

This Instrument
Prepared by and
Return to
Scott M. Grant, P.A.
3341 Tamiami Trail North
Naples, Florida 34103

2707635 OR: 2737 PG: 2884
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
10/31/2000 at 09:18AM DWIGHT H. BROCK, CLERK
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Re:da:
HB HOLDINGS LLC
800 SHAGATE DR #203
NAPLES FL 34103

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
DA VINCI ESTATES**

THIS DECLARATION is made this 30 day of October, 2000, by H.B. HOLDINGS OF SOUTHWEST FLORIDA, L.L.C., a Florida limited liability company, hereinafter referred to as the "Developer" or "Declarant" for itself and its successors, grantees, and assigns.

WITNESSETH:

WHEREAS, Declarant intends to develop certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" to this Declaration, and desires to create thereon a neighborhood of Single Family Residences; and

WHEREAS, Declarant desired to provide for the preservation of the values and amenities in said neighborhood, and to create a corporate entity to which should be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has created a Florida Corporation not for profit, known as da Vinci Estates Homeowners Association, Inc., for the purpose of exercising the functions aforesaid; and

NOW THEREFORE, the Declarant, and any other person having an ownership or other interest in the real property described in Exhibit "A" to this Declaration as amended from time to time, hereby declare that said property and all improvements thereon shall be held, transferred, sold, conveyed, and occupied subject to the Governing Documents and to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the land and be binding upon and inure to the benefit of all present and future owners of Lots and Living Units. The acquisition of fee simple interest in any Lot, or the lease, occupancy, or use of any portion of a Living Unit, shall constitute an acceptance and ratification of all provisions of this Declaration and agreement to be bound by its terms.

1. DEFINITIONS. Unless the context clearly requires otherwise, the terms used in this Declaration and its recorded Exhibits shall have the definitions set forth below and as amended from time to time.

1.1 “AAB” or “Architectural Advisory Board” means the Board vested with the power to review and accept or reject any and all property, landscape, and/or structural changes, improvements, additions, or otherwise, as further described herein in Section 5 and its subparts.

1.2 “Association” or “Neighborhood Association” means da Vinci Estates Homeowners Association, Inc. a Florida Corporation not for profit.

1.3 “Board” means the Board of Directors of the Association.

1.4 “Club” means the Olde Cypress Golf Club.

1.5 “Club Declaration” means the Declaration Covenants, Conditions, and Restrictions for Olde Cypress, as recorded in the Official Record Book 2539, Pages 2902 et. Seq., Public Records of Collier County, Florida, as amended from time to time.

1.6 “Community” means da Vinci Estates.

1.7 “Declarant” or “Developer” means H.B. Holdings of Southwest Florida, L.L.C., a Florida limited liability company. Wherever either term is used in this Declaration or its recorded Exhibits, it shall always be deemed to include any successor in interest to the Declarant’s development rights and obligations.

1.8 “Declaration” means this Declaration of Covenants, Conditions, and Restrictions for da Vinci, as amended from time to time.

1.9 “Governing Documents” means the Articles of Incorporation, Bylaws, as well as this Declaration and all recorded Exhibits thereto. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

1.10 “Guest” means any person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.11 “da Vinci Estates” means the Properties subject to this Declaration.

1.12 “da Vinci Estates Documents” means this Declaration and all recorded Exhibits hereto, as the same may be amended from time to time.

1.13 "Institutional Mortgagee" means the holder of a mortgage against a Lot or Living Unit, which mortgagee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Living Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or any other public or private corporation engaged in the business of guaranteeing or insuring first mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Living Unit.

1.14 "Lease" means the grant by an owner of a temporary right to occupy owner's Living Unit for valuable consideration.

1.15 "Living Unit", "Unit", or "Residence" means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.16 "Lot" means any one or more of the up to sixty (60) platted parcels of land into which the Properties have been or will be subdivided as shown in Exhibit "B", upon each of which a Residence has been or will be constructed. Wherever herein the term "Lot" is used, it shall be interpreted as if followed by the words "and Living Unit constructed thereon," except where the context clearly requires otherwise.

1.17 "Occupant" when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "**Occupy**" means the act of being an occupant.

1.18 "Owner" means the record owner of legal title to a Lot.

1.19 "Properties" or "Neighborhood" means all the real property which is subject to this Declaration.

1.20 "Public Records" means the Public Records of Collier County, Florida.

1.21 "Rules and Regulations" means the administrative rules and regulations governing procedures for administering the Association and the Properties, as adopted amended or rescinded by resolution of the Board of Directors.

1.22 "Service Charge" means a charge against one or more owners, Lots or Living Units for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of the owner on a voluntary basis, such as contracting in bulk

for repairs, services, materials, or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving such material or service shall be a service charge against the Lots or Living Units so benefitted. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.23 **"SFWMD"** means the South Florida Water Management District.

1.24 **"Subject Property"** means da Vinci Estates as defined herein above.

1.25 **"Surface Water Management System"** means the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded, or obstructed. This term includes exfiltration trenches, lakes, dams, impoundments, reservoirs, drainage maintenance easements, and those works defined in Section 373.403(1)(5) or the Florida Statutes. All or portions of the Surface Water Management System may comprise part of the Common Areas.

1.26 **"Tenant"** means the lessee named in any written lease respecting a Home who is legally entitled to possession of any Home within da Vinci Estates.

1.27 **"Voting Group"** means a group of homeowners whose Lots are represented by one(1) or more Directors of the Association.

1.28 **"Voting Representative"** means the representative selected by the members of this Neighborhood to be responsible for casting all votes the members in the Neighborhood in all matters other than the election of Directors.

2. CONTINUATION OF DEVELOPMENT. The Properties are being developed by the Declarant into Lots intended for the construction of single family residences and are located within the da Vinci Estates. Incident to that development, the quiet enjoyment of the Properties may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and other may make public certain renderings, plans, or models. Declarant does not warrant in any way the accuracy of these renderings, plans, or models. They are primarily thematic in nature and do not necessarily represent a guaranteed final development plan for da Vinci Estates.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The administration and management of this Neighborhood shall be by da Vinci Estates Homeowners Association, Inc., a Florida Corporation not for profit, which shall perform its functions pursuant to the following:

3.1 Articles of Incorporation. A copy of the Articles of Incorporation of the association is attached as Exhibit "C."

3.2 Bylaws. The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "D."

3.3 Delegation of Management. The Association may contract with a management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in Chapter 617, Florida Statutes and the Governing Documents.

3.4 Members. Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

3.5 Voting Interests. The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. The total number of votes ("voting interests") is equal to the total number of Lots in the Neighborhood. The vote of a Lot is not divisible. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more persons, the vote of that Lot may be cast by any one of the record owners. If two or more owners of a Lot do not agree among themselves how their one (1) vote shall be cast on any question, that vote shall not be counted. If the owner of a Lot is a corporation, the vote of that Lot may be cast by the president or vice-president. If the owner of a Lot is a partnership, the vote may be cast by any general partner. If a Lot is subject to a life estate, any life tenant may vote. If a Lot is owned in trust, any trustee may vote. If a Lot is subject to an agreement for deed, the contract vendee may vote.

3.6 Approval or Disapproval of Matters. Whenever the decision or approval of the owner of a Lot is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of such Lot as provided in 3.5 above if present in person at an Association meeting, unless the joinder of all record owners is specifically required.

3.7 Termination of Membership. Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.8 Association As Owner of Lots. The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

3.9 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of owners and primary occupants. A copy of the up-to-date roster shall be available to any owner upon request.

3.10 Board of Directors. Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its Officers, and no vote of the membership shall be required. The Officers and Directors of the Association have a fiduciary relationship to the members.

3.11 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation, and the Bylaws, and those provided in Chapter 617, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships, and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving other matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.12 Member Approval of Certain Litigation. Notwithstanding any other provisions of the governing documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests of the Association prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

1. the collection of assessments;
2. the collection of other charges which members are obligated to pay;
3. the enforcement of the governing documents;
4. the enforcement of the rules and regulations of the Association;
5. in an emergency, when waiting to obtain approval of the members creates a substantial risk of irreparable injury to the Association or its members; or

6. filing a compulsory counterclaim.

3.13 Official Records. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Neighborhood. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.14 Master Association. Nothing contained in this Declaration or any other document of daVinci shall in any manner limit the Declaration of Covenants, Conditions, Restrictions, and Easements for Olde Cypress, dated April 26, 1999 and recorded in Original Record Book 2539, Page 2902, et seq., of the Public Records of Collier County, Florida, which is the Master Association of which daVinci is a "Neighborhood" within the meaning of Article 2.25 hereunder. Accordingly, each purchaser in daVinci shall be a member of the Master Association and be subject in all respects to the aforementioned Declaration of Covenants, Conditions, Restrictions, and Easements for Olde Cypress, as well as, the Declaration of daVinci. Furthermore, each purchaser in daVinci shall be liable to the Master Association for any and all fees, assessments, and otherwise which the Master Association shall assess. Should there be any conflict within the documents of the Master Association and daVinci, then the Master Association shall control insofar as the conflicting text is concerned.

4. ASSESSMENTS.

4.1 Covenant to Pay Assessments. Developer, for each Lot within the Neighborhood, hereby covenants, and each subsequent owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

1. the Lot's pro-rata share of annual assessments based on the annual budget adopted by the Association;
2. the Lot's pro-rata share of special assessments not provided for by annual assessments; and
3. any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, costs, and reasonable attorney's fees shall bind each Lot in the hands of the owner, his heir, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to the Developer and a first mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments levied by the Association, such share being a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is the total number of Lots then included within the Neighborhood.

4.3 Capital Contributions. Except as otherwise provided herein, each Lot and the purchaser thereof shall be liable for the daVinci Capital Contribution Fee of \$500.00. Said fee shall be paid by each and every purchaser, and all subsequent purchasers thereof, at the time of transfer.

4.4 Establishment of Liens. Any and all assessments and charges levied by the association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot and Living Units against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot and Living Unit assessed. This lien is superior to any Homestead rights the owners may acquire. No owner may exempt himself from personal liability for assessments and charges, or release the Lot owned by him from the liens and charges hereof, by waiver of his rights, or by abandonment of his Lot. The lien is activated upon recording a Claim of Lien by the Association in the public records of the County, setting forth the amount and due date of each unpaid assessment or charge as of the date of the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interests, costs, and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure is obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.5 Priority of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. A lease of a Living Unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure

sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through, or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment or charge which cannot be collected by reason of this Section, shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

4.6 Collection of Assessments. If any owner fails to pay any assessment, charge, or installments thereof, within ten (10) days after the due date, the Association shall have any and all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association.

(A) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and in addition, to impose a late payment penalty of not more than eighteen percent (18%).

(B) To suspend the voting rights of the owner in the Association during the period of delinquency.

(C) To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the owner's Lot.

(D) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of the liens on condominium parcels for unpaid condominium assessments.

(E) To bring an action at law for a money judgment against the owner without waiving any foreclosure rights of the Association.

4.7 Certificate. The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for the assessments a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate shall be protected thereby.

4.8 Termination of the Association. If the Association no longer exists for any reason whatsoever, and no other Neighborhood Association has assumed its duties and functions, the formation of a new association shall be undertaken by the counsel for the da Vinci Estates or if no counsel exists then counsel of Olde Cypress and shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

5. ARCHITECTURAL AND AESTHETIC CONTROL. No building, structure, pool or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the AAB. While Developer is in control of the Association, the Developer's written consent shall also be required. In obtaining said written approval, each owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal of approval for plans and specifications may be based on any reason, including purely aesthetic reasons.

5.1 Architectural Style. The recommended Architectural style for da Vinci Estates is one with a predominantly Mediterranean flavor. The use of block and stucco construction with decorative banding and accents is encouraged. This type of Architecture is predominant in Naples and other areas within southwest Florida. Contemporary, Florida Cracker, and other Architectural styles not commonplace in our area are discouraged. Exact duplications of elevations will be discouraged. The Architectural characteristics of the residence must be carried through on all sides of any structure.

5.2 Driveways. All driveways will be constructed of concrete pavers, stamped concrete or brick.

5.3 Landscaping. Will be based on the Approved List of plants and species which is available from Developer. Once such items are selected, the landscape plan must be approved by the AAB. Minimum sizes and quantities of certain species will be required. Neighborhood association documents will mandate common grass maintenance. Any and all changes to be made to the landscaping, at any time, shall first be approved by the AAB.

5.4 Exterior Colors and Roof Colors. Natural stone, brick, stucco and wood exterior material are to be used. Exterior colors should support the historical appearance of the Architectural style selected and/or blend with the natural indigenous shades and colors found on da Vinci Estates. AAB prefers the colors and tones associated with a Mediterranean setting. Exterior colors must be included with the final plans and any changes to colors and material must be approved by the AAB. No dwelling shall have an exposed structural block. Emphasis will be placed on conservative colors, primary colors **WILL NOT** be approved.

5.5 Roofing. Roofs shall be designed with a pitch of 7/12 or greater. All roofs shall be color through concrete or clay tile. White and non-colored concrete will be discouraged. Asphalt shingles and cedar shakes **WILL NOT** be approved. Any other alternative materials submitted will be evaluated and approved/disapproved at the sole discretion of the AAB.

6. EASEMENTS.

6.1 Encroachments. If a building, window, eaves, projection, gutter, roof or any other structure on a Lot (the "encroaching Lot") encroaches upon any adjoining Lot, by reason of original construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, or by the unintentional act of the owner or Developer, then such an easement for the encroachment, appurtenant to encroaching Lot, to the extent of such encroachment, shall exist so long as such encroachment exists.

6.2 Utility and Service Easements. The Developer (during any period in which the Developer has any ownership interest in the Properties) and the Association shall each have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, central service, or other easements, and to relocate and existing easement in any portion of the Properties and to grant access easements and to relocate any existing access easements in any portion of the Properties as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the owners, or for the purposes of carrying out any provisions of this Declaration. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Lots and Living Units. Each living Unit and Lot shall be subject to an easement in favor of all other portions of the Properties to locate utilities and provide drainage and support and to use, maintain, repair, alter, and replace structural support, roofs, pipes, wire, ducts, vents, cable, conduits, public utility lines, and other similar or related facilities serving other portions of the Properties.

