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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# FOR

# TERRA VISTA

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| EXHIBIT | SUBJECT MATTER |
|---|---|
| "A" | Land Submitted |
| "B" | Site Plan of Terra Vista |
| "C" | Initial Use Restrictions |
| "D" | Articles of Incorporation of Terra Vista Community Association, Inc. |
| "E" | Bylaws of Terra Vista Community Association, Inc. |
| "F" | South Florida Water Management District Resource Permit and South Florida Water Management District Water Use Permit |

improvements on the Lot. The boundaries of each Lot are shown on the Plat; however, in the case of a building containing multiple Homes for independent sale (*e.g., Condominium Units*), each Home that may be sold independently shall be a separate Lot. Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of this Declaration and the other Governing Documents.

"Member": A Person subject to membership in the Association, as described in Section 6.2. There initially are four (4) membership classes-- Class "A", Class "B", Class "C" and Class "D."

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and held by an institutional lender. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation *(e.g., a Mortgagee)*.

"Person": An individual, a corporation, a partnership, a trustee, or any other legal entity.

"Plat": The plat of Terra Vista which is recorded in Official Records Instrument Number 2006000146387, of the Public Records of Lee County, Florida.

"Property": means and refers to that certain real property heretofore described in Exhibit "A" submitted to this Declaration; provided, however, Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

"Regular Assessment": Annual Assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1(a).

"Reviewer": For purposes of Article IV, the "Reviewer" is the Person having authority under Article IV for the review of materials, as provided in Article IV.

"Service Area": A group of Lots designated as a separate Service Area pursuant to this Declaration or a Supplemental Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in Section 7.10.

"Service Area Assessments": Assessments levied against the Lots in a particular Service Area to fund Limited Common Expenses, as described in Section 8.1(b).

"Special Assessment": Assessments levied against Lots in accordance with Section 8.3 to cover unbudgeted expenses or expenses in excess of those budgeted.

Declaration is recorded. If any provision of this Declaration would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire 90 years after this Declaration is recorded. This section does not authorize termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The following chart identifies the documents which govern the Community (as they may be amended, the "Governing Documents") and describes, in part, the purpose of each. Every Owner and occupant of a Lot, Villa Unit or Condominium Unit in Terra Vista, a Condominium (as defined in Article II), and their respective guests, tenants, visitors and invitees, shall comply with the Governing Documents.

| | |
|---|---|
| **Declaration** → (Recorded) | creates obligations which are binding upon the Association and all present and future owners and occupants of, and others with any interest in, property in the Community |
| **Articles of Incorporation** → (filed with the Secretary of State; initial Articles attached as Exhibit "D") | establish the Association as a not-for-profit corporation under Florida law |
| **Bylaws** → (Board adopts; initial Bylaws attached as Exhibit "E") | govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc. |
| **Architectural Guidelines** → (Declarant or Association may adopt) | establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots |
| **Use Restrictions** → (initial set attached as Exhibit "C") | govern use of property and activities within the Community |
| **Board Resolutions and Rules** → (Board may adopt) | establish rules, policies, and procedures for internal governance and Association activities; regulate operation and use of Common Area (as defined in Article II) |

Additional covenants, conditions, and restrictions may be imposed on all or any portion of the Community, in which case the more restrictive provisions will be controlling. However, no Person (as defined in Article II) shall record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's written consent, during the Development and Sale Period (as defined in Article II), or without the Board's consent thereafter. Any instrument recorded without the necessary consent is void and of no force or effect.

If there are conflicts between Florida law, the Declaration, the Articles, and the Bylaws, Florida law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

## ARTICLE II
## CONCEPTS AND DEFINITIONS

2.1. Defined Terms.

The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows:

"Affiliate": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power or authority to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

"Architectural Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV as they may be amended from time to time.

"Architectural Review Board" or "ARB": The committee established, upon delegation or termination of Declarant's authority under Article IV, to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

"Articles": The Articles of Incorporation of Terra Vista Community Association, Inc., filed with the Secretary of State for the State of Florida, as they may be amended from time to time. A copy of the initial Articles is attached to this Declaration as Exhibit "D".

"Association": Terra Vista Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

"Association Property": means such portions of the Property which are not included in any Lot and which are or shall be owned and maintained by the Association, as set forth in this Declaration, for the common use and enjoyment of the Owners within Terra Vista, including, without limitation, landscaping, open spaces, private drives, sidewalks, monument signs, fountains, recreation areas, retention areas, irrigation facilities, decorative signs, perimeter fences, gates, gatehouses, entry or other lighting, if any, and buffer tracts but excluding any public utility installations thereon. The mention of such improvements shall not be deemed a representation by Declarant that any such improvements shall exist.

"Benefited Assessment": Assessments charged against a particular Lot or Lots for Association expenses as described in Section 8.4.

"Board of Directors" or "Board": The body responsible for the general governance and administration of the Association, selected as provided in the Bylaws.

"Bylaws": The Bylaws of Terra Vista Community Association, Inc., as they may be amended from time to time. A copy of the initial Bylaws is attached to this Declaration as Exhibit "E."

"Class "D" Control Period": The time period during which the Class "D" Member may appoint a majority of the Board members. The Class "D" Control Period shall end when any one of the following occurs:

(a) when 90% of the Lots and Condominium Units proposed under the Development Plan have been issued certificates of occupancy and are owned by Class "A" or Class "B" Members other than Declarant;

(b) 10 years from the date this Declaration is recorded; or

(c) when, in its discretion, the Class "D" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, holds, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Surface Water and Storm Water Management System and the Limited Common Area, as defined below. Common Area also includes Association Property.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reasonable reserves the Board finds necessary or appropriate.

"Community" or "Terra Vista": The real property described in Exhibit "A".

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Architectural Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board's or the ARB's discretion. The Community-Wide Standard may or may not be set out in writing. The Community-Wide Standard may evolve as development progresses and as the Community matures.

"Completed": The status of construction where a certificate of occupancy for a Home constructed on a Lot or a Condominium Unit in a Condominium has been issued by the appropriate governmental agency.

"Completed Condominium Unit": Any Condominium Unit which has been issued a certificate of occupancy by the appropriate governmental agency, provided, however, a

Condominium Unit does not exist until the Declaration of Condominium creating same has been recorded in the public records of the County.

"Completed Lot": Any Lot which has been issued a certificate of occupancy for a Home constructed thereon by the appropriate governmental agency.

"Completed Lot Owner": The Owner of a Completed Lot.

"Completed Condominium Unit Owner": The Owner of a Completed Condominium Unit.

"Condominium": Any condominium that may be created within Terra Vista by the recording of a Condominium Declaration.

"Condominium Association": Terra Vista Condominium Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

"Condominium Declaration": A Declaration of Condominium, and any amendments thereto, by which a portion of Terra Vista is submitted to the condominium form of ownership.

"Condominium Unit": means a condominium unit in a Condominium created within Terra Vista.

"County": Lee County, Florida.

"Declarant": Kimball Hill Marbella Estates Limited Partnership, a Florida limited partnership, or any successor or assign as developer of all or any portion of the Community that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a "predecessor Declarant" and, unless otherwise agreed in writing, shall be entitled to the rights of a predecessor Declarant established in this Declaration. Whether or not specifically stated, a predecessor Declarant shall be afforded the same protection with respect to matters arising during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

"Development Plan": The land use plan for the Community described in Article IX, as the same may be amended from time to time, which includes all of the property described in Exhibit "A", as depicted on the Site Plan for Terra Vista attached hereto as Exhibit "B". Reference should be made to Article IX of this Declaration for the respective rights and obligations of Owners and Declarant with respect to the use and development of the Community.

"Development and Sale Period": The period of time during which Declarant and/or its Affiliates own property subject to this Declaration.

"HOA Act": means and refers to the homeowners' association act, Chapter 720, Florida Statutes, as amended through the date of recording this Declaration amongst the Public Records of the County.

"Home": A residential dwelling unit in Terra Vista intended as an abode for one family, including single-family residences, Villa Units and Condominium Units. The term Home shall include the Lot as provided in Article II, Section 2.1.

"Incomplete": The status of construction where a certificate of occupancy for a Home constructed on a Lot, Villa Unit or a Condominium Unit has not been issued by the appropriate governmental agency but which Lot has been cleared, filled and compacted and is ready to receive a Home thereon.

"Incomplete Condominium Unit": Any Condominium Unit which has not been issued a certificate of occupancy by the appropriate governmental agency.

"Incomplete Lot": means any Lot which has not been issued a certificate of occupancy for a Home constructed thereon by the appropriate governmental agency.

"Incomplete Lot Owner": The Owner of an Incomplete Lot.

"Incomplete Villa Unit": Any Villa Unit which has not been issued a certificate of occupancy by the appropriate governmental agency.

"Lake Lot": means a Lot which abuts one of the Lakes in Terra Vista as shown on the Plat.

"Legal Fees": means reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and postjudgment proceedings, (ii) collection of fines; and (iii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and shall also include court costs through and including all trial and appellate levels and postjudgment proceedings.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Lots or Service Areas, as described in Article XIII.

"Limited Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the benefit of Owners benefiting from a Limited Common Area or within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area or Lots.

"Lot": A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended to be improved, with a Home. The term shall refer to the land, if any, which is part of the Lot as well as any

improvements on the Lot. The boundaries of each Lot are shown on the Plat; however, in the case of a building containing multiple Homes for independent sale (*e.g., Condominium Units*), each Home that may be sold independently shall be a separate Lot. Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of this Declaration and the other Governing Documents.

"Member": A Person subject to membership in the Association, as described in Section 6.2. There initially are four (4) membership classes-- Class "A", Class "B", Class "C" and Class "D."

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and held by an institutional lender. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation *(e.g., a Mortgagee)*.

"Person": An individual, a corporation, a partnership, a trustee, or any other legal entity.

"Plat": The plat of Terra Vista which is recorded in Official Records Instrument Number _____, of the Public Records of Lee County, Florida.

"Property": means and refers to that certain real property heretofore described in Exhibit "A" submitted to this Declaration; provided, however, Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

"Regular Assessment": Annual Assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1(a).

"Reviewer": For purposes of Article IV, the "Reviewer" is the Person having authority under Article IV for the review of materials, as provided in Article IV.

"Service Area": A group of Lots designated as a separate Service Area pursuant to this Declaration or a Supplemental Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in Section 7.10.

"Service Area Assessments": Assessments levied against the Lots in a particular Service Area to fund Limited Common Expenses, as described in Section 8.1(b).

"Special Assessment": Assessments levied against Lots in accordance with Section 8.3 to cover unbudgeted expenses or expenses in excess of those budgeted.

"Supplemental Declaration": A recorded instrument which imposes additional and/or modified restrictions and obligations on the land described in such instrument.

"Surface Water and Storm Water Management System": A drainage system consisting of swales, inlets, culverts, retention ponds, detention ponds, lakes, outfalls, storm drains and the like, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution or otherwise affect quantity and quality of discharges from the system, as permitted pursuant to Chapter 40D, Florida Administrative Code. The Surface Water and Storm Water Management System facilities include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention ponds, lakes, floodplain compensation areas, wetlands, uplands, littoral shelves, and any associated buffer areas, and wetland mitigation areas, to the extent that any such facilities, areas, or conditions apply to the Community.

"Turnover Date": means the date upon which "Class A Members", "Class B Member" and "Class C Members" (as defined in Article V.D.1 of the Articles), including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.D.2 of the Articles.

"Use Restrictions": The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and the Common Areas set forth in Exhibit "C," as they may be changed in accordance with Article III or otherwise amended from time to time.

"Villa Association": Terra Vista Villas Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

"Villa Declaration": A Declaration of Covenants, Conditions and Restrictions, and any amendments thereto, governing the Villa neighborhood.

"Villa Unit": means one (1) of thirty-two (32) attached villas contained within sixteen (16) buildings constructed or to be constructed within Terra Vista, each of which is designed and intended for use and occupancy as a single-family residence.

"Wetland": Any area within the Community identified or designated as habitat for wetland species of plants and/or animals by the South Florida Water Management District, or by the County, or by the United States Army Corps of Engineers, or by any other agency of the State of Florida or the United States government, whether or not such area is included within the Surface Water and Storm Water Management System, or is an isolated area that is not connected to the Surface Water and Storm Water Management System.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument

filed, or the filing of a legal instrument, in the public records of the County, or such other place designated as the official location for filing documents affecting title to real estate in the County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

## ARTICLE III
## USE AND CONDUCT

3.1. Restrictions on Use, Occupancy, and Alienation.

In addition to the initial Use Restrictions set forth in Exhibit "C" which may be modified as provided below, the Lots shall be subject to the following. The restrictions set forth in this Section may be amended only in accordance with Article XX.

(a) Residential and Related Uses. Lots shall be used primarily for residential and related purposes. No business shall be conducted in, on, or from any Lot, except that an occupant residing in the Home on a Lot may conduct business activities on such Lot ancillary to their primary residential use, if the business activity, as determined in the Board's discretion:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning and other legal requirements and other requirements of this Declaration;

(iii) does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the use and enjoyment of other Lots by the Owner thereof or the security or safety of others within the Community.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves

providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit, or (C) a license is required.

No Lot shall be rezoned to any classification allowing commercial, institutional, or other non-residential use without the express written consent of the Association and Declarant, which either may withhold in its discretion. Notwithstanding anything in this Article to the contrary, Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant's or the Association's other rights and remedies.

This Section shall not apply to restrict Declarant's, or Declarant's Affiliates', activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development, construction, and sale of property in the Community. This Section shall not apply to Association activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities.

Leasing of a single Lot by the Owner thereof for residential occupancy shall not be considered a "business" within the meaning of this subsection; however, no Owner or group of Owners who are Affiliates shall, on their own behalf or through any agent, engage in leasing activity with respect to multiple Lots at the same time.

(b) Leasing. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a Home by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, or gratuity. The improvements on the Lot may be leased only in its entirety *(e.g.,* separate rooms within the same Home may not be separately leased).

**All leases shall be in writing and shall have a term of at least six (6) months, except with the Board's prior written consent. No Owner may rent all or a portion of a Lot more than two (2) times in any 12-month period, even if a tenant defaults on a lease or abandons the Lot before expiration of the lease term. The restrictions on lease terms set forth in this paragraph shall not apply to Lots owned or leased by Declarant, its Affiliates, or Persons Declarant approves, in connection with their development, construction, or sale of property in the Community.**

All leases shall include an acknowledgment by the tenant that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents and that the tenant has received a copy of the Governing Documents. The Owner shall be responsible for providing a copy of the Governing Documents to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant.

**Each lease shall set forth the name, address, and telephone number of the Lot's Owner and of the tenant(s); the date the tenant's occupancy commences and ends; a description of each motor vehicle owned or operated by the tenant or members of the tenant's household; and a description of all pets to be kept at the Lot.**

If an Owner elects to permit a tenant to sublease during the term of the lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as the original lease.

Within 10 days of a lease being signed for a Lot, the Owner shall notify the Board or the Association's managing agent of the lease and provide a copy of such lease and such additional information the Board may reasonably require. An Owner proposing to lease a Lot may obscure the rental and deposit amounts in the copy of the proposed lease submitted to the Board so long as the lease contains the information listed above. In addition to this subsection (b), the Board may, from time to time, adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

No Owner may assign or otherwise transfer the Owner's obligations under this Declaration to any tenant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, or any member of the tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and his or her tenant requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Lots, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners of Lots in the Community, including, but not limited to, Declarant, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of his or her tenant, other occupants of the leased Lot, and their respective guests to the same extent that Owner would be liable for such violation if it had resulted from the acts or omissions of the Owner or a member of the Owner's household or guests. The Owner's obligations hereunder shall be deemed a guaranty of performance by his or her tenant, and the Association shall have the right to take any action or seek any remedy for the tenant's failure or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant.

(c) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations of

the Governing Documents and any damage and losses they cause to the Common Areas, notwithstanding the fact that such Persons also are personally responsible for complying and may be sanctioned for any violation.

(d) Subdivision of a Lot. Lots may not be subdivided or their boundary lines changed except with Declarant's or the Board's prior written approval. Declarant may subdivide, change the boundary lines of, and replat any Lot it owns without Board approval. In addition, if Declarant, or any Declarant Affiliate, owns any portion of the Community, it may convert Lots it owns into Common Area.

(e) Lodging; Timeshares. No Lot may be used as a rooming house, hostel, or hotel. Timesharing or other arrangements involving more than three ownership interests in a Lot (including ownership by more than three Persons as joint tenants or tenants-in-common), or assigning separate use periods of less than six (6) months duration, are prohibited.

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Board may change *(i.e.,* modify, cancel, limit, create exceptions to, or add to) the Use Restrictions; however, during the Development and Sale Period the Board shall be required to obtain Declarant's written consent. The Board shall send the Members notice of any proposed change at least five (5) business days before the Board meeting at which such change will be considered. The Members shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by a majority of the Class "A" votes, Class "B" votes, Class "C" votes and by the Class "D" Member, if any. The Board is not obligated to call a meeting of the Members to consider disapproval unless it receives a petition that meets the Bylaws requirement for special meetings. If the Board receives such a petition before the effective date of the change, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(b) Alternatively, members representing a majority of the Class "A", Class "B" and Class "C" votes, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change during the Development and Sale Period shall require approval of Declarant.

(c) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change shall not become effective until thirty (30) days following distribution to the Owners. The Association shall provide to any requesting Member or Mortgagee, at no charge, a copy of the Use Restrictions then in effect.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Architectural Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Architectural Guidelines and the Use Restrictions, the Architectural Guidelines shall control. In the event of a conflict between the Use

Restrictions and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

(e) The procedures described in this Section 3.2 are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

(f) Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," the Association's actions with respect to Use Restrictions and rules must comply with the following:

(i) Displays/Lighting. A reasonable number of holiday and religious lights and decorations may be displayed on any Lot for up to thirty (30) days prior to a publicly observed holiday or religious observance, and up to thirty (30) days thereafter without prior approval of the ARB, subject to the right of the Association or Declarant to require removal of any such decorations which it deems to (i) be excessive in number, size or brightness, relative to other Lots in the area; (ii) draw excessive attention or traffic; (iii) unreasonably interfere with the use and enjoyment of neighboring properties; or (iv) cause a dangerous condition to exist. The Association shall have the right, upon 30 days' prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence.

(ii) Signs. To the extent that signs are permitted under Article IV and the Use Restrictions, the Association shall not regulate the content of political signs; however, it may regulate the time, place, size, number, and manner of posting such signs (including design criteria). Signs, regardless of size, used by Declarant, its successors or assigns, for advertising and marketing during the Development and Sale Period of Terra Vista or other communities developed and/or marketed by Declarant and/or its Affiliates and other signs authorized by Declarant and/or its Affiliates shall be exempt from this restriction. Such sign or signs as Declarant and/or its Affiliates may be required to erect under the terms of an institutional mortgage shall be exempt from this restriction. An Owner may display a security sign, provided by a contractor for security services, as permitted by the HOA Act.

(iii) Activities Within Homes. The Association shall not interfere with activities carried on within a Home, except that it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Home, that create undesirable odors noticeable to persons outside the Home, or that are an unreasonable source of annoyance, or that violates a provision of the Governing Documents. This provision shall not be applicable to Declarant and/or its Affiliates.

(iv) Alienation. The Association shall not prohibit leasing or transfer of any Lot, or require the Association's or the Board's consent prior to leasing or transferring a Lot. The Association may impose restrictions on leasing, in addition to those set forth in this Article, and may require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot.

(v) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(vi) Right to Develop. The Association may not impede Declarant's right to develop, market, or sell the property described on Exhibit "A".

The limitations in paragraphs (i) through (iv) of this subsection (f) shall not apply to amendments to this Declaration adopted in accordance with Article XX.

3.3. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the terms of the Governing Documents, including Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Association may have adopted changes to the Use Restrictions and that such changes may or may not be set forth in a recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Association.

## ARTICLE IV
## ARCHITECTURE AND LANDSCAPING

4.1. General.

Except for work done by or on behalf of Declarant or any Declarant Affiliate, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements of any kind or other work (including, without limitation, staking, clearing, excavation, grading and other site work, exterior alterations or additions, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article and the Architectural Guidelines.

All Owners of Lots along or adjacent to the Lakes are prohibited from disturbing or removing any vegetation within the lake bank areas and are subject to certain restrictions regarding fences as set forth in Article 7.12.

An Owner shall not plant any shrubs, trees and/or landscaping on his or her Lot and/or in any manner alter the landscaping in the Community as initially installed by Declarant.

No additional trees or other landscaping are permitted to be planted on the Property for as long as Declarant owns a Home, and thereafter without the prior written consent of the Board.

Any Owner may remodel, paint, or redecorate the interior of the Home on his or her Lot without approval hereunder. However, modifications to the interior of screened porches, patios, and any other portions of a Lot or structure visible from outside a structure are subject to approval under this Article.

Improvements shall be constructed only by qualified Persons acceptable to the Reviewer (as defined in Section 4.2(c)). Owners shall be responsible for obtaining all permits and approvals from the County and other governmental agencies.

This Article does not apply to Declarant's or its Affiliates' activities, nor to the Association's activities during the Class "D" Control Period.

4.2. Architectural Review.

(a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article shall continue until termination of the Development and Sale Period, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Board. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Board. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARB, shall assume jurisdiction over architectural matters. When appointed, the ARB shall consist of at least three (3), but not more than five (5), persons. Members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ARB members shall serve and may be removed and replaced in the Board's discretion.

Unless and until such time as Declarant delegates any of its reserved rights to the ARB or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Reviewer. For purposes of this Article, the "Reviewer" is the Person having jurisdiction under this Section in a particular case.

(d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include, without limitation, the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals the Reviewer employs or with whom it contracts.

The Board may include the compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to location within the Community or product type. The Architectural Guidelines, are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee an application's approval.

