such agreement exists here. The CDA merely mentions that a warranty would be provided; it does not state the CDA is “subject to” any warranty terms or arbitration clauses, nor does it incorporate them by reference. Likewise, the ministerial Closing Checklist merely acknowledges delivery of materials at closing; it is not a contract, does not amend the CDA, and does not reflect any Tribal Council resolution authorizing arbitration as required by Section 13.04(H) and the Ordinance. Under settled Florida law, a mere reference to a warranty is insufficient to bind a party to its terms, particularly where sovereign immunity and express no-arbitration language are at stake.

Third, Lennar’s “Footnote 3 theory”—that post-closing documents silently superseded Section 13.04 of the CDA—fails under basic rules of contract construction. Florida law requires courts to give effect to all provisions of a contract, reading them harmoniously rather than nullifying key protections by implication. See *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000). Accepting Lennar’s theory would erase both Section 13.04’s no-arbitration mandate and STOF’s indemnity rights under Section 15.02, in direct violation of this principle.

In fact, Lennar itself has repeatedly and continuously invoked the specific requirements of Section 13.04 during the past seven months, before ever even mentioning arbitration. More astonishing, Lennar’s Motion cites only one post-closing Limited Warranty document as the sole basis for its purported arbitration right, that was admittedly *never* agreed to by STOF, *never* signed by STOF and directly conflicts with the clear language and requirements of the CDA. In fact, Lennar waited months after the mediation required by Section 13.04 failed, and months after the Broward County lawsuit envisioned by Section 13.04 was initiated, to file this Motion.² Even if the CDA was not legally binding (as it unquestionably is), common

²The American Bar Association and many treatises on Native American law remind practitioners that a Tribe can only waive sovereign immunity, and any specific choice of forum, by a specifically designated Tribe authorized official and procedure:

One important caveat before we leave the subject: waivers of immunity must come from a tribe’s governing body and not from “unapproved acts of tribal officials.” Attorneys must evaluate a tribe’s structural organization to determine precisely which tribal agents have authority to properly waive tribal sovereign immunity or otherwise bind the tribal entity by contract. *If attorneys do not have a working knowledge of pertinent tribal law, they risk leaving their clients without an enforceable immunity waiver.*

sense dictates that a party cannot proceed for seven months under Section 13.04's dispute resolution procedures, only to (seven months later) cite a separate post-closing document in an attempt to abandon those agreed-upon dispute resolution procedures.

That course of conduct expressly confirms that both parties understood Section 13.04 as the exclusive and sole dispute resolution process. Because STOF's sovereign immunity remains fully intact for the selected forum of litigation (Florida state or federal court), and arbitration was ***never*** authorized by the CDA, Tribal Ordinance, or the Tribal Council Resolution, Lennar's motion must be denied.³

FACTUAL BACKGROUND

1. As the Amended Complaint expressly reiterates, this lawsuit is solely between just two named Parties, STOF and Lennar, and contains only state law claims arising from Lennar's breaches of the CDA entered between only Lennar and STOF. A copy of the CDA was attached to the Amended Complaint as Exhibit 1.

https://www.americanbar.org/groups/business_law/resources/business-law-today/2016-january/doing-business-in-indian-country/#:~:text=Tribal%20sovereign%20immunity%20is%20not,Arbitration; ***see also***

<https://ktslaw.com/-/media/Files/articles/2018/Contract-Waivers-for-Tribal-Sovereign-Immunity--What-Every-Idaho-Attorney-Needs-to-Know-Advocate-Smith-MarchApril-2018.pdf>

("... the typical waiver of tribal sovereign immunity may name the forum where a dispute can be heard.").

³ Further, given the lack of good faith and the clear and unequivocal language of the CDA, STOF respectfully requests the Court award STOF its reasonable attorneys' fees and costs expended in opposing Lennar's motion, as specifically authorized by Section 13.04(G) of the CDA.

2. STOF filed this action against Lennar on March 13, 2025, as a direct result of Lennar's negligent and defective design, manufacture and construction of hundreds of homes across six of STOF's reservations throughout Florida. One of STOF's most important obligations is always to take care of every Tribe member's housing and welfare. Am. Compl. ¶ 66. That is why STOF has spent the last seven months—working almost daily—to make sure that every defective Lennar home is fixed and every Tribe member and their families are relocated, evaluated and treated for any and all adverse health effects from the resulting mold. STOF retained some of the best construction and health/mold counsel and experts in the country (including doctors who have developed proposed medical monitoring programs), who have tested and examined hundreds of the defective Lennar homes and many of the injured Tribe members.

3. Almost all of the defective Lennar homes are owned directly by STOF ("Subject Residences"). It cannot be overstated that 100% of all Subject Residences that have been tested (during the past seven months, by both STOF and Lennar experts) have significant defects, including specifically defective roofs that have caused mold in most of the Subject Residences. As a direct result, STOF estimates hundreds of millions of dollars in damages. Am. Compl. ¶ 1.