6.3 Lateral and Subjacent Support. Each Lot shall be burdened with an easement in favor of all adjoining Lots and Common Areas for lateral and subjacent support.

6.4 Easements for Playing Golf. Non-specific, non-exclusive easements are hereby created over all Lots, Living Units, and Neighborhood Common Areas adjacent to the golf course, to permit every act necessary, incidental, or appropriate to the playing of golf. These acts shall include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots or Neighborhood Common Areas, the landing of errant golf balls upon the Lots, Living Units, or Neighborhood Common Areas, the use of necessary and usual golf carts and maintenance equipment upon the golf course (and golf course easement as herein set out), the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Maintenance of Living Units. The maintenance, repair, and replacement of each Lot

and Living Unit is the responsibility of its owner. The owner shall keep the appearance of the Lot and all landscaping and improvements in a condition comparable to when they were new, except normal wear. The owner is responsible for his own driveway and irrigation system.

7.2 Completion of Neighborhood. Developer shall undertake the work of developing all Lots and Living Units within the Neighborhood. The completion of that work, or the sale, lease, or other disposition of Living Units, is essential to the establishment and welfare of the Neighborhood as an ongoing residential community. In order that such work may be completed and the Neighborhood established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors, or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonable, necessary, or advisable for the completion of the work and the establishment of the Neighborhood as a residential community. As used in this paragraph, the words "its transferees" specifically exclude purchasers of Lots improved with completed residences.

7.3 Enforcement of Maintenance. If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including, but not limited to entering the Lot, with or without consent of the owner. The Association may repair, replace, or maintain any item which constitutes a significant hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner as service assessments, together with reasonable attorney's fees and all other expenses of enforcement.

7.4 Negligence; Damage Cause by Condition in Living Unit. The owner of each Lot and Living Unit shall be personally liable for the expenses of any maintenance, repair, or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available to the injured person.

8. MAINTENANCE BY ASSOCIATION.

8.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, the Community Association shall at all times maintain, repair, replace and insure the Common Areas, including all improvements placed thereon. Without limiting any other obligation of the Community Association, the Community Association is legally responsible for the repair of any landscaping, driveways, asphalt or other above ground facilities damaged during the repair of any main or service breaks within the Common Areas.

8.2 Surface Water Management System. The following sub-sections as they relate to the South Florida Water Management District Environmental Resource Permit No. 11-01824-P,

issued on May 11, 2000 to HB Holdings of Southwest Florida LLC, shall in no manner attempt to change the terms of the aforesaid permit. Such permit shall be deemed to have priority over the terms contained herein. However, the terms contained herein shall further limit the actions permissible regarding the surface water management system. A copy of the permit is attached hereto as Exhibit "E."

(A) **Duty to Maintain.**

The Community Association acknowledges that the Surface Water Management System within the Common Areas is owned by the Community Association. The duty of maintenance of the Common Areas expressly includes the duty to operate, maintain, and repair the Surface Water Management System, in a manner which complies with any Permit respecting the same, if any, or any additional permit. The costs of the operation and maintenance of the Surface Water Management System is part of the Operating Costs of the Community Association and each Owner shall pay Assessments which shall include a pro rata share of such costs.

(B) **No Structures or Impediment.**

No structure of any kind (including docks) shall be constructed or erected in or on, nor shall an Owner or Neighborhood Association in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in any portion of any water management area including, but not limited to, lakes, ponds, swales, drainage ways, or areas intended for the accumulation of runoff waters, without the specific written permission of the Community Association and the Declarant, and, to the degree required, of all applicable governmental entities.

(C) **No Denial of Ingress/Egress.**

No Owner, Neighborhood Association or other person shall unreasonably deny or prevent ingress and egress to water management, lake and preserve areas for maintenance, repair, or landscaping purposes by Declarant, the Community Association, or any appropriate governmental agency that may reasonably require ingress and egress. Rights of ingress and egress, and easements therefore, are hereby specifically reserved and created in favor of the Declarant, the Community Association, and any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(D) **No Filling Without Prior Approval.**

No Parcel or Neighborhood Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts, nor shall any person fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Community Association, the Declarant, the SFWMD, and any other applicable governmental entities. No person may draw water for irrigation or other

purposes from any lake, pond or water management area without the permission of the Community Association and the Declarant.

(E) Open Space.

Any land subjected to this Declaration and designated as open space, landscape buffer, preservation or conservation area or with words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. No development may occur on such land except structures or improvements which promote the use and enjoyment of the land for open space purposes. Prospective Owners are hereby put on notice that land appurtenant to their Home(s) may contain or be adjacent to wetland preservation or mitigation areas, upland buffers, and/or other conservation areas, which are protected under conservation easements as provided in Section 10.25 herein below.

(F) Amendments to Community Association Documents.

The Community Association shall submit to SFWMD any proposed amendment to the Community Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas. SFWMD shall then inform the Community Association as to whether the amendment requires a modification of any Permit respecting the Surface Water Management System. If a modification of any Permit respecting the Surface Water Management System is necessary, SFWMD shall so advise the Community Association. Once the Community Association receives the modification to the Permit and any conditions to the Permit, both shall be attached as an exhibit to an amendment to this Declaration, which amendment shall not require the approval of the Owners. The Community Association shall maintain copies of all water management permits and correspondence respecting such permits for the benefit of the Community Association.

8.3 Irrigation. In the event Declarant irrigates the Common Areas, the costs of such irrigation shall be Operating Costs.

8.4 Adjoining Areas. The Community Association shall also maintain those drainage areas, swales, lakes, maintenance easements, driveways, and landscape areas that are within the Common Areas and immediately adjacent to a Home, provided that such areas are readily accessible to the Community Association. Under no circumstances shall the Community Association be responsible or maintaining any areas within fences or walls that form a part of a Home. Maintenance of driveways within the boundaries of the land appurtenant to a Home shall be the responsibility of the Owners in some Neighborhoods; however, the Community Association shall be responsible for repairing any driveway which must be removed in order to maintain the Surface Water Management System.

8.5 Negligence. The expense of any maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner or Neighborhood Association, shall be borne solely by such Owner or Neighborhood Association, and, with respect to Owners, the Home owned by that Owner shall be subject to an Individual Assessment for that expense. By way of example, and not of limitation, an Owner shall be responsible for the removal of all landscaping and structures placed within easements or Common Areas without the prior written approval of Community Association.

8.6 Right of Entry. Declarant and the Community Association are granted a perpetual and irrevocable easement over, under and across da Vinci Estates for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, Declarant specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Declarant may construct, maintain, repair, alter, replace and/or remove any improvements; install landscaping; install utilities; and/or remove structures on any portion of da Vinci Estates, if Declarant is required to do so in order to obtain the release of any bond posted with any governmental agency.

8.7 Maintenance of Property Owned by Others. The Community Association shall, if designated by Declarant by amendment to this Declaration or by other notice or direction, maintain vegetation, landscaping, sprinkler system, community identification features and/or other area of elements designated by Declarant upon areas which are within or outside of da Vinci Estates and which are owned by, or dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, so as to enhance the appearance of da Vinci Estates. These areas may include (by way of example and not limitation) swale areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or features, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways. Without limiting the foregoing, the Community Association shall maintain (including mowing and spraying for weeds), repair, and replace offsite drainage improvements as required by any documents between Declarant or the Community Association and all applicable governmental entities, including without limitation the SFWMD.

The following are specifically to be maintained and are the responsibility of the Association, however, this list shall in no way limit the responsibility of the Association.

1. Association shall maintain all easement areas surrounding the entrance way.
2. Association shall maintain the preserve easement on all exterior lots pursuant to the plat.
3. Association shall maintain the "Tract Preservation Areas" pursuant to the plat, which are Common Areas. These areas, may be landscaped by the Association.

however, such landscaping will be restricted to the native species enumerated on the Re-vegetation Plan annexed hereto as Exhibit "F."

4. Association shall maintain the Ingress/Egress Entrance Easement depicted on Exhibit "G" annexed hereto and made a part hereof.

8.8 Treated Effluent. The Declarant or the Community Association may negotiate an agreement with the Collier County Water Sewer District for the use of treated sewage or effluent within da Vinci Estates for the purpose of irrigation. All Owners, by the act of purchasing a Home, are deemed to have irrevocably consented to irrigation of Common Areas and Parcels with treated effluent emanating from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction. The cost of any treated effluent used by the Community Association, and all administrative, operational, maintenance and support costs related to it, are Operating Costs of the Community Association, and will be included in the budget of the Community Association.

8.9 Non-Applicability of Condominium Act. The Community Association is not a condominium association and therefore is not governed by, nor subject to Chapter 718, Florida Statutes, except where specific portions of Chapter 718 are incorporated by reference in the Community Documents with the idea that the Community Association should follow the Condominium Act procedures. This Declaration is not a declaration of condominium. No portion of the Subject Property is submitted, by the recording of this Declaration is not a declaration of condominium. No portion of the Subject Property is submitted, by the recording of this Declaration, to the condominium form of ownership. Declarant does not intend that any portion of the Subject Property be submitted to the condominium form of ownership, unless that property is a Neighborhood legally described in a declaration of condominium specifically prepared in accordance with Chapter 718, Florida Statutes, executed by, or with the consent of Declarant or a Builder. Further, the express intent of this Declaration is that all substantive rights created hereunder shall not be affected retroactively by legislation subsequent to the date of recording of this Declaration.

9. INSURANCE OF LIVING UNITS.

9.1 Duty to Insure and to Reconstruct. Each owner shall at all times maintain property insurance on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within six (6) months from the date that such damage or destruction occurred, and shall complete the repair or reconstruction within nine (9) months thereafter. All such repairs or replacements must restore the improvement to substantially their original character, design, and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the AAB.

9.2 Failure to Reconstruct. If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.1 above, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment.

9.3 Failure to Insure; Association as Additional Insured. For the purpose of this Section 9, each owner of a Lot within the Neighborhood agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may, from time to time exist. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance converge deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason, caused the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees, and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof.

9.4 Association's Right of Entry. For the purpose of performing the duties authorized by this Section 9, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

10. GENERAL COVENANTS AND USE RESTRICTIONS.

10.1 Use Restrictions. The Lots in this Neighborhood shall be used for detached single family residences and for no other purposes. No business buildings may be erected on a Lot and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office. Notwithstanding the above provisions, the Declarant may, in its sole discretion, permit one or more of its Living Units to be used or maintained as a sales

office or as model homes.

The Preserve Tracts, Preserve Easements as well as the Lake Tracts are dedicated to daVinci Estates Neighborhood Association, their successors and assigns, with full responsibility for the maintenance and upkeep. No Builder, Developer, Homeowner, or otherwise shall have any rights or responsibilities to these areas other than as a member of the Association and with an undivided interest thereof. Accordingly, no person shall clear, plant, construct, erect, or otherwise touch, control, change, style, or develop these areas, whether that be landscaping, housing, or otherwise.

10.2 Building Setback Lines, Size of Buildings, Site Restrictions and Building Height. All structures shall conform to the requirements of the County and Governing Documents which states as follows:

Setbacks:

1. Front yard setback : 20 feet minimum
2. Side yard setback : 10 feet minimum
3. Rear yard setback : 25 feet minimum

Building Size. The minimum size of living area is 3000 square feet of air-conditioned space. Garages, porches, patios, terraces and lanais will not be included in the area calculation.

Minimum/maximum Finished Floor Levels. The AAB must approve minimum finish floor elevations for each home-site. Minimum elevation required by South West Florida Water Management district is 18" above the crown of the road. Fill may be used to attain elevations under 24" inches above the crown of the road. Any elevation above 24 inches must use stem walls. Submitted plans must contain details regarding grading and drainage.

10.3 Leasing. An owner may lease his Living Unit without prior Association approval, subject to the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term together with such other information about the tenants as the Board may reasonably require.

(B) No Living Unit may be leased or rented for a period of less than ninety (90) consecutive days.

(3) No subleasing or assignment of lease rights is allowed. All of the provisions of the da Vinci Estates Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit as a lessee or guest to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the

Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT HIS LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP.

10.4 Nuisance. No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents.

10.5 Temporary Structures. No structure of a temporary character, including trailer, tent, or shack shall be used on any Lot, either temporarily or permanently, except for Declarant.

10.6 Signs. To the extent lawful, the display of signs, advertisements, and advertising shall be subject to the Master Declaration and the control of the Community Association. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs. The Section shall not apply to signs used by Declarant or its agents to market Living Units owned by it.

10.7 Appearance; Refuse Disposal. After closing of title, each owner shall keep his Lot free and clear of weeds, and underbrush, unsightly growths, trash, and debris and shall reasonably maintain his Living Unit. No Lot shall be used or maintained as dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

10.8 Maintenance. The Declarant shall care for vacant or unimproved Lots within the Properties, and clear tall grass, undergrowth, weeds, and rubbish therefrom, and do any other things and perform any labor necessary or desirable in the judgment of the Declarant to keep the Lot in good order. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure

Declarant's or the Association's attorney's fees and other costs in connection with said foreclosure.

10.9 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to prior approval and control of the AAB.

10.10 Fences. No fence, wall, hedge, or similar structure shall be erected on any Lot, except as originally installed by Developer, and except any approved by the AAB.

10.11 Lawns; Landscaping. Except for designated Conservation Areas, buffer zones, open space, or other similar area, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals, or water management areas. Stone, gravel, or paving may not be used as a substitute for grass in a lawn. Certain areas as determined by the Developer or the RPD shall remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the owner, as defined by the Association. Lawns must be regularly cut and mulched areas regularly re-mulched. The landscaping on Lots, including without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevations, shall be maintained by the owner thereof. No landscaping shall be installed, cut down, destroyed or removed without the prior written approval of the AAB.

PLEASE NOTE THE FOLLOWING:

Individual Owners shall maintain the "Re-Vegetation Area" which is the 10' border on each lot pursuant to the plat. This area shall be planted by the individual Builder, but such plantings must follow the Approved List and comply with the AAB plan.

10.12 Irrigation. No private wells will be allowed. Irrigation design and installation required by an approved contractor. No Owner whose Home adjoins a waterway may utilize the waterway to irrigate unless so provided by Declarant as part of original construction. The Community Association may use waterways to irrigate Common Areas. Neighborhood Associations may also use waterways for irrigation, provided such use is in accordance with all applicable governmental regulations, and subject to the prior approval of the Community Association

10.13 Outside Lighting. Except as may be initially installed by Developer, no spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon without the written authorization of the Community Association. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Properties shall be allowed.