Declarant shall have sole and full authority to amend the Architectural Guidelines, from time to time, during the Development and Sale Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the ARB, unless Declarant also delegates the power to amend to the ARB. Upon termination or delegation of Declarant's right to amend, the Board may amend the Architectural Guidelines, subject to Declarant's veto right under Section 4.2(a) (if still applicable).

Amendments to the Architectural Guidelines shall be prospective only. They shall not require modifications to or removal of structures, improvements, and other things previously approved once the approved construction or modification has begun. However, any new work or improvements on such structures must comply with the Architectural Guidelines as amended. Subject to the Community-Wide Standard, there is no limit to the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners. In Declarant's discretion, the Architectural Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Unless the Architectural Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin until a request is submitted to and approved in writing by the Reviewer. The request must be in writing and be accompanied by plans and specifications and other information the Reviewer and/or the Architectural Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction or other activity as the Reviewer deems relevant.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and all other information the Reviewer requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until 45 days after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions; or (iii) disapprove the application. The Reviewer shall notify the applicant in writing of a final determination on any application. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

After the initial 45-day period has elapsed, if the Owner has not received notice of the Reviewer's determination, the Owner may make a second written request for approval of the plans previously submitted which shall be marked "Second Request." If the Reviewer fails to respond within seven (7) business days from receipt of the Second Request, approval shall be deemed given. However, no approval or improvement governed by such approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines or other Governing Documents unless a written variance has been granted pursuant to Section 4.5.

Notwithstanding anything to the contrary in this Declaration or the Bylaws, Owners shall send any such "Second Request" via the U. S. Postal Service, certified mail, return receipt requested, or by commercial overnight carrier that obtains a signed receipt upon delivery. A Second Request shall be deemed made, and the seven (7) business day time period shall commence running, on the date of the Reviewer's actual receipt of the Second Request, as evidenced by its signature on the return receipt provided by the U. S. Postal Service or in the records of the overnight carrier, as applicable.

As part of any approval, the Reviewer may require that construction and landscaping in accordance with approved plans commence and be completed within a specified time period. If construction does not commence within the required period, the approval shall expire and the

Owner must reapply for approval before commencing any activities within the scope of this Article. Once commenced, such activities must be diligently pursued to completion. All elements of the approved plans shall be completed within one year of commencement unless a shorter or longer period is otherwise specified in the notice of approval or the Architectural Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless written approval to modify any application has been obtained.

Declarant or the ARB, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the Reviewer's right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the improvements for which the variance was granted.

4.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. The standards and procedures do not create any duty to any Person. Review and approval of any application pursuant to this Article may be

based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every Home is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, Declarant's Affiliates, any predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work related to approved work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any owner or their contractor or their subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify and hold harmless Declarant, Declarant's Affiliates, any predecessor Declarant, the Board, the ARB, the members of each, and the Association officers as provided in the Articles.

4.7. Enforcement.

Any construction, alteration, improvement or other work done in violation of this Article or the Architectural Guidelines is subject to enforcement action pursuant to Section 7.4. Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed to be an act done by or on behalf of such Owner.

## ARTICLE V
## MAINTENANCE AND REPAIR

5.1. Maintenance by the Owners.

(a) The Owner of each Lot must keep and maintain his or her Lot and the improvements thereon, including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within his or her Home which, if omitted, would adversely affect Terra Vista, the other Owners or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot, improvements and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structure constructed in, upon or below the Lot, and physical items attached or connected to such structure that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of the walls, doors, windows and roof of the physical structure of the Home shall be done by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the

Owner. The Owner of a Lot further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, water, sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at his or her own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

(b) Owners of all Homes shall also be responsible to clean, maintain and repair the driveways located on their Lots and keep the sidewalks located on their Lots clean.

(c) In addition to the foregoing, each Owner shall be required to maintain appropriate climate control, keep his or her Home clean, and take necessary measures to retard and prevent mold from accumulating in the Home. Each Owner shall be required to clean and dust the Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts. Owners are required to report immediately in writing to the Board (i) any evidence of water leak or water infiltration or excessive moisture in the Home, and any other common elements; (ii) any evidence of mold that cannot be removed with a common household cleaner; (iii) any failure or malfunction in heating, ventilation or air conditioning, and (iv) any inoperable doors or windows and each Owner shall be responsible for damage to the Home and personal property as well as any injury to the Owner and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner is fully responsible and liable for the entire amount of all cleaning expenses and remediation costs incurred by the Association, the Condominium Association or the Villa Association, as the case may be, to remove mold from the Home if the Owner fails to remediate same and each Owner shall be responsible for the repair and remediation of all damages to the Home caused by mold.

5.2. Maintenance by the Association.

The Association shall perform, or cause to be performed, the following on designated Service Areas:

(a) maintenance (including, mowing, fertilizing, watering, pruning, mulching, and replacing, and controlling disease and insects), of all lawns and landscaping installed on the Lots as part of the initial construction on the Lots, specifically excluding landscaping within any enclosed area not readily accessible from outside the Home and landscaping added by the Owner or occupants of a Lot after issuance of a certificate of occupancy for the Home on the Lot; and

(b) operation, maintenance, repair, and replacement of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks, wherever located) serving the Lots, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupants of any Lot after issuance of a certificate of occupancy for the Home on the Lot. The Owners shall be responsible to reimburse Declarant for hookup/tie in fees for irrigation to their Lot.

(c) Declarant may have constructed or installed drainage swales, drainage lines, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of excess surface water, if any, found upon such Lot from time to time. Except to the extent that such responsibility is assigned to or assumed by the Owners pursuant to this Declaration or any Supplemental Declaration, the Association shall be responsible for the maintenance, operation, and repair of such drainage swale(s), drainage lines, and other equipment. Maintenance, operation, and repair shall, without limitation, mean the exercise of practices, such as mowing and erosion repair, which allow the drainage swales, drainage lines, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities as permitted by the South Florida Water Management District ("SFWMD"). Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, and other equipment is prohibited. No alteration of a drainage swale, drainage lines, and other equipment shall be authorized and any damage to any drainage swale, drainage lines, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot upon which the drainage swale, drainage lines, and other equipment is located.

(d) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owner specified in this Declaration shall be performed as and when the Board determines it necessary to maintain the property to a level consistent with the Community-Wide Standard.

5.3. Insurance on Lots; Casualty Losses.

Each Owner shall maintain property insurance providing fire and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on such Owner's Lot, to the extent such responsibility is not assigned to or assumed by the Association pursuant to this Declaration or any applicable Supplemental Declaration. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Area due to occurrences originating within the Owner's Lot caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within the Lot which causes damage to the Lots or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the

Association as an additional insured. Unless a Mortgagee is named as the loss payee under any such policy, the Association shall be named as the loss payee.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV.

Each Owner shall maintain property insurance providing fire and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on such Owner's Lot. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot or the Common Area due to occurrences originating within the Owner's Lot caused by the negligence of the Owner, the failure of the Owner to maintain the Lot, and any other casualty within the Lot which causes damage to the Lots or the Common Area. Such insurance policy or policies shall name the Association as an additional insured.

Each Owner shall provide a certificate evidencing such insurance to the Association within 10 days of any written request from the Board of Directors. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering his or her Lot. Each Owner shall promptly notify the Board in writing in the event such policy on his or her Lot is canceled. In the event that an Owner fails to obtain any insurance which the Owner is required to obtain hereunder, or permits such insurance to lapse, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Lot as a Benefited Assessment.

Upon Board resolution and at least 60 days' prior written notice to each Owner of a Lot within any Service Area, the Association may elect to obtain, as a Service Area Expense, a blanket insurance policy providing property insurance for all structures on the Lots within such Service Area. In such event, the Owners shall be relieved of their insurance responsibility to the extent such responsibility is assumed by the Association. Any such policy obtained by the Association may exclude fixtures, finishes, contents, and improvements to the interior of the structures on the Lot and any exterior improvements made by an Owner or occupant of the Lot. Following such an assumption of insurance responsibility the Association may, at any time, upon not less than 30 days' written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain in his or her own name and at his or her own expense the insurance coverage for such Owner's Lot and structures thereon.

Regardless of whether the insurance required hereunder is obtained by the Association or the Owners, in the event of a casualty loss, the Association shall be entitled to file a claim against such insurance for the cost of any repair or reconstruction to the Lot and improvements thereon which is the Association's responsibility, and the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and the Association each to repair and replace those portions of the Lot and improvements thereon which are their respective responsibilities.

If the Owner is required to obtain insurance hereunder and such insurance is insufficient, the Association shall be relieved of any obligation to maintain, repair, and replace damaged or destroyed portions of the Owner's Lot, to the extent of such insufficiency. Alternatively, the Association may perform required repairs, whether the responsibility of the Association or the Owner, and assess all costs to the Owner and the Owner's Lot as a Benefited Assessment pursuant to Section 8.4.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV, except that if the Association has assumed responsibility for insurance coverage hereunder, the Association shall, subject to the limitations above, be responsible for repair or reconstruction of those portions of the structure on the Lot for which the Association has expressly, in writing, assumed insurance responsibility.

Declarant, and its Affiliates, shall be exempt from the provisions of this Section 5.2, provided that any such reconstruction, rebuilding or repairs made by Declarant shall be consistent, as to the exterior appearance, with the improvements as they existed prior to the damage or other casualty.

## ARTICLE VI
## THE ASSOCIATION AND ITS MEMBERS

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Florida law. The Board shall be responsible for management of the Association and may contract with a property manager for such purposes. The Board is appointed or elected as provided in the Bylaws. Membership in the Association is appurtenant to and may not be severed from the Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation, or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot.

6.2. Membership.

The Association initially shall have four (4) classes of membership, Class "A", Class "B", Class "C" and Class "D." Class "A" Members are all Owners of the single family Lots except the Class "D" Member, Class "B" Members are all Owners of the Villa Units except the Class "D" Member, and Class "C" Members are all Owners of the Condominium Units except the Class "D" Member. The sole Class "D" Member shall be Declarant. The Class "D" membership shall terminate upon the earlier of (i) the conveyance of 90% of Lots permitted

under the Development Plan, or (ii) when, in its discretion, Declarant declares such in a recorded instrument.

Notwithstanding the above, there shall be only one Class "A" membership per single family Lot, only one Class "B" membership per Villa Unit and only one Class "C" membership per Condominium Unit. If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3(a) and in the Bylaws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not an individual *(e.g., a corporation)* may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

6.3. Voting.

(a) Class "A". Class "A" Members have one equal vote for each single family Lot they own, except that there is only one vote per Lot. No vote shall be exercised for any property which is exempt from Assessment under Section 8.8.

(b) Class "B". Class "B" Members have one equal vote for each Villa Unit they own, except that there is only one vote per Villa Unit. No vote shall be exercised for any property which is exempt from Assessment under Section 8.8.

(c) Class "C". Class "C" Members have one equal vote for each Condominium Unit they own, except that there is only one vote per Condominium Unit. No vote shall be exercised for any property which is exempt from Assessment under Section 8.8.

In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(c) Class "D". The Class "D" Member shall not have any specific number of votes, but may appoint a majority of the Board members during the Class "D" Control Period, as specified in the Bylaws, and may exercise the additional rights specified throughout the Governing Documents.

Upon termination of the Class "D" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each single family Lot it owns, Declarant shall be a Class "B" Member entitled to one Class "B" vote for each Villa Unit it owns, and Declarant shall be a Class "C" Member entitled to one Class "C" vote for each Condominium Unit it owns.

## ARTICLE VII
## ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Common Area

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 16.9. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

(b) Declarant and their respective Affiliates, or their respective designees may, from time to time, transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in Exhibit "A". Subject to the provisions of Section 16.9, upon Declarant's request, the Association shall transfer back to Declarant or its designees any real property which has not been improved by a structure intended for occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, or other improvements, if originally conveyed to the Association for no payment.

(c) The Association is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may, from time to time, adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate.

(d) Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Area, but is not obligated to do so and may elect to leave portions of the Common Area in their natural unimproved state. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, will be located on the Common Area during the Development and Sale Period.

(e) Declarant hereby reserves the right, at all times after conveyance of the Common Area to the Association, to enter the Common Area, without prior notice, and to inspect the condition thereof and the improvements and facilities thereon, if any. If Declarant determines, in its sole judgment, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any means available, including, but not limited to, photographing and/or videotaping the Common Area, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing,

Declarant shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

7.2. Maintenance of Common Areas.

The Association shall maintain the Common Areas in accordance with the Community-Wide Standard. The Common Areas shall include, but are not limited to (a) the Common Area, including landscaping, signage, perimeter walls, fencing, structures, and other improvements located on the Common Area, as well as any private streets and entry gates serving the Community; (b) landscaping within public rights-of-way within or abutting the Community, or wetlands or uplands if not the obligation of Owners; (c) such portions of Lots as are specifically identified as the Association's responsibility under Section 5.1; and (d) all lakes, ponds, streams, ditches, culverts, and/or wetlands and uplands located within the Community which serve as part of the Surface Water and Storm Water Management System, including associated improvements and equipment, but not including any such areas, improvements, or equipment maintained by the County or any other governmental or quasi-governmental body.

The Association shall maintain the littoral shelf, if any, of all lakes, culverts, ditches, or waterways serving as part of the Surface Water and Storm Water Management system, which maintenance may include, without limitation, appropriate landscaping and plantings.

The Association may maintain other property that it does not own, including property dedicated to the public (such as rights-of-way), if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the owner of such other property consents. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been grossly negligent in performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Areas in continuous operation, except for any periods necessary, as the Board may determine in its discretion, to perform required maintenance, repairs, or replacement, unless Members representing at least 75% of the Class "A", Class "B" and Class "C" votes agree in writing to discontinue such operation (which may include closing and/or demolishing such facilities or equipment). Notwithstanding the above, the Common Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval during the Development and Sale Period.

Unless otherwise provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair, and replacement of the Common Areas shall be a Common Expense, except that such costs associated with Limited Common Areas shall be a Limited Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Areas pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

7.3. Insurance.

The Association shall keep all improvements, facilities, and fixtures located within the Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters) and may obtain insurance against such other hazards and casualties as the Association may deem desirable.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect any or all of the following types of insurance, as deemed necessary or advisable in the Board's business judgment and as may be reasonably available: (i) blanket property insurance covering all insurable improvements within the Common Areas to the extent that the Association has responsibility for repair or reconstruction in the event of a casualty, regardless of ownership; (ii) commercial general liability insurance on the Common Areas of at least $1,000,000.00 (if available at reasonable rates and upon reasonable terms) insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with regards to Common Areas, including, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and the Association and vice versa; (iii) directors and officers liability coverage; (iv) commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount at least equal to three months of Regular Assessments, plus all reserve funds; (v) to the extent any insurable improvements to Common Areas are within an "A" flood zone, flood insurance in an amount equal to the lesser of 100% of the replacement costs of all insurable improvements (if any) within the Common Areas or the maximum amount of coverage available under the National Flood Insurance Program; and (vi) such additional insurance as the Board, in its business judgment, determines advisable. Notwithstanding the foregoing, Declarant may obtain insurance for multiple communities which it is developing and/or other projects under a blanket policy instead of obtaining a separate policy for the Association, and charge a reasonable portion of the cost thereof to the Association.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Lot insured.

Unless designated as a Limited Common Area or otherwise provided in a Supplemental Declaration, premiums for Common Area insurance shall be a Common Expense.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons. All Association policies

shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

To the extent obtainable at reasonable rates, the insurance policy(ies) maintained by the Association may contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction. All insurance policies shall contain standard mortgagee clauses, if applicable.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or Limited Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(d) Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Members, Declarant, any predecessor Declarant, and the directors, trustees, officers, shareholders, attorneys, agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 80% of the total Class "A", Class "B" and Class "C" votes in the Association, if general Common Area, or 80% of the Class "A", Class "B" and Class "C" votes of Lots to which the Limited Common Area is assigned, if Limited Common Area, and Declarant during the Development and Sale Period, decide, within 60 days after the loss, not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period may be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall deposit any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, in a capital improvements account for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

7.4. Enforcement.

(a) The Association, acting through the Board, may impose sanctions for violation of the Governing Documents, subject to the notice and hearing procedures set forth in the Bylaws, as applicable. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, which may accrue from the date of notice (in the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and

(ii) suspending the vote attributable to the violating Owner's Lot; and

(iii) suspending the violator's and any guest or invitee of the violator's right to use any recreational facilities within the Common Area; and

(iv) suspending any services which the Association provides to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association; and

(v) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and/or the Architectural Guidelines from continuing or performing any further activities in the Community; and

(vi) levying Benefited Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Fees, or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

(b) In addition, but without limitation of the Association's other rights and remedies, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the notice and hearing procedures set forth in the Bylaws:

(i) requiring an Owner, at its own expense, to perform maintenance on such Owner's Lot, to complete any construction or modification approved pursuant to Article IV, or to remove any structure, item or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition; or

(ii) entering the property pursuant to the easement granted in Section 11.5 and exercising self-help to remove or cure a violating condition, or to complete any construction or modification approved pursuant to Article IV which was begun and not completed within the required time period, upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after the Board's mailing of written notice to do so, and any such entry shall not be deemed a trespass (in the event of the occurrence of the same or similar violating condition within 12 months, the Owner shall not be entitled to any notice or opportunity to cure); or

(iii) exercising self-help in any situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XV, if applicable.

(c) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all Legal Fees incurred in any such action.

(d) The Association's decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under the same or other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

(e) The Association, by contract or other agreement, may enforce applicable governmental regulations and permit a governmental authority to enforce ordinances, rules, statutes, or laws within the Community for the benefit of the Association and its Members.

(f) The SFWMD and the Association shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, and repair of the Surface Water or Storm Water Management System.

(g) Declarant shall be entitled to exercise all of the rights and powers granted to the Association under Sections 7.4(a)(v), 7.4(b), and 7.4(c), and shall be entitled to recover all costs that it incurs in so doing from the responsible Owner to the same extent as the Association would be entitled to recover them after notice and a hearing under Sections 7.4(a)(vi) and Section 7.4(c).

(h) Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted as provided in the Governing Documents by Declarant, its successors and assigns, the Association, its successors or assigns, or any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self-help to cure any violations that remain uncured after any required notice is given.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members. In exercising the Association's rights and powers, making decisions on the Association's behalf, including, without limitation, deciding whether to file a lawsuit under any circumstances, and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called

meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

(c) the enforcement of the use and occupancy restrictions contained in the Governing Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Common Areas, any improvements or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); or

(e) filing a compulsory counterclaim.

7.6. Provision of Services to Lots.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including, without limitation, Declarant or its Affiliates, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a Common Expense and assess it as part of the Regular Assessment, if provided to, or determined by the Board to be a benefit to, all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, telephone, internet access, security monitoring, caretaker, transportation, fire protection, utilities, trash collection and recycling, and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services or facilities shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services or facilities provided to Owners or Lots as a Common Expense or a Limited Common Expense, shall not exempt any Owner from the obligation to pay Assessments for such services or facilities.

7.7. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of Common Areas.

7.8. Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public or private utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute money, real property (including, without limitation, Common Area), personal property, or services to any such entity. Any such contribution may be a Common Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

7.9. Right To Designate Sites for Governmental and Public Interests.

During the Development and Sale Period, Declarant may, but is not obligated to, designate sites within the Community for government, education, or religious activities and interests, including, without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Subject to the approval requirements set forth in Section 16.9, the sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

7.10. Provision of Services to Service Areas.

(a) Declarant may assign the Property described on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the additional property to one or more Service Areas (by name or other identifying designation) as Declarant deems appropriate, in Declarant's discretion, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to the Lots within such Service Area in addition to those which the Association generally provides to all Lots. Until termination of the Class "D" Control Period, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to designate or re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, the Owner(s) of any two or more Lots may petition the Board to designate such Lots as a Service Area for the purpose of receiving from the Association (a) special benefits or services which are not provided to all Lots, or (b) a higher level of service than the Association otherwise provides. Upon receipt of such petition signed by the Owner(s) of a majority of the Lots within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to be

made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate in its discretion (provided, any such administrative charge shall apply at a uniform rate per Lot among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least 67% of the Lots within the proposed Service Area, and Declarant during the Development and Sale Period, the Association shall provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services shall be assessed against the Lots within such Service Area as a Service Area Assessment, subject to the right of the Owners of Lots within the Service Area to veto the budget for their Service Area as provided in Section 8.1.

(c) The Board may, by resolution, designate a group of Lots as a Service Area and levy Service Area Assessments against such Lots to fund the costs of operating, maintaining, repairing, replacing and/or insuring certain portions of the Common Area within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and green space between the Service Area and adjacent public roads, private streets within the Service Area, and lakes or ponds within the Service Area, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; however, all similarly situated Lots shall be treated the same. Any such designation shall require the consent of Declarant during the Development and Sale Period.

7.11. Responsibilities Under Governmental Permits.

Declarant shall have the absolute and unconditional right in its sole discretion to assign, delegate, or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Community, including, without limitation, its continuing obligations with respect to the Surface Water and Storm Water Management System under Environmental Resource Permit No. 021018-7 issued by SFWMD and the Water Use Permit under Permit No. 36-05121-W issued by the SFWMD ("SFWMD Permits") (a copy of the SFWMD Permits are attached hereto as composite Exhibit "F"),. The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment or transfer and assumption shall be effective without the consent of the Association, but upon Declarant's request, the Association shall promptly execute any documents which Declarant requests to evidence the assignment or transfer and assumption of such responsibilities. The Association shall comply in all respects with the terms of and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant harmless from any claims or losses arising out of the violation or failure to comply with any permit(s), or out of the operation, maintenance or use of any improvement or facility authorized by the permit(s), provided such claim or loss first occurs after the effective date of the assignment, delegation, transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by the Association).