4. STOF is a federally recognized, sovereign, Native American tribe under 25 U.S.C. § 5123. STOF's seat of government is located in Hollywood, Broward County, Florida. Over 1,000 STOF members reside in these defective Subject Residences and are now being tested by health experts. They have been forced to live

in unhealthy dangerous conditions until they are able to be relocated by STOF. Additionally, many families in these 313 homes who are renting directly from STOF have been constructively evicted from their rentals, due to unsafe living conditions in their Subject Residences. One of STOF's most important obligations as a sovereign power is to seek redress in "federal, state, and tribal courts" for any and all damages incurred by STOF. Am. Compl. ¶ 66.

5. There is no dispute that Lennar was solely responsible for the design, development and construction of the Subject Residences—the homes at issue in this case. Am. Compl. ¶ 66. Lennar's misconduct has caused a financial burden for which STOF seeks relief, including: (1) costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from mold and dust mite exposure; and (2) costs for providing home repair, reconstruction, reimbursement, relocation and rehousing. Am. Compl. ¶¶ 72, 74.

6. Pursuant to the CDA, Lennar was obligated to design and construct the Subject Residences in accordance with the permitted plans and specifications, manufacturer's recommendations and instructions, industry standards, Florida Building Code, and the various warranties implied in law and in contract.

7. As Lennar was continuing to develop the Subject Residences, STOF discovered significant design and construction defects in violation of the CDA.

8. STOF is obligated to its tribal members to provide maintenance to the Subject Residences including paying for the inspection, repair and replacement of certain components, such as HVAC and structural components. STOF is also

obligated to perform indoor air quality (“IAQ”) testing and to perform mold remediation and restoration services for its tribal members. STOF is also obligated to relocate tribal members whose homes have, among other issues, structural or mold concerns. Am. Compl. ¶¶ 173–174.

9. As a result of Lennar’s construction and design-related issues, STOF’s maintenance of these defective units built by Lennar has increased significantly. Am. Compl. ¶ 175. STOF has also already reimbursed tribal members for damages to tribal members’ personal property and for other out-of-pocket expenses incurred by tribal members to relocate and address the defects. Am. Compl. ¶¶ 176-177.

10. Because STOF is required to provide the Tribal Health Plan to all of its members, the construction and design related issues have directly damaged STOF, and STOF has incurred all of the costs of health care for tribal members affected by these Lennar defects. Am. Compl. ¶ 179.⁴

THE AGREED DISPUTE RESOLUTION PROCEDURE

11. As a direct result of Lennar’s breaches of the CDA, STOF was required to exercise its rights under Article XIII of the CDA titled “**DEFAULT, REMEDIES,**

⁴ As discussed by STOF and Lennar counsel on their phone conference, the health damages in this case are very similar to the extensive damages awarded in the nationwide Opioid Multi District Litigation. In that litigation, a “Native American Track” was established that includes almost every Tribe in the country and has been extensively litigated for the past six years. Those Native American tribes have sought, and have already been awarded, many millions of dollars in direct damages incurred for health care costs to take care of their members.

AND MEDIATION.” Pursuant to Section 13.01 of the CDA, in the event of any default by Lennar, STOF shall be entitled to terminate the CDA.

12. Pursuant to Section 13.03 of the CDA, STOF could not take any action with respect to Lennar’s default until STOF first gave written notice to Lennar and Lennar failed to cure the default within the applicable cure period.

13. Pursuant to Article 13.04(C) of the CDA, STOF and Lennar agreed to first attempt to resolve any controversy or claim arising out of or relating to the CDA, or the alleged breach thereof, by negotiating in good faith for a period not to exceed thirty (30) days with each other with a view toward resolving their dispute voluntarily. If those voluntary efforts of the parties at direct negotiations failed, the parties must then submit the dispute to mediation within 60 days after the failure of voluntary negotiations between the parties. STOF and Lennar agreed that “under no circumstances will the mediation operate as a waiver of tribal sovereign immunity.”

14. Pursuant to Article 13.04(F) of the CDA, “if a dispute cannot be resolved as a result of mediation, then venue shall be proper in the U.S. District Court for the Southern District of Florida, Broward County Division; or the Florida Circuit Court for the 17th Judicial Circuit, both with applicable appellate jurisdiction thereafter if required.”

15. Further, Section 13.04(A) of the CDA, provides that “Nothing contained in this Agreement shall be deemed or construed to constitute consent on the part of STOF or Builder to arbitrate any matter or dispute, and nothing contained herein

shall be deemed or construed to constitute an obligation or intent on the part of STOF or Builder to arbitrate any matter or dispute whatsoever.”