The owner of each Lot shall maintain, and keep operating during all hours of darkness, the front yard lamp (if any). The owner's responsibility includes the photoelectric cell and replacement of light bulbs.

10.14 Commercial Activities. No business or commercial activity shall be conducted on the Properties, except the Developer's construction of improvements and the maintenance of sales office or models.

10.15 Pets. The owner of each Living Unit may keep no more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Association. All pets must be carried under the owner's arm or leashed at all times while outside of the Unit. The owner is responsible for cleaning up after his pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Properties. No reptiles, amphibians, poultry, or livestock may be kept on the Properties under any circumstances. Pets shall not be left unattended on screened porches, lanais, yards, or in garages.

10.16 Parking and Storage of Motor Vehicles.

(A) No commercial vehicle of any kind shall be parked in the Neighborhood, except for services vehicles temporarily present on business.

(B) No boat, trailer of any kind, camper, mobile home, motorcycle, motor home, bus, commercial truck, truck camper, pick-up truck, or disabled, inoperative, or unlicensed vehicle shall be permitted to be parked or stored unless kept fully enclosed inside a structure.

(C) No motor vehicle shall be parked anywhere other than on paved or designated areas designated for that purpose, or in garages. Parking on lawns or landscaped areas is prohibited.

(D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary.

10.17 Garages, Carport, and Accessory Buildings.

(A) No garage or other accessory building shall be erected which is unattached from a residence. Each residence shall have a garage which shall accommodate at a minimum two (2), automobiles. The standard of the community is to have side loaded garages. Front loading garages would only be considered when the configuration of a home-site does not allow for the space needed to have a side loaded garage. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain

closed.

(B) Carports are not permitted.

(C) No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the AAB. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

10.18 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

10.19 Mailboxes, Lamp Posts. Mailboxes, front yard lamp posts, and their supporting structures shall be substantially uniform in style, appearance, and location, and are subject to regulation by the AAB.

10.20 Television and Other Outdoor Antennae. No outdoor television, radio, or other antenna or antenna system may be erected or installed on any Lot or Living Unit or on the Common Areas. However, satellite dishes will be allowed based on the following:

1. The satellite dish shall not exceed eighteen (18) inches in diameter, though this may be varied depending on use and application, on a case by case basis when requesting a variance from the Association.
2. All satellite dishes shall be installed and secured to the side of the residence structure or on its own base, including but not limited to fencing or trees.
3. Satellite dishes shall never be placed on the roof of a structure.
4. Screening shall be installed to obscure the satellite dish and provide for 100% opacity from all horizontal directions as seen by pedestrians, motorists, and occupants of adjacent lots. Screening may be as a part of the structure, fencing, landscaping, or otherwise, provided that such screening comply with all provisions of this Declaration and meet all requirements of the AAB.

10.21 Radio Equipment. No ham radio, CB base station, or other radio transmission equipment (except mobile transmitters in service vehicles) shall be operated or permitted to be operated in the Neighborhood.

10.22 Swimming Pools. An owner may, if approved by the AAB, construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

10.23 LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN

ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRMROSE, WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE ASSOCIATION.

10.24 Lakes; Water Retention Ponds. No Lot, Tract, Parcel, or Neighborhood Common Area shall be increased in size by filling in any lake, pond, or other water retention or drainage areas which it abuts nor is boating, swimming, wading or fishing in such water allowed.

BY ACCEPTANCE OF A DEED TO A HOME, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL WATER BODIES MAY VARY. THERE IS NO GUARANTEE BY DECLARANT OR THE COMMUNITY ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME.

10.25 Conservation Areas. Certain portions of the Common Areas will be conservation areas subject to an easement in favor of the SFWMD.

(A) The following activities are prohibited in or on the conservation areas:

1. Construction or replacing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a SFWMD approved maintenance plan;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substances in such manner is to affect the surface;
5. Surface use except for purposes that permit the land or water area to remain in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; or
7. Acts or uses detrimental to such aforementioned retention of land or water areas.

- (B) The Community Association hereby accepts the responsibility for perpetual maintenance of such conservation easements, including, without limitation, preserved, restored, and/or created wetland areas and/or upland buffer zones, and agrees to take action against Owners as may be reasonably necessary to enforce the condition of such conservation easement(s) and the conditions of all Permits. Prospective Owners are also hereby put on notice that Owners are and will be responsible for the perpetual maintenance of any signage required by Permits.
- (C) Prospective Owners are hereby put on notice that the Community Association is further responsible for mitigation/monitoring duties and costs and financial assurances, as are and may be required under all Permits.

10.26 Drainage System. Once a drainage system or drainage facilities are installed by Declarant, the maintenance of such system and/or facilities thereafter shall be the responsibility of the Owner of the Home which includes such system and/or facilities. In the event that such system or facilities (whether comprised of swales, pipes, pumps, or other improvements) is adversely affected by landscaping, fences, structures, or additions, the cost to correct, repair, or maintain such drainage system and/or facilities shall be the responsibility of the Owner of each Home containing all or a part of such drainage system and/or facilities. By way of example, and not of limitation, if the roots of a tree within the boundaries of a Home affect pipes or other drainage facilities within another Home, the Owner of the affected Home shall be solely responsible for the removal of the roots within the boundaries of his or her Home. The Community Association and Declarant shall have no responsibility or liability for drainage problems of any type whatsoever.

11. ENFORCEMENT OF COVENANTS AND ABATEMENTS OF VIOLATIONS.

Every owner shall at all times comply with Chapter 617, Florida Statutes, the Governing Documents and the rules of the Association. Before undertaking any remedial, disciplinary, or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents and/or whose remedial action shall control. If any person, firm, or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors of the Association, that person shall be liable to be fined by the Association for each such failure to comply or other violations.

11.1 Legal Action. Judicial enforcement of the covenants and restrictions of this Declaration may be an action at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or against the land to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so. If such action is instituted, the Association shall, in addition, be entitled to

recover its costs and attorney's fees incurred if it is the prevailing party.

11.2 Entry by Association. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the owner of the lands, any construction or other violation that may be or exist thereon. The Declarant, its successors, and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

12. THE OLDE CYPRESS GOLF CLUB.

12.1 Membership in the Club. By taking title to a Lot, the owner becomes subject to the terms and conditions of the Club Declaration as it may be amended from time to time.

12.2 Regular Membership in the Club. Each Lot shall have as an appurtenance Social Membership in the Club, which membership shall carry such rights and obligations, and to be exercised in such manner, as is more fully set forth in the Governing Documents. The Membership cannot be sold, conveyed, or assigned separately from the Lot. Assessments and dues levied by the Club shall be paid directly by the Lot owner to the Club.

12.3 Membership and Voting in the Club. All owners in this Neighborhood are automatically Social members of the Club. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of all members at meetings of the members of the Club. At Club meetings, the votes shall be cast as provided in the Bylaws of the Club.

12.4 Golf Membership. All of the owners in the Neighborhood who are Social members, which as aforementioned is all the owners, shall have the option to purchase Golf memberships in Olde Cypress at the prevailing market price, if currently available.

12.5 Notices to the Club. Copies of all recorded amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, shall be forwarded to Club no later than thirty (30) days after becoming effective. The Association shall also provide a current list of the names and mailing address of all owners within fifteen (15) days after receiving a written request for same from the Club.

13. DEVELOPER'S RIGHTS AND DUTIES: So long as the Developer holds any Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary:

13.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Neighborhood neither the owners, nor the Association, nor their use of the Lots and Living Units shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots. The Developer may make any use of unsold Lots and Living Units as may reasonably be allowed under the law.

13.2 Assignment of Development Rights. All or any portion of the rights, privileges, powers, and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any person or entity, without the consent of any other owner or any holder of a mortgage secured by any Lot. Upon the acceptance of such assignment by the assignee, the assignor shall be relieved of all liabilities and responsibilities to the extent of the assignment. In the event of foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges, and immunities of the Developer in and to such interest.

13.3 Amendment of Declaration. In addition to any other right of amendment or modification provided for in this Declaration and its recorded Exhibits, the Declarant, or any entity which succeeds to Declarant's position as the Developer of the Property described in Exhibit "A", may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive, or add to any provision of this Declaration or any of its Exhibits. This right specifically includes the right to amend this Declaration and its Exhibits to bring additional Lots within the Properties. The right to amend set forth in this paragraph shall expire when the Declarant no longer holds any Lots and Living Units in the Properties for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made by the Declarant without notice or consent to the members or any other entity.

13.4 Sales or Leases of Units. The Developer intends to sell all Lots and has no program for leasing. However, the Developer shall have the right to sell, lease, or transfer any Living Unit owned by it on such terms and conditions as it deems in its own best interest.

13.5 Non-enforcement of Covenants. The Developer shall have no liability with regard to the enforcement or non-enforcement of the covenants conditions and restrictions in the da Vinci Estates Documents.

THE DECLARANT MAKES NO REPRESENTATIONS, AND TO THE FULLEST EXTENT PERMITTED BY LAW DISCLAIMS ALL WARRANTIES EXPRESS OF IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY, OR CAPACITY IN RELATION TO THE UTILIZATION, DATE

OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN THE COMMON AREAS AND FACILITIES.

14. TURNOVER OF CONTROL OF ASSOCIATION.

14.1 Time of Turnover. Owners other than the Developer shall be entitled to assume control of the Association by electing the entire Board of Directors not later than ninety (90) days after the conveyance of title, to owners other than the Developer, of at least ninety (90%) of the Lots within the Properties. At that time the Directors appointed by the Developer shall resign. The election shall occur at a meeting of the members (the "Turnover Meeting").

14.2 Procedure for Calling Turnover Meeting. No less than sixty (60) days prior to the Turnover Meeting, the Association shall notify in writing all owners of the date, time, and place of the Turnover Meeting.

14.3 Early Turnover. The Developer may turn over control of the Association to owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if owners other than the Developer refuse or fail to assume control.

14.4 Developer Representative. The Developer is entitled to appoint at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five (5%) percent of the Lots. After Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other member except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

15. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:

15.1 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Developer, and any owner, their respective legal representatives, heirs, successors, and assigns, for an initial period that expires on the ninety-ninth (99th) anniversary of the date of recordation of the Declaration of Covenants, Conditions, and Restrictions for da Vinci Estates. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year

period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths ($\frac{3}{4}$ ths) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days in advance of the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

15.2 Amendments; Proposal. Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth ($\frac{1}{4}$ th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

15.3 Amendments; Vote Required. Except as otherwise provided by law, or by specific provision of this da Vinci Estates Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least two-thirds ($\frac{2}{3}$ rds) of the voting interests present and voting at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be substantially in the form specified in Chapter 718, Florida Statutes, for proposed amendments to a Declaration of Condominium.

15.4 Amendments; Certificate; Recording; Effective Date. A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration was originally recorded, and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendments shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

15.5 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of more than two-thirds ($\frac{2}{3}$ rds) of the voting interests, is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote reacquired to authorize or take the action.

15.6 Amendment of Provision Relating to Developer. As long as the Developer holds any Lot for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Developer without the Developer's written consent.

16. GENERAL PROVISIONS.

16.1 Waiver. Any waiver by Developer of any provisions of this Declaration of breach hereof must be in writing and shall not operate or be construed as a waiver of any other provisions or subsequent breach.

16.2 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portion thereof.

16.3 Notices. Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as the owner in the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any changes of address.

Signatures Appear Next Page

IN WITNESS WHEREOF, the Declarant does hereby execute this Declaration of Covenants, Conditions, and Restrictions through its undersigned, duly authorized officer this 30th day of October, 2000.

H.B. HOLDINGS OF SOUTHWEST
FLORIDA, L.L.C. a Florida limited
liability company.

By: EURO/FLORIDA FUNDINGS,
INC., a Florida Corporation, as Manager

WITNESSES:

[Signature]
Signature

By: [Signature]
Michael Bahms, President

Kenneth O'Leary
Print Name

Nina Harkness
Signature

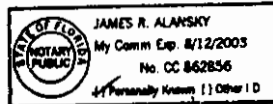
NINA HARKNESS
Print Name

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 30th day of OCTOBER, 2000, by Michael Bahms, President of H.B. Holdings, L.L.C. He is personally known to me or did produce _____ as identification.

[Signature]
Notary Public
My Commission Expires: 8/12/2003

Declarations of Covenants, Conditions, and Restrictions2.wpd



EXHIBITS

- A: Legal Description
- B: Plat
- C: Articles of Incorporation
- D: By-Laws
- E: South Florida Water Management Permit
- F: Re-vegetation Plan
- G: Ingress/Egress Entrance Easement

LEGAL DESCRIPTION

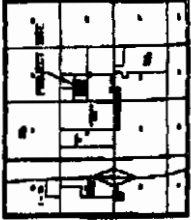
EAST ½ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ AND THE WEST ½ OF THE
SOUTHEAST ¼ OF THE NORTHWEST ¼ OF SECTION 21, TOWNSHIP 48 SOUTH,
RANGE 26 EAST, COLLIER COUNTY, FLORIDA.