7.12. Waterways; Water Level and Use.

With respect to any waterways now existing or which may hereafter be contained within or adjoining the Community, only Declarant (and after termination of the Class "D" Control Period, the Association) shall have the right to pump or otherwise remove any water from such

waterways for the purposes of irrigation or other use or to place any matter or object in such waterways. No docks, moorings, pilings, boat shelters, or other structure shall be erected on or over the waterways, except as may be erected or approved in writing by Declarant (and following the termination of the Class "D" Control Period, the Association or the ARB). Only Declarant (and after termination of the Class "D" Control Period, the Association) shall have the right to prescribe the schedule for watering of the lawns on the Lots and Common Areas (subject to applicable legal requirements). No boats or other water vehicle or craft shall be permitted on such waterways. Subject to the provisions of this Declaration, the Association shall have the right and, as permitted by law, the obligation to control the growth and eradication of plants, fowl, reptiles, animals, fish, and fungi in and on such waterways.

Water levels in the waterways may rise and fall significantly due to among other things, fluctuations in ground water elevations within the surrounding areas. Accordingly, Declarant has no control over such water levels and/or ground water elevations. Each Owner, by acceptance of title to a Lot, hereby releases Declarant from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including, without limitation, attorneys' fees and courts costs at trial and all appellate levels), related to, arising out of and/or resulting from water levels in the waterways.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE WATERWAYS. ANY INDIVIDUAL USING THE WATERWAYS SHALL DO SO AT HIS/HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF TITLE TO A LOT, ACKNOWLEDGES THAT THE WATERWAYS ARE DEEP AND DANGEROUS. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY WATERWAY WITHIN TERRA VISTA, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF TERRA VISTA SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN OR NEARBY TERRA VISTA AND

MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

No planting, fencing or other improvements or additions within any Lake Maintenance Easement is permitted. No installation of sand or other materials intended to simulate a beach shall be permitted along the Lake banks or within the Lake Maintenance Easement or rear yards of Lake Lots. Swimming in the Lakes is prohibited, and the operation of motorized and non-motorized watercraft in the Lakes is prohibited. The Lake Maintenance Easements are for the use of the Association, SFWMD, the applicable water management district and any other governmental agency for access to the Lakes for maintenance of the Lakes and any littoral plantings and other proper purposes. No removal or damage to littoral, upland or wetland plantings is permitted.

An imaginary line will be extended from the side property lines at the back of each Lake Lot down to the water's edge. The area encompassed between the rear property line and the water's edge between these imaginary lines shall be defined as the "Lake Bank Zone" as to each Lake Lot.

All Lake Lot Owners are prohibited from disturbing or removing any vegetation within the Lake Bank Zone to the lake deep cut line without the prior written approval of the SFWMD. A copy of any such approval shall be provided to the Association.

All Lake Lot Owners are prohibited from disturbing or removing the "cluster" landscaping located in the rear of the Lots near the Lake Bank Zones without the prior approval of the Association.

7.13. Surface Water and Storm Water Management System.

(a) Maintenance and Operation. The Association shall be responsible for the maintenance, operation, repair, and replacement of the Surface Water and Storm Water Management System. Maintenance of the Surface Water and Storm Water Management System(s) shall mean the exercise or practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or storm water management capabilities as permitted by the SFWMD. Any repair or reconstruction of the Surface Water and Storm Water Management System shall be as permitted or, if modified, as approved by the SFWMD. Notwithstanding anything contained herein to the contrary, the Association shall maintain embankments so that grass, planting, or other lateral support shall prevent erosion of the embankment. The height, grade, and contour of such embankments shall not be changed without the prior written consent of Declarant or the Architectural Review Board.

(b) Effect of Dissolution. In the event of the termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System, wetlands and uplands must be transferred to and accepted by an entity which would comply with Section 40.E F.A.C., and be approved by the SFWMD prior

to such termination, dissolution, or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for the operation and maintenance of the Surface Water and Storm Water Management System, wetlands and uplands in accordance with the requirements of the permits.

(c) Shared Facilities. Certain portions of the Surface Water and Storm Water Management System may serve the drainage needs of adjacent lands not owned by Declarant and not within the Community. Declarant reserves the right to grant such drainage and/or use such easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Community and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

## ARTICLE VIII
## ASSOCIATION FINANCES

8.1. Budgeting and Allocating Common Expenses.

(a) Calculation of Regular Assessments. Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses which it expects to incur for the coming year, including any contributions to be made to reserves pursuant to Section 8.2 for repair and replacement of items that the Association maintains as a Common Expense. The budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance of the Surface Water and Storm Water Management System and, as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and replacements to the Common Areas as provided in Section 8.2, including contributions to reserves for the private roads and Surface Water and Storm Water Management System. The budget shall separately reflect the anticipated sources and estimated amounts of funds to cover the Common Expenses, including any surplus or deficit to be applied from prior years, Assessment income, any fees charged for use of recreational amenities, and any other non-Assessment income.

The Association is authorized to levy Regular Assessments to fund the Common Expenses against all Lots subject to Assessment under Section 8.5, in the proportions described in Section 8.5. In determining the Regular Assessment rate, the Board may consider any Assessment income expected to be generated from any property anticipated to become subject to Assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)) which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's sole and absolute discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a summary of the proposed budget and notice of the Regular Assessment to be levied pursuant to such budget to each Owner at least thirty (30) days prior to the effective date of the budget. The budget and Assessment shall automatically take effect on such date unless disapproved at a meeting by Members representing 75% of the total Class "A", Class "B" and Class "C" votes and by Declarant during the Development and Sale Period. There shall be no obligation to call a meeting of the Members for the purpose of considering the budget except upon petition of the Members as provided for special meetings in Section 2.5 of the Bylaws. Any such petition must be presented to the Board within 14 days after mailing of the budget and notice of the Regular Assessment.

If any proposed budget is disapproved, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements set forth above and in accordance with Florida law.

(b) Calculation of Service Area Assessments. Before the beginning of each fiscal year, the Board shall prepare a separate budget for each Service Area of the estimated Limited Common Expenses which it expects to incur on behalf of such Service Area for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2 for periodic major maintenance, repair and replacement of items that the Association maintains on behalf of the Service Area as a Limited Common Expense. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance and repair of any private roads which the Association maintains on behalf of such Service Area as a Limited Common Expense, and as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and repaving of such roads, each of which shall be in at least the minimum amount approved by the County for such purposes prior to recordation of this Declaration. The budget shall separately reflect the anticipated sources and estimated amounts of funds to cover the Limited Common Expenses, including any surplus or deficit to be applied from prior years, Assessment income, any fees charged for use of recreational amenities maintained on behalf of the Service Area, and any other non-Assessment income.

The Association is authorized to levy Service Area Assessments to fund the Limited Common Expenses for each Service Area against all Lots in the Service Area that are subject to Assessment under Section 8.5, in the proportions described in Section 8.5, except that, unless otherwise specified in the applicable Supplemental Declaration, any portion of the Assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Lots in proportion to the benefit received, as the Board may reasonably determine. In determining the Service Area Assessment rate for any Service Area, the Board may consider any Assessment income expected to be generated from any property in the Service Area reasonably anticipated to become subject to Assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Service Area Assessment applicable to any Service Area for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)) which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a summary of the proposed budget and notice of the Regular Assessment to be levied pursuant to such budget to each Owner at least thirty (30) days prior to the effective date of the budget. The budget and Assessment shall automatically take effect on such date unless disapproved at a meeting by Members representing 75% of the total Class "A", Class "B" and Class "C" votes and by Declarant during the Development and Sale Period. There shall be no obligation to call a meeting of the Members for the purpose of considering the budget except upon petition of the Members as provided for special meetings in Section 2.5 of the Bylaws. Any such petition must be presented to the Board within 14 days after mailing of the budget and notice of the Regular Assessment.

If any proposed budget is disapproved, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

All amounts that the Association collects as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

8.2. Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Area and for each Service Area for which the Association maintains capital items as a Limited Common Expense which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of capital items under each budget. The Board may include in the Common Expense budget adopted pursuant to Section 8.1(a), or the Service Area budgets adopted pursuant to Section 8.1(b), as appropriate, a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

Reserve funds, if collected, shall be held in a separate account or accounts from the operating and other funds of the Association. Reserve funds collected for each Service Area shall be segregated from reserves collected for Common Areas or other Service Areas.

The reserve funds held in each account may be expended only for major maintenance, repair, or replacement of those assets covered by the reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the expenditure

of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent during the Development and Sale Period.

8.3. Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Service Area, if such Special Assessment is for Limited Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of all Members (if a Common Expense) or Owners (if a Service Area Expense) representing more than 50% of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of Declarant during the Development and Sale Period. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Benefited Assessments.

The Association may levy Benefited Assessments against one or more particular Lots as follows:

(a) to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.6 or Section 8.10) or pursuant to a Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests, including, without limitation, Legal Fees, subject to the limitations of Section 7.4, as applicable.

8.5. Assessment Rate; Commencement of Assessments; Time of Payment.

The obligation to pay Assessments commences as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies Assessments pursuant to this Article, whichever is later. Regular and Special Assessments for Common Expenses shall be allocated equally among all Completed Lots subject to Assessment. Except as otherwise provided in Section 8.1(b) or in any applicable Supplemental Declaration, Service Area Assessments shall be allocated equally among all Completed Lots subject to Assessment in the

benefited Service Area. The first annual Regular Assessment and Service Area Assessment, if any, levied on each Completed Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Completed Lot. Notwithstanding anything to the contrary contained in this Declaration, Incomplete Lots will be assessed at five percent (5%) of the Regular Assessment until such time as the Incomplete Lot becomes a Completed Lot and then such Completed Lot shall be assessed at one hundred percent (100%) of the Regular Assessments.

Owners shall pay Assessments quarterly, in advance, with payments due on the first day of the months of January, April, July and October. The Board may require advance payment of Assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in monthly installments. If any Owner is delinquent in paying any Assessments or other charges levied on his or her Lot, the Board may require that the outstanding balance on all Assessments be paid in full immediately.

8.6. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all Assessments levied in accordance with the Governing Documents for each Lot owned. All Assessments, together with interest (computed from the Assessment's due date at a rate of 18% per annum or the maximum rate permitted by law, whichever is less), late charges as determined by Board resolution, and Legal Fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance.

The Board's failure to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Regular Assessments and Service Area Assessments, if any, on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempted from liability for Assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant by each Owner. No reduction or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Following a written request, the Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. To the extent permitted by Florida law, during the Class "D" Control Period, Declarant may satisfy the obligation for Assessments on Lots which it owns either by paying Assessments in the same manner as any other Owner or by funding the budget deficit. The budget deficit is the difference between (i) the amount of Assessments levied on Class "A", Class "B" and Class "C" Member-owned Lots, plus any other income received during the fiscal year, and (ii) the amount of the Association's actual expenditures during the fiscal year, excluding contributions to reserves and excluding special Assessments arising as a result of any unusual loss or liability. Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year.

Regardless of Declarant's election, Declarant's Assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be quantified with proof of invoices, etc. After termination of the Class "D" Control Period, Declarant shall pay Assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

(c) Declarant's Right to Loan or Advance Funds. Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting its financial obligations, in addition to Declarant's obligation to pay Assessments or fund the deficit under Section 8.5 or 8.6(b). Notwithstanding anything to the contrary contained in this Article 8, if Declarant loans, advances or otherwise pays Assessments in excess of its obligations under Sections 8.5 or 8.6(b) then any such sums shall be repaid to Declarant prior to the termination of the Class D Control Period.

8.7. Lien for Assessments.

The Association may record a lien against any Lot, including Declarant's Lots, to secure payment of Assessments that remain unpaid for a period of thirty (30) days or longer after becoming due. For purposes of this Section, Assessments shall include interest, late charges (subject to Florida law), and Legal Fees. Such lien shall be superior to all other liens, except (a) the liens of all real estate taxes and other governmental Assessments and charges against the Lot, (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) other recorded liens or encumbrances which by law would be superior. The Association's lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

Notwithstanding the above, and subject to Florida law, the Board may designate Assessments or charges levied solely for the purpose of funding Common Expenses related to acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) as a "Capital Improvement Assessment," and the lien therefor shall be superior to (a) the Association's lien for other Common Expenses and Limited Common Expenses, and (b) all other liens except those deemed superior under federal or Florida law and which may not be made subordinate by this provision.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Assessments and other charges without foreclosing or waiving its Assessment lien.

Sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee or pursuant to a deed in lieu of foreclosure to a first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure or the deed in lieu of foreclosure. The purchaser of such foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to the foreclosure sale. Such unpaid Assessments shall be a Common Expense collectible from Owners of all Lots subject to Assessment under Section 8.5, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

8.8. Exempt Property.

The following property shall be exempt from payment of Regular Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and other portions of the Community which are not Lots; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

8.9. Working Fund Contribution.

There is hereby established a Working Fund Contribution which is a one-time Assessment (the "Working Fund Contribution") applicable to each Lot in the amount of $250.00 per Lot, levied for the year in which the Working Fund Contribution is due and payable. The Working Fund Contribution shall become due and payable upon the transfer of title to the Lot by Declarant to a Class "A", Class "B" or Class "C" Member. Such Working Fund Contribution may be used to fund the Association's initial start up costs and other operating expenses, during and after the Guarantee Period, or to help fund reserves, in the Board's discretion.

No further Working Fund Contribution shall be due for any subsequent transfer of ownership of any Lot.

8.10. Use and Consumption Fees; Licenses and Royalties.

The Board may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users *(e.g., Owners and non-Owners)*. Any such fees charged to Owners shall be considered a Benefited Assessment against the Lots of such Owners under Section 8.4(a).

## ARTICLE IX
## DEVELOPMENT PLAN

9.1. Terra Vista.

Terra Vista is intended to be comprised of eleven (11) single family Lots, thirty-two (32) Villa Units, one hundred twenty-four (124) Condominium Units and the property encompassing the Common Area, as more particularly defined by this Declaration. The property declared hereunder is described on Exhibit "A" attached hereto. Declarant's general Development Plan further contemplates that such Homes, Villa Units and Condominium Units shall be whatever types of structures Declarant may choose which are in conformance with the Governing Documents. Declarant's general Development Plan of Terra Vista may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Terra Vista.

Declarant expressly reserves the right as to the property comprising Terra Vista to (i) commence construction and development of Terra Vista if and when Declarant desires; (ii) develop Terra Vista upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the Development Plan of Terra Vista in such manner as it, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Terra Vista according to the present Development Plan.

9.2. Common Area.

The Common Area shall consist of the property indicated on the Plat as Tracts A, B, C, E, F, G, H, J and K, or as property reserved for or dedicated to the Association. The Common Area shall be used for ingress/egress, landscaping, lakes, drainage, recreational and social purposes as well as other proper purposes by the Association and the Owners and their family members, guests, invitees and lessees in accordance with the Governing Documents. Common Area may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or lessees.

The portions of Terra Vista described in this Section 9.2 shall constitute Common Area and shall be used solely in accordance with the covenants impressed upon the Common Area as follows:

9.2.1. Tract G (Recreation). Terra Vista will contain a recreation area containing approximately 1.87 acres ("Recreation Area"), which is designated on the Plat as Tract G. The Recreation Area is proposed to include a clubhouse, one swimming pool, pedestrian

walkway, and parking. The Recreation Area shall be part of the Common Area and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invitees and lessees. Such portion, if any, of the Recreation Area upon which Declarant has constructed or hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. All of the Recreation Area shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses *(e.g., parking spaces within the Recreation Area shall be used for proper purposes by those using the recreational facilities but only while using such facilities)*, and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Area shall be maintained, administered and owned by the Association.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Area and to change the facilities planned for the Recreation Area.

Notwithstanding anything contained herein, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any recreational facilities within any specific time period.

Declarant, at its sole discretion, reserves the right to reduce and/or modify the planned facilities.

The decision as to whether to construct additional recreational facilities, to change the planned facilities, or to reduce and/or modify the planned facilities and the construction thereof shall be in the sole discretion of Declarant.

9.2.2. Entranceway(s) and Entry Gate(s). Terra Vista is intended to include an entry gate(s) installed by Declarant or the Association. Such entranceway(s) and entry gate(s) shall be deemed Common Area and shall be owned, maintained, repaired or replaced by the Association and the expense thereof shall be included as an Operating Expense. All other portions of the entranceway(s) and entry gate(s) shall also be owned and maintained by the Association. Neither Declarant nor the Association makes any representations whatsoever as to the security of the premises or the effectiveness of any entry gate(s). The entry gate(s) will remain open during the daylight hours to allow for unobstructed access for construction purposes for as long as Declarant is constructing improvements within Terra Vista. All Owners agree to hold Declarant and the Association harmless from any loss or claim arising within Terra Vista from the occurrence of a crime or other act. The Owners acknowledge that the entry gate(s) are designed to deter crime, not prevent it. Notwithstanding anything herein to the contrary, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any entry gate(s) within any specific time period.

9.2.3. Tract A (Roadways).

The "Roadways" are those portions of Terra Vista designated on the Plat as Tract A; and includes the entranceway and entry features. Notwithstanding anything to the contrary on the Plat, the Roadways shall be used as private roads by Declarant, the Association and the

Owners, their family members, guests, lessees and invitees in accordance with the provisions of this Declaration. Declarant believes that the roadways will be private and disclaims any responsibility if the roadways are ever determined to be public. The Roadways shall be maintained, administered and owned by the Association. The landscaping features within the Roadways shall be maintained, administered and owned by the Association. Notwithstanding the foregoing, each Owner shall be responsible for the maintenance, repair and replacement of the driveway serving his or her Lot, including that portion of the driveway in a Roadway, if any, unless the driveway was damaged by the Association in the fulfillment of its obligations and duties under this Declaration.

9.2.4. Tracts B, C, F and H (Lakes/Water Management,/Lake Maintenance Easements and Drainage Easements).

The "Lakes" are those portions of Terra Vista designated on the Plat as Tracts B, C, F and H, and shall always be kept and maintained as lakes for water retention, drainage, irrigation and water management purposes in compliance with all applicable governmental and water management district requirements. The Lakes shall be maintained, administered and owned by the Association. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Terra Vista as may be necessary for the purpose of accessing, maintaining and administering the Lakes, and no Owner or any condominium association governing a portion of Terra Vista shall do any act which may interfere with the performance by the Association of its obligations hereunder.

9.2.5. Tracts E, K and M (Open Space).

The "Open Space" are those portions of Terra Vista designated on the Plat as Tracts E, K and M, and shall always be maintained in a manner consistent with the Community-Wide Standard. The Open Space shall be maintained, administered and ultimately owned by the Association. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Terra Vista as may be necessary for the purpose of accessing, maintaining and administering the Open Space, and no Owner or any condominium association governing a portion of Terra Vista shall do any act which may interfere with the performance by the Association of its obligations hereunder.

9.2.6. Tract J (Conservation).

The "Conservation" tracts are those portions of Terra Vista designated on the Plat as Tract J, and shall always be maintained in a manner consistent with the zoning ordinance of the County and Community-Wide Standard. The Conservation tract shall be maintained, administered and ultimately owned by the Association. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Terra Vista as may be necessary for the purpose of accessing, maintaining and administering the Conservation tract, and no Owner or any condominium association governing a portion of Terra Vista shall do any act which may interfere with the performance by the Association of its obligations hereunder.

9.2.7. Gopher Tortoise Preserve Easements.

The "Gopher Tortoise Preserve Easements" are those portions of the Property designated on the Plat as "Gopher Tortoise Preserve Area" or "G.T.P.E.", and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Terra Vista, their family members, guests, lessees and invitees, in accordance with the provisions of this Declaration. The Gopher Tortoise Preserve Easements shall be ultimately owned by the Association and shall be administered and maintained by the Association in accordance with the requirements of the appropriate governmental agencies.

9.2.8. Landscape Buffer Easements.

The "Landscape Buffer Easements" are those portions of the Property designated on the Plat as "L.B.E.", and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Terra Vista, their family members, guests, lessees and invitees, in accordance with the provisions of this Declaration. The Landscape Buffer Easements shall be ultimately owned by the Association. There are Landscape Buffer Easements along the perimeter of the Lots and such Landscape Buffer Easements shall be maintained by the Association and such expense will be a Common Expense of the Association. The Landscape Buffer Easements shall be administered and maintained in accordance with the requirements of the appropriate governmental agencies.

9.2.9. Right to Add Additional Improvements.

Such portions of the Common Area upon which Declarant has constructed, or hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Common Area. The decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

## ARTICLE X
## ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, Declarant, its Affiliates, and their assigns may construct, maintain, and operate upon portions of the Common Area and property they own, such facilities, activities, and things as, Declarant, in its discretion, may deem to be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and their assigns, may park vehicles in areas other than garages or driveways, including, without limitation, on streets.

For the term of this Declaration, the Common Area is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, and their family members, guests, invitees and lessees, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves the right to use the Common Areas for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant of Homes in Terra Vista and in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings and engaging in sales promotions and related sales and marketing activities.

B. Except to the extent herein provided, the Common Areas shall be for the sole and exclusive use of the Owners and residents of Terra Vista and their family members, guests, invitees and lessees.

C. The administration, management, operation and maintenance of the Common Areas shall be the responsibility of the Association, as provided herein and in the Terra Vista Documents.

D. The right to use the Common Areas shall be subject to the rules and regulations established by the Association.

E. Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Terra Vista. The "model row(s)" may contain models for Terra Vista or other communities, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across streets, drives, roads and/or roadways as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Terra Vista, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determines to be necessary in its sole judgment. By Owner's acceptance of a deed for a Lot in Terra Vista, such Owner agrees and acknowledges that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of its affiliates have an easement over Terra Vista for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Terra Vista or other communities being developed by Declarant and/or any of Declarant's affiliates, as long as such "model row(s)" exists; and (iii) he shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of its affiliates, including the carrying of signs or other types of demonstrations in Terra Vista or any public right-of-way adjacent to the Property. Each Owner acknowledges that any such activities interfere with the quiet enjoyment of Terra Vista by the other Owners, are detrimental to the value of the Homes within Terra Vista, and interfere with Declarant's ability to conduct its business.

10.2. Right to Develop.

Declarant and its Affiliates, and their respective employees, agents, and designees, shall have a right of access and use and an easement over, upon, and under all of the Common Area

for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Exhibit "A" property as Declarant deems appropriate in Declarant's discretion.