16. Section 13.04(B) of the CDA provides (emphasis added):

Except as otherwise noted below, by referring to federal law and the laws of the State of Florida, this Agreement is not intended to, and does not: (i) incorporate any administrative or other dispute resolution procedure contained therein; (ii) subject STOF, Builder, or the Tribal Residential Lands to the jurisdiction of the State of Florida or its courts or administrative bodies; or (iii) grant the State of Florida jurisdiction over this Agreement. **Any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof shall be resolved in the manner set forth below.**

17. Further, Lennar agreed in Section 13.04(H) of the CDA that:

it is understood and agreed that by executing this Agreement, STOF does not waive, limit or modify its sovereignty or its tribal sovereign immunity from suit or from the assertion of any claim against it in any court or tribunal whatsoever unless the Tribal Council of STOF duly enacts an ordinance or a resolution in legal session authorizing a limited waiver of tribal sovereign immunity which conforms, in form and in substance, to the requirements of Tribal Ordinance C-01-95 regarding tribal sovereign immunity.

18. A copy of Tribal Ordinance C-01-95 (adopted by Tribal Council resolution in 1995) is attached as **Exhibit A**. Ordinance C-01-95 mandates that any waiver: (1) be enacted by formal Tribal Council resolution; (2) specifically acknowledge that STOF is waiving its sovereign immunity; and (3) describe the purpose and extent of the waiver. *Id.* The Ordinance expressly provides that any attempted waiver failing to comply with these requirements is “null and void.” *Id.*

19. Pursuant to Section 17.02 of the CDA:

No amendment to this Agreement shall bind any of the parties unless and until such amendment is in writing and executed by Builder and STOF.

20. The CDA was amended—in writing and executed by STOF and Lennar—**five** different times. The CDA amendments were fully executed on June 15, 2020, April 28, 2021, August 9, 2021, July 26, 2023, and September 9, 2024. None of the amendments ever modified the dispute resolution procedures or ever included an arbitration provision. In fact, the amendments ***expressly*** stated that all other terms and conditions of the original CDA and accompanying amendments remain in full force and effect.

21. On August 23, 2019, the STOF Tribal Council executed Tribal Resolution No. C-557-19, a copy of which is attached as **Exhibit B** (the “Tribal Resolution”). Included in the Tribal Resolution at page 4 is the following limited waiver of Tribal Sovereign Immunity for disputes specifically with Lennar:

BE IT FURTHER RESOLVED: in the event that a dispute is not resolved through a good faith effort or mediation, for the purpose of enforcement of the direct obligations of the Seminole Tribe of Florida, but not for any homes directly purchased by qualified Tribal members, under the Community Development Agreement with Lennar Homes, LLC the Tribal Council of the Seminole Tribe of Florida hereby expressly and unmistakably ***waives the sovereign immunity of the Seminole Tribe of Florida for the limited purpose of resolving disputes arising under the Community Development Agreement with Lennar Homes, LLC as otherwise provided in Section 13.04 of the Community Development Agreement***, and all in accordance with the provisions set forth in Seminole Tribe of Florida Ordinance No. C-01-95 adopted on March 16, 1995 titled: “Ordinance of the Seminole Tribe of Florida Relating to its Immunity From Suit Under the Doctrine of Tribal Sovereign Immunity; the Applicability of such Immunity to Tribal Officials, Employees and Authorized Tribal Agents; Exclusive Method for Tribal Waiver of Sovereign Immunity and Renunciation of all Prior Non-Conforming Acts Purporting to Waive Tribal Sovereign Immunity as to the Seminole Tribe of Florida and its Tribal Officials, Employees

and Authorized Agents,” and consents on behalf of the Seminole Tribe of Florida *to venue in the United States District Court for the Southern District of Florida, Broward County Division and the courts within the Seventeenth Judicial Circuit in and for Broward County, Florida, both with applicable appellate jurisdiction thereafter, if required*[.]

Id. at 4 (emphasis added).

22. The Tribal Resolution is the only one executed in connection with the CDA. It clearly only effects a limited waiver of sovereign immunity for resolving disputes in accordance with the procedures set forth in Section 13 of the CDA—which expressly excludes arbitration.

COMPLIANCE WITH CDA DISPUTE RESOLUTION PROCEDURE

23. In accordance with Section 13.03 of the CDA, on December 19, 2024, STOF sent Lennar a written notice of default as a result of Lennar’s breaches of the CDA. A copy of STOF’s default notice is attached as **Exhibit C**.

24. In accordance with Sections 13.01 and 13.03 of the CDA, on January 20, 2025, STOF sent Lennar a written notice of termination of the CDA and demanded that Lennar participate in the dispute resolution procedures set forth in Article XIII of the CDA. A copy of STOF’s termination notice is attached as **Exhibit D**.

25. On January 29, 2025, Lennar responded to STOF’s notice of termination acknowledging a dispute between Lennar and STOF and invoking the dispute resolution procedures of Article XIII of the CDA. A copy of Lennar’s response is attached as **Exhibit E**.