OR: 2737 PG: 2916

PLAT

daVINCI ESTATES

A PORTION OF THE NORTHWEST 1/4 OF SECTION 28,
TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA




PLAT BOOK PAGE
SHEET 1 OF 5

RECORDING INFORMATION

THIS INSTRUMENT WAS PREPARED BY
THOMAS M. HENRY, P.A., 00000
H&A REAL ESTATE

PROPERTY INFORMATION

PROPERTY ADDRESS: 00000
PROPERTY TYPE: 00000
PROPERTY SIZE: 00000
PROPERTY VALUE: 00000

LEGAL DESCRIPTION

A PORTION OF THE NORTHWEST 1/4 OF SECTION 28,
TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA

DEED INFORMATION

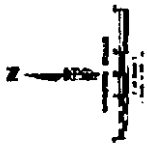
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RECORDING INFORMATION

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RECORDING TYPE: 00000

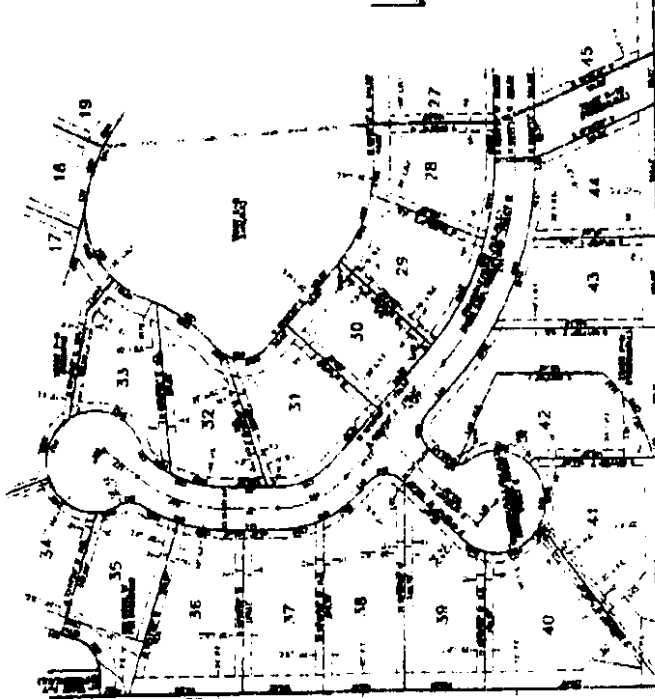
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SHEET 2 41 5

daVINCI ESTATES
A PORTION OF THE NORTHWEST 1/4 OF SECTION 21,
TOWNSHIP 48 SOUTH RANGE 18E EAST, COLLIER COUNTY, FLORIDA



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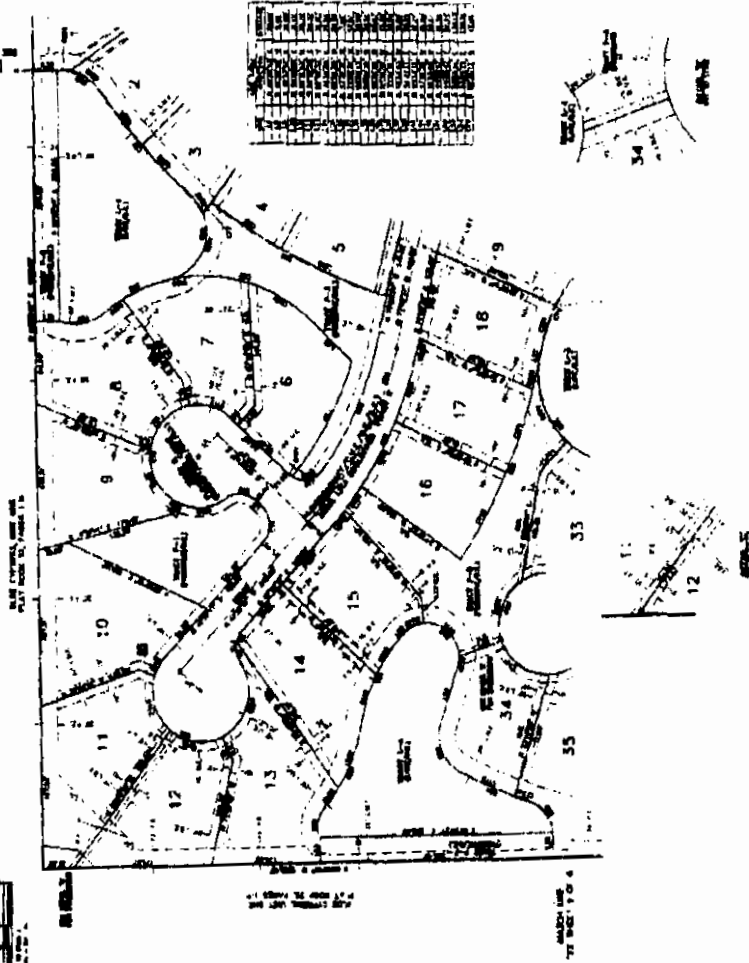


THIS INSTRUMENT WAS PREPARED BY
THOMAS E. MURPHY, P.S.M. #5528
H&M
HARRIS & MURPHY
REGISTERED PROFESSIONAL SURVEYORS
FLORIDA

09/25/20

PLAN ROOM
SHEET 3 of 5

daVINCI ESTATES
A PORTION OF THE NORTHWEST 1/4 OF SECTION 21,
TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA



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THOMAS M. GUNTER, P.E., 00028



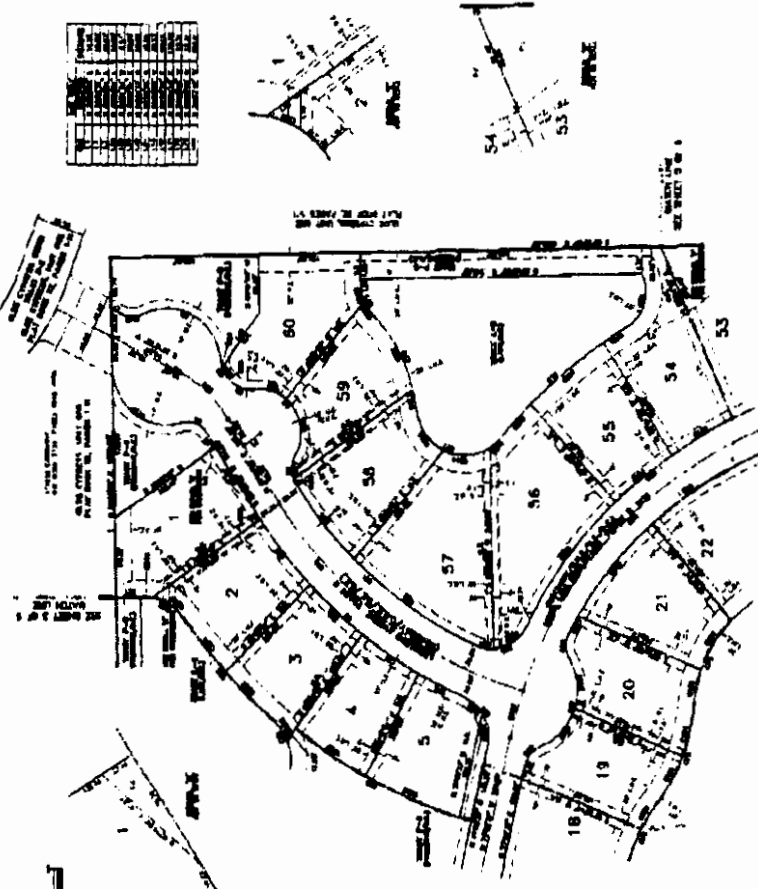
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SHEET 4 of 5

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TOWNSHIP 48 SOUTH RANGE 25 EAST, COLLIER COUNTY, FLORIDA

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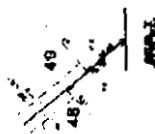
THIS INSTRUMENT WAS PREPARED BY
THOMAS M. SHERRY, P.S.M. #00000000

THOMAS M. SHERRY
P.S.M. #00000000

OR: 2737 PG: 2920

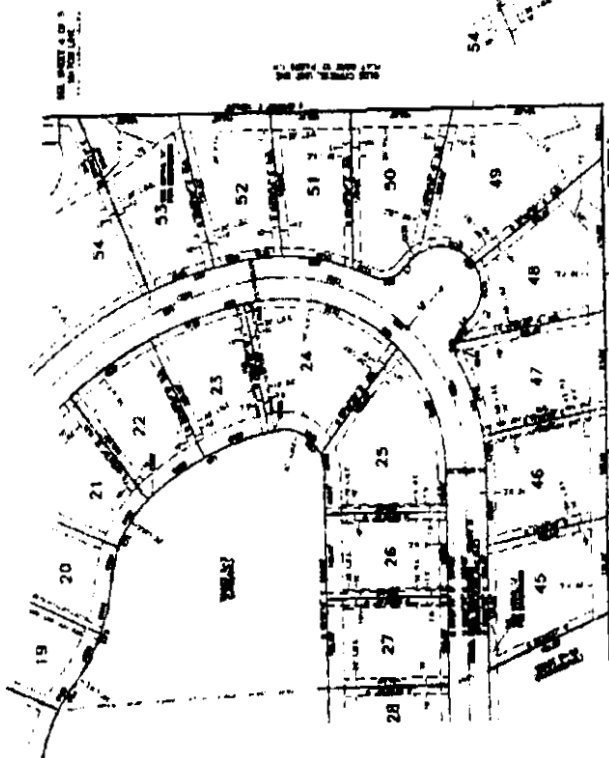
10/20/00

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SHEET 8 of 8



THIS INSTRUMENT WAS PREPARED BY
THOMAS M. MURPHY, P.E. (P.S.)
REGISTERED PROFESSIONAL ENGINEER
STATE OF FLORIDA
No. 12345
Exp. 12/31/2010

daVINCI ESTATES
A PORTION OF THE NORTHWEST 1/4 OF SECTION 28
TOWNSHIP 48 SOUTH RANGE 26 EAST, COLLIER COUNTY, FLORIDA



ARTICLES OF INCORPORATION

Articles of Incorporation

of

DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC.

A Florida Nonprofit Corporation

We, the undersigned natural persons of legal age, acting as incorporators of a corporation under Chapter 617 of the Florida Statutes, hereby adopt the following articles of incorporation:

Article I

The name of the corporation is DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC. (hereinafter the "association").

Article II

The association is a nonprofit corporation.

Article III

The period of its duration is perpetual.

Article IV

The association is formed for the primary purpose of providing for the maintenance, preservation, and architectural control of the residence lots and common area within a certain subdivided tract of real property described as follows: See attached legal description, and to promote the health, safety, and welfare of the residents within the above-described subdivision and such additions thereto as may hereafter be brought within the jurisdiction of the association for such purpose.

In furtherance of such purposes, the association will have the power to:

- (a) Perform all of the duties and obligations of the association as set forth in a certain Declaration of Covenants, Conditions, and Restrictions (the "Declaration") applicable to the subdivision and to be recorded in the public records of Collier County, Florida;
- (b) Affix, levy, and collect all charges and assessments pursuant to the terms of the Declaration, and enforce payment thereof by any lawful means; and pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the association, including all licenses, taxes, or governmental charges levied or imposed on the property of the association;
- (c) Acquire (by gift, purchase, or otherwise), own, hold, improve, build on, operate, maintain,

convey, sell, lease, transfer, dedicate to public use, or otherwise dispose of real and personal property in connection with the affairs of the association;

- (d) Borrow money and, subject to the consent by vote or written instrument of two-thirds of each class of members, mortgage, pledge, convey by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) Dedicate, sell, or transfer all or any part of the common areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the members. No such dedication or transfer will be effective unless an instrument has been signed by two-thirds of each class of members, agreeing to such dedication, sale, or transfer;
- (f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, or annex additional residential property and common areas, provided that any merger, consolidation, or annexation must have the consent by vote or written instrument of two-thirds of each class of members;
- (g) Have and exercise all powers, rights and privileges that a corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise.

The association is organized and will be operated exclusively for the above purposes. The activities of the association will be financed by assessments on members as provided in the Declaration, and no part of any net earnings will inure to the benefit of any member.

Article V

The street address of the initial registered office of the association is 800 Seagate Drive, Suite 203, Naples, Florida 34105, and the name of its initial registered agent at that address is KENNETH O'LEARY.

Article VI

Every person or entity who/which is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessments by the association, including contract sellers, but excluding persons holding title merely as security for performance of an obligation, will be a member of the association. Membership will be appurtenant to and may not be separated from ownership of a lot which is subject to assessment by the association.

Article VII

The association will have two classes of voting members, which are defined as follows:

Class A. Class A members will include all owners with the exception of the declarant, as that term is defined in the Declaration. Class A members will be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all of those persons will be members. The vote for such lot will be exercised as such members determine among themselves.

but in no event will more than one vote be cast with respect to any lot owned by Class A members.

Class B. The Class B member will be the declarant, as that term is defined in the Declaration. The declarant will be entitled to three votes for each lot owned. The Class B membership will cease and be converted to Class A membership as provided in the Declaration.

Article VIII

The number of directors constituting the initial board of directors of the association is three, and the names and addresses of the persons who are to serve as the initial directors are:

Michael Bahms
800 Seagate Drive, Suite 203
Naples, Florida 34105

Kenneth O'Leary
800 Seagate Drive, Suite 203
Naples, Florida 34105

James Alansky
800 Seagate Drive, Suite 203
Naples, Florida 34105

Article IX

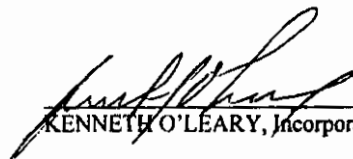
On dissolution, the assets of the association will be distributed to an appropriate public agency to be used for purposes similar to those for which the association was created. In the event such distribution is refused acceptance, such assets will be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization organized and operated for such similar purposes.

Article X

The name and street address of each incorporator is:

Kenneth O'Leary
800 Seagate Drive, Suite 203
Naples, Florida 34105

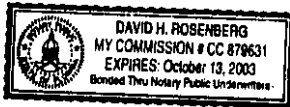
Executed this 30 day of Oct, 2000.

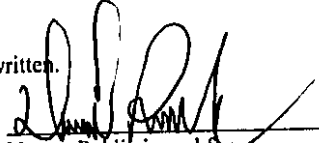

KENNETH O'LEARY, Incorporator

State of Florida
County of Collier

I, David Rosenberg, a notary public, certify that on 10/30, 2000, KENNETH O'LEARY, being first duly sworn, personally appeared before me and declared that he is the persons who signed the foregoing document as incorporator, and that the statements contained therein are true.

In witness, I have set my hand and on the date first above-written.




Notary Public in and for
Collier County, Florida

My commission expires:

BY-LAWS

BYLAWS
OF
DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC.,
a Florida corporation not-for-profit

1. General.

1.1 Identity. These are the Bylaws of DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC. (the "HOMEOWNERS' ASSOCIATION"), a corporation not-for-profit formed under the laws of the State of Florida. The HOMEOWNERS' ASSOCIATION has been organized for the purposes stated in the Articles of Incorporation (the "Articles"), and the MASTER DECLARATION OF COVENANTS AND RESTRICTIONS FOR DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC. (the "Declaration"). The HOMEOWNERS' ASSOCIATION shall have all of the powers provided in these Bylaws, the Articles, the Declaration (collectively, the "Governing Documents"), and any other statute or law of the State of Florida or any other power incident to any of the above powers.