Each Owner acknowledges that the Community is a planned community, the development of which is likely to extend over a number of years, and agrees and consents to all changes in (a) uses or density of Lots or Homes within the Community, or (b) the Development Plan.

Each Owner acknowledges and agrees that the present plans and themes for the Community's development may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities will be added, modified, or eliminated within the Community; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of property within the Community; (b) the number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of the Community; or (c) as to the use or development (current or future) of any property adjacent to or within the vicinity of the Community.

10.3. Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use Restrictions, rules, or the Architectural Guidelines during the Development and Sale Period shall be effective without prior notice to and the written approval of Declarant.

10.4. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the Bylaws may, except to the extent restricted by Florida law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

10.5. Community Systems and Services.

Declarant reserves for itself, its successors and assignees, and grants to the Association (after Declarant no longer owns any property described on Exhibit "A" or at such earlier time as Declarant elects in writing) the exclusive and perpetual right to provide and operate, or to permit others to provide and operate, within the Community, such telecommunication systems (including, without limitation, cable television, community intranet, internet, and other systems for receiving, distributing, and transmitting electronic data, signals, and audio or visual communications), security systems and services, utilities, trash collection, and other systems and services, including, without limitation, conduits, wires, amplifiers, towers, antennae, and other apparatus and equipment for the operation or provision thereof (collectively, the "Community

Systems and Services") as Declarant, in its discretion, deems appropriate. Such right shall include, without limitation, the right to select and contract with companies licensed, if applicable, to provide such services in the vicinity of the Community, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable. Declarant may receive, and shall be entitled to retain, any rebate, credit, fee, or incentive relating to the installation, operation, or provision of any Community Systems and Services.

During the Development and Sale Period, Declarant may require that the Association enter into agreements for the provision of Community Systems and Services to all Lots as a Common Expense, or to Lots within a particular Service Area as a Service Area Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefited Assessment.

10.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate, from time to time, the right to inspect, monitor, test, redesign, modify and correct any structure, improvement, or condition which may exist on any portion of the Community, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Home or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials. The Person exercising this easement shall promptly repair, and pay for, any resulting damage. The provisions of this paragraph do not impose any obligation on Declarant or any other Person to perform any such inspection, monitoring, testing, redesigning, modification, or correction.

10.7. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

10.8. Termination of Rights.

Rights granted under this Article shall terminate upon the earlier of (a) the period specified in the particular Section, if any; (b) twenty-five (25) years from the date this Declaration is recorded; or (c) Declarant's recording of a statement that all sales activity has

ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, nonexclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's prior written consent.

10.9. Exclusion of Declarant's Other Properties.

By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall, in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant or any Declarant Affiliate of any property either of them owns, whether contained within or contiguous to the Community. Declarant and its Affiliates shall have full, free, and unrestricted use of its and their other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant owns.

## ARTICLE XI
## EASEMENTS

11.1. Easements in Common Area.

Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying the property to the Association;

(c) The Board's right to:

(i) adopt rules regulating Common Area use, including, without limitation, rules limiting the number of guests who may use the Common Area, and charge use fees for such use;

(ii) suspend the right of an Owner and its guests and invitees to use any Common Area amenity (A) for any period during which any Assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;

(iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;

(iv) rent any portion of any the Common Area on an exclusive or non-exclusive short-term basis to any Person;

(v) permit use by the general public, which use may, but need not, be subject to admission charges, membership fees, or other user fees established in the Board's discretion (except to the extent inconsistent with any easement agreement relating thereto); and

(vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 16.9.

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," if any, as described in Article XIII.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot in accordance with this Declaration shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term and shall not have any right to utilize the Common Area during such term, except as necessary to access the Lot.

11.2. Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots, to a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. Such easement shall permit encroachment only by a structure or fixture (i) which has been built by a builder or approved in accordance with Article IV of this Declaration, and (ii) which is unintentionally constructed on another's property. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, its successors and assigns, so long as Declarant or any Declarant Affiliate owns any property described in Exhibit "A", and grants to the Association, subject to Declarant's rights under Section 10.6, perpetual, non-exclusive easements throughout the Community (but not through a structure) to: (i) install utilities and infrastructure to serve the Community, including, without limitation, water, sewer, telephone, electric, gas, irrigation, cable and other systems for sending and receiving data and/or other electronic signals, drainage structures, facilities and systems, and security and similar systems and other Community Systems and Services; (ii) install walkways, pathways and trails,

curb cuts, driveways and paved areas, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; (iv) access and read utility meters; and (v) for any other purpose in Declarant's sole discretion. The right, license, or easement granted to a utility supplier shall include the non-exclusive right to ingress and egress over any streets for access and maintenance of its equipment and facilities.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to record such specific easements as may be necessary, in Declarant's discretion, to develop the Community. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize, to the extent practicable, interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably practical, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area and Lots for enjoyment, use, access, and development of the property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area and Lots for construction of roads and for connecting and installing utilities.

If the above easement is exercised for permanent access to any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall enter into an agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder, except to the extent such easement was created prior to the recordation of this Declaration.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Community as necessary for the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have an easement and the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose

of ensuring compliance with and enforcing the Governing Documents. Such easement and right may be exercised by the Association through its officers, directors, committee members, employees, contractors, or agents in their capacities as such and by all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition that violates the Governing Documents. Any costs incurred, including Legal Fees, shall be assessed against the Lot Owner as a Benefited Assessment.

11.6. Easements for Maintenance of Bodies of Water and Flooding.

Declarant reserves for itself, the Association, the SFWMD, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Areas and the Community to (a) install, operate, maintain, repair, and replace pumps and other equipment to supply irrigation water to the Common Areas; (b) construct, maintain, repair, and replace structures and equipment used for retaining, detaining, and otherwise controlling water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard and applicable legal requirements. Declarant, the Association, the SFWMD, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Home or other structure) adjacent to or within 50 feet of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences or for other occurrences not reasonably foreseeable or under the control of Declarant or such other Person.

11.7. Easements for Cross-Drainage.

All portions of the Community shall be burdened with easements for drainage of storm water runoff from other portions of the Community; however, no Person other than Declarant shall alter the drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, the SFWMD, if applicable, and Declarant during the Development and Sale Period.

11.8. Rights to Storm Water Runoff, Effluent, and Water Reclamation.

Declarant reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

11.9. Easement for Maintenance of Surface Water and Storm Water Management System.

Declarant and the Association shall have a perpetual, non-exclusive easement over all portions of the Surface Water and Storm Water Management System for access to operate, maintain, repair, or replace the system. By this easement, Declarant and the Association shall have the right to enter upon any portion of any Lot which is a part of or adjacent to the Surface Water and Storm Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain, repair, or replace the system as the County or any governmental agency or quasi-governmental body requires or permits. Additionally, Declarant and the Association shall have a perpetual, non-exclusive easement for drainage over the entire Surface Water and Storm Water Management System, and the owner of the pumps, pipes, and other apparatus comprising the system shall have an easement of access and maintenance as necessary for the operation, maintenance, repair, and replacement of such equipment. No Person other than Declarant shall alter the drainage flow of or over the Surface Water and Storm Water Management System, including, without limitation, buffer areas or swales, without the Association's prior written approval, and, during the Development and Sale Period, Declarant's written consent.

11.10. Sign Easement.

Declarant reserves for itself and the Association an easement (herein referred to as the "Entry, Sign and Landscape Easement") over, upon, and across all areas designated as "Landscape Tract", "Signage Tract", "Landscape Area", "Entryway Feature Easement Area or Tract" or "Open Space" or identified by similar designation, on any Plat, for erection, installation, operation, maintenance, repair, and replacement of Community signs, walls, monuments, fencing, decorative improvements, and other entry features, together with landscaping, lighting, utility, and irrigation facilities. No Owner shall obstruct access to the Entry, Sign and Landscape Easement, or install or remove any plant or other improvement or installation placed in the Entry, Sign and Landscape Easement by the beneficiaries thereof, or obstruct the view of the Entry, Sign and Landscape Easement from the adjacent street right-of-way. All signs, walls, monuments, entry features, landscaping, utility, irrigation and other permanent improvements installed in the Entry, Sign and Landscape Easement by Declarant shall become the Common Area of the Association upon conveyance from Declarant, and the Association shall maintain such Entry, Sign and Landscape Easement and the improvements

therein as part of the Common Area. In addition, Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within the Entry, Sign and Landscape Easement, and to change, move, remove, repaint, maintain, and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Lot owned by Declarant in the Community, and all such marketing signs shall be and remain the exclusive property of Declarant and shall not be deemed part of the Common Area owned by the Association.

11.11. Easement for Irrigation Equipment.

If there is a master irrigation system for the Community, Declarant and the Association shall have a perpetual, non-exclusive easement over, under and through all exterior portions of each Lot, except any area upon which buildings have been erected by Declarant or otherwise in accordance with Article IV, for the purpose of installing, maintaining, repairing, replacing and operating all irrigation equipment, systems and lines serving all or any portion of the Lots and/or Common Area. The foregoing easement shall not impose any obligation on the Association and/or Declarant to install any such improvements.

11.12. Private Roadways.

(a) The private roadways within the Community ("Roadways"), as depicted on any Plat, shall be owned by the Association as part of the Common Area and shall not be dedicated to the County or to public use by recordation of such Plat. Use of such Roadways shall be subject to and in accordance with any rights and easements shown on the Plats and such reasonable Use Restrictions and Rules as the Association may adopt from time to time consistent with this Declaration, the Plat, and any law, ordinance, or regulation governing the Community.

(b) Declarant hereby reserves unto itself, its agents, employees, successors, and assigns an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community (including Lots) which Declarant deems reasonably necessary, in its discretion, or which Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. With regard to construction on any of the Lots by the Owners thereof, the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any such Lots shall have access to such Lots over the Roadways subject to such rules as the Association may adopt; however, during the Class "D" Control Period, Declarant shall have the right to prohibit the use of the Roadways by such Persons and to designate alternate access easements for such Persons.

(c) Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage collection

service to the Community provided that such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities.

The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

## ARTICLE XII
## CONSERVATION EASEMENTS, NATURAL CONDITIONS AND PRESERVES

12.1. Conservation Easements.

(a) Establishment of Conservation Easements. The provisions of Section 704.06, Florida Statutes establish the right of the SFWMD and/or the County (the "Easement Grantee") to accept easements for the preservation of the natural habitat (such easements shall be referred to herein as the "Conservation Easements"). There are Conservation Easements established by this Declaration; and Declarant reserves unto itself and to the Association the right to grant further such easements over and upon portions of the Common Area unto the Easement Grantee pursuant to the provisions of Section 704.06, Florida Statutes. Any Conservation Easements so granted shall be subject to the requirements of Section 704.06, Florida Statutes and the Easement Grantee, and the following provisions. For the purposes of this Declaration, any portion of the Common Area encumbered by a Conservation Easement shall be referred to as the "Conservation Easement Property."

(b) Purpose. The purpose of a Conservation Easement is to assure that the Conservation Easement Property will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Property that will impair or interfere with the environmental value of the Conservation Easement Property.

(c) Prohibited Acts and Uses. Any activity on or use of the Conservation Easement Property inconsistent with the purpose of a Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(i) constructing or placing buildings, roads, signs, billboards, or other advertising, utilities or other structures on or above the ground;

(ii) dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials;

(iii) removing, mowing, trimming or destroying trees, shrubs, or other vegetation;

(iv) excavating, dredging, or removing loam, peat, gravel, soil, rock, or other material substances in such a manner as to affect the surface;

(v) using the surface area of the Conservation Easement, except for purposes that permit the land or water area to remain predominantly in its natural condition;

(vi) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

(vii) acting upon or using the Conservation Easement in a manner detrimental to such retention of land or water areas;

(viii) acting upon or using the Conservation Easement in a manner detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance;

(ix) constructing or installing utilities on, below, or above the ground without appropriate local, state, and federal permits or other authorization; and

(x) applying of herbicides, pesticides, or fertilizers.

(d) Reserved Rights. The owner of record title to the Conservation Easement Property reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Property, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Conservation Easement.

(e) Rights of Easement Grantee. To accomplish the purposes stated herein, the owner of record title to the Conservation Easement Property shall, upon the request of Declarant or the Easement Grantee, grant the following rights to the Easement Grantee:

(i) to enter upon and inspect the Conservation Easement Property in a reasonable manner and at reasonable times to determine if the Association, the Owners and Declarant or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement; and

(ii) to proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth therein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Property that may be damaged by any activity inconsistent with the Conservation Easement.

(f) Easement Grantee's Discretion. The Easement Grantee may enforce the terms of the Conservation Easement at its discretion, but if the Association, Declarant, or any Owner, breaches any term of the Conservation Easement and the Easement Grantee does not exercise its rights under the Conservation Easement, the Easement Grantee's forbearance shall not be construed to be a waiver by the Easement Grantee of such term, or of any subsequent breach of

the same, or any other term of the Conservation Easement, or of any of the Easement Grantee's rights under the Conservation Easement. No delay or omission by the Easement Grantee in the exercise of any right or remedy upon any breach by the Association, Declarant or any Owner shall impair such right or remedy or be construed as a waiver. The Easement Grantee shall not be obligated to Declarant, or to any other person or entity, to enforce the provisions of the Conservation Easement.

(g) Easement Grantee's Liability. The owner of the fee interest in the Conservation Easement Property shall retain all liability for any injury or damage to the person or property of third parties that may occur on the Conservation Easement Property. Neither Declarant, nor any Owner, nor any person or entity claiming by or through Declarant or any Owner, shall hold the Easement Grantee liable for any damage or injury to person or personal property that may occur on the Conservation Easement Property.

(h) Acts Beyond Declarant's Control. Nothing contained in the Conservation Easement shall be construed to entitle the Easement Grantee to bring any action against Declarant or the Association for any injury to or change in the Conservation Easement Property resulting from natural causes beyond Declarant's or the Association's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Property or to persons resulting from such causes.

(i) Recordation. Declarant shall record any Conservation Easement in a timely fashion and Declarant and the Owners of any Lots encumbered by the Conservation Easement shall re-record it by separate instrument at any time the Easement Grantee may require to preserve its rights. The Owners of any Lots encumbered by the Conservation Easement shall pay all recording costs and taxes necessary to record the Conservation Easement. Declarant will hold the Easement Grantee harmless from any recording costs or taxes necessary to record the Conservation Easement.

(j) Successors. The covenants, terms, conditions, and restrictions of the Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Property.

(k) Restrictive Covenants Affecting Conservation Easements. No Owner or other person shall cut, remove, destroy, or otherwise disturb any plant, shrub, tree, or other vegetation within any Conservation Easement created pursuant to this Article, nor shall any person, including, but not limited to any Owner, Declarant, and the Association, deposit dirt, fill, grass clippings, trash, rubbish, tree trimmings, building materials, or other waste within such easements without the prior written consent (as evidenced by any required permit or other official certification) of the Association, Declarant, the County, and the SFWMD.

THE CONSERVATION AREAS ARE HEREBY DEDICATED AS COMMON AREAS AND THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES

PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; OFF-ROAD VEHICLE USE; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS OR OTHER VEGETATION – WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

12.2. Natural Conditions.

(a) The Community may contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, alligators, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Lot, and every Person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither the Association, Declarant, any predecessor Declarant, nor the members, partners, affiliates, officers, directors, shareholders, attorneys, agents, or employees of any of the foregoing, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

(b) The natural areas described in subsection (a) above may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Lot shall enter upon, or permit their guests or any other person acting on their behalf to enter upon, or disturb such areas in any way without the Association's or Declarant's prior written approval.

12.3. Preserves.

As may be depicted on any Plat, certain tracts may be identified as "Preserve" or "Private Preserve", if any. Unless otherwise approved in writing by Declarant, the SFWMD, the County and any other governmental authorities having jurisdiction, the Preserve areas, if any, shall be maintained in their natural state in perpetuity. No Owner, member of an Owner's household, or any other Person acting, or purporting to act, on behalf of any Owner, or for whom any Owner shall be responsible pursuant to this Declaration, shall disturb the natural environment of the Preserve areas in any way without first obtaining the written consent of the Board properly approved by the adoption of a resolution describing in detail the exact activities to be conducted within the Preserve areas, the times and dates when such activities are authorized to occur, and the identities of the Persons who are authorized to so act, together with the written consent of Declarant and any governmental authority having jurisdiction over the proposed activity.

This restrictive covenant is intended in the broadest sense, and includes, but is not limited to, trimming, cutting, or mowing grass, shrubs, trees or other plants; placing grass clippings, landscape debris, household trash or other materials; storing materials, equipment, vehicles, boats, motor homes, trailers, or other items; erecting children's playhouses, tree houses, swings, or other permanent or temporary improvements; planting trees, shrubs, grass, or ground cover; releasing birds, snakes, reptiles, insects, or other animals; grading or excavating; cultivating or gardening; or dumping dirt, sand, rocks, gravel, or other inorganic or organic material on any part of a Preserve area. No hunting or animal trapping, carrying or discharging of firearms, overnight camping or campfires, operation of motorcycles or so-called "all-terrain vehicles," "dirt bikes," or other motorized vehicles, implements, equipment, or conveyances are permitted within the Preserve areas at any time.

Any Owner who violates the foregoing restrictive covenants shall be responsible for the cost of restoring the affected Preserve area to the satisfaction of the Association, Declarant, and any governmental authority having jurisdiction thereof, and the Association shall have the right to prohibit the offending party from further use or enjoyment of the Preserve areas after prior notice and hearing before the Board. Notwithstanding the foregoing, the Owners shall have the right, without prior notice, to enter the Preserve areas for hiking, birding, and other passive, non-destructive activities during the hours of dawn to dusk.

**BECAUSE THE PRESERVE AREAS ARE TO BE RETAINED IN THEIR NATURAL STATE, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS FOR RECREATIONAL ACTIVITIES.**

**NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY OR SUPERVISION FOR ANY PERSON USING A PRESERVE AREA, AND ALL PERSONS USING A PRESERVE AREA DO SO AT THEIR OWN RISK.**

**INSECTS, SNAKES, AND ANIMALS THAT MAY BE DANGEROUS TO HUMANS MAY INHABIT THE PRESERVE AREAS.**

**OWNERS SHOULD NOT ALLOW CHILDREN OR PETS TO ENTER THE PRESERVE AREA WITHOUT ADULT SUPERVISION.**

**NEITHER THE ASSOCIATION NOR DECLARANT NOR ANY OF THEIR AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF A PRESERVE AREA OR ANY INJURY OR DEATH OCCURRING THEREON.**

**THE ASSOCIATION SHALL HAVE THE RIGHT TO IMPOSE ADDITIONAL RULES AND REGULATIONS GOVERNING THE USE OF THE PRESERVE AREAS OR FOR ANY INJURY OR DEATH OCCURRING THEREON.**

**IF THE PRESERVE AREAS, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED OR DESTROYED BY FIRE, WINDSTORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT, NEITHER THE ASSOCIATION, NOR DECLARANT, NOR ANY OF DECLARANT'S AFFILIATES, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR OTHER VEGETATION.**

## ARTICLE XIII
## LIMITED COMMON AREAS

13.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of one or more, but less than all, Lots. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, private roads, lakes and other portions of the Common Area primarily serving a limited area. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Limited Common Expense allocated in accordance with Section 8.1(b) among the Owners in the Service Area to which the Limited Common Area is assigned.

13.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots during the Development and Sale Period.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of (a) the Board, (b) Members representing a majority of the total Class "A", Class "B" and Class "C" votes in the Association, and (c) Members entitled to cast a majority of the Class "A", Class "B" and Class "C" votes attributable to Lots to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

13.3. Use by Others.

Upon approval of a majority of Owners of Lots to which any Limited Common Area is assigned, and subject to such restrictions as such Owners may impose, the Association may permit Owners of other Lots to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Expenses attributable to such Limited Common Area.

## ARTICLE XIV
## PARTY WALLS AND OTHER SHARED STRUCTURES

14.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots that serves any two adjoining Lots shall constitute a party structure. For the purposes of this Article, any fence that serves to enclose only one Lot or which is otherwise installed at the option of the Owner of a Lot shall not be deemed a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XV.

14.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share equally in the cost of necessary or appropriate party structure repairs and maintenance; however, painting and other aesthetic modifications visible only to one side of the structure shall be the responsibility of the Lot Owner with such visibility.

If a party structure is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from other sharing owners. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## ARTICLE XV
## DISPUTE RESOLUTION

15.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, any builder and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving the Community or the Governing Documents without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to, directly or indirectly, file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 15.2.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of improvements within the Community unless otherwise provided on Contract, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; or

(iv) trespass, nuisance, property damage, or enforcement of laws, codes, or ordinances within the Community, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 15.2:

(i) any Association action to collect Assessments, sanctions or other amounts due from any Owner;

(ii) any Association action to obtain a temporary or permanent restraining order or injunction (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to enforce the provisions of the Governing Documents or maintain the status quo and preserve the Association's ability to enforce the provisions of the Governing Documents;

(iii) any action between Owners, which does not include Declarant and/or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any action in which any indispensable party is not a Bound Party; and

(v) any action as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article, unless otherwise provided in a builder's contract with Purchaser of a construction or sale of home pursuant to contract.

15.2. Mediation and Arbitration.

Subject to the requirements of the HOA Act, any and all disputes, claims or controversies between to Association and Declarant or between Declarant and any Owner or Owners shall be submitted to the American Arbitration Association (the "AAA") for mediation by one mediator under its Commercial Mediation Rules. If the matter is not resolved through

mediation, then it shall be submitted to arbitration administered by the AAA under its Commercial Arbitration Rules. Unless the parties agree otherwise, there shall be one arbitrator. The arbitrator may grant any remedy of relief that the arbitrator considers just and equitable, provided that it is within the scope of this Declaration (including any exclusions and limitations of liability therein). The decision of the arbitrator shall be final, and judgment upon the arbitration award may be entered in any court having jurisdiction thereof. The mediation and arbitration provided herein are the sole way in which the aforesaid disputes, claims or controversies shall be resolved, and the Association, Declarant and the Owners waive their right to initiate judicial proceedings with regard to the aforesaid disputes, claims or controversies, except proceedings to enforce the arbitration award, including without limitation trial by jury.