26. On January 29, 2025, Lennar also sent a notice of default to STOF and demanded STOF’s compliance with Article XIII of the CDA. A copy of Lennar’s notice

is attached as **Exhibit F**. On February 6, 2025, Lennar reaffirmed its efforts to comply with Section 13.04(C) of the CDA and to engage in direct negotiations and mediation as required by the CDA. A copy of Lennar's correspondence is attached as **Exhibit G**.

27. On February 19, 2025, STOF and Lennar participated in voluntary negotiations pursuant to Section 13.04(C) of the CDA, which were unsuccessful.

28. On March 13, 2025, STOF and Lennar participated in mediation pursuant to Section 13.04(D) of the CDA, which was likewise unsuccessful. On March 13, 2025, STOF filed this action against Lennar. On April 14, 2025, Lennar filed a Motion for Extension requesting through and including May 2, 2025 to respond to STOF's Complaint. On April 29, 2025, Lennar and STOF filed a Joint Motion for a Stay of Proceedings pending additional remediation efforts by the Parties. Lennar represented to the Court that "such discussions and any remediation will necessarily entail significant time and resources from both Parties. Therefore, all Parties agree that a temporary stay of the current litigation, including all deadlines, is in the best interests of the Parties and the judicial resources of this Court."

29. On August 14, 2025, STOF filed a motion to vacate the stay of the proceedings and advised the Court that STOF and Lennar have been unable to resolve any of the issues alleged in STOF's Complaint.

30. On August 27, 2025, at the hearing on STOF's motion to vacate the stay, Lennar represented to the Court that it intended to file a motion to compel arbitration.

LEGAL ARGUMENT

I. Lennar Cannot Compel *Arbitration* Because the CDA, Ordinance C-01-95, and Tribal Council Resolution No. C-557-19 Provide a Dispute Resolution Process That Expressly Rejects Arbitration.

A. Legal Standards for Tribal Sovereign Immunity and Waiver.

As a federally recognized Indian tribe, STOF possesses inherent sovereign immunity from suit absent (1) a clear and unequivocal waiver by the Tribe or (2) congressional abrogation. *See Seminole Tribe of Fla. v. Manzini*, 361 So. 3d 883, 884 (Fla. 4th DCA 2023) (sovereign immunity “bars suit unless such immunity is abrogated by Congress or waived by the Seminole Tribe”); *Seminole Tribe of Fla. v. Webster*, 372 So. 3d 287, 289 (Fla. 4th DCA 2023) (same). This immunity extends to all contract and commercial disputes unless the Tribe unmistakably consents to suit in the manner prescribed by tribal law. *See Miccosukee Tribe of Indians v. Lewis Tein, P.L.*, 227 So. 3d 656, 665–66 (Fla. 3d DCA 2017) (sovereign immunity remains intact unless waiver is “clear, explicit, and unmistakable”).⁵

Florida and federal courts strictly construe waiver and resolve all doubts in favor of immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (“A waiver

⁵ *See also Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1287 (11th Cir. 2015) (quoting *Okla. Tax Comm’n*, 498 U.S. at 509) (Indian tribes “are domestic dependent nations that exercise inherent sovereign authority over their members and territories” and “possess the common-law immunity from suit traditionally enjoyed by sovereign powers”); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1241 (11th Cir. 1999) (same); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 760 (1998) (tribal immunity extends to “suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation”); *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001) (tribal immunity waived only where contract unambiguously subjects tribe to arbitration).

of sovereign immunity cannot be implied but must be unequivocally expressed.”); *Evans Energy Partners, LLC v. Seminole Tribe of Fla.*, 561 F. Supp. 3d 1171, 1179–80 (M.D. Fla. 2021), *aff’d*, 2022 WL 2784604 (11th Cir. July 15, 2022) (courts demand “a clear and unambiguous waiver” and construe doubts in favor of immunity); *Seminole Tribe of Fla. v. McCor*, 903 So. 2d 353, 358–59 (Fla. 2d DCA 2005) (no waiver absent Tribal Council resolution required by tribal ordinance).⁶ Post-execution conduct, informal agreements, or implied theories cannot expand a waiver beyond the precise terms authorized by the Tribe’s governing law. *See Lewis Tein*, 227 So. 3d at 665–66 (limited waiver tied to specific litigation conduct did not open door to broader or subsequent suits); *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, No. 08-61048-CIV, 2008 WL 2959850, at *1–2 (S.D. Fla. July 28, 2008) (no waiver where arbitration clause did not clearly apply to dispute).

Under *Seminole Tribe of Fla. v. Ariz*, 67 So. 3d 229, 231–32 (Fla. 2d DCA 2010), and *MMMG, LLC v. Seminole Tribe of Fla., Inc.*, 196 So. 3d 438, 446–47 (Fla. 4th DCA 2016), a party invoking waiver bears the burden to prove strict compliance with the Tribe’s ordinances and any contractual waiver conditions. Where tribal law—such as Tribal Ordinance C-01-95—requires a formal Tribal Council resolution specifying the purpose and scope of any waiver, courts and other tribunals lack jurisdiction absent that resolution. *See Seminole Tribe of Fla. v. McCor*, 903 So. 2d 353, 358–59 (Fla. 2d DCA 2005) (strictly enforcing ordinance-based waiver requirements).