1.2 Principal Office. The principal office of the HOMEOWNERS' ASSOCIATION shall be at such place as the BOARD may determine from time to time.

1.3 Fiscal Year. The fiscal year of the HOMEOWNERS' ASSOCIATION shall be the calendar year.

1.4 Seal. The seal of the HOMEOWNERS' ASSOCIATION shall have inscribed upon it DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC., the year of its incorporation and the words "Corporation Not-For-Profit". The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the HOMEOWNERS' ASSOCIATION.

1.5 Inspection of Books and Records. The records of the HOMEOWNERS' ASSOCIATION shall be open to inspection by any MEMBER of the HOMEOWNERS' ASSOCIATION, upon request, during normal business hours or under other reasonable circumstances. The records of the HOMEOWNERS' ASSOCIATION shall include current copies of the Declaration, the Articles, the Bylaws, any Rules and Regulations of the HOMEOWNERS' ASSOCIATION, any contracts entered into by the HOMEOWNERS' ASSOCIATION, and the books, records and financial statements of the HOMEOWNERS' ASSOCIATION. The HOMEOWNERS' ASSOCIATION shall be required to make available to prospective purchasers of any Property Unit, current copies of the Governing Documents and the most annual financial statement of the HOMEOWNERS' ASSOCIATION.

1.6 Definitions. Unless the context otherwise requires, all terms used in these Bylaws shall have

the same meaning as are attributed to them in the Declaration and the Articles.

2. Membership in General.

2.1 Qualification. The qualification of MEMBERS, the manner of their admission to membership, changes in membership, and the termination of such membership, shall be as set forth in the Declaration and the Articles.

2.2 Member Register. The Secretary of the HOMEOWNERS' ASSOCIATION shall maintain a register in the office of the HOMEOWNERS' ASSOCIATION showing the names and addresses of the MEMBERS of the HOMEOWNERS' ASSOCIATION. Each MEMBER shall at all times advise the Secretary of any change of address, of any change of ownership of the MEMBER's Property Unit, and of any change in the number of Property Units. The HOMEOWNERS' ASSOCIATION shall not be responsible for reflecting any changes until notified of such change in writing.

3. Members Voting. The votes of the MEMBERS shall be equal to the percentage of any MEMBER's share of the Assessment charged to each MEMBER pursuant to the terms of the Declaration.

4. Membership Meetings.

4.1 Who may Attend. Any person entitled to cast the votes of the MEMBER, and in the event any Property Unit is owned by more than one Person, all CO-OWNERS of the Property Unit may attend any meeting of the MEMBERS. However, the votes of any MEMBER shall be cast in accordance with the provisions of Section 3 above. Any Person not expressly authorized to attend a meeting of the MEMBERS, as set forth above, may be excluded from any meeting of the MEMBERS, by the presiding officer of the meeting.

4.2 Place. All meetings of the MEMBERS shall be held at the principal office of the OWNERS' ASSOCIATION or at any other location as designated by the BOARD and stated in the notice of meeting.

4.3 Quorum Requirements. Except as set forth hereinafter or unless otherwise so provided, at any regular or special meeting of the MEMBERS, the presence in person of MEMBERS entitled to cast a majority of the votes of the entire membership at the time of such vote shall constitute a quorum. If any meeting of the MEMBERS cannot be organized because a quorum is not present, a majority of the votes of the MEMBERS present may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence in person or by proxy of MEMBERS holding at least twenty-five percent (25%) of the votes of the entire membership. Such an adjourned meeting may be held without notice thereof as provided in subsection 4.4, provided that notice is given by announcement at the meeting at which such adjournment is taken. If, however, such an adjourned meeting is actually attended, in person or by proxy, by MEMBERS entitled to cast less than one-third (1/3) of the total votes of the membership, notwithstanding the presence of a quorum, no matter may be voted upon except such matters

notice of the general nature of which was given pursuant to subsections 4.4 and 4.7 hereof. If a meeting of MEMBERS is adjourned for more than thirty (30) days from the originally scheduled meeting date, or if the MEMBERS adjourn a meeting without specifying a date for holding the adjourned meeting, the quorum and notice requirements for the holding of such adjourned meeting shall then be the same as the notice and quorum requirements prescribed for special meetings.

4.4 Notices. Written notice stating the location, day and hour of any meeting and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be posted continuously in a public place not less than five (5) days nor more than sixty (60) days before the date of the meeting, by or at the direction of the President, the Secretary, or the Officer or persons calling the meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice of any meeting at which members of the BOARD are to be elected shall include the names of all those who are nominees at the time the notice is given to the MEMBERS. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the MEMBER at the MEMBER's address as it appears on the records of the HOMEOWNERS' ASSOCIATION, unless such MEMBER shall have filed a written request with the Secretary of the HOMEOWNERS' ASSOCIATION stating that notices to him be mailed to some other address. All notices shall be dated and shall be mailed to the MEMBERS as soon after the date of the notice as is practical. The date of the notice shall be the date used for the purposes of determining MEMBERS entitled to notice of, or to vote at, any meeting of the MEMBERS of the HOMEOWNERS' ASSOCIATION, or in order to make a determination of the MEMBERS for any other purpose. The BOARD shall not be required to take into account any changes in membership occurring after that date but may, in their sole and absolute discretion, do so. If the Property Unit of a MEMBER is owned by more than one person or by an entity, only one notice shall be required to be sent with respect to the MEMBER, which shall be made to the person designated in the records of the HOMEOWNERS' ASSOCIATION. Notice to a Community Association shall be made to its Representative and, in the absence of a Representative, shall be sent to the Secretary of the Community Association.

4.5 Waiver of Notice. Whenever any notice is required to be given to any MEMBER under the provisions of the Articles or these Bylaws, or as otherwise provided by law, a waiver in writing signed by the Person or Persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a MEMBER at a meeting shall constitute a waiver of notice of such meeting except when the MEMBER objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

4.6 Annual Meeting. The annual meeting for the purpose of electing members of the BOARD and the transacting any other business shall be held at _____ [time] on the _____ [day of month] in _____ [month];, or at such other time in the month of _____ as shall be selected by the BOARD. If the BOARD fails to call the annual meeting by the end of _____ [month], then within thirty (30) days after the written request of any MEMBER, Officer or member of the BOARD of the HOMEOWNERS' ASSOCIATION, the Secretary shall call the annual meeting.

4.7 Special Meetings. Special meetings of the MEMBERS may be requested by written notice to

the Secretary by any member of the BOARD, the President, or any MEMBERS having not less than ten percent (10%) of the votes of the entire membership, or as otherwise provided by law. Such request shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. Notices of any special meeting shall be given in accordance with subsection 4.4 to all of the MEMBERS within thirty (30) days after a special meeting is duly requested.

4.8 Adjournments. Any meeting may be adjourned or continued by a majority of the votes presents at the meeting in person or by proxy, regardless of a quorum, or if no MEMBER entitled to vote is present at a meeting, then any Officer of the HOMEOWNERS' ASSOCIATION may adjourn the meeting. If any meeting is adjourned or continued to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original meeting. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, notice of the adjourned meeting may be given to MEMBERS not present at the original meeting, without giving notice to the MEMBERS who were present at such meeting.

4.9 Organization. At each meeting of the MEMBERS, the President, or in his absence the Vice President, shall act as chairman of the meeting. The Secretary, or in his absence or inability to act, any person appointed by the chairman of the meeting shall act as Secretary of the meeting.

4.10 Minutes. The minutes of all meetings of the MEMBERS shall be kept in a book available for inspection by the MEMBERS or their authorized representatives, and the members of the BOARD, at any reasonable time.

11. Actions Without a Meeting. Any action required or permitted to be taken at any annual or special meeting of the MEMBERS may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the MEMBERS having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all MEMBERS entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice shall be given to those MEMBERS who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. If the Property Unit(s) for which membership is established in the HOMEOWNERS' ASSOCIATION is owned by more than one Person or by an entity, the consent for such Property Unit(s) need only be signed by one Person who would be entitled to cast the vote(s) for the Property Unit(s).

5. BOARD.

5.1 Number of Members of the BOARD.

5.1.1 The affairs of the HOMEOWNERS' ASSOCIATION shall be managed by a BOARD comprised of not less than three (3) nor more than nine (9) members. As long as the DEVELOPER is entitled to appoint all members of the BOARD pursuant to the Articles, the

number of members of the BOARD will be determined, and may be changed from time to time, by the DEVELOPER by written notice to the BOARD. In the absence of such notification, there shall be three (3) members of the BOARD.

5.1.2 When the DEVELOPER is no longer entitled to appoint all members of the BOARD, the number of members of the BOARD shall be increased to at least five (5).

5.1.3 Notwithstanding the foregoing, in no event shall there be less than three (3) members of the BOARD, and the number of members of the BOARD shall always be an odd number. The MEMBERS shall not have the right to change the number of members of the BOARD as long as the DEVELOPER has the right to determine the number of members of the BOARD as set forth above.

5.2 Election of Members of the BOARD. Election of members of the BOARD to be elected by the MEMBERS of the HOMEOWNERS' ASSOCIATION shall be conducted in the following manner:

5.2.1 At any time after the DEVELOPER no longer has the right to appoint one or more members of the BOARD or upon the earlier voluntary relinquishment by the DEVELOPER of its right to appoint any or all members of the BOARD, the existing BOARD shall appoint a nominating committee composed of MEMBERS (or the representative of Community Association MEMBERS). The BOARD shall send a notice to all MEMBERS advising of the impending election of the members to the BOARD, the names and addresses of the members of the nominating committee, and the date the committee will make decisions concerning nominations for election to the BOARD, which date shall be no less than fifteen (15) days after the date of the notice. MEMBERS may then submit names in writing of the proposed members of the BOARD to members of the nominating committee.

5.2.2 The nominating committee shall make as many nominations for election to the BOARD as it shall in its discretion determine, but not less than the number of vacancies that are to be filled (see subsection 5.1.2). Such nominations may be made from among MEMBERS or nonmembers as the committee in its discretion shall determine.

5.2.3 All elections to the BOARD shall be made by written ballot which shall:

- (a) indicate the number of vacancies to be filled;
- (b) set forth the names of those nominated by the nominating committee;
- (c) contain a space for write-in vote by the MEMBERS; and
- (d) contain a requirement that the MEMBER must cast the same number of votes as the number of vacancies on the BOARD. For example, if the MEMBER has one (1) vote and there are five (5) nominees and three (3) vacancies, the MEMBER must vote for no more and no less than three (3) nominees or the ballot will not be counted. Such ballots shall be prepared and mailed by the Secretary to the MEMBERS at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the

number of members of the BOARD will be determined, and may be changed from time to time, by the DEVELOPER by written notice to the BOARD. In the absence of such notification, there shall be three (3) members of the BOARD.

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5.2.2 The nominating committee shall make as many nominations for election to the BOARD as it shall in its discretion determine, but not less than the number of vacancies that are to be filled (see subsection 5.1.2). Such nominations may be made from among MEMBERS or nonmembers as the committee in its discretion shall determine.

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- (b) set forth the names of those nominated by the nominating committee;
- (c) contain a space for write-in vote by the MEMBERS; and
- (d) contain a requirement that the MEMBER must cast the same number of votes as the number of vacancies on the BOARD. For example, if the MEMBER has one (1) vote and there are five (5) nominees and three (3) vacancies, the MEMBER must vote for no more and no less than three (3) nominees or the ballot will not be counted. Such ballots shall be prepared and mailed by the Secretary to the MEMBERS at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the

day before the annual meeting). The Secretary shall include with the ballot a brief summary and description of each Person nominated by the BOARD.

5.3 Term of Office. On the first occasion that the MEMBERS, other than the DEVELOPER, have the opportunity to elect any members of the BOARD, the MEMBERS shall have the right to elect at least two (2) members of the BOARD. The term of office of the member of the BOARD receiving the highest number of votes shall be two (2) years and the term of office of the member of the BOARD receiving the next highest number of votes at such meeting shall be one (1) year. One (1) member of the BOARD shall hold office until the third annual meeting after his election, and the other member of the BOARD shall hold office until the second annual meeting after his election. Each member of the BOARD shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Just prior to each annual meeting thereafter, new members of the BOARD shall be elected to fill vacancies created by the death, resignation, removal, judicial adjudication of mental incompetence or expiration of the terms of past members of the BOARD and the term of each such member of the BOARD shall be two (2) years. On the first occasion that the MEMBERS, other than the DEVELOPER, have the opportunity to elect all members of the BOARD, the new members of the BOARD shall be elected to replace the members of the BOARD appointed by the DEVELOPER as provided in these Bylaws. The term of office of the two (2) members of the BOARD receiving the highest number of votes shall be two (2) years and the term of office of the other member of the BOARD shall be one (1) year. It is the intention of this provision to create staggered terms so that at least one-third (1/3) of the members of the BOARD shall be elected each year. The term of office of each member of the BOARD elected to fill a vacancy created by the expiration of the term of office of the respective past member of the BOARD shall be two (2) years. The term of office of each member of the BOARD elected or appointed to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor. Any person serving as a member of the BOARD may be re-elected, and there shall be no limitation on the number of terms during which he may serve.

5.4 Organizational Meeting. The newly elected BOARD shall meet for the purposes of organization, the election of officers and the transaction of other business immediately after their election or within ten (10) days of same at such place and time as shall be fixed by the members of the BOARD at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

5.5 Regular Meetings. Regular meetings of the BOARD may be held at such time and place as shall be determined, from time to time, by a majority of the members of the BOARD.

5.6 Special Meetings. Special meetings of the BOARD may be called by any member of the BOARD, or by the President if not otherwise a member of the BOARD, at any time.

5.7 Board Action Without a Meeting. Any action required to be taken at a meeting of the members of the BOARD, or any action which may be taken at a meeting of the members of the BOARD, may be taken without a meeting if a consent in writing setting forth the action so to be taken is signed by all members of the BOARD and is filed in the minutes of the proceedings of the BOARD. Such consent shall have the same effect as a unanimous vote.