The mediation or arbitration shall be held in the county where the Property is located. The exact location of the mediation or arbitration proceeding shall be determined by the mediator or arbitrator, as the case may be. The fees and expenses of the mediation or arbitration proceeding established by the AAA (including the fees of the mediator and arbitrator) shall be shared equally by the parties. Each party shall pay its own expenses (including without limitation attorneys' fees and costs and expenses of preparation and presentation of proofs), except that the prevailing party in any arbitration proceeding shall be entitled to an award of reasonable attorneys' fees and costs.

15.3. Dispute Resolution Procedures.

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

15.4. Initiation of Litigation by Association.

After the Class "D" Control Period, the Association shall not initiate any judicial or administrative proceeding which is reasonably expected to cost $10,000.00 or more in legal fees to prosecute to completion unless first approved by the Board upon the specific recommendation of the Dispute Resolution Committee (if created as provided in the Bylaws), and a seventy-five percent (75%) vote of the Class "A", Class "B" and Class "C" votes in the Association. The Dispute Resolution Committee's recommendation must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

## ARTICLE XVI
## MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

(e) If the U.S. Department of Housing and Urban Development is insuring or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superceded.

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights.

16.2. Special FHLMC Provision.

If any portion of the Community is a condominium, then to the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Class "A", Class "B" and Class "C" Members representing at least 67% of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner of a Lot (any decision or action in accordance

with the provisions of this Declaration or any Supplemental Declaration subsequently recorded on any portion of the Community resulting in the levy of Service Area Assessments shall not be subject to this provision);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

16.3. Other Provisions for First Lien Holders.

To the extent not inconsistent with Florida law and in addition to the provisions in this Declaration:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

16.4. Amendments to Documents.

The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 17.3(a) and (b), otherwise:

(a) The consent of at least 67% of the Class "A", Class "B" and Class "C" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of the Eligible

Holders of first Mortgages on Lots to which at least 67% of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

(b) If and to the extent FHA or VA is insuring or guaranteeing any Mortgage on a Lot, the consent of at least 67% of the Class "A", Class "B" and Class "C" votes, and the consent of Declarant, during the Development and Sale Period, and the approval of Eligible Holders of first Mortgages on Lots to which more than 50% of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(i) voting;

(ii) Assessments, Assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair, and replacement of the Common Area;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Area;

(vi) responsibility for maintenance and repair of the Community;

(vii) expansion or contraction of Community or the addition, annexation, or withdrawal of property to or from the jurisdiction of the Association;

(viii) boundaries of a Lot;

(ix) leasing of Lots;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

16.5. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Florida law for any of the acts set out in this Article.

16.6. No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.7. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

16.8. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery.

16.9. HUD/VA Approval.

As long as there is a Class "D" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Lot or has granted project approval for such Mortgages: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "A"; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the Bylaws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

16.10. Rights of Declarant and Institutional Mortgagees To Pay Assessments and Receive Reimbursement. Declarant and any institutional lender(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot(s). Further, Declarant and any institutional lender shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Common Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any institutional lender paying overdue Common Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each institutional

lender who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

## ARTICLE XVII
## DISCLOSURES AND WAIVERS

17.1. No Liability For Third Party Acts.

**Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in the Community. The Association may, but is not obligated to, maintain or support certain activities within the Community which are intended to promote or enhance safety or security within the Community. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any systems or measures, including, without limitation, fire protection, burglar alarm, or other security monitoring systems, or any gate or other mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants and invitees of its Lot that the Association, the Board and its committees, Declarant and any predecessor Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.**

Declarant may, but shall not be obligated to, employ or retain, at Declarant's sole cost and expense, a person or persons to staff any entry gate(s) located at the entrance to the Community and perform such functions on behalf of Declarant as Declarant, in its sole discretion, deems appropriate, including, but not limited to, facilitating access by contractors, subcontractors, inspectors, brokers, and salespersons, and others to Lots that are under construction or for sale. Any such person employed or retained by Declarant shall under no circumstances be responsible for the security or safety of any persons or property within the Community, nor shall the Association or any Owner or occupant of the Community be authorized to direct or request favors of any such person. Neither Declarant nor the Association shall have any obligation to staff the entry gate(s).

17.2. View Impairment.

**Neither Declarant nor the Association guarantee or represent that any view over and across the Lots or any open space within the Community will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping. The Association (with respect to the Common Area) and**

**Declarant have the right to relocate, prune, thin, or add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.**

17.3. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in cable television and other Community Systems and Services (as defined in Section 11.6) will occur from time to time, neither Declarant nor any of Declarant's successors or assigns (and their Affiliates) shall in any manner be liable for, and no Community System and Service user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems and Services, regardless of whether or not such interruption is caused by reasons within the service provider's control. Declarant shall be entitled to retain any rebate, discount, or other compensation received from the provider of any Community Systems and Services in connection with the installation or operation of such system.

17.4. Construction Activities.

**All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, any Declarant Affiliate, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, shall, from time to time, conduct construction activities within the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and/or by using any portion of a Lot or the Community generally, Owners, occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Lot or any portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, any Declarant Affiliate, or predecessor Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable for any losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to any breach of this covenant; (d) that any purchase or use of any Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant or its Affiliates to sell, convey, lease, and/or allow the use of Lots and Condominium Units within the Community.**

17.5. Water Management.

**Each Owner acknowledges and agrees that some or all of the water features, if any, or wetlands in or adjacent to the Community are designed as water management areas and are not designed solely as aesthetic features. Due to fluctuations in water elevations within the immediate area, water levels will rise and fall. Each Owner further acknowledges and**

**agrees that Declarant has no control over such elevations. Therefore, each Owner agrees to release and discharge Declarant and Declarant Affiliates and any predecessor Declarant from and against any and all losses, claims, demands, damages, and expenses of whatever nature or kind, including, without limitation, Legal Fees, related to or arising out of any claim relating to such fluctuations in water elevations.** Owners shall not alter, modify, expand, or fill any water features or wetlands located within or in the vicinity of the Community without the prior written approval of Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

17.6. Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including their respective Affiliates, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, Legal Fees), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Areas and the collection of Assessments.

## ARTICLE XVIII
## CHANGES IN OWNERSHIP OF LOTS

Any Owner, other than Declarant or any Declarant Affiliate, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Notwithstanding the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including Assessment obligations, until the date upon which the Board receives such notice, after which the original Owner shall be released from the obligation to pay Assessments levied after the date such notice is received.

## ARTICLE XIX
## CHANGES IN COMMON AREA

19.1. Condemnation.

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking,

Members entitled to cast at least 75% of the total Class "A", Class "B" and Class "C" votes and Declarant, during the Development and Sale Period, shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

19.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

19.3. Transfer or Dedication of Common Area.

The Association may convey, dedicate, or otherwise transfer portions of the Common Area to the County or to any other local, state, or federal governmental or quasi-governmental entity, with the consent of at least two-thirds (2/3) of the Owners and such approval as may be required by Section 16.9; however, any dedication or transfer of Limited Common Areas to the County or to any other governmental entity shall require the consent of 67% of the Owners entitled to use such Limited Common Area.

## ARTICLE XX
## AMENDMENT OF DECLARATION

20.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until the first conveyance of a Lot to a Person other than Declarant, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter and until termination of the Class "D" Control Period, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; (iv) to satisfy the requirements of any local,

state, or federal governmental agency; or (v) for any other purpose which does not materially adversely affect title to any Lot, unless the Owner of such Lot consents to such amendment.

20.2. By the Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 75% of the Association's total Class "A", Class "B" and Class "C" votes. In addition, during the Development and Sale Period, Declarant's written consent is required for any amendment. The approval requirements set forth in Article XV also shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

20.3. Approval by South Florida Water Management District.

Notwithstanding Sections 20.1 and 20.2, any amendment to the Declaration that alters any provision relating to the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, or amendment to this Section 20.3, must have the prior approval of the SFWMD.

20.4. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "D" Member without the written consent of Declarant or the Class "D" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon the earliest of (a) actual notice; (b) recording; or (c) later effective date specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

20.5. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by reference and may be amended as provided in Article III or pursuant to Sections 20.1 and 20.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

**IN WITNESS WHEREOF,** Declarant has caused this instrument to be executed on the day and year written below.

IN THE PRESENCE OF:

Witness No. 1

Printed Name

Witness No. 2

Printed Name

**KIMBALL HILL MARBELLA ESTATES LIMITED PARTNERSHIP**, a Florida limited partnership
By: KIMBALL HILL HOMES FLORIDA, INC., a Florida corporation
Its: General Partner

By:

Its:
2907 Bay to Bay Blvd. Suite 301
Tampa, FL 33629

STATE OF FLORIDA )
)
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 13th day of February, 2006 by John Campbell, as Vice President of KIMBALL HILL MARBELLA ESTATES LIMITED PARTNERSHIP, a Florida limited partnership, as general partner of KIMBALL HILL HOMES FLORIDA, INC., a Florida corporation, on behalf of the corporation. He is [X] personally known to me or has [ ] produced driver's license no. _____ as identification.

My Commission expires: 07/17/2009

Notary Public

Printed Name

DD451480
Commission Number

Notary Public State of Florida
Jody A Long
My Commission DD451480
Expires 07/17/2009

NAP:43274:1

# EXHIBIT "A"

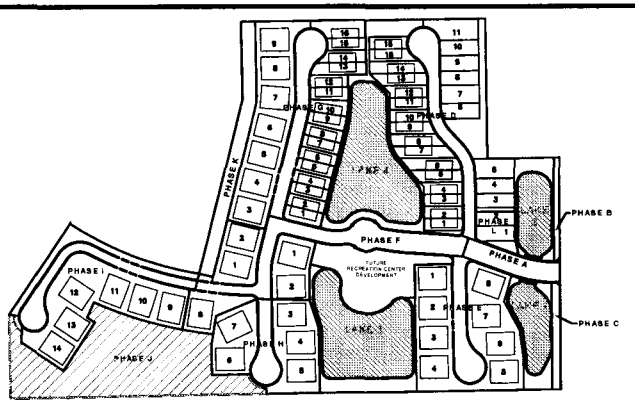
## LEGAL DESCRIPTON

**A PARCEL OF LAND LYING IN SECTION 28, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 28, THENCE RUN S.00°49'31"E., ALONG THE WEST BOUNDARY OF SAID SECTION 28, 663.02 FEET TO THE POINT OF BEGINNING; THENCE N.89°10'29"E., 296.00 FEET; THENCE S.55°57'04"E., 390.39 FEET TO A POINT ON A CURVE; THENCE SOUTHERLY, 492.92 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1240.00 FEET AND A CENTRAL ANGLE OF 22°46'34" (CHORD BEARING S.21°18'42"W., 489.68 FEET); THENCE S.75°56'50"E., 635.05 FEET; THENCE N.89°16'23"E., 273.18 FEET; THENCE S.00°43'37"E., 867.94 FEET; THENCE S.89°29'11"W., 493.95 FEET; THENCE S.00°46'43"E., 255.52 FEET; THENCE S.89°49'00"W., 823.11 FEET TO A POINT ON THE WEST BOUNDARY OF SAID SECTION 28; THENCE N.00°49'31"W., ALONG THE WEST BOUNDARY OF SAID SECTION 28, 1951.88 FEET TO THE POINT OF BEGINNING.**

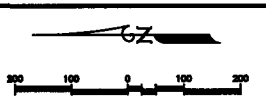
**CONTAINING 41.328 ACRES, MORE OR LESS.**

INSTR # 200600014638 8 Page Number: 83 of 152

EXHIBIT "B"




PHASING MAP




LEGEND

PROPOSED PAVEMENT
LAKE
UPLAND CONSERVATION AREA
M MODEL HOUSE
SC SALES CENTER




P:\Marabella Estates\Master Plan\Engineering\MSP.dwg, 1/27/2006 9:15:31 AM, GenaK, 1:213.953

| DATE | DESCRIPTION | BY |
|---|---|---|
| 05-05-05 | UPDATED PLAN FOR ROAD ALIGNMENT | MH |
| 05-07-04 | MISC. REVISIONS | MH |

HEIDT & ASSOCIATES, Inc.
Tampa • Fort Myers
Fort Myers Office
3800 Colonial Boulevard, #200
Fort Myers, Florida 33912
Phone: 239-482-7275
FAX: 239-482-2126
STRICKLAND T. SMITH, P.E. NO. 50662
FLORIDA PROFESSIONAL ENGINEER

MASTER SITE PLAN

MARBELLA ESTATES

KIMBALL HILL HOMES

SHEET 2 OF 20 SHEETS

# EXHIBIT "C"

## USE RESTRICTIONS

The following restrictions are covenants running with the land shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to procedures of the Declaration.

For purposes of these Use Restrictions, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Owner, and any other permitted occupants of a Home. All the Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Paragraph 42 hereof:

1. Single-Family Use. The Homes shall be for single-family use only. No commercial occupation or activity may be carried on in Terra Vista except as such occupation or activity is permitted to be carried on by Declarant under the Declaration. A family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated persons living as a single housekeeping unit.

2. Nuisance. Subject to allowances for reasonable construction activities, no obnoxious or offensive activity shall be carried on, in or about the Lots or in or about any Improvements, or on any portion of Terra Vista, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Lots which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Lots or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements or Homes. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Architectural Review Board ("ARB").

3. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Lot or the Home thereon nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. The Property will be subject to, and the Association and each Owner will conform to and observe, all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County, and any and all other governmental and public authorities and boards or officers of the same relating to such Property and any Improvements thereon or the use thereof. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any Lot or Home shall be corrected by, and at the sole expense of the Owner of such Lot.

4. Leases. No portion of a Home (other than an entire Home) may be rented and the lease or sale of any Home on a time-share basis is prohibited. All leases shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of the Declaration, the Articles, the Bylaws, these Use Restrictions, or of any other agreement, document or instrument governing the Lots. No Home shall be leased for a term of less than six (6) months and no Home may be leased more than two (2) times in any calendar year. A copy of the lease must be provided to the Association. The Owner of a leased Home shall be jointly and severally liable with his or her tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

In the event that a Owner is delinquent in the payment of his or her Assessments, the Association has the right to require such Owner's tenant, if any, by written notice to such tenant, to pay directly to the Association the rental fees ("Rent") due for such Lot. The Association shall then deduct the delinquent Assessments for the Lot from the Rent and forward the balance of the Rent to the Owner. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all Owners hereby appoint the Association its agent for such purpose.

5. Removal of Sod and Shrubbery; Alteration of Drainage, Etc. Except for Declarant's acts and activities with regard to the development of Terra Vista, no Improvements (including, but not limited to, driveways, pools, and landscaping) and no sod, top soil, muck, trees or shrubbery shall be removed from Terra Vista and no change in the condition of the soil or the level of the land of any of the Terra Vista area shall be made which would result in any permanent change in the flow or drainage of storm water within Terra Vista without prior written consent of the Association and the ARB.

6. Addition of Landscaping; Alteration of Drainage, Etc. Home Owners are prohibited from installing additional landscaping to their Lots.

7. Antenna and Aerial. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Any permissible dishes or antennae shall be

installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible dishes or antennae may, but is not obligated, submit plans and specifications for same to the Association to ensure compliance with the Association's rules governing the types of permissible antennae and restrictions relating to safety, location and maintenance of antennae. This Section 7 shall not apply to Declarant.

8. Garbage and Trash. Each Owner shall regularly pick up all garbage, trash, refuse or rubbish around his or her Lot, and no Owner or resident shall place or dump any garbage, trash, refuse or other materials on any other portions of Terra Vista, including any Common Area or any property contiguous to Terra Vista. Garbage, trash, refuse or rubbish that is required to be placed at the front of a Lot in order to be collected may be placed and kept at the curb after 5:00 p.m. on the day before the scheduled day of collection, but not sooner, and any trash facilities must be removed on the collection day after the pick-up. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters and other trash collection facilities shall be approved by the Association. All containers, dumpsters or garbage facilities shall be stored inside the garage and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted. Owners are prohibited from dumping garbage and other refuse in the construction dumpsters.

9. Radio Transmission. No ham radios or radio transmission equipment shall be operated or permitted to be operated within Terra Vista without the prior written consent of the Association.

10. Signs. Until the Turnover Date (as defined in the Declaration), an Owner, other than Declarant, shall not display any sign, advertisement or notice of any type in Terra Vista, including in or upon his or her vehicle(s), except as may be previously and specifically approved in writing by Declarant. Following the Turnover Date, an Owner, other than Declarant, shall not display any sign, advertisement or notice of any type in Terra Vista, including in or upon his or her vehicle(s), except as may be previously and specifically approved in writing by the ARB, which may limit the size and placement of signs in accordance with Architectural Guidelines. An Owner may display a security sign, provided by a contractor for security services, as permitted by the HOA Act.

11. Animals and Pets. An Owner is permitted to keep up to two (2) common household pets (i.e., dogs, cats, birds and fish) in any Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock or poultry of any kind shall be kept, raised, bred or maintained on any portion of Terra Vista. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Association. However, under no circumstances will any dog whose breed is noted for its viciousness or ill-temper, in particular, the "Pit Bull" (as hereinafter defined), Rottweiler, Mastiff, Presa Canario, or any crossbreeds of such breeds, be permitted on any portion of the Property. A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by

the American Kennel Club or United Kennel Club for any of the above breeds. No exotic pet or any animal of any kind which has venom or poisonous defense or capture mechanisms, or if let loose would constitute vermin, shall be allowed on any portion of the Property. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. Other animals will be permitted if such animals serve as physical aides to handicapped persons and such animals have been trained or provided by an agency or service qualified to provide such animals. The guide or assistance animal will be kept in direct custody of the assisted person or the qualified person training the animal at all times when on the Property and the animal shall wear and be controlled by a harness or leash and collar. Pets may not be kept, bred or maintained for any commercial purpose. Any pet must be temporarily caged, carried or kept on a leash when outside of a Home. No pet shall be kept tied outside a Home or on any lanai unless someone is present in the Home. No dogs will be curbed in any landscaped area or close to any walk, but only in special areas designated by the Association, if any, provided this statement shall not require the Association to designate any such area. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet. The Owner shall compensate any person hurt or bitten by his or her pet and shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal within the Property. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner thereof must cause the problem to be corrected; or, if it is not corrected, the Owner, upon written notice by the Association, will be required to permanently remove the animal from the Property. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets.

12. Clotheslines. No clothesline or clothes drying which is visible from outside a Lot shall be undertaken or permitted on any portion of Terra Vista.

13. Temporary Buildings, Etc. No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed within Terra Vista except in connection with construction, development, leasing or sales activities permitted under the Declaration or with the prior written consent of the Association. No temporary structure may be used as a residence.

14. Lakes. Owners shall not be permitted to operate any watercraft upon lakes located within Terra Vista. No docks shall be constructed within or adjacent to a lake. Owners are prohibited from using the lakes for irrigation purposes. No swimming is permitted in the lakes.

15. Garages. No garage shall be erected which is separate from the Home. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into other uses such as living area, storage area, workshop, recreation room or business uses. No individual air conditioning units which are visible from outside the Home shall be permitted in a garage. All garage doors shall remain closed when not in use for ingress and egress. Garages are intended for the primary use of parking and storage of motor vehicles. Home Owners and their lessees and the family members, guests and invitees of such Home Owners and lessees, may not

store personal property in a garage and then park motor vehicles in the unassigned parking areas of Terra Vista.

16. Fences. No fence of any type, including invisible fencing, is permitted to be erected on a Lot, except as installed by Declarant.

17. Drainage or Utility Easements. No structures, trees or shrubs shall be placed on any drainage or utility easements, except by Declarant, without the prior written consent of the Association.

18. Additions and Alterations. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his or her Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, without the prior written approval of the ARB as set forth in the Declaration, which approval may be withheld for purely aesthetic reasons.

19. Increase in Insurance Rates. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

20. Mining, Drilling, or Excavation. There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise ("Mining Activity") undertaken on the Property. Activities of Declarant, or the Association in dredging, excavating or maintaining drainage or other facilities or easements shall not be deemed Mining Activities nor will the installation of wells or pumps for sprinkler systems as set forth in subparagraph 31 hereinbelow in compliance with applicable governmental requirements be deemed a Mining Activity.

21. Maintenance of Property. The Property and Improvements thereon shall be kept in a good, safe, clean, neat and attractive condition, and all Improvements thereon shall be maintained in a finished, painted and attractive condition. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any portion of the Property, no refuse or unsightly objects shall be allowed to be placed or permitted to remain anywhere thereon. Excepted from the foregoing shall be all construction debris, refuse, unsightly objects and waste upon any portion of the Property owned by Declarant or its nominee through the period of construction of Homes or other Improvements upon the Property. During construction of a Home or other Improvement upon any portion of the Property, the Owner thereof shall be required to maintain said property in a clean condition and, except for the initial construction of Homes by Declarant or its nominee, to provide receptacles for the disposal of trash and rubbish as well as other construction debris. All such construction debris, refuse, unsightly objects and waste on a portion of the Property must be removed within thirty (30) days after the completion of construction of the Improvement on such portion of the Property, as evidenced by issuance of a certificate of occupancy, if applicable.

Upon the failure of a Owner(s) to (i) maintain the portion of the Property and any Improvement thereon which such party is responsible to maintain in accordance with the requirements of the Declaration and to the satisfaction of the Association and (ii) correct such

deficiencies within fifteen (15) days of written notice by the Association, unless a longer period is authorized by the Association, the Association may enter upon such portion of the Property and make such corrections as may be necessary. The cost of such corrections shall be paid by the Owner who is required to perform such maintenance. If any Owner(s) fails to make payment within fifteen (15) days after requested to do so by the Association, then the payment requested shall be collected as an Individual Expense Assessment from such Owner and the Association shall be entitled to lien rights upon such Lot requiring such maintenance in accordance with the provisions of the Declaration.