⁶ *See also Webster*, 372 So. 3d at 289–90 (waivers “must be strictly construed with any ambiguities being resolved against waiver”); *Manzini*, 361 So. 3d at 886–88 (granting prohibition where patron failed to strictly comply with compact waiver procedures).

Here, Tribal Resolution C-557-19 expressly and unmistakably waives sovereign immunity for CDA disputes, but *only* “as otherwise provided in Section 13.04” of the CDA and *solely for litigation in the courts* of Broward County or the U.S. District Court for the Southern District of Florida—certainly not for secret arbitration. Any attempt to impose arbitration exceeds the limited waiver and is thus legally barred.

Together, these authorities confirm that (1) waivers of tribal sovereign immunity must be clear, explicit, and unequivocal; (2) tribal ordinances or contractual provisions specifying how and when waiver may occur must be followed exactly; (3) Lennar bears the burden to show strict compliance with the Tribe’s prescribed mechanism (e.g., Tribal Council resolution) and any contractual/compact conditions; (4) this Court must resolve any ambiguities *against* waiver; and (5) ministerial documents, litigation conduct, or post-execution acts cannot broaden waiver beyond what tribal law and contract text expressly authorize.

Because Lennar certainly has not met, and cannot meet, these standards, and because there admittedly is no waiver of tribal sovereign immunity that would subject STOF to arbitration regarding the CDA, Lennar’s motion must be denied.

B. The CDA, Ordinance C-01-95, and Tribal Council Resolution No. C-557-19 Provide the Exclusive Dispute Resolution Process, Which Expressly Excludes Arbitration.

Section 13 of the CDA is the sole provision governing dispute resolution between STOF and Lennar. Section 13.04(A) could not be clearer:

Nothing contained in this Agreement shall be deemed or construed to constitute consent on the part of STOF or Builder to arbitrate any matter or dispute, and nothing contained herein shall be deemed or

construed to constitute an obligation or intent on the part of STOF or Builder to arbitrate any matter or dispute whatsoever.

Section 13.04(H) further provides:

By executing this Agreement, STOF does not waive, limit or modify its sovereignty or its tribal sovereign immunity... unless the Tribal Council of STOF duly enacts an ordinance or a resolution... authorizing a limited waiver... in conformity with Tribal Ordinance C-01-95.

Ordinance C-01-95 then mandates that any waiver: (1) be enacted by formal Tribal Council resolution; (2) specifically acknowledge that STOF is waiving its sovereign immunity; and (3) describe the purpose and extent of the waiver. *See Ex. A.* The Ordinance expressly provides that any attempted waiver failing to comply with these requirements is “null and void.” *Id.*

The Tribal Council Resolution No. C-557-19 satisfies Ordinance C-01-95’s requirement for a formal resolution, but it limits the waiver to disputes resolved “as otherwise provided in Section 13.04” and expressly consents only to venue in specified state or federal courts, not arbitration.

Courts applying sovereign immunity rules enforce such requirements strictly, refusing to ever infer waiver from silence, implication, or informal acts, and they confine any waiver to its precise terms and procedures. *See McCor*, 903 So. 2d at 358–59 (holding that where STOF tribal ordinance requires a specific Tribal Council resolution, courts “**have no authority**” to infer a waiver absent compliance with those procedures) (emphasis added).⁷

⁷ *See also Manzini*, 361 So. 3d at 886–88 (granting prohibition where patron failed to strictly comply with compact notice/wait prerequisites; waivers strictly construed); *Webster*, 372 So. 3d at 289–92 (reversing and remanding to determine

Given the clear terms of the CDA, the requirements of Ordinance C-01-95, and the clear terms of the Tribal Resolution, there is simply no dispute that Lennar is foreclosed from seeking to compel arbitration or otherwise avoid the CDA's Section 13 dispute resolution procedures. In fact, Lennar itself invoked Section 13's mediation provisions in its January and February 2025 correspondence, requesting mediation and negotiations "pursuant to §13.04(C) and (D)."⁸ Only months after mediation failed, and months after STOF filed this action, did Lennar attempt to compel arbitration. That course of conduct confirms both parties understood Section 13 to be the exclusive dispute resolution procedure, with no arbitration provision applicable. Lennar's motion must be denied.