5.8 Notice of Meetings. Notice of meetings of the BOARD shall be given by the Secretary, or by any other officer or member of the BOARD, stating the day, location and time of the meeting. Notice of such meeting shall be delivered to each member of the BOARD either personally or by telephone or telegraph, at least twenty-four (24) hours before the time at which such meeting is to be held, or by first-class mail, postage prepaid, at least three (3) days before the day on which such meeting is to be held. Notice of a meeting of the BOARD need not be given to any member of the BOARD who signs a waiver of notice either before or after the meeting. Attendance of a member of the BOARD at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place, the time or the manner in which the meeting has been called or convened, except when a member of the BOARD states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the BOARD need be specified in any notice or waiver of notice of such meeting.

5.9 Attendance at Board Meetings. All meetings of the BOARD shall be open to all MEMBERS. A member of the BOARD may appear at a BOARD meeting by telephone conference, but in that event a telephone speaker shall be attached so that any discussion may be heard by the members of the BOARD and any MEMBERS present as in an open meeting.

5.10 Quorum and Manner of Acting. A majority of the BOARD shall constitute a quorum for the transaction of any business at a meeting of the BOARD. The act of the majority of the members of the BOARD present at a meeting at which a quorum is present shall be the act of the BOARD unless the act of a greater number of members of the BOARD is required by statute or the Governing Documents.

5.11 Adjourned Meetings. A majority of the members of the BOARD present at a meeting, whether or not a quorum exists, may adjourn any meeting of the BOARD to another location and time. Notice of any such adjourned meeting shall be given to the members of the BOARD who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other members of the BOARD. Any business that might have been transacted at the meeting as originally called may be transacted at any adjourned meeting without further notice.

5.12 Presiding Officer. The presiding officer of the meetings of the BOARD shall be the Chairman of the BOARD if such an officer is elected; and if none, the President of the OWNERS' ASSOCIATION shall preside if the President is a member of the BOARD. In the absence of the presiding officer, the member of the BOARD shall designate one of their members to preside.

5.13 Minutes of Meetings. The minutes of all meetings of the BOARD shall be kept in a book available for inspection by the MEMBERS or members of the BOARD.

5.14 Committees. The BOARD may by resolution appoint committees. Any committee may exercise such powers, duties and functions as may be determined by the BOARD which may include any powers which may be exercised by the BOARD.

5.15 Resignation. Any member of the BOARD may resign at any time by giving written notice of

his resignation to the Secretary. Any resignation shall take effect at the time specified therein or, if the time when such resignation is to become effective is not specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

5.16 Removal of Members of the Board. Members of the BOARD may be removed as follows:

5.16.1 Any member of the BOARD other than a member appointed by the DEVELOPER may be removed by majority vote of the remaining members of the BOARD if such member has been absent for the last three consecutive BOARD meetings and/or adjournments and continuances of such meetings.

5.16.2 Any member of the BOARD other than a member appointed by the DEVELOPER may be removed with or without cause by a majority of the votes the MEMBERS cast at a special meeting of the MEMBERS called by MEMBERS having not less than twenty-five percent (25%) of the votes of the entire membership expressly for that purpose. The vacancy on the BOARD caused by any such removal may be filled by the MEMBERS at such meeting, or, if the MEMBERS shall fail to fill such vacancy, by the BOARD as in the case of any other vacancy on the BOARD.

5.17 Vacancies. Vacancies on the BOARD of any member of the BOARD appointed by the DEVELOPER shall be filled by appointment by the DEVELOPER. Unless the vacancy is filled by the MEMBERS in accordance with subsection 5.16.2, vacancies on the BOARD of any member of the BOARD elected by MEMBERS may be filled by a majority vote of the members of the BOARD then in office, though less than a quorum, or by a sole remaining member of the BOARD. If there are no members of the BOARD in office, then a special election meeting of the MEMBERS shall be called to elect the members of the BOARD to fill the vacancies.

5.18 Members of the Board Appointed by the DEVELOPER. Notwithstanding anything contained herein to the contrary, the DEVELOPER shall always have the right to appoint the maximum number of members of the BOARD in accordance with the privileges granted to the DEVELOPER pursuant to the Articles. All members of the BOARD appointed by the DEVELOPER shall serve at the pleasure of the DEVELOPER, and the DEVELOPER shall have the absolute right, at any time, and in its sole discretion, to remove any member of the BOARD appointed by it, and to replace such member with another person to serve on the BOARD. Replacement of any member of the BOARD appointed by the DEVELOPER shall be made by written notice to the HOMEOWNERS' ASSOCIATION which shall specify the name of the person designated as successor member of the BOARD. The removal of any member of the BOARD and the designation of his successor by the DEVELOPER shall become effective immediately upon delivery of such written notice by the DEVELOPER. The DEVELOPER may waive its right to appoint one or more members of the BOARD which it has the right to appoint at any time upon written notice to the HOMEOWNERS' ASSOCIATION, and thereafter such member(s) of the BOARD shall be elected by the MEMBERS.

5.19 Compensation. The BOARD shall not be entitled to any compensation unless the MEMBERS elect to pay them compensation and set the amount of such compensation at any

meeting of the MEMBERS.

5.20 Power and Duties. The BOARD shall have the right to exercise all of the powers and duties of the HOMEOWNERS' ASSOCIATION, express or implied, existing under these Bylaws, the Articles, the Declaration, or as otherwise provided by statute or law. Such powers and duties of the BOARD shall include without limitation (except as limited elsewhere herein), the following:

5.20.1 The operation, care, upkeep and maintenance of the Common Areas, and any other portion of DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC. determined to be maintained by the HOMEOWNERS' ASSOCIATION.

5.20.2 The determination of the expenses required for the operation of the HOMEOWNERS' ASSOCIATION.

5.20.3 The collection of Assessments for Common Expenses from MEMBERS required to pay same.

5.20.4 The employment and dismissal of personnel.

5.20.5 The adoption and amendment of Rules and Regulations covering the details of the operation and use of property owned and/or maintained by the HOMEOWNERS' ASSOCIATION.

5.20.6 Maintaining bank accounts on behalf of the HOMEOWNERS' ASSOCIATION and designating signatories required thereof.

5.20.7 Obtaining and reviewing insurance for property owned and/or maintained by the HOMEOWNERS' ASSOCIATION.

5.20.8 The making of repairs, additions and improvements to, or alterations of, property owned and/or maintained by the HOMEOWNERS' ASSOCIATION.

5.20.9 Borrowing money on behalf of the HOMEOWNERS' ASSOCIATION, provided, however, that the consent of the MEMBERS having at least two-thirds (2/3) of the votes of the entire membership, obtained at a meeting duly called and held for such purpose in accordance with provisions of these Bylaws, shall be required for the borrowing of any sum in excess of \$25,000.00.

5.20.10 Contracting for the management and maintenance of property owned and/or maintained by the HOMEOWNERS' ASSOCIATION. Authorizing a management agent or company to assist the HOMEOWNERS' ASSOCIATION in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the Common Areas with such funds as shall be made available by the HOMEOWNERS' ASSOCIATION for such purposes. The HOMEOWNERS' ASSOCIATION and its Officers shall, however, retain at all times the power and duties granted by all Governing Documents, including but not limited to, the making of Assessments, promulgation of rules, and execution of contracts on behalf of the

HOMEOWNERS' ASSOCIATION.

5.20.11 Exercising all powers specifically set forth in the Governing Documents and as otherwise provided by statute or law and all powers incidental thereto or implied therefrom.

5.20.12 Collecting delinquent Assessments by suit or otherwise, abating nuisances, and enjoining or seeking damages from the MEMBERS and/or OWNERS for violations of these Bylaws and the terms and conditions of the Declaration or of the Rules and Regulations of the HOMEOWNERS' ASSOCIATION.

6. TAXES AND INSURANCE.

6.1 **Taxes.** The HOMEOWNERS' ASSOCIATION shall pay all real and personal property taxes and assessments for any property owned or maintained by the HOMEOWNERS' ASSOCIATION as a Common Expense.

6.2 **Insurance.** The HOMEOWNERS' ASSOCIATION may, in its discretion, purchase insurance as a Common Expense as follows:

6.2.1 **Hazard Insurance.** Hazard Insurance protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering one hundred percent (100%) of the current replacement costs of all Common Areas and property owned by the HOMEOWNERS' ASSOCIATION, excluding land, foundations, excavations, and other items normally excluded from insurance coverage. The HOMEOWNERS' ASSOCIATION shall not use hazard insurance proceeds for any purpose other than repair, replacement or reconstruction of any damage or destroyed property without the approval of the BOARD.

6.2.2 **Liability Insurance.** Comprehensive General Liability Insurance protecting the HOMEOWNERS' ASSOCIATION from claims for bodily injury, death or property damage providing for coverage of one million dollars (\$1,000,000) for any single occurrence and five million dollars (\$5,000,000) in the aggregate, or in such amounts as the BOARD, in its sole discretion, deems reasonable and necessary. If the HOMEOWNERS' ASSOCIATION is not able to obtain such insurance in the amounts stated, the BOARD shall obtain insurance in such lesser amounts as can be obtained.

6.2.3 **Fidelity bonds.** Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the HOMEOWNERS' ASSOCIATION, covering the maximum funds that could reasonably be in the custody and control of the HOMEOWNERS' ASSOCIATION or any managing agent.

6.2.4 **Officers and Directors Insurance.** Officer and Director liability insurance and liability insurance for members of committees and boards appointed by the BOARD, if available, and for MEMBERS of the HOMEOWNERS' ASSOCIATION, if available, as shall be determined by BOARD to be required or beneficial for the protection of the Members of the BOARD, the

officers of the HOMEOWNERS' ASSOCIATION, the members of committees and boards appointed by the BOARD, and the MEMBERS of the HOMEOWNERS' ASSOCIATION.

6.2.5 Other Insurance. Such other forms of insurance and coverages and in such amounts as the BOARD shall determine to be required or beneficial for the protection or preservation of the Common Areas and any improvements now or hereafter located thereon or in the best interests of DA VINCI ESTATES HOMEOWNERS' ASSOCIATION, INC.

6.2.6 Cancellation Notice. To the extent possible, all insurance purchased by the HOMEOWNERS' ASSOCIATION must include a provision requiring as much advance written notice as is possible to the HOMEOWNERS' ASSOCIATION before the insurance can be canceled or the coverage reduced for any reason.

6.2.7 Deductible. Any deductible or exclusion under the policies shall be a Common Expense and shall be approved by the BOARD.

7. Indemnification.

7.1 Indemnification of Officers, Members of the Board or Agents. The HOMEOWNERS' ASSOCIATION shall indemnify any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a member of the BOARD, employee, Officer or agent of the HOMEOWNERS' ASSOCIATION, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the HOMEOWNERS' ASSOCIATION; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in performance of his duty to the HOMEOWNERS' ASSOCIATION unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the HOMEOWNERS' ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

7.1.1 To the extent that a member of the BOARD, officer, employee or agent of the HOMEOWNERS' ASSOCIATION is entitled to indemnification by the HOMEOWNERS' ASSOCIATION in accordance with this Section 7, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

7.1.2 Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the HOMEOWNERS' ASSOCIATION in advance of the final disposition of such action, suit or proceeding upon receipt of any undertaking by or on behalf of the member of the BOARD, Officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the HOMEOWNERS' ASSOCIATION as authorized in this Article.

7.1.3 The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of MEMBERS or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the BOARD, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

7.1.4 The HOMEOWNERS' ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any Person who is or was a member of the BOARD, Officer, employee or agent of the HOMEOWNERS' ASSOCIATION, or is or was serving at the request of the HOMEOWNERS' ASSOCIATION as a member of the BOARD, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the HOMEOWNERS' ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

8. Officers.

8.1 Positions and Qualifications. The Officers of the HOMEOWNERS' ASSOCIATION shall include a President, a Vice President, a Treasurer and a Secretary, all of whom shall be elected by the BOARD and may be pre-emptively removed from office with or without cause by vote of the BOARD at any meeting by concurrence of a majority of the members of the BOARD. Any person may hold two or more offices except that the President shall not also be the Secretary. The BOARD may, from time to time, elect such other officers and designate their powers and duties as the BOARD shall find to be appropriate to manage the affairs of the HOMEOWNERS' ASSOCIATION. Each Officer shall hold office until his successor shall have been elected, qualified, or until his death, resignation or removal.

8.2 Resignation. Any officer of the HOMEOWNERS' ASSOCIATION may resign at any time by giving written notice of his resignation to any member of the BOARD, the President or the Secretary. Any resignation shall take effect at the time specified therein, or if there is no time specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make such resignation effective.

8.3 Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause may be filled for the unexpired portion of the term of the office which shall be vacant in the manner prescribed in these Bylaws for the regular election or appointment of such office.

8.4 The President. The President shall be the chief executive officer of the HOMEOWNERS' ASSOCIATION. He shall have all of the powers and duties which are usually vested in the office

of the president of an association or corporation including, but not limited to, the power to appoint committees to assist in the conduct of the affairs of the HOMEOWNERS' ASSOCIATION.

8.5 The Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also assist the President generally and exercise such other powers and perform such other duties as may be prescribed by the BOARD.

8.6 The Secretary. The Secretary shall be responsible for preparing and keeping the minutes of all proceedings of the BOARD and the MEMBERS. He shall be responsible for attending to the giving and serving of all notices to the MEMBERS and the members of the BOARD and other notices required by law. He shall have custody of the seal of the HOMEOWNERS' ASSOCIATION and affix the same to instruments requiring a seal. He shall keep the records of the HOMEOWNERS' ASSOCIATION, except those of the Treasurer, and shall perform or direct performance of all other duties incident to the office of Secretary of the HOMEOWNERS' ASSOCIATION, and as may be required by the BOARD or the President.

8.7 The Treasurer. The Treasurer shall have custody of all property of the HOMEOWNERS' ASSOCIATION, including funds, securities, and evidences of the indebtedness. He shall oversee the keeping of books of account for the HOMEOWNERS' ASSOCIATION in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the BOARD for examination at reasonable times. He shall cause a Treasurer's Report to be submitted to the BOARD at reasonable intervals and shall perform or cause to be performed all other duties incident to the office of Treasurer. He shall collect, or direct collection of, all Assessments and shall report promptly to the BOARD the status of collections.