22. Subdivision and Partition. No Lot on the Property shall be subdivided.

23. Casualty Destruction to Improvements. In the event a Home(s) and/or other Improvement(s) upon a Lot(s) is damaged or destroyed by casualty, hazard or other loss then, within a reasonable period of time after such incident, the Owner(s) thereof shall either commence to rebuild or repair the damaged Home(s) or Improvement(s) upon obtaining ARB approval, if required hereunder, diligently continuing such rebuilding or repairing activities to completion or, upon a determination by the Owner(s) thereof that the Home(s) or Improvement(s) will not be repaired or replaced, promptly clear the damaged Home(s) or Improvement(s) and grass over and landscape such Lot(s) as applicable, in a sightly manner consistent with Declarant's plan for beautification of Terra Vista. Any damaged or destroyed Home(s) and other Improvements shall only be repaired or replaced with Home(s) and other Improvements of a similar size and type as those damaged or destroyed and without substantial alteration from what existed prior to the damage or destruction, unless the prior written approval of the ARB is obtained.

24. Common Area. Nothing shall be stored and/or constructed within or removed from any Common Area other than by Declarant, except with the prior written approval of the Association.

25. Lake Maintenance Easement. Any Improvement on a Lot which is placed within a Lake Maintenance Easement, if any, shall be removed, if required by Declarant or by the Association. The cost of such removal shall be paid by such Owner(s) as an Individual Expense Assessment.

26. Boats, Recreational Vehicles and Commercial Vehicles. No trailer, boat, pickup truck, camper, or other vehicle, other than four-wheel passenger automobiles and other four-wheel passenger vehicles determined acceptable by the ARB, shall be permitted on any portion of Terra Vista unless fully enclosed in the garage, except for trucks furnishing goods and services during the daylight hours and except as the Association may designate for such use by appropriate rules and regulations. Motorcycles are permitted on the Property, however, they are restricted to being parked in the garage only. In addition, the Board shall adopt rules and regulations from time to time regulating and limiting the size, weight, type and place and manner of operation of vehicles in Terra Vista.

27. Vehicular Parking. No person, firm or corporation shall park or cause to be parked any vehicle on any portion of the Property other than in driveways or other specifically

designated parking areas, if any, located on the Property. The foregoing, however, shall not: (i) apply to Owners who have construction in progress on their particular Lot; (ii) prohibit routine deliveries by tradesmen, or the use of trucks or commercial vans in making service calls and short term visits; (iii) apply to a situation where a vehicle becomes disabled and, as a result of an emergency, is required to be parked within Terra Vista until it can be towed away; and (iv) apply to vehicles used in connection with construction, development or sales activities permitted under the Declaration.

No person, firm or corporation shall maintain or repair any vehicle (including, but not limited to, four-wheel passenger automobiles) upon any portion of the Property except within a closed garage and totally isolated from public view; provided, however, Declarant its successors, nominees or assigns and the Association may make, or cause to be made, such repairs if necessary in regard to vehicles used in connection with construction, sales or management at Terra Vista. Vehicles which are missing one or more wheels, have one or more deflated tires, are not in an operating condition, or do not have current valid license plates shall not remain upon any portion of the Property, except within a wholly enclosed garage fully shielded from view, for more than two (2) consecutive days. No Owner or his or her family members, guests, invitees or lessees or their family members, guests, or invitees shall be permitted to keep any vehicle on the Property which is deemed to be a nuisance by the Association or Declarant.

28. Window Decor. No newspaper, aluminum foil, sheets or other temporary window treatments shall be permitted, except for periods not exceeding two (2) weeks after an Owner or a lessee first moves into a Home or when permanent window treatments are being cleaned or repaired. Window tinting is permitted provided that the type and method of tinting is first approved by the Association.

29. Hurricane Shutters. No hurricane shutters may be installed without the prior written consent of the Association, which consent may be unreasonably withheld. The Board will adopt hurricane shutter specifications ("Hurricane Standards") in accordance with Florida Statutes. The Hurricane Standards will be made available to a Home Owner within five (5) business days after the Board's receipt of a written request for such Hurricane Standards. If the installation of hurricane shutters is made which does not conform with the Hurricane Standards adopted by the Association, then the hurricane shutters will be made to conform by the Association at the Owner's expense or they shall be removed.

Approved hurricane shutters shall not be installed before the issuance of a hurricane watch by the National Hurricane Center encompassing the Terra Vista location, and shall be removed no later than five (5) days after the cessation of a hurricane watch or warning for same ("Hurricane Shutter Time Period").

Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Lot prior to such Owner's departure by (a) removing all furniture, potted plants and other movable objects from his or her porch, balcony or patio, if any; (b) designating a responsible firm or individual satisfactory to the Association to install and remove hurricane shutters in accordance with the Hurricane Standards and the Hurricane Shutter Time Period requirements; and (c) designating a responsible firm or individual satisfactory to the Association

to care for the Home should the Home suffer hurricane damage. Such firm or individual shall contact the Association for clearance to install or remove hurricane shutters pursuant to the Declaration.

30. Landscaping, Lawn Décor, and Improvements. No Improvements of any kind including, without limitation, any building, shed, play structure, wall, topographical feature, mailbox, landscaping, lawn sculpture, fence, swimming pool, tennis court, basketball hoops, swing sets, athletic/play equipment, or screened enclosure shall be erected, placed or maintained, and no addition, alteration, modification or change to any such Improvement shall be made without the prior written approval of the Association (as hereinafter defined), including, but not limited to, painting the Home in a color other than the color originally placed by Declarant on the painted surface.

31. Basketball Backboards. No garage, roof mounted, or in-ground mounted basketball backboards are permitted. No portable basketball backboards may be kept outside of a Home overnight.

32. Water Supply. No individual water supply system for drinking purposes or household use shall be permitted on any Lot, including for irrigation or sprinkler purposes.

33. Sewage Disposal. No individual sewage disposal system shall be permitted on the Property.

34. Lakefront Lots. No boat house, dock, building, landing, mooring pile, pier or ramps for boats or aircraft shall be erected on or adjoining a lakefront Lot; (b) no lakefront Lot shall be increased in size by filling in the water on which it abuts; (c) no boat canal or other waterways shall be dug or excavated into a lakefront Lot; and (d) no slope of abutting lakefronts shall be altered in any manner whatsoever.

35. Garage Sales. No garage sales shall be permitted on any Lot or any other area in Terra Vista unless approved in writing by the Board.

36. Motorized Vehicles. All powered vehicles capable of exceeding 5 miles per hour are prohibited from use on the Terra Vista property unless they are licensed, registered, and insured. Specifically, any motorcycle, moped, or motorized scooter used in Terra Vista may only be driven by a licensed driver, and must be registered and insured in accordance with Florida law. Specifically exempted from this regulation are electric personal assistive mobility devices as defined under Florida Statute, Section 316.003(83); and any other bona-fide "assistive technology devices" as defined in Florida Statute, Section 427.802(1); and any special mobile equipment as defined under Florida Statute, Section 316.003(48) provided that such equipment may not be operated in a manner that creates a traffic hazard, or which poses a threat of harm to the user of such equipment.

37. Air Conditioning Units. No wall mounted air conditioning units are permitted in Terra Vista.

38. Screened Enclosures. Screened enclosures are permitted on the single family Lots if such Lots have a swimming pool constructed thereon, and such screened enclosures must have either a white or bronze caging. Under no circumstances may a Home Owner permanently enclose his or her patio, lanai or balcony for use as a solarium, sunroom or Florida room.

39. Grilling/Barbecues. Grilling or barbecuing shall be permitted on the single family Lots and Villa Units. When grills are not in use they must be stored in the garage or in a covered area screened from view from other areas of Terra Vista.

40. Feeding of Birds and other Animals. Owners are prohibited from feeding birds and other wild animals that may be within Terra Vista.

41. Compliance with Governing Documents. Each Owner and their family members, guests, invitees, and lessees and their family members, guests and invitees shall be bound by and abide by the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Terra Vista. Such Owner shall be liable to the Association and shall pay the cost of any maintenance, repair or replacement of any real or personal property located on the Common Area rendered necessary by his or her act, neglect or carelessness, or by that of any other of the foregoing parties as an Individual Expense Assessment.

42. No Implied Waiver. The failure of the Association or Declarant to object to a Owner's or other party's failure to comply with the covenants or restrictions contained herein or any other Governing Document (including the rules now or hereafter promulgated) shall in no event be deemed a waiver by Declarant, the Association, or of any other party having an interest in the Property of its right to object to same and to seek compliance in accordance with the provisions of the Governing Documents.

43. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of these Use Restrictions shall not apply to Declarant as an Owner.

44. Board's Rule-Making Power. The foregoing Use Restrictions shall not be deemed to be all inclusive nor restrict the right of the Association to adopt such reasonable rules and regulations governing the use of Terra Vista as the Board may determine from time to time, provided that such rules and regulations: (i) are not in conflict with the provisions hereof; (ii) apply equally to all lawful residents of Terra Vista without discriminating on the basis of whether a Home is occupied by a Owner or his or her lessee; and (iii) for so long as Declarant holds any Homes within Terra Vista for sale in the ordinary course of its business, have the prior written approval of Declarant. Declarant has the right to approve any rule or modification thereof.

EXHIBIT "D"

# State of Florida

## Department of State

I certify from the records of this office that TERRA VISTA COMMUNITY ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on August 24, 2005.

The document number of this corporation is N05000008760.

I further certify that said corporation has paid all fees due this office through December 31, 2005, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 805A00053938-082505-N05000008760-1/1, noted below.

Authentication Code: 805A00053938-082505-N05000008760-1/1

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-fifth day of August, 2005

Glenda E. Hood

Glenda E. Hood
Secretary of State

# State of Florida

## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of TERRA VISTA COMMUNITY ASSOCIATION, INC., a Florida corporation, filed on August 24, 2005, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H05000203135. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N05000008760.

Authentication Code: 805A00053938-082505-N05000008760-1/1

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-fifth day of August, 2005

Glenda E. Hood

Glenda E. Hood
Secretary of State

FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

August 25, 2005

TERRA VISTA COMMUNITY ASSOCIATION, INC.
2907 BAY TO BAY BLVD, SUITE 301
TAMPA, FL 33629

The Articles of Incorporation for TERRA VISTA COMMUNITY ASSOCIATION, INC. were filed on August 24, 2005, and assigned document number N05000008760. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H05000203135.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Bruce W Kitchens
Document Specialist
New Filings Section
Division of Corporations Letter Number: 805A00053938

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# ARTICLES OF INCORPORATION
# OF
# TERRA VISTA COMMUNITY ASSOCIATION, INC.
# (A Florida Corporation Not For Profit)

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

## ARTICLE I
## DEFINITIONS

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "Articles" means these Articles of Incorporation and any amendments hereto.

2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Regular Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.

3. "Association" means Terra Vista Community Association, Inc., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

4. "Board" means the Board of Directors of the Association.

5. "Bylaws" means the Bylaws of the Association and any amendments thereto.

6. "Common Area" means the property more particularly described in Article IX of the Declaration.

7. "County" means Lee County, Florida.

8. "Declarant" means Kimball Hill Marbella Estates Limited Partnership, a Florida limited partnership, or any successor or assign that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a "predecessor Declarant" and, unless otherwise agreed in writing, shall be entitled to the rights of a predecessor Declarant established in the Declaration. Whether or not specifically stated, a

predecessor Declarant shall be afforded the same protection with respect to matters arising during its tenure as Declarant as the predecessor Declarant would have if it were still Declarant.

9. "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Terra Vista, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.

10. "Director" means a member of the Board.

11. "Governing Documents" means in the aggregate the Declaration, these Articles and the Bylaws and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) thereto.

12. "HOA Act": means and refers to the homeowners' association act, Chapter 720, Florida Statutes, as amended through the date of recording the Declaration amongst the Public Records of the County.

13. "Home" shall mean one of the eleven (11) single family residences (may also be referred to herein as "Single-Family Home"), one of the thirty-two (32) attached villa residences (may also be referred to herein as "Villa Unit"), or one of the one hundred twenty-four (124) multi-family residences (may also be referred to herein as "Condominium Unit"), each of which is designed and intended for use and occupancy as a single-family residence.

14. "Member" means a member of the Association.

15. "Operating Expenses" means the expenses for which Owners are liable to the Association as described in the Declaration and any other Governing Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing, but not reconstructing, replacing or improving, the Common Area and improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Governing Documents.

16. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Home within Terra Vista, and includes Declarant for as long as Declarant owns fee simple title to a Home, but excluding therefrom those having such interest as security for the performance of an obligation.

17. "Terra Vista" means that planned residential development located in the County, which encompasses the Property (as defined in the Declaration) and is intended to comprise eleven (11) Single Family Homes, thirty-two (32) Villa Units, and one hundred twenty-four (124) Condominium Units in thirty-one (31) buildings and the Common Area. Terra Vista will consist of the land set forth in Exhibit "A" of the Declaration.

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Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II
NAME

The name of this corporation shall be TERRA VISTA COMMUNITY ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 2907 Bay to Bay Boulevard, Suite 301, Tampa, Florida 33629.

ARTICLE III
PURPOSES

The purpose for which the Association is organized is to take title to, operate, administer, manage, lease and maintain the Common Area in accordance with the terms of, and purposes set forth in, the Governing Documents and to carry out the covenants and enforce the provisions of the Governing Documents.

ARTICLE IV
POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Governing Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Governing Documents.

2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Common Area.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

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4. To own, maintain, repair, replace, operate and convey the Common Area in accordance with the Governing Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the Governing Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Common Area and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Common Area and to delegate to such professional manager certain powers and duties of the Association.

7. To enter into the Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain Terra Vista in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at Terra Vista.

9. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Common Area in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

10. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

(c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Common Area or to Member(s) (the

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imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or

(e) filing a compulsory counterclaim.

11. To operate, maintain, and manage the Surface Water and Storm Water Management System in a manner consistent with the requirements of South Florida Water Management District Permit and applicable rules; to assist in the enforcement of the Declaration's provisions relating to the Surface Water and Storm Water Management System; and to levy and collect adequate assessments against Owners for the cost of maintenance and operation of the Surface Water and Storm Water Management System.

## ARTICLE V
## MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Homes until each such Home is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Homes owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Home as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Home is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Home shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have four (4) classes of voting membership:

1. "Class A Members" shall be the Single Family Home Owners, with the exception of Declarant while Declarant is a Class D Member, each of whom shall be entitled to one (1) vote for each Single Family Home owned.

2. "Class B Members" shall be the Villa Unit Owners, with the exception of Declarant while Declarant is a Class D Member, each of whom shall be entitled to one (1) vote for each Single Family Home owned.

3. "Class C Members" shall be the Condominium Unit Owners, with the exception of Declarant while Declarant is a Class D Member, each of whom shall be entitled to one (1) vote for each Condominium Unit owned.

4. "Class D Members" shall be Declarant, who shall be entitled to three times the total number of votes of the Class A Members, Class B Members and Class C Members plus one. Class D membership shall cease and be converted to Class A, Class B and Class C membership upon the earlier to occur of the following events ("Turnover Date"):

(i) Three (3) months after the conveyance of ninety percent (90%) of the Homes by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County; or

(ii) At such time as Declarant shall designate in writing to the Association.

On the Turnover Date, Class A Members, Class B Members and Class C Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Homes, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Governing Documents.

F. No Member may assign, hypothecate or transfer in any manner his or her membership in the Association except as an appurtenance to his or her Home.

G. Any Member who conveys or loses title to a Home by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Home and shall lose all rights and privileges of a Member resulting from ownership of such Home.

H. There shall be only one (1) vote for each Home, except for the Class D Member as set forth herein. If there is more than one Member with respect to a Home as a result of the fee interest in such Home being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Home owned by more than one natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Home, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Member"), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed

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with the Secretary of the Association, the vote of such Home shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Home is owned by a husband and wife they may, but shall not be required to, designate a Voting Member. In the event a certificate designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Home owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Home vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Home vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

## ARTICLE VI
## TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

In the event of the Association's termination, dissolution, or final liquidation, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which complies with Section 40C-42.027,

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F.A.C. and is approved by the South Florida Water Management District ("SFWMD") prior to such termination, dissolution, or liquidation.

ARTICLE VII
INCORPORATOR

The name and address of the Incorporator of these Articles are: Darlene Thibodeau, and such incorporator's address is 2907 Bay to Bay Boulevard, Suite 301, Tampa, Florida 33629.

ARTICLE VIII
OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

| | | |
|---|---|---|
| President | - | Jim Moyle |
| Vice President | - | John Campbell |
| Secretary/Treasurer | - | Janet Thinger |

ARTICLE X
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be seven (7). Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. There shall be only one (1) vote for each Director.

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B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

| NAMES | ADDRESSES |
|---|---|
| Jim Moyle | 2907 Bay to Bay Boulevard, Suite 301<br>Tampa, FL 33629 |
| John Campbell | 2907 Bay to Bay Boulevard, Suite 301<br>Tampa, FL 33629 |
| Janet Thinger | 2907 Bay to Bay Boulevard, Suite 301<br>Tampa, FL 33629 |

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Declarant presently intends that Terra Vista, when ultimately developed, will contain one hundred sixty-seven (167) Homes.

D. Upon the Turnover Date, the Members (including Declarant) shall be entitled to elect all the Directors. The election shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting. At the Initial Election Meeting, the Class A Members are entitled to elect one (1) Director, the Class B Members are entitled to elect two (2) Directors, and the Class C Members are entitled to elect four (4) Directors, for a total number of seven (7) Directors.

E. The Board shall continue to be so designated and elected, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

F. A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote or the agreement in writing of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

G. The Initial Election Meeting shall be called by the Association, through the Board, within sixty (60) days after the Members other than Declarant are entitled to elect a majority of Directors as provided in Paragraph D hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days' notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Members.

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H. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or the Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or the Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

## ARTICLE XI
## INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he/she becomes involved by reason of his or her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he or she is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

## ARTICLE XII
## BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

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ARTICLE XIII
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by the incorporator of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the total voting interests present at such meeting.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

F. Notwithstanding the foregoing provisions of this Article XIII, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X hereof, nor shall any amendment be adopted or become effective without the prior written consent of Declarant.

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G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 1200 South Pine Island Road, Plantation, Florida 33324, and the initial registered agent of the Association at that address shall be CT Corporation System.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature, this 18th day of August, 2005.

Darlene Thibodeau
DARLENE THIBODEAU, Incorporator

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

Lauren Greco
Lauren Greco
Assistant Secretary
, Registered Agent

Dated: 8/19/2005

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**EXHIBIT "E"**

# BYLAWS
# OF
# TERRA VISTA COMMUNITY ASSOCIATION, INC.

Section 1. Identification of Association

These are the Bylaws of Terra Vista Community Association, Inc. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 2907 Bay to Bay Boulevard, Suite 301, Tampa, Florida 33629, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions and Restrictions for Terra Vista ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at any place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his or her last known address as it appears on the books of the Association and shall be mailed to the said address not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Governing Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast thirty percent (30%) of the total number of votes of the class. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Governing Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Voting for Directors shall be by Class of Members so that only Members of each Class may elect Directors for such Class. Members may not vote for Directors by Proxy, but may vote by absentee ballot. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the "Chairman" (as hereinafter defined in Paragraph 7.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by absentee ballot. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes of each Class represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his or her successor is duly elected and qualified or until he/she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, telephone or telegraph at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7 Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. Meetings of the Board shall be open to all Members on such terms as the Board may determine. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself/herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he/she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.13. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a late charge of Twenty-Five Dollars ($25) by the Association for such late Assessment. Owners shall be responsible to pay all legal fees (including, but not limited to, attorney and paralegal fees and court costs) incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessments and foreclose the Association's lien has been commenced. The Board has authorized the following initial schedule of fees for such circumstances:

(a) One Hundred Fifty Dollars ($150) for a Claim of Lien plus recording costs and sending of Notice of Intention to Foreclose;

(b) One Hundred Fifty Dollars ($150) for a Satisfaction of Lien plus recording costs; and

(c) Any further action would require an hourly computation of attorney and/or paralegal time spent pursuing collection of such unpaid Assessments.

Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He/She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he/she may, in his or her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by

Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he/she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Terra Vista.

Section 8. Resignations

Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Homes owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Home within Terra Vista which shall designate the name and address of the Owner thereof, the amount of Regular Assessments and all other Assessments, if any, charged to the Home, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Regular Assessment applicable to his or her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Regular Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his or her last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made monthly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

9.4. Regular Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Regular Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The

report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his or her last known address shown on the records of the Association.

Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of Terra Vista; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Governing Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Association Property, same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership. The Association shall maintain such information. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2. After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by

written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Home; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

Section 14. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

Section 15. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

TERRA VISTA COMMUNITY ASSOCIATION, INC.,
a Florida not-for-profit corporation

By: _____
JOHN CAMPBELL, President

Attest: _____
RON CZARNIK, Secretary

(SEAL)

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE
STANDARD GENERAL PERMIT NO. 36-04534-P
DATE ISSUED: April 7, 2003

EXHIBIT
11 F 11
ALL-STATE LEGAL®

Form #0941
08/95

**PERMITTEE:** MARBELLA ESTATES LIMITED
4340 WEST HILLSBOROUGH AVE
SUITE 212
TAMPA, FL 33614

**PROJECT DESCRIPTION:** Construction and operation of a surface water management system serving 41.32 acres of a residential development known as Marbella Estates with discharge to West Broadway roadside ditch.

**PROJECT LOCATION:** LEE COUNTY, SEC 28 TWP 46S RGE 25E

**PERMIT DURATION:** See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 021018-7, dated October 18, 2002. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40 , Florida Administrative Code (F.A.C.).

Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 5 ),
3. the attached 14 Special Conditions (See Pages : 5 - 5 of 5 ) and
4. the attached 6 Exhibit(s).