C. Strict Construction Bars Lennar's Attempt to Manufacture Waiver of Immunity from a Post-Execution Document.

The Supreme Court and Florida courts demand a "clear and unequivocal" statement before finding waiver and resolve any ambiguities in favor of immunity.

strict compliance with compact procedures; no waiver without adherence to conditions precedent); *Ariz*, 67 So. 3d at 231–32 (granting prohibition; compact's limited waiver inapplicable to facts, and no Tribal Council resolution—thus no jurisdiction); *MMMG, LLC*, 196 So. 3d at 446–47 (affirming dismissal; waiver must strictly follow charter/bylaws—boilerplate language or apparent authority is insufficient); *Lewis Tein, P.L.*, 227 So. 3d at 665–66 (a limited waiver tied to specific litigation conduct does not become a global waiver for later, related suits); *Hollywood Mobile Estates Ltd.*, 2008 WL 2959850, at *1–2 (holding no waiver where an arbitration clause did not expressly cover the dispute at issue).

⁸ Lennar's correspondence, *see* Exs. E–G, underscores the inapplicability of the warranty dispute resolution provision they now seek to enforce, as that provision contains its own, separate mediation process before the AAA, which Lennar clearly did not invoke at any time. Had Lennar truly believed that the warranty dispute resolution provision controlled, it would have invoked it in this correspondence months ago.

See Martinez, 436 U.S. at 58; *see also Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991); *Evans Energy Partners, LLC v. Seminole Tribe of Florida, Inc.*, No. 21-13493, 2022 WL 2784604, at *3 (11th Cir. July 15, 2022) (finding no waiver of sovereign immunity sufficient to subject the Tribe to arbitration where agreement was ambiguous and “double[d] down on this deficiency by providing that the Tribe shall ‘in no event ... be named a party in any arbitration.’”).

Consistent with that principle, Florida courts refuse to expand immunity waivers beyond the precise terms authorized in governing contracts or tribal ordinances. *MMMG*, 196 So. 3d at 446–47 (no waiver without strict compliance with tribal charter requirements); *Lewis Tein*, 227 So. 3d at 665–66 (litigation conduct in one case did not waive immunity in later cases); *Hollywood Mobile Estates*, 2008 WL 2959850, at *1–2 (arbitration clause did not apply where it failed to clearly cover dispute).⁹

Here, Section 13 of the CDA and Ordinance C-01-95 expressly disallow arbitration absent formal Tribal Council action. Tribal Council Resolution No. C-557-19 confirms Section 13.04 as the exclusive dispute resolution process. It bars arbitration by limiting the waiver to certain court proceedings and by incorporating Section 13.04’s express rejection of arbitration. Post-execution documents such as a

⁹ *See also Rosebud Sioux Tribe v. Val-U Constr. Co. of S. Dakota, Inc.*, 50 F.3d 560, 563 (8th Cir. 1995) (arbitration clause waived immunity only as to claims under the contract, not unrelated causes of action); *Cal. Parking Servs., Inc. v. Soboba Band of Luiseno Indians*, 128 Cal. Rptr. 3d 560, 564–65 (Ct. App. 2011) (strong presumption against implied waivers; ambiguities strictly construed in favor of tribal immunity).

“Closing Checklist” certainly cannot expand or create waiver where none exists in the CDA or tribal law.

Further, Section 17.02 of the CDA provides that “[n]o amendment to this Agreement shall bind any of the parties unless and until such amendment is in writing and executed by Builder and STOF.” The Closing Checklist and warranty do not purport to amend the CDA. Moreover, these documents are ministerial, post-execution acknowledgments—*not* CDA amendments—and were never enacted by Tribal Council resolution as required by Section 13.04(H) and Ordinance C-01-95. Nor did STOF “execute[]” the warranty documents, and it is the warranty (not the Closing Checklist) that contains the arbitration provisions Lennar invokes. Courts repeatedly hold that post-execution acts, informal writings, or unilateral conduct cannot override explicit sovereign immunity protections. *See McCor*, 903 So. 2d at 358–59; *MMMG*, 196 So. 3d at 446–47; *Lewis Tein*, 227 So. 3d at 665–66; *see also Soboba Band*, 128 Cal. Rptr. 3d at 564–65 (“Because a waiver of immunity is altogether voluntary on the part of a tribe, it follows that a tribe may prescribe the terms and conditions on which it consents to be sued.”) (cleaned up). Strict construction bars Lennar’s attempt to manufacture jurisdiction for arbitration where the CDA and tribal law expressly disclaim it.

Under these circumstances, the Court must deny Lennar’s motion.

D. The Court must deny Lennar’s Motion because Sovereign Immunity Bars Arbitration Absent Express Tribal Authorization.

Because Section 13 of the CDA, Tribal Ordinance C-01-95, and Tribal Council Resolution C-557-19 establish the exclusive dispute resolution process—which

expressly bars arbitration, jurisdiction properly remains with this Court. Courts uniformly hold that tribal immunity waivers must be strictly construed and confined to the precise terms authorized by tribal law; they reject efforts to expand waivers through post-execution documents or litigation tactics. Lennar's reliance on ministerial materials like the Closing Checklist or warranty documents cannot override the clear text of the CDA and Tribal Council Resolution C-557-19, the Ordinance's strict requirements, or Lennar's own conduct invoking Section 13 procedures. Because the Tribal Council's own Resolution limits any waiver to litigation in Broward County or federal court and incorporates Section 13.04's rejection of arbitration, Lennar's motion to compel arbitration contradicts both tribal law and the controlling resolution. Thus, with STOF's sovereign immunity fully intact and arbitration never authorized, Lennar's motion to compel arbitration must be denied.