8.8 Compensation. The Officers of the HOMEOWNERS' ASSOCIATION shall not be entitled to compensation unless the BOARD specifically votes to compensate them. However, neither this provision, nor the provision that members of the BOARD will not be compensated unless otherwise determined by the MEMBERS, shall preclude the BOARD from employing a member of the BOARD or an Officer as an employee, of the HOMEOWNERS' ASSOCIATION and compensating such employee, nor shall they preclude the OWNERS' ASSOCIATION from contracting with a member of the BOARD for the management of the Common Areas or any portion thereof, or for the provision of services to the HOMEOWNERS' ASSOCIATION, including, but not limited to, engineering, architectural, planning, landscape planning, accounting or legal services, and in either such event to pay such member of the BOARD a reasonable fee for such management or provision of services.

9. Finances and Assessments.

9.1 Adoption of the Budget.

9.1.1 By November 30th of each year, or as soon thereafter as is reasonably possible, the BOARD shall adopt a budget for the next fiscal year, necessary to defray the Common Expenses of the HOMEOWNERS' ASSOCIATION for such fiscal year as set out in the Declaration. The Common Expenses of the HOMEOWNERS' ASSOCIATION shall include all expenses of any

kind or nature whatsoever anticipated to be incurred, by the HOMEOWNERS' ASSOCIATION for the next fiscal year. In the event the BOARD fails to adopt an annual budget for any year, the prior year's budget shall remain in effect until a new budget is adopted or the existing budget is amended or revised.

9.1.2 If, after the adoption of any budget, it shall appear that the adopted budget is insufficient to provide adequate funds to defray the Common Expenses of the HOMEOWNERS' ASSOCIATION for the fiscal year in which the adopted budget applies, the BOARD may adopt an amended budget to provide such funds. All of the above provisions shall apply to the adoption of an amended budget.

9.2 Assessments and Assessment Roll.

9.2.1 Pursuant to the terms of the Declaration, the BOARD shall fix and determine the amount and frequency of the MEMBERS' Assessments for Common Expenses. Such Assessments shall be due not more frequently than monthly and shall each be in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Any Periodic Assessments for Common Expenses, whether quarterly, monthly, or otherwise, shall be equal unless the BOARD determines unequal Assessments are required to provide funds in advance for the expenses of the HOMEOWNERS' ASSOCIATION. As soon as practicable after the determination of the Assessments for Common Expenses, the HOMEOWNERS' ASSOCIATION shall notify each MEMBER, in writing, of the amount, frequency and due date of such MEMBERS' Assessments, provided, however, that no Assessments shall be due in less than ten (10) days from the date of such notification.

9.2.2 In the event the expenditure of funds by the HOMEOWNERS' ASSOCIATION is required that cannot be paid from the Assessments for Common Expenses, the BOARD may make Special Assessments in the manner as set out in the Declaration.

9.2.3 The HOMEOWNERS' ASSOCIATION shall maintain an Assessment roll for each MEMBER, designating the name and current mailing address of the MEMBER, the amount of each Assessment payable by such MEMBER, the dates and amounts in which the Assessments come due, the amounts paid upon the account of the MEMBER, and the balance due.

9.3 **Depositories.** The funds of the HOMEOWNERS' ASSOCIATION shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the BOARD from time to time. Funds shall be withdrawn only upon checks and demands for money signed by such officers, members of the BOARD or other persons as may be designated by the BOARD.

9.4 **Application of Payments and Commingling of Funds.** All sums collected by the HOMEOWNERS' ASSOCIATION from Assessments may be commingled in a single fund or divided into more than one fund, as determined by the BOARD. Reserve Funds shall be deposited in separate interest bearing accounts.

10. **Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the meetings of MEMBERS when not in conflict with the Governing Documents.

11. **Amendments.**

11.1 **Initiation.** A resolution to amend these Bylaws may be proposed by any member of the BOARD, or by MEMBERS holding not less than ten percent (10%) of the votes of the entire membership of the HOMEOWNERS' ASSOCIATION.

11.2 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

11.3 **Adoption of Amendments.**

11.3.1 As long as the DEVELOPER appoints a majority of the members of the BOARD, the DEVELOPER shall have the right to unilaterally amend these Bylaws without the joinder or approval of any member of the BOARD or any MEMBER. No amendment to these Bylaws shall be effective without the written approval of the DEVELOPER as long as the DEVELOPER owns any portion of the Property.

11.3.2 A resolution for the adoption of the proposed amendment shall be adopted by MEMBERS having not less than a majority of the votes of the entire membership of the HOMEOWNERS' ASSOCIATION.

11.4 No amendment shall make any changes in the qualification for membership nor the voting rights or property rights of MEMBERS without approval by all of the MEMBERS. As long as the DEVELOPER owns any portion of the Property, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DEVELOPER, unless the DEVELOPER shall join in the execution of the amendment.

11.5 **Execution and Recording.** No modification of, or amendment to, these Bylaws shall be valid unless recorded in the Public Records of Collier County, Florida.

12. **Rules and Regulations.** The BOARD may, from time to time, adopt or amend previously adopted Rules and Regulations concerning the use of the Common Areas and concerning the use, operation and maintenance of other portions of the Property in order to further implement and carry out the intent of the Governing Documents. The BOARD shall make available to any MEMBER, upon request, a copy of the Rules and Regulations adopted from time by the BOARD.

13. **Miscellaneous.**

13.1 **Tenses and Genders.** The use of any gender or of any tense in these Bylaws shall refer to all genders or to all tenses, wherever the context so requires.

13.2 **Partial Invalidity.** Should any of the provisions hereof be void or become unenforceable at

law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

13.3 **Conflicts.** In the event of any conflict, any applicable Florida statute, the Declaration, Articles and Bylaws, and the Rules and Regulations of the HOMEOWNERS' ASSOCIATION shall govern, in that order.

13.4 **Captions.** Captions are inserted herein only as a matter of convenience and for reference and in no way are intended to and shall define, limit or describe the scope of these Bylaws or the intent of any provisions hereof.

13.5 **Waiver of Objections.** The failure of the BOARD or any Officers of the HOMEOWNERS' ASSOCIATION to comply with any terms and provisions of the Governing Documents which relate to time limitations shall not, in and of itself, invalidate the act done or performed. Any such defect shall be waived if it is not objected to by a MEMBER within thirty (30) days after the MEMBER is notified or becomes aware of the defect. Furthermore, if such defect occurs at a general or special meeting, the defect shall be waived as to all MEMBERS who received notice of the meeting and failed to object to such defect at the meeting.

SOUTH FLORIDA WATER MANAGEMENT PERMIT



SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 11-01624-P
DATE ISSUED: MAY 11, 2000

FORM PER-1
Rev. 05/95

PERMITTEE: HB LAND HOLDINGS OF SOUTHWEST FLORIDA LLC
 (LA SIENNA ESTATES)
 1331 OLD OAK LANE,
 NAPLES, FL 34110

PROJECT DESCRIPTION: AN ENVIRONMENTAL RESOURCE PERMIT FOR CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING A 40.37 ACRE RESIDENTIAL SUBDIVISION.
PROJECT LOCATION: COLLIER COUNTY, SECTION 21 TWP 48S RGE 26E
PERMIT DURATION: Five years from the date issued to complete construction of the surface water management system as authorized herein. See attached Rule 40E-4.321, Florida Administrative Code

This Permit is issued pursuant to Application No. 991112-9, dated October 27, 1999. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV Chapter 373 F.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.351(1), (2), and (4), F.A.C.

This Permit shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and the Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit. All activities authorized by this Permit shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:

SEE PAGES 2 - 3 OF 6
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(13) SPECIAL CONDITIONS.
 (19) GENERAL CONDITIONS.

FILED WITH THE CLERK OF THE SOUTH
 FLORIDA WATER MANAGEMENT DISTRICT

ON

5-17-00
 DEPUTY CLERK

SOUTH FLORIDA WATER MANAGEMENT
 DISTRICT, BY ITS GOVERNING BOARD

By

ASSISTANT SECRETARY

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SPECIAL CONDITIONS

1. MINIMUM BUILDING FLOOR ELEVATION: 16.5 FEET NGVD.
2. MINIMUM ROAD CROWN ELEVATION: 15 FEET NGVD.
3. DISCHARGE FACILITIES:
 - 1-.33' W X .33' H CIRCULAR ORIFICE WEIR WITH CREST AT ELEV. 12.8' NGVD.
 - 1-.42' DIA. CIRCULAR ORIFICE WITH INVERT AT ELEV. 12' NGVD.
 - 218 LF OF 2.5' DIA. RCP CULVERT.
- RECEIVING BODY : OLDE CYPRESS SWM - LAKE NO. 6
- CONTROL ELEV : 12 FEET NGVD. /12 FEET NGVD DRY SEASON.
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 PROBLEMS ARE NOT CREATED 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.
8. FACILITIES OTHER THAN THOSE STATED HEREIN SHALL NOT BE CONSTRUCTED WITHOUT AN APPROVED MODIFICATION OF THIS PERMIT.
9. OPERATION OF THE SURFACE WATER MANAGEMENT SYSTEM SHALL BE THE RESPONSIBILITY OF LA SIENNA HOME OWNERS ASSOCIATION, INC..
10. ACTIVITIES ASSOCIATED WITH IMPLEMENTATION OF THE WETLAND MITIGATION, MONITORING AND MAINTENANCE SHALL BE IN ACCORDANCE WITH THE FOLLOWING WORK SCHEDULE. ANY DEVIATION FROM THESE TIME FRAMES SHALL REQUIRE FORMAL SPWMD APPROVAL. SUCH REQUESTS MUST BE MADE IN WRITING AND SHALL INCLUDE (1) REASON FOR THE MODIFICATION; (2) PROPOSED START/FINISH DATES; AND (3) PROGRESS REPORT ON THE STATUS OF THE EXISTING MITIGATION EFFORTS.

COMPLETION DATE	ACTIVITY
AUGUST 10, 2000	SUBMIT DOCUMENTATION OF PURCHASE OF MITIGATION CREDITS

11. ENDANGERED SPECIES, THREATENED SPECIES, OR SPECIES OF SPECIAL CONCERN HAVE BEEN OBSERVED ON SITE AND/OR THE PROJECT CONTAINS SUITABLE HABITAT FOR THESE SPECIES. IT SHALL BE THE PERMITTEE'S RESPONSIBILITY TO COORDINATE WITH THE FLORIDA GAME AND FRESH WATER FISH COMMISSION AND/OR U.S. FISH AND WILDLIFE SERVICE FOR APPROPRIATE GUIDANCE, RECOMMENDATIONS, AND/OR NECESSARY PERMITS TO AVOID IMPACTS TO LISTED SPECIES.
12. PRIOR TO CONSTRUCTION ACTIVITIES THE SITE SHALL BE SURVEYED FOR THE PRESENCE OF ACTIVE BIG CYPRESS FOX SQUIRREL NESTS. A 125 FEET RADIUS UNDISTURBED BUFFER MUST BE

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PROVIDED AROUND ANY ACTIVE NESTS. THE RESULTS OF THE SURVEY, SUBSEQUENT PROTECTIVE MEASURES, AND ALL NECESSARY RELATED PERMITTING SHALL BE COORDINATED WITH THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION.

13. PRIOR TO CONSTRUCTION AND NO LATER THAN AUGUST 10, 2000, THE PERMITTEE SHALL PROVIDE THE DISTRICT WITH A LETTER OF COMMITMENT FROM THE PANTHER ISLAND MITIGATION BANK (SFWD PERMIT NO.11-00002-M) DEMONSTRATING THAT THE BANK HAS CREDITS AVAILABLE AND THE PERMITTEE HAS PURCHASED 19.05 CREDITS AS MITIGATION TO OFFSET THE 40.4 ACRES OF WETLAND IMPACTS

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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 THE 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-41091, 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 NO. 0960 INDICATING THE ACTUAL START DATE AND THE EXPECTED 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 PERMITTEE 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/CONSTRUCTION CERTIFICATION FORM NO. 088. THE STATEMENT OF COMPLETION AND CERTIFICATION SHALL BE BASED ON ONSITE OBSERVATION OF CONSTRUCTION OR REVIEW OF ASBUILT 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 ARE 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 "ASBUILT" 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

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HAS COMPLIED WITH THE REQUIREMENTS OF CONDITION (5) ABOVE, HAS 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 - AUGUST 1995, 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 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 - AUGUST 1995, PRIOR TO LOT OR UNIT SALES OR PRIOR TO THE COMPLETION OF THE SYSTEM, WHICHEVER OCCURS FIRST. OTHER DOCUMENTS CONCERNING THE ESTABLISHMENT AND AUTHORITY OF THE OPERATING ENTITY MUST BE FILED WITH THE SECRETARY OF STATE WHERE APPROPRIATE. FOR THOSE SYSTEMS WHICH ARE PROPOSED TO BE MAINTAINED BY THE 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 ANY 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-4D, 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 SOVEREIGN LANDS OR

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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-1.6102(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 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.

OR: 2737 PG: 2951

ENVIRONMENTAL RESOURCE PERMIT

CHAPTER 40E-4 (10/95)

40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to chapter 40E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit,
- or
2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

Specific authority 373.044, 373.113 F.S. Law Implemented 373.413, 373.416, 373.419, 373.420 F.S. History: New 9-3-81 Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-89, 4/20/94, Amended 7-1-98, 10/3/99

OR: 2737 PG: 2952

RE-VEGETATION PLAN

OR: 2737 PG: 2953

INGRESS/EGRESS ENTRANCE EASEMENT

OR: 2737 PG: 2955

10/03/00
356-00-00
10
THE RECORDS FAX 8412630703
RECORD A RETURN TO:
Thad Kirkpatrick, Esq.
Cummings & Lockwood
3001 Tamiami Trail North
Naples, FL 34103
Prepared by: [illegible]
Scott M. Grant, P.A.
3341 Tamiami Trail North
Naples, Florida 34103

CUMMINGS & LOCKWOOD

2.006

2698213 OR: 2729 PG: 1649
RECORDED IN OFFICIAL RECORDS OF COLLIER COUNTY, FL
10/03/2000 AT 11:55PM DWIGHT S. BROCK, CLERK
REC 222 33.00
DOC-70 7.00
COPIES 7.00
NISC 1.00

Re: CUMMINGS & LOCKWOOD
3001 TAMIAAMI TRAIL NORTH FLOOR
NAPLES FL 34103

GRANT OF ACCESS EASEMENT

This indenture made and executed this 29 day of September, 2000 by and between Olde Cypress Development, LTD., a Florida limited partnership, by its undersigned general partner, who has been duly authorized by the partnership to execute this Grant of Easement, whose mailing address is 5692 Strand Court, Suite One, Naples, Florida 34110, and The Club at Olde Cypress LTD., a Florida limited partnership, by its undersigned general partner, who has been duly authorized by the partnership to execute this Grant of Easement, whose mailing address is 5692 Strand Court, Suite One, Naples, Florida 34110, hereinafter collectively referred to as the "GRANTOR," and HB Holdings of Southwest Florida, L.L.C., a Florida limited liability company, by its undersigned manager, who has been duly authorized by the company to execute this Grant of Easement, whose mailing address is 800 Seagate Drive, Suite 203, Naples, Florida 34105, hereinafter referred to as the "GRANTEE."