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 7th day of April, 2003, in accordance with Section 120.60(3), Florida Statutes.

BY: Carla N. Palmer
Carla N. Palmer, P.E.
Director
Lower West Coast Service Center

Certified mail number 7002 0860 0002 1605 0326

## NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1999), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

**Petition for Administrative Proceedings**

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by

any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or

publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;

(2) a statement of the preliminary agency action;

(3) an explanation of how the person's substantial interests will be affected by the agency determination; and

(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, telephone number and any facsimile number of the petitioner;

(c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);

(d) the applicable rule or portion of the rule;

(e) the citation to the statue the rule is implementing;

(f) the type of action requested;

(g) the specific facts that demonstrate a substantial hardship or violation of principals of fairness that would justify a waiver or variance for the petitioner;

(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) a statement of whether the variance or waiver is permanent or temporary, If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and

b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

**28-106.201 INITIATION OF PROCEEDINGS**
**(INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

**28-106.301 INITIATION OF PROCEEDINGS**
**(NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(e) A demand for relief.

**28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL**

(3) Requests for hearing filed in accordance with this rule shall include:

(a) The name and address of the party making the request, for purposes of service;

(b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and

(c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

(a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**28-107.005 EMERGENCY ACTION**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) the 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

**40E-1.611 EMERGENCY ACTION**

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

## GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373. F.S.

2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.

5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.

6. Within 30 days after completion of construction of the permitted activity, the permitee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied Environmental Resource Permit Construction Completion/Certification Form Number 0881. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings is discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "As-built" or "Record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.

7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the

## GENERAL CONDITIONS

approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.

9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..

12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(4), F.A.C., also known as the "No Notice" Rule.

14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.

16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and

## GENERAL CONDITIONS

40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.

19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

## SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on April 7, 2008.

2. Operation of the surface water management system shall be the responsibility of MARBELLA ESTATES HOMEOWNERS ASSOCIATION, INC.. The permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association concurrent with the engineering certification of construction completion.

3. Discharge Facilities:

   1-0.25'W x 1.17'H rectangular orifice with invert at elevation 11.5' NGVD.
   1-0.25'W x 1.67'H rectangular weir with invert at elevation 12.1' NGVD.
   91 LF of 24" RCP.

   Receiving body: WEst Broadway roadside ditch.

   Control elevation: 11.5' NGVD.

4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.

5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.

6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.

7. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.

8. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.

9. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.

10. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.

11. Minimum building floor elevation: 14.6' NGVD.

12. Minimum road crown elevation: 13.03' NGVD.

13. Minimum parking lot elevation: 13.03' NGVD.

14. Drainage plans and detail sheets by Vanessa Daylor # 3-5 of 5, signed and sealed on February 28, 2003 by Vanessa A. Richter, P.E., and sheet 1 of 1 received on March 24, 2003 have been included in this permit by reference (please see permit file).

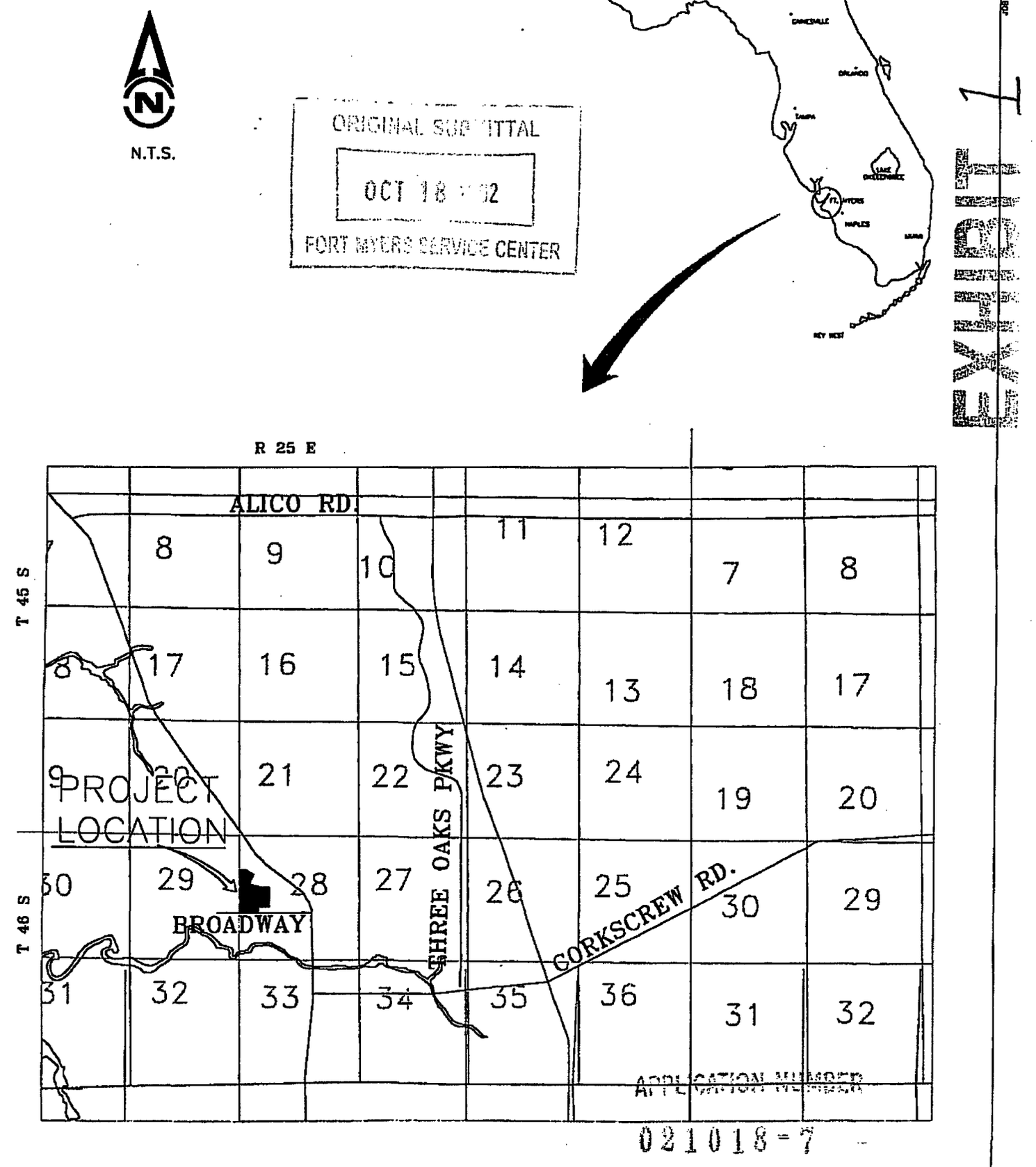



FIGURE 1. PROJECT LOCATION MAP
MARBELLA ESTATES

*PASSARELLA and ASSOCIATES, INC.*
*Consulting Ecologists*
DRAWN BY: C.C. DATE: 5/13/02

**Last Date For Agency Action:** 03-MAY-2003

## GENERAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

**Project Name:** Marbella Estates

**Permit No.:** 36-04534-P

**Application No.:** 021018-7

**Application Type:** Environmental Resource (New General Permit)

**Location:** Lee County, S28/T46S/R25E

**Permittee :** Marbella Estates Limited

**Operating Entity :** Marbella Estates Homeowners Association, Inc.

**Project Area:** 41.32 acres

**Project Land Use:** Residential

**Drainage Basin:** ESTERO BAY **Sub Basin:** HALFWAY CREEK

**Receiving Body:** Existing drainage ditch **Class:** OFW

**Special Drainage District:** NA

**Conservation Easement To District :** No

**Sovereign Submerged Lands:** No

**PROJECT PURPOSE:**

This application is a request for an Environmental Resource Permit to authorize construction and operation of a surface water management system serving 41.32 acres of a residential development known as Marbella Estates with discharge to West Broadway roadside ditch. Staff recommends approval with conditions.



EXHIBIT 2

## PROJECT EVALUATION:

### PROJECT SITE DESCRIPTION:

The site is located 1/4 mile west of US 41 on the north side of West Broadway in Section 28, Township 28 South, Range 25 East in Lee County (Exhibit 1). The existing land use of the site is currently undeveloped, forested land and is bordered to the west and to the east by residential development; to the south by West Broadway; and to the north by undeveloped, forested land.

There are no permitted surface water management facilities within the project area. There are no wetlands or other surface waters located within or affected by the proposed project.

The project site is located within an Estero Bay Tributary, Halfway Creek Watershed, which corresponds to Outstanding Florida Waters. The allowable discharge rate is 60 CSM or 0.09 cfs/acre.

### PROPOSED PROJECT:

The applicant proposes the construction of a mix of residential single and multi-family dwellings, an entrance road from West Broadway, a clubhouse, associated parking and surface water management facilities.

The proposed surface water management system consists of four wet detention lakes, two dry detention ponds, catch basins and culverts. The dry detention system provides the required one-half inch of dry pretreatment for the clubhouse area. The wet detention system provides the required 5.17 ac-ft of water quality and quantity storage for the 25 year/3 day storm event serving the entire development.

Stormwater runoff from the parking lot serving the clubhouse area is directed into two dry detention ponds prior to discharge into Lake #3 through control structures CS 8 and CS 9 via 3" diameter orifices with invert at elevation 11.5' NGVD. Runoff from the rest of the site is conveyed via inlets and culverts to the lakes for water quality treatment and attenuation. This wet detention system includes a 50% additional treatment since the project discharges to Outstanding Florida Waters. The system discharges 3.63 cfs to the existing drainage ditch along the south side of West Broadway and ultimately into Halfway Creek.

### LAND USE:

WTRM includes 0.22 acres of the dry detention ponds and 5.55 acres of lake area.

**Construction:**
**Project:**

| | **Total Project** | |
|---|---|---|
| Building Coverage | 7.51 | acres |
| Pavement | 10.27 | acres |
| Pervious | 17.99 | acres |
| Water Mgnt Acreage | 5.55 | acres |
| **Total:** | **41.32** | |

### WATER QUANTITY :

EXHIBIT 3

**Discharge Rate :**

The proposed project discharges 3.63 cfs into the existing drainage ditch along the south side of West Broadway prior to reaching Halfway Creek. This discharge rate is within the allowable limit for the Halfway Crek Watershed.

No adverse discharge impacts are anticipated as a result of the proposed project.

**WATER QUALITY :**

The dry detention system provides the required one-half inch of dry pretreatment for the clubhouse area. The lakes provide the required 5.17 ac-ft of water quality treatment for the proposed development.

No adverse water quality impacts are anticipated as a result of the proposed project.

**CERTIFICATION AND MAINTENANCE OF THE WATER MANAGEMENT SYSTEM:**

It is suggested that the permittee retain the services of a Professional Engineer registered in the State of Florida for periodic observation of construction of the surface water management (SWM) system. This will facilitate the completion of construction completion certification Form #0881 which is required pursuant to Section 10 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, and Rule 40E-4361(2), Florida Administrative Code (F.A.C.).

Pursuant to Chapter 40E-4 F.A.C., this permit may not be converted from the construction phase to the operation phase until certification of the SWM system is submitted to and accepted by this District. Rule 40E-4.321(7) F.A.C. states that failure to complete construction of the SWM system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization unless a permit extension is granted.

For SWM systems permitted with an operating entity who is different from the permittee, it should be noted that until the permit is transferred to the operating entity pursuant to Rule 40E-1.6107, F.A.C., the permittee is liable for compliance with the terms of this permit.

The permittee is advised that the efficiency of a SWM system will normally decrease over time unless the system is periodically maintained. A significant reduction in flow capacity can usually be attributed to partial blockages of the conveyance system. Once flow capacity is compromised, flooding of the project may result. Maintenance of the SWM system is required to protect the public health, safety and the natural resources of the state. Therefore, the permittee must have periodic inspections of the SWM system performed to ensure performance for flood protection and water quality purposes. If deficiencies are found, it is the responsibility of the permittee to correct these deficiencies in a timely manner.



EXHIBIT 4

**RELATED CONCERNS:**

**Water Use Permit Status:**

The applicant has indicated that potable water supply will be used as a source for irrigation water for the project.

The applicant has indicated that short-term dewatering is required for construction of this project. Application No. 030131-8 was concurrently reviewed for this project.

**Historical/Archeological Resources:**

The District has received correspondence from the Florida Department of State, Division of Historical Resources indicating that the agency has no objections to the issuance of this permit.

**DCA/CZM Consistency Review:**

The District has not received a finding of inconsistency from the Florida Department of Community Affairs or other commenting agencies regarding the provisions of the federal Coastal Zone Management Plan.

**Enforcement:**

There has been no enforcement activity associated with this application.

**STAFF REVIEW:**

**DIVISION APPROVAL:**

**NATURAL RESOURCE MANAGEMENT:**

Cory L. Peck

DATE: 4/1/03

**SURFACE WATER MANAGEMENT:**

Ricardo Valera, E.I.

DATE: 03/27/03



EXHIBIT 5

**South Florida Water Management District**

**erp_existing_site_details.rdf** **Existing / Proposed Environmental Features Information**

**Run Report on :** 09-DEC-02 11:47 AM



**Application Number:** 021018-7

**CSTR NEW MARBELLA ESTATES** **ONSITE**

| Pre - Development | Post - Development |
|---|---|

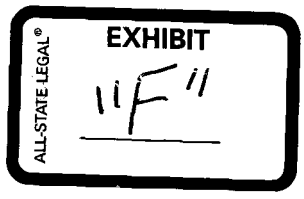
**UPLA**

| Site Id | Acreage | Quality | Qualify Melaleuca | Habitat | Impact Type | Impact Acreage | Undisturbed Acreage | Preserved Acreage | Enhanced Acreage | Restored Acreage |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 5.71 | N/A | N | Palmetto Prairies | | | | | | |
| 1 | 33.89 | N/A | N | Pine Flatwoods | | | | | | |
| 1 | 1.59 | N/A | N | Melaleuca-Upland | | | | | | |
| 1 | .13 | N/A | N | Disturbed Lands | | | | | | |
| Total: | 41.32 | | | | | | | | | |

EXHIBIT 6

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

LOWER WEST COAST REGIONAL SERVICE CENTER 2301 McGregor Boulevard, Fort Myers, FL 33901
(239) 338-2929 • FL WATS 1-800-248-1201 • Suncom 748-2929 • Fax (239) 338-2936 • www.sfwmd.gov/org/exo/ftmyers/




CON 24-06

**Application No.:** 041008-5
**General Permit No.:** 36-05121-W

November 30, 2004

KIMBALL HILL HOMES INC
12730 NEW BRITTANY BOULEVARD SUITE 403
FORT MYERS, FL 33907

**Dear Permittee:**

**SUBJECT:** **General Water Use Permit No.:** 36-05121-W
**Project:** MARBELLA ESTATES
**Location:** LEE COUNTY, S28/T46S/R25E
**Permittee:** KIMBALL HILL HOMES INC

This letter is to notify you of the District's agency action concerning your Notice of Intent to Use Water. This action is taken pursuant to Chapter 40E-20, Florida Administrative Code (F.A.C.). Based on the information provided, District rules have been adhered to and a General Water Use Permit is in effect for this project subject to:

1. Not receiving a filed request for Chapter 120, Florida Statutes, administrative hearing and
2. The attached Limiting Conditions.

The purpose of this application is to obtain a Water Use Permit for landscape irrigation of 7.02 acres of turf using a sprinkler irrigation system. Withdrawals are from the On-site lake(s) via one proposed withdrawal facility, from the Water Table Aquifer via one proposed withdrawal facility and from the Intermediate aquifer system via one proposed withdrawal facility. Prior to drilling the proposed wells, it will be necessary for you to obtain well construction permits from Lee County.

*GOVERNING BOARD*

Nicolás J. Gutiérrez, Jr., Esq., *Chair*
Pamela Brooks-Thomas, *Vice-Chair*
Irela M. Bagué
Michael Collins
Hugh M. English
Lennart E. Lindahl, P.E.
Kevin McCarty
Harkley R. Thornton
Trudi K. Williams, P.E.

*EXECUTIVE OFFICE*

Henry Dean, *Executive Director*

**Date Of Issuance:** November 30, 2004

**Expiration Date:** January 16, 2025

**Water Use Classification:** Landscape

**Total Serviced Acreage:** 7.02 ( 7.02 acres of turf )

**Water Use Permit Status:** Proposed

**Environmental Resource Permit Status:** Permitted (No. 36-04534-P).

**Right Of Way Permit Status:** Not Applicable.

**Ground Water From:** Intermediate Aquifer System
Water Table Aquifer

**Surface Water From:** On-site Lake(s)

**Permitted Allocation(s):**

**Annual Allocation:** 9,018,900 Gallons
**Maximum Monthly Allocation:** 1,211,600 Gallons

**Proposed Withdrawal Facilities - Ground Water**

Source: Intermediate Aquifer System
1 - 4" X 480' X 180 GPM Well Cased To 320 Feet
Source: Water Table Aquifer
1 - 4" X 40' X 150 GPM Well Cased To 25 Feet

**Proposed Withdrawal Facilities - Surface Water**

Source: On-site Lake(s)
1 - 4" X 10 HP X 200 GPM submersible Pump

**Rated Capacity**

| Source(s) | Status Code | GPM | MGD | MGM | MGY |
|---|---|---|---|---|---|
| Intermediate Aquifer System | P | 180 | 0.26 | 7.9 | 95 |
| On-site Lake(s) | P | 200 | 0.29 | 8.8 | 105 |
| Water Table Aquifer | P | 150 | 0.22 | 6.6 | 79 |
| **Totals:** | | **530** | **0.77** | **23.3** | **279** |

Should you object to the Limiting Conditions, please refer to the attached Notice of Rights which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have questions concerning this matter. If we do not hear from you prior to the time frame specified in the Notice of Rights, we will assume that you concur with the District's recommendations.

**Certificate Of Service**

I HEREBY CERTIFY that a Notice of Rights has been mailed to the addressee not later than 5:00 p.m. this 30th day of November, 2004, in accordance with Section 120.60(3), Florida Statutes.

Sincerely,

Terry O. Bengtsson P.G.
Sr Hydrogeologist
Water Use Regulation Division

TOB /ss

**Certified Mail No.:** 7004 0750 0004 1651 7737

Enclosure

c: Audubon of Florida
Div of Recreation and Park - District 8
Florida Fish & Wildlife Conservation Commission
League of Women Voters of Lee County
Lee County
Lee County Engineer
Lee County HRS
Lee County Utilities Division
S.W.F.R.P.C.
Water Resource Solutions Inc

**Limiting Conditions**

1. This permit shall expire on January 16, 2025.
2. Application for a permit modification may be made at any time.
3. Water use classification:

   Landscape Irrigation

4. Source classification:

   Ground Water from:
   Intermediate Aquifer System
   Water Table Aquifer

   Surface Water from:
   On-site Lake(s)

5. Total annual allocation is 9.0189 MG.

   Total maximum monthly allocation is 1.2116 MG.

   These allocations represent the amount of water required to meet the water demands as a result of rainfall deficit during a drought with the probability of recurring one year in ten. The Permittee shall not exceed these allocations in hydrologic conditions less than a 1 in 10 year drought event. If the rainfall deficit is more severe than that expected to recur once every ten years, the withdrawals shall not exceed that amount necessary to continue to meet the reasonable-beneficial demands under such conditions, provided no harm to the water resources occur and:

   (a) All other conditions of the permit are met; and

   (b) The withdrawal is otherwise consistent with applicable declared Water Shortage Orders in effect pursuant to Chapter 40E-21, F.A.C.

**Limiting Conditions**

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

   Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

   Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

   This Permit is issued to:

   Kimball Hill Homes Inc.,
   12730 New Brittany Blvd.,
   Suite - 403
   Fort Myers FL - 33907

7. Withdrawal Facilities:

   Ground Water - Proposed:

   1 - 4" X 40' X 150 GPM Well Cased To 25 Feet
   1 - 4" X 480' X 180 GPM Well Cased To 320 Feet

   Surface Water - Proposed:

   1 - 4" x 10 HP X 200 GPM submersible Pump

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

   Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

   (1) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

   (2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

**Limiting Conditions**

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm as determined through reference to the conditions for permit issuance, includes:

    (1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

    (2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

    (3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

    (1) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

    (2) Reduction in water levels that harm the hydroperiod of wetlands,

    (3) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

    (4) Harmful movement of contaminants in violation of state water quality standards, or

    (5) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.

12. Authorized representatives of the District shall be permitted to enter, inspect, and observe the permitted system to determine compliance with special conditions.

13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.

14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.

15. Permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: S.F.W.M.D., Supervising Hydrogeologist - Post-Permit Compliance, Water Use Regulation Dept. (4320), P.O. Box 24680, West Palm Beach, FL 33416-4680.

**Limiting Conditions**

16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.

17. Permittee shall secure a well construction permit prior to construction, repair, or abandonment of all wells, as described in Chapters 40E-3 and 40E-30, Florida Aministrative Code.

18. The Permittee shall submit to the District an updated Well Description Table (Table A) within one month of completion of the proposed wells identifying the actual total and cased depths, pump manufacturer and model numbers, pump types, intake depths and type of meters.

19. The permittee shall comply with Mandatory Year-Round Landscape Irrigation Measures for Lee, Collier and Charlotte Counties, as established by Chapter 40E-24, F.A.C. Landscape irrigation is prohibited daily between 10:00 a.m. and 4:00 p.m.; and, landscape irrigation of nonathletic play fields (golf courses, ball fields, tennis courts, etc.) with even addresses may irrigate Tuesday, and/or Thursday and/or Sunday, and odd addresses or locations without an address may irrigate Monday, and/or Wednesday and/or Saturday.
    Exceptions to the nondaytime and three-day per week schedule are described below.

    a. Landscape irrigation systems may be operated during restricted days and/or times for cleaning and maintenance purposes no more than once per week for no more than 10 minutes per test.

    b. Landscape irrigation for the purpose of watering in insecticides, fungicides and herbicides, when required by the manufacturer or by federal, state or local law, shall be allowed providing that the watering-in shall be limited to one application in the absence of specific alternative instructions, and the watering-in shall be accomplished during normally allowable watering days and times unless a professional licensed applicator has posted a sign listing the dates of application and necessary watering-in activity.

    c. Any plant material may be watered using low-volume hand watering methods without regard to the watering days or times allowed pursuant to this measure.