II. Arbitration Provisions Are Creatures of Contract, and Neither the CDA nor the Closing Checklist Creates Any Agreement to Arbitrate.

Lennar's entire arbitration theory hinges on the claim (articulated in Footnote 3 of its motion) that while the CDA itself disclaims arbitration, it supposedly "contemplated" future contracts at closing that would impose arbitration obligations after homes were completed. This argument fails as a matter of blackletter contract law, basic rules of construction, and the CDA's own text.

First, arbitration is strictly a creature of contract and must be construed as "a matter of contract interpretation." *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999) (citing *Seaboard Coast Line R.R. v. Trailer Train Co.*, 690 F.2d 1343, 1352

(11th Cir. 1982)). “[C]ourts must place arbitration agreements on an equal footing with other contracts and enforce them according to their terms.” *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citations omitted). “[T]he interpretation of contract provisions is a question of law for the courts where the language is clear, unambiguous and susceptible [to] only one interpretation.” *Turner Constr. Co. v. Cent. Fla. Equip. Rental, Inc.*, 904 So. 2d 474, 475 (Fla. 3d DCA 2005) (Green, J., specially concurring); see also *Gray v. D & J Indus., Inc.*, 875 So. 2d 683, 683 (Fla. 3d DCA 2004).

Florida law also prohibits using extrinsic or parol evidence to alter the plain meaning of unambiguous contract provisions: “If a contract provision is clear and unambiguous, a court may not consider extrinsic or parol evidence to change the plain meaning set forth in the contract.” *Spring Lake NC, LLC v. Figueroa*, 104 So. 3d 1211, 1214 (Fla. 2d DCA 2012) (citing *Jenkins v. Eckerd Corp.*, 913 So. 2d 43, 52 (Fla. 1st DCA 2005)).

While contracts may incorporate other documents into the parties’ agreement, they must express an intent to do so, and a mere reference to another document is not enough. As the Fourth District made clear in *Kantner*:

The doctrine [of incorporation by reference] requires that there must be some expression in the incorporating document... of an intention to be bound by the collateral document... A mere reference to another document is not sufficient... particularly where the incorporating document makes no specific reference that it is ‘subject to’ the collateral document.

624 So. 2d at 781.

Here, the CDA merely mentions that a warranty will be provided at closing; it does not say the CDA is “subject to” the warranty, nor does it incorporate the warranty or any of its arbitration provisions. As the Fourth District held in *Tremarco*, even a contractual obligation to “provide” a warranty does not incorporate that warranty’s arbitration clause unless the contract expressly adopts and assents to it. 705 So. 2d at 984.

Second, the closing checklist itself does nothing to cure this defect. It is a ministerial acknowledgment of materials delivered at closing, not a contract amending the CDA or imposing new dispute-resolution obligations. The checklist nowhere states that STOF agreed to arbitrate disputes, nor that it assented to the terms of any warranty document. Under *Kantner* and *Tremarco*, a mere reference to the warranty is legally insufficient to incorporate its terms, much less its arbitration clause, into any agreement binding STOF.

Third, Lennar’s Footnote 3 theory collapses under the CDA’s own terms. The court must give harmonious effect to all the terms in the contract. *C.C. Borden Constr., Inc. v. Walding Co.*, 94 So. 3d 725, 725 (Fla. 1st DCA 2012); see *Wallshein v. Shugarman*, 50 So. 3d 89, 90–91 (Fla. 4th DCA 2010). In so doing, courts consider the intent of the parties as “discerned from the total writing and not particular provisions or disjointed parts.” *SCG Harbourwood*, 93 So. 3d at 1200. As the Florida Supreme Court has noted, “we rely upon the rule of construction requiring courts to read provisions of a contract harmoniously in order to give effect to all portions thereof.” *Johnson*, 760 So. 2d at 84; see also *Sugar Cane Growers Cooperative of*

Florida, Inc. v. Pinnock, 735 So. 2d 530, 535 (Fla. 4th DCA 1999) (holding contracts should be interpreted to give effect to all provisions); *Paddock v. Bay Concrete Indus., Inc.*, 154 So. 2d 313, 315 (Fla. 2d DCA 1963) (stating “All the various provisions of a contract must be so construed, if it can reasonably be done, as to give effect to each.”). Section 13.04(A) expressly disclaims arbitration, while Section 15.02 grants STOF indemnity rights against Lennar. Accepting Lennar’s view—that post-closing warranty documents silently supersede Section 13—would nullify Section 15.02’s indemnity protections and render Section 13’s no-arbitration mandate meaningless.¹⁰ Florida law forbids such interpretations: contracts must be read to give effect to all provisions, not to read critical protections out of existence.¹¹

Fourth, Section 17.02 of the CDA flatly prohibits Lennar’s end-run around the CDA’s dispute-resolution scheme:

¹⁰ Indeed, Section 15.02 contemplates Lennar indemnifying STOF for “any claim, liability, loss, damage, cost, expense, including attorneys’ fees, awards, fines or judgments arising out of the negligence or willful misconduct of Builder in performing its obligations hereunder, including without limitation, death or bodily or personal **injury to persons, injury or damage to tangible property, including the loss of use therefrom, construction defects**, or other loss, damage or expense, regardless of whether it is caused in part by any of the STOF Indemnitees,” all of which arise after Lennar completes construction of the homes and they are occupied by Tribal Members.

¹¹ Florida law also forecloses Lennar’s claim that the CDA’s dispute resolution provisions somehow vanished after closing under a “merger” theory. Courts have long held that the merger doctrine “does not apply to those provisions of the antecedent contract which the parties do not intend to be incorporated in the deed, or which are not necessarily performed or satisfied by the execution and delivery of the stipulated conveyance.” *Engle Homes, Inc. v. Jones*, 870 So. 2d 908, 910 (Fla. 4th DCA 2004) (collecting cases). So too here: Section 13.04’s binding mediation and litigation provisions were not “performed or satisfied” merely by closing on the homes, and nothing in the CDA or closing documents suggests the parties intended to extinguish them.

No amendment to this Agreement shall bind any of the parties unless and until such amendment is in writing and executed by Builder and STOF.

Neither the warranty nor the closing checklist even purports to be an amendment, and neither was executed by formal Tribal Council resolution as required by Section 13.04(H) and Ordinance C-01-95. Those governing documents require that any waiver of sovereign immunity or alteration of dispute-resolution procedures must be (1) express, (2) enacted by formal Tribal Council resolution, and (3) strictly construed in favor of immunity. *See, e.g., McCor*, 903 So. 2d at 358–59; *Manzini*, 361 So. 3d at 886–88; *Webster*, 372 So. 3d at 289–92.

Finally, Lennar’s own conduct confirms this reading. Before filing its motion to compel arbitration, Lennar repeatedly invoked Section 13’s mediation and negotiation procedures—expressly citing §13.04(C) and (D)—before abruptly abandoning them months after mediation failed and months after STOF filed this action. *See, e.g., Exs. E–G*. Having relied on Section 13 as the governing dispute-resolution provision, Lennar cannot now manufacture arbitration obligations from ministerial documents that fail even the most basic tests for contractual assent.

In sum, where contract provisions are clear and unambiguous, arbitration cannot be compelled. *Ocwen Fed. Bank FSB v. LVWD, Ltd.*, 766 So. 2d 248, 249 (Fla. 4th DCA 2000) (citation omitted); *MacDougald Family Ltd. P’ship, LLP v. Rays Baseball Club, LLC*, 371 So. 3d 988, 991 (Fla. 2d DCA 2023). Here, neither the CDA, the closing checklist, nor the warranty documents create any agreement to arbitrate disputes with STOF. Arbitration provisions are creatures of contract; no contract here

imposes arbitration, and sovereign immunity and the CDA foreclose any attempt to invent such obligations after the fact.

CONCLUSION

Because the CDA, Tribal Ordinance C-01-95, and Tribal Council Resolution C-557-19 collectively: (1) establish the exclusive dispute resolution process of good-faith negotiations, mediation, and, if necessary, litigation in Broward County state or federal court; (2) expressly reject arbitration in Section 13.04; and (3) strictly limit any waiver of STOF's sovereign immunity to the specific terms authorized by formal Tribal Council resolution, Lennar's motion to compel arbitration must be denied.

Lennar's attempt to manufacture arbitration obligations from post-closing warranty documents and a ministerial Closing Checklist fails under blackletter contract law. Arbitration provisions are strictly creatures of contract; they cannot be implied, incorporated by mere reference, or used to nullify express no-arbitration provisions and sovereign immunity protections. Florida courts uniformly refuse to read contracts in a manner that would erase critical protections like Section 13.04's no-arbitration mandate or STOF's indemnity rights in Section 15.02.

Finally, Section 13.04(F) of the CDA entitles the prevailing party in any dispute "arising out of or relating to this Agreement" to recover its reasonable attorneys' fees, costs, and expenses incurred in enforcing its rights under the CDA. Because STOF was forced to expend significant resources opposing a motion that directly contradicts the governing documents and settled law, STOF requests an award of its fees, costs, and expenses incurred in responding to Lennar's motion.

WHEREFORE, STOF respectfully requests the Court: (1) deny Lennar's motion to compel arbitration, (2) retain jurisdiction over this dispute consistent with Section 13.04 and the Tribal Council Resolution, and (3) award STOF its reasonable attorneys' fees, costs, and expenses pursuant to Section 13.04(F) of the CDA.