WITNESSETH

That for and in consideration of the sum of ten (\$10.00) dollars and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the GRANTOR hereby grants to the GRANTEE, its successors and assigns, a non-exclusive and perpetual surface easement (together with a non-exclusive sub-surface easement) for constructing, operating, utilizing, and maintaining an entranceway for access to the land owned by GRANTEE which will be platted and sold to third parties (hereinafter referred to as the "Entranceway"). The Entranceway easement as defined above, shall include, but not be limited to reasonable access for ingress and egress along with security gates utilizing a keypad/card entry system, gatehouse, lighting systems, irrigation systems, utilities, signage, shrubs, flowers, plantings, mulch, brick pavers and/or other paving materials, and such other buildings, structures, decorations, adornments, landscaping, and other facilities and characteristics which are desirable in the discretion of GRANTEE, including the areas over, under, upon, and across the following described lands being located in Collier County, Florida, to wit:

A PORTION OF TRACT J OF OLDE CYPRESS, UNIT ONE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 32, AT PAGES 1 THROUGH 11 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE MOST NORTHERLY CORNER OF LOT 18, TRACT 10, OLDE

OR: 2737 PG: 2956

OR: 2729 PG: 1650

CYPRESS, UNIT ONE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 32, AT PAGES 1 THROUGH 11 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE RUN N.69°37'13"W., ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF OLDE CYPRESS DRIVE, A 60.00 FOOT RIGHT OF WAY, FOR A DISTANCE OF 166.02 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED AND TO A POINT ON A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY WHOSE RADIUS POINT BEARS S.20°22'47"W. A DISTANCE OF 10.00 FEET THEREFROM; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, THROUGH A CENTRAL ANGLE OF 84°11'55" SUBTENDED BY A CHORD OF 13.41 FEET AT A BEARING OF S.68°16'50"W., FOR A DISTANCE OF 14.70 FEET TO THE END OF SAID CURVE; THENCE RUN S.26°10'52"W., FOR A DISTANCE OF 48.73 FEET TO A POINT ON THE BOUNDARY OF SAID TRACT J; THENCE RUN S.89°05'47"W., ALONG THE BOUNDARY OF SAID TRACT J, FOR A DISTANCE OF 89.85 FEET; THENCE RUN N.26°10'52"E., FOR A DISTANCE OF 91.07 FEET TO A POINT ON A TANGENTIAL CIRCULAR CURVE, CONCAVE WESTERLY; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, THROUGH A CENTRAL ANGLE OF 77°58'28" SUBTENDED BY A CHORD OF 12.58 FEET AT A BEARING OF N.12°48'22"W. FOR A DISTANCE OF 13.61 FEET TO END OF SAID CURVE THE SAME BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID OLD CYPRESS DRIVE AND A POINT ON A CIRCULAR CURVE, CONCAVE NORTHEASTERLY, WHOSE RADIUS POINT BEARS N.38°12'24"E., A DISTANCE OF 230.00 FEET THEREFROM; THENCE RUN ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID OLDE CYPRESS DRIVE, AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET THROUGH A CENTRAL ANGLE OF 174°37", SUBTENDED BY A CHORD OF 71.27 FEET AT A BEARING OF S.60°42'25"E., FOR A DISTANCE OF 71.56 FEET TO THE END OF SAID CURVE; THENCE RUN S.65°37'13"E., ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID OLDE CYPRESS DRIVE, FOR A DISTANCE OF 25.87 FEET TO THE POINT OF BEGINNING, CONTAINING 6,147.344 SQUARE FEET MORE OR LESS.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE CENTERLINE OF OLDE CYPRESS DRIVE, TRACT R-2, OLDE CYPRESS, UNIT ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 32, AT PAGES 1 THROUGH 11 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AS BEING N.69°37'13"W;

hereinafter referred to as the "Easement Property" which is further depicted on the plan annexed hereto as Exhibit "A" and incorporated herein dated 4/30 by Hole Montes & Associates, Bonita

OR: 2737 PG: 2957

Springs, Florida.

WITNESS TO HAVE AND TO HOLD the Easement hereby granted unto and for the benefit of said GRANTEE its successors and assigns, shall be appurtenant to and run with the land of the GRANTEE its successors and assigns (described therein and attached hereto as Exhibit "B") and be binding upon and inure to the benefit of all present and future owners and occupiers of the parcels which are described in Exhibit "B." The acquisition of title by a parcel owner to property described in Exhibit "B" or any interest in the property, or the lease, occupancy, or use of any portion of the property, shall constitute an acceptance and ratification of all provisions of this Easement and an agreement to be bound by its terms.

GRANTEE, by acceptance of this easement agrees for itself, its successors and assigns, to maintain said Easement Property. GRANTOR strictly prohibits GRANTEE from utilizing the Easement Property for any uses other than those described above. GRANTEE accepts GRANTOR's restricted use of the Easement Property. GRANTEE further agrees that any substantial variation in the use of the Easement Property from the terms and conditions contained herein shall require prior approval by the GRANTOR. GRANTEE further agrees that it will at all times, use reasonable care to restore all grounds to as good or better condition than found prior to utilizing, constructing, operating, and maintaining the Easement Property.

The GRANTEE and GRANTOR specifically covenant that in so far as the maintenance of the herein described Entranceway is concerned, GRANTEE, its successors and assigns, are obligated to solely develop, plant, and maintain, and upkeep the Entranceway. The GRANTEE must maintain the Entranceway in a manner consistent with the Declaration of Covenants, Conditions, and Restrictions for Olde Cypress, dated April 26, 1999, and recorded in Original Records Book 2539, Page 2902 et seq., of the Public Records of Collier County, Florida. The GRANTOR shall have no obligations hereunder.

Nothing contained herein shall prevent the GRANTOR from granting additional surface or sub-surface easements, however, no such grant shall in any way interfere with the operation and maintenance of the Entranceway constructed by the GRANTEE or the intended use of the Grant of Easement.

GRANTEE hereby covenants and agrees to indemnify, save, protect, and hold harmless GRANTOR against any loss, damage, injury, debt, expense, or claims or asserted by any person or entity, arising out of the GRANTEE's installation or of the GRANTEE's facilities described above.

IN WITNESS WHEREOF, the GRANTOR has caused these presents to be executed in its name the day and year first above written.

Signatures Appear Next Page

OR: 2729 PG: 1652

**OLDE CYPRESS DEVELOPMENT,
LTD., a Florida limited partnership.**

BY: **OLDE CYPRESS DEVELOPMENT
CORPORATION, a Florida
corporation, as General Partner**

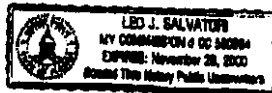
BY: *[Signature]*
Renee Tolson, as Vice President
Robert Paul Hardy

[Signature]
Printed Name: **Carl Salcher**

[Signature]
Printed Name: **Nancy C. Tarn**

STATE OF FLORIDA
COUNTY OF Collier

The foregoing instrument was subscribed and sworn to before me on this 29th day of September, 2000, by **RENEE TOLSON**, as Vice President of Olde Cypress Development Corporation, a Florida corporation, who is personally known to me, or has produced as identification. *[Signature]*
Robert Paul Hardy



[Signature]
Notary Public
My Commission expires:

**THE CLUB AT OLDE CYPRESS
LTD., a Florida limited partnership,**

BY: **THE CLUB AT OLDE CYPRESS
INCORPORATED, a Florida
corporation, as General Partner**

BY: *[Signature]*
Renee Tolson, as Vice President
Robert Paul Hardy

[Signature]
Printed Name: **Carl Salcher**

[Signature]
Printed Name: **Nancy C. Tarn**

OR: 2737 PG: 2959

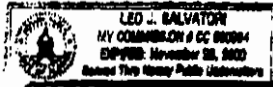
OR: 2729 PG: 1653

STATE OF FLORIDA.
COUNTY OF Collier

The foregoing instrument was subscribed and sworn to before me on this 27 day of September, 2000, by RENEE TOLSON, as Vice-President of The Club at Oldc Cypress Incorporated, a Florida corporation, who is personally known to me, or has produced _____ as identification. Release Print Here.

(SEAL)

[Signature]
Notary Public
My Commission expires:



**H.B. HOLDINGS OF SOUTHWEST
FLORIDA, L.L.C.** a Florida limited
liability company.

BY: **EURO/FLORIDA FUNDINGS, INC.,**
a Florida Corporation, as Manager

[Signature]
Printed Name: Kenneth V. Cleary

BY: [Signature]
Michael Bahms, as President

[Signature]
Printed Name: Frank E. [unclear]

STATE OF FLORIDA
COUNTY OF Collier

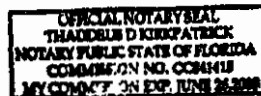
The foregoing instrument was subscribed and sworn to before me on this 29 day of September, 2000, by MICHAEL BAHMS, as President of Euro/Florida Fundings, Inc., a Florida corporation, who is personally known to me, or has produced _____ as identification.

(SEAL)

[Signature]
Notary Public
My Commission expires:

H:\WPDOCS\LEGAL\Real Estate\00159 Access Easement.wpd

Page 5 of 5



OR: 2737 PG: 2960

*** OR: 2729 PG: 1655 ***

Exhibit "B"

A Parcel of land located in a portion of Section 21, Township 48 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

E ½ - SW ¼ - NW ¼, W ½ - SE ¼ - NW ¼, all of Section 21, Township 48 South, Range 26 East, Collier County, Florida.

OR: 2737 PG: 2961

State of FLORIDA
County of COLLIER
I HEREBY CERTIFY THAT this is a true and
correct copy of a document recorded in
the OFFICIAL RECORDS of Collier County.
WITNESS my hand and official seal this
date, October 5, 2000
BRIGHT L. BRACK, CLERK OF COLLIER COUNTY
Bright L. Brack

Retn:
ANTONIO FAGA
PICK UP

3678933 OR: 3868 PG: 0145
RECORDED in the OFFICIAL RECORDS of COLLIER COUNTY, FL
08/15/2005 at 02:11PM DWIGHT B. BROCK, CLERK

REC FEB

18.50

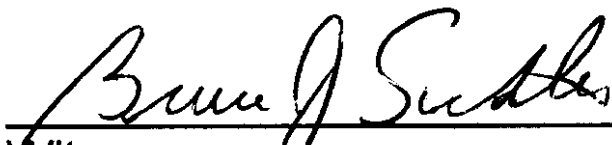
CERTIFICATE OF AMENDMENT

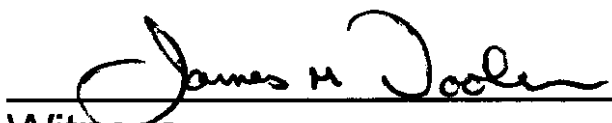
THE UNDERSIGNED, being the duly elected and acting President of H.B. Holdings of Southwest Florida, LLC, a Florida limited liability company (the "Association"), does hereby certify that at a special meeting of the Association held on December 23, 2004, where a quorum was present, after due notice, the resolution set forth below was approved and adopted by at least sixty percent (60%) of all members present in person or by proxy for the purposes of amending the Declaration of Covenants, Conditions and Restrictions for Da Vinci Estates, as originally recorded in Official Records Book 2737, Pages 2884-2914, as amended, of the Public Records of Collier County, Florida.

RESOLVED: That the Declaration of Covenants, Conditions and Restrictions, be and is hereby amended; and the amendment is adopted in the form attached hereto and made a part hereof.

Date: December 23, 2004

**H.B. HOLDINGS OF
SOUTHWEST FLORIDA, LLC,
a Florida limited liability
company.**


Witness
Print Name: Bruce J Sickles


Witness
Print Name: JAMES M DOOLEN

BY: 
Patrick J. O'Loughlin, President

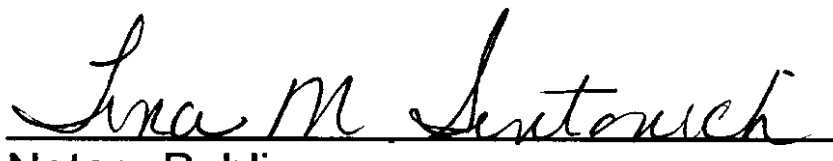
STATE OF FLORIDA)
COUNTY OF COLLIER)

I hereby certify that on this day before me, an officer duly authorized to take acknowledgments, personally appeared Patrick J. O'Loughlin, President of the aforementioned corporation, and he executed the foregoing instrument freely and voluntarily under the authority duly vested in him by said corporation. Patrick J. O'Loughlin is personally known to me and he did take an oath.

Witness my hand and official seal this 23rd day of December, 2004.



Tina M Santovich
My Commission DD336553
Expires July 09, 2008


Notary Public

Print Name

This document prepared by:
Antonio Faga, Esquire, 7955 Airport Road N., Ste. 101, Naples, Florida 34109 (239) 597-9999

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF DA VINCI ESTATES**

The Declaration of Covenants, Conditions and Restrictions for Da Vinci Estates, shall be amended as shown below:

NOTE: Deleted language is ~~struck out~~; new language is underlined.

4.3. ~~Capital Contributions.~~ Capital Contributions and Transfer Fee.

Except as otherwise provided herein, each Lot and the purchaser thereof shall be liable for the Da Vinci Capital Contribution Fee of \$500. Said fee shall be paid by each and every purchaser, and all subsequent purchasers thereof, at the time of transfer. In addition to the above referenced Capital Contribution Fee, each Lot and the purchaser shall pay Capital Contributions and transfer fee. All purchasers of Da Vinci property within Da Vinci Estates shall pay a transfer fee of \$300 at the time of closing. Said amount shall be made payable to Da Vinci Estates Homeowner's Association.