20. The allocation in this permit is for irrigation only, not the artificial maintenance of lake levels. The use of surface water lakes is for water quality treatment or irrigation water replacement only. Therefore, the ratio of the number of gallons per day withdrawn from the groundwater wells to the number of gallons per day withdrawn from the surface water pumps shall not exceed 1:1 on a monthly basis.

bc:Saurabh Srivastava
A. Superchi - 4320
P. McGary - 7420
Permit File
S. Korf - 7420
WU Compliance - L. Burke - 4320

**ADDRESSES**

Audubon of Florida
Attn: Mr. Jason Lauritsen
375 Sanctuary Road
Naples, FL 34120

Div of Recreation and Park - District 8
Attn: FDEP
1843 S Tamiami Trail
Osprey, FL 34229

Florida Fish & Wildlife Conservation Commission
Attn: - Imperiled Species Mgmt Section
620 South Meridian Street
Tallahassee, FL 32399-6000

League of Women Voters of Lee County
Attn: - Clara Anne Graham Elliott
25201 Divot Drive
Bonita Springs, FL 33923

Lee County
Attn: - Dept of Environmental Protection
P.O. Box 398
Fort Myers, FL 33902-0398

Lee County Engineer
Attn:
P.O. Box 398
Fort Myers, FL 33902-0398

Lee County HRS
Attn: Bill Allen
Environmental Engineering
60 Danley Drive #1
Ft. Myers, FL 33907

Lee County Utilities Division
Attn:
PO Box 398
Ft Myers, FL 33902

**ADDRESSES**

S.W.F.R.P.C.
Attn: Marisa Morr
1926 Victoria Avenue
Fort Myers, FL 33901

Water Resource Solutions Inc
Attn: Brian K Barnes
2029 Bayside Parkway
Fort Myers, FL 33901

Water Resource Solutions Inc
428 Pine Island Road Sw
Cape Coral, FL 33991

# NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (1997), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

**PETITION FOR ADMINISTRATIVE PROCEEDINGS**

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

a. Formal Administrative Hearing:

If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

b. Informal Administrative Hearing:

If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

c. Administrative Complaint and Order:

If a Respondent(s) objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

d. State Lands Environmental Resource Permit:

Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

e. Emergency Authorization and Order:

A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

f. Order for Emergency Action:

A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.

g. Permit Suspension, Revocation, Annulment, and Withdrawal:

If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

CIRCUIT COURT

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

DISTRICT COURT OF APPEAL

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

LAND AND WATER ADJUDICATORY COMMISSION

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (LAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with LAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with LAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

PRIVATE PROPERTY RIGHTS PROTECTION ACT

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

MEDIATION

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not adversely affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

(1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
(2) a statement of the preliminary agency action;
(3) an explanation of how the person's substantial interests will be affected by the agency determination; and
(4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

VARIANCES AND WAIVERS

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

(a) the caption shall read:
Petition for (Variance from) or (Waiver of) Rule (Citation)
(b) The name, address, telephone number and any facsimile number of the petitioner;
(c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner,;
(d) the applicable rule or portion of the rule;
(e) the citation to the statue the rule is implementing;
(f) the type of action requested;
(g) the specific facts that demonstrate a substantial hardship or violation of principals of fairness that would justify a waiver or variance for the petitioner;
(h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
(i) a statement of whether the variance or waiver is permanent or temporary, If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

a) the specific facts that make the situation an emergency; and
b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

WAIVER OF RIGHTS

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

**28-106.201 INITIATION OF PROCEEDINGS** (INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:
(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
(c) A statement of when and how the petitioner received notice of the agency decision;
(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
(f) A demand for relief.

**28-106.301.1 INITIATION OF PROCEEDINGS** (NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)

(2) All petitions filed under these rules shall contain:
(a) The name and address of each agency affected and each agency's file or identification number, if known;
(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
(c) A statement of when and how the petitioner received notice of the agency decision;
(d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
(e) A demand for relief.

**28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL**

(3) Requests for hearing filed in accordance with this rule shall include:
(a) The name and address of the party making the request, for purposes of service;
(b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
(c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217**

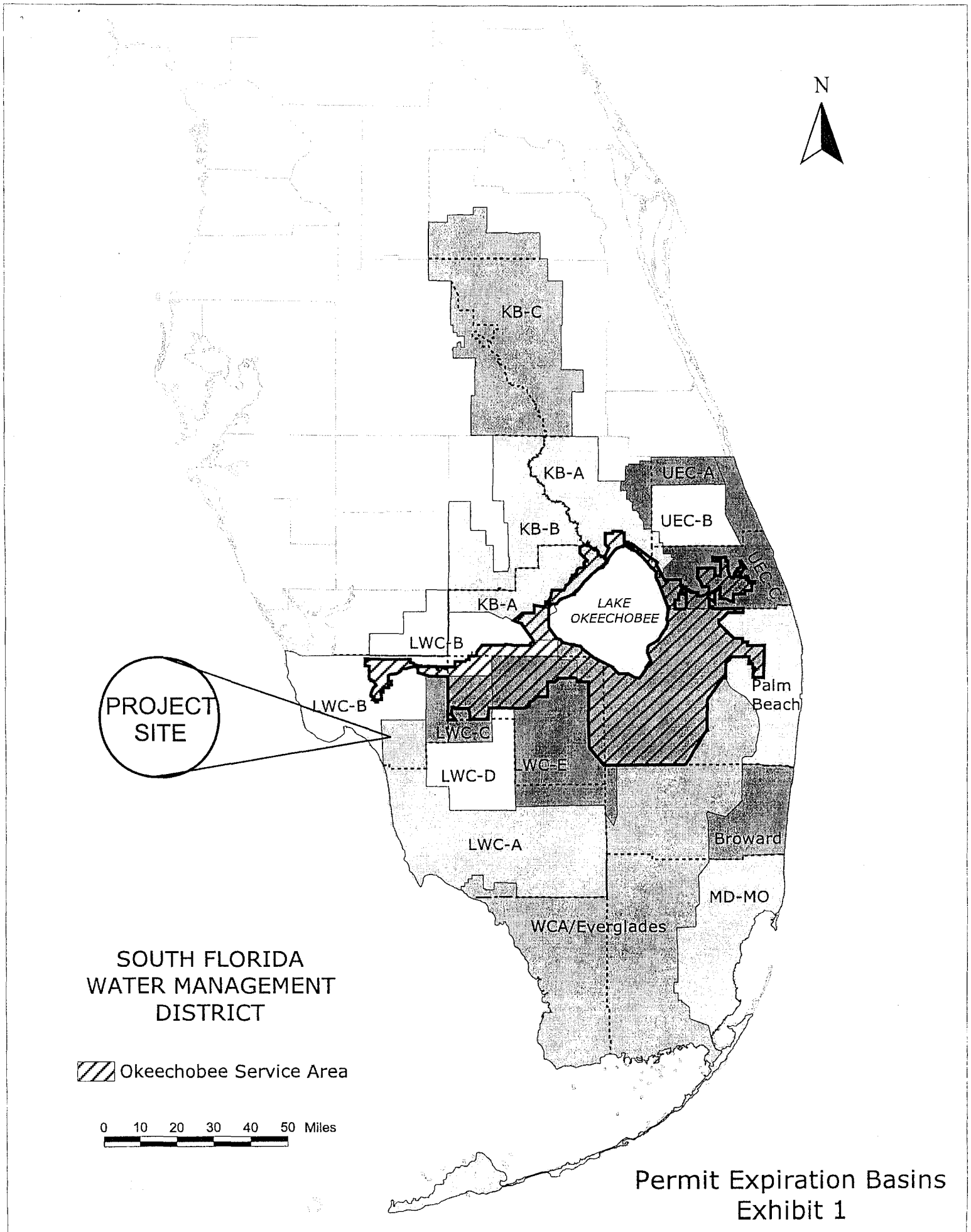
(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.
(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:
(a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;
(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;
(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;
(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and
(e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**28-107.005 EMERGENCY ACTION**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.
(2) The 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.
(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57. and 120.60, F.S.

**40E-1.611 EMERGENCY ACTION**

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.
(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.


N
KB-C
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LWC-C
LWC-D
LWC-E
LWC-A
UEC-A
UEC-B
UEC-C
LAKE OKEECHOBEE
Palm Beach
Broward
MD-MO
WCA/Everglades
PROJECT SITE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Okeechobee Service Area
0 10 20 30 40 50 Miles
Permit Expiration Basins
Exhibit 1

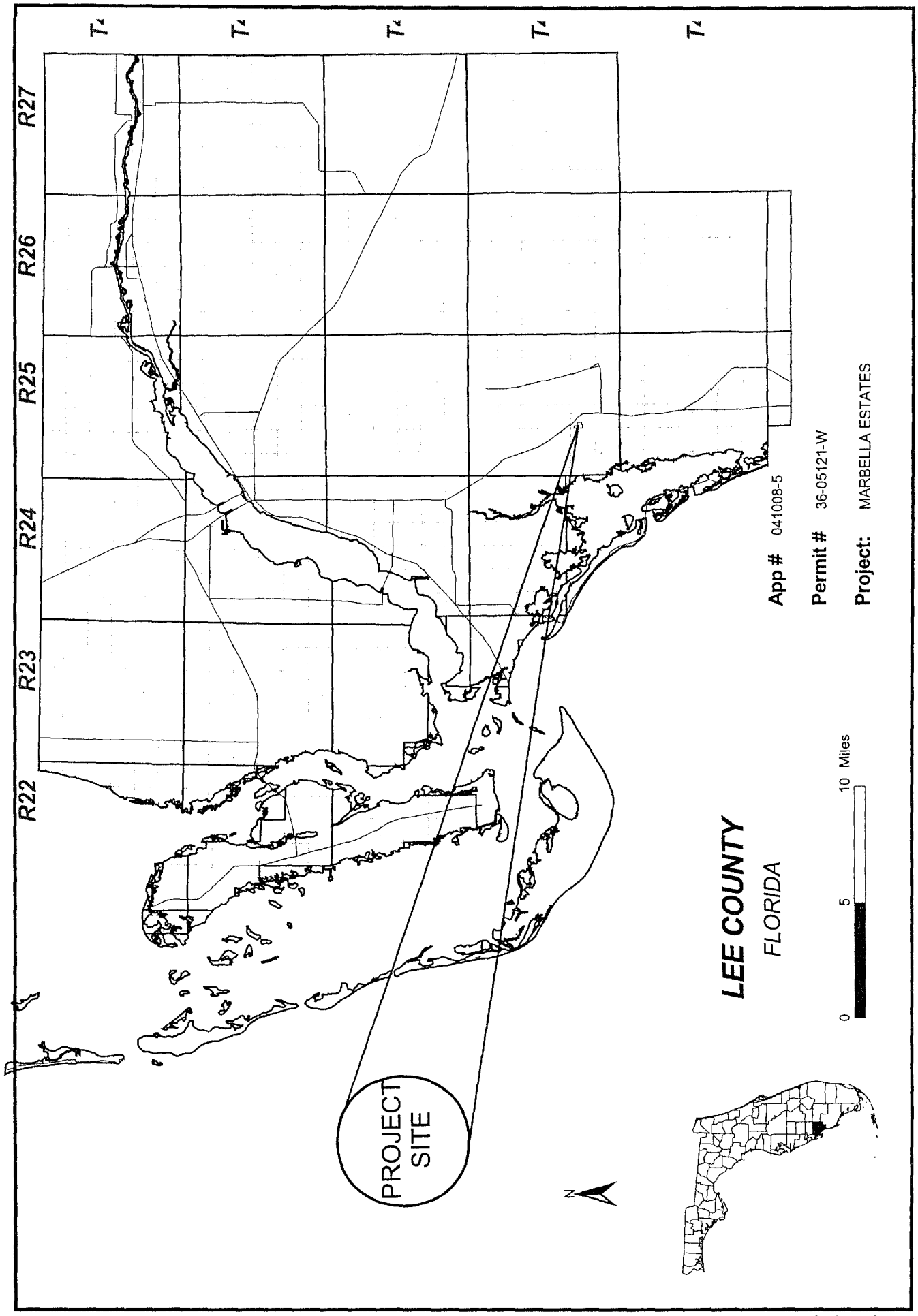
R22
R23
R24
R25
R26
R27
PROJECT SITE
LEE COUNTY
FLORIDA
0
5
10 Miles
App # 041008-5
Permit # 36-05121-W
Project: MARBELLA ESTATES

Exhibit 2

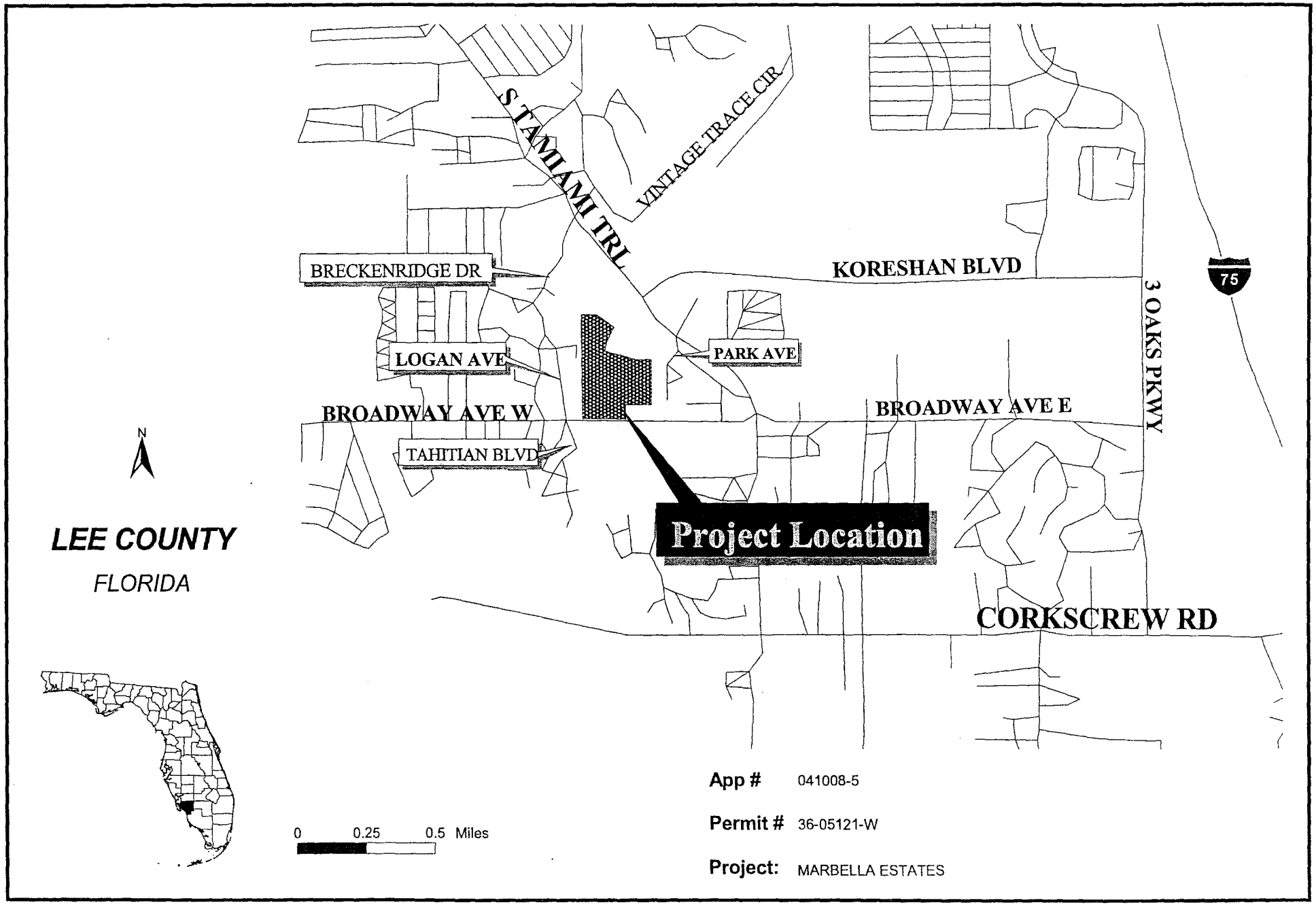


Exhibit 3

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# TABLE - A
## Description Of Wells.

**Application Number:** 041008-5

| | | |
|---|---|---|
| **Well ID** | 163917 | 163919 |
| **Name** | PW-1 | PW-2 |
| **Map Designator** | | |
| **FLUWID Number** | | |
| **Well Field** | | |
| **Existing/Proposed** | P | P |
| **Well Diameter(Inches)** | 4 | 4 |
| **Total Depth(feet)** | 40 | 480 |
| **Cased Depth(feet)** | 25 | 320 |
| **Facility Elev. (ft. NGVD)** | 15 | 15 |
| **Screened Interval** | | |
| **From** | | |
| **To** | | |
| **Pumped Or Flowing** | P | P |
| **Pump Type** | submersible | submersible |
| **Pump Int. Elev.** | | |
| **Feet (NGVD)** | -13 | |
| **Feet (BLS)** | 28 | |
| **Pump Capacity(GPM)** | 150 | 180 |
| **Year Drilled** | | |
| **Planar Location** | | |
| **Source** | REVIEWER | REVIEWER |
| **Feet East** | 388035 | 388689 |
| **Feet North** | 767968 | 767987 |
| **Accounting Method** | flow meter | flow meter |
| **Use Status** | Recharge | Standby |
| **Water Use Type** | Irrigation Water Replacement | Irrigation Water Replacement |
| **Aquifer** | Water Table Aquifer | Intermediate Aquifer System |

Exhibit No: 4

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TABLE - B

Description Of Surface Water Pumps



**Application Number:** 041008-5

| | |
|---|---|
| **Pump ID** | 163915 |
| **Name** | SWP-1 |
| **Map Designator** | |
| **Facility Group** | |
| **Existing/Proposed** | P |
| **Pump Type** | submersible |
| **Diameter(Inches)** | 4 |
| **Pump Capacity(GPM)** | 200 |
| **Pump Horse Power** | 10 |
| **Two Way Pump ?** | N |
| **Elevation (ft. NGVD)** | 0 |
| **Planar Location** | |
| **Source** | REVIEWER |
| **Feet East** | 387663 |
| **Feet North** | 767935 |
| **Accounting Method** | totalizer |
| **Use Status** | Primary |
| **Water Use Type** | Irrigation |
| **Surface Water Body** | On-site Lake(s) |

Exhibit No: 5

## Calculations Of Irrigation Requirements

APPLICATION NUMBER: 041008-5

RAINFALL STATION: Ft. Myers
IRRIGATION SYSTEM Sprinkler
PARCEL ACREAGE: 7.02
LAND USE: Landscape

CROP: Turf
SOIL TYPE: 0.8
PARCEL NAME:
IRR. MULTIPLIER 1.3

| | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MEAN RAINFALL | 1.90 | 2.00 | 1.50 | 1.90 | 4.10 | 9.40 | 8.70 | 8.60 | 8.40 | 3.50 | 1.50 | 1.50 | 53.00 |
| EVAPOTRANSPIRATION | 1.86 | 2.14 | 3.70 | 5.11 | 6.83 | 7.60 | 8.05 | 7.72 | 6.48 | 4.92 | 3.07 | 2.15 | 59.63 |
| AVG. EFFECTIVE RAIN | 0.88 | 0.94 | 0.79 | 1.06 | 2.31 | 4.91 | 4.71 | 4.58 | 4.19 | 1.81 | 0.76 | 0.72 | 27.66 |
| DROUGHT RAINFAL | 0.74 | 0.79 | 0.66 | 0.89 | 1.94 | 4.12 | 3.96 | 3.85 | 3.52 | 1.52 | 0.64 | 0.60 | 23.23 |
| AVERAGE IRRIGATION | 0.98 | 1.20 | 2.91 | 4.05 | 4.52 | 2.69 | 3.34 | 3.14 | 2.29 | 3.11 | 2.31 | 1.43 | 31.97 |
| DROUGHT IRRIGATION | 1.12 | 1.35 | 3.04 | 4.22 | 4.89 | 3.48 | 4.09 | 3.87 | 2.96 | 3.40 | 2.43 | 1.55 | 36.40 |

ANNUAL SUPPLEMENTAL CROP REQUIREMENT: 36.40 INCHES

ANNUAL SUPPLEMENTAL CROP WATER USE:

36.40 IN X 7.02 AC X 1.3 X 0.02715 MG/AC-IN = 9.02 MG

MAXIMUM MONTHLY SUPPLEMENTAL CROP REQUIREMENT: 4.89 INCHES

MAXIMUM MONTHLY SUPPLEMENTAL CROP WATER USE:

4.89 IN X 7.02 AC X 1.3 X 0.02715 MG/AC-IN = 1.21 MG

TOTAL ANNUAL DEMAND: 9.02 MG
TOTAL MAXIMUM MONTHLY DEMAND: 1.21 MG



Exhibit No: 6

# Summary Of Water Use Demands & Recommended Allocation Components

Application Number: 041008-5

Landscape

Recommended Allocation (MGD): 0.0190 Recommended Maximum Month Withdrawals (MGM): 1.2116

| Description | Acres | Rec. Unit Demand (gallons) | <--------- Recommended Demands---------- Avg. Daily MGD | Peak Factor | Max Monthly MGM | Delivery System Efficiency | <--------Recommended Allocation Daily MGD | Max. Monthly MGM |
|---|---|---|---|---|---|---|---|---|
| | 7.02 | 2,708 | 0.0190 | 1.6121 | 0.9320 | 75% | 0.0247 | 1.2116 |

Exhibit No: 7